

From: Joseph Shea / E 00
To: Stacey Rosenberg / E 00
Date: 11/15/01 1:00PM
Subject: Fwd: Re: question

more from OGC...

C-14

From: Lawrence Chandler
To: Gerke, Laura; Shea, Joseph; Young, Mitzi
Date: 11/15/01 10:17AM
Subject: Re: question

To state it perhaps more emphatically - the provisions of the order **ARE IN EFFECT** even if challenged **unless and until** determined otherwise by the ASLB, as explained by Mitzi.

>>> Mitzi Young 11/15/01 10:12AM >>>

On the money! Any licensee challenge to the immediate effectiveness must state with particularity the reasons why the order is not based on adequate evidence (but rather, mere suspicion, unfounded allegations or error). While the motion is pending the presiding officer may not stay the immediate effectiveness (either on its own or in response to a licensee or other motion).

The motion must be decided expeditiously. If the staff is upheld, the decision becomes final. If immediate effectiveness is set aside, the ASLB order is referred to the Commission and does not become effective until the Commission issues an order.

>>> Joseph Shea 11/15/01 09:55AM >>>

Laura,

10 CFR 2.202 lays out the process associated with an order with a specificity I can't improve upon....as you take a look at that section, you should be aware that the potential orders for the CRDM issues will be issued as "immediately effective"...this designation comes into play when discussing the forums and contingencies provided for a licensee....if you need more on this, I'd give Larry Chandler or Mitzi Young a call....

With that caveat, here is my understanding of the answer to your question....

In responding to the "immediately effective" order to shutdown and inspect by 12/31, the licensee can request two things:

- (1) a hearing on the content of the order (proposed action and basis)....and
- (2) a motion to set aside the immediate effectiveness aspect of the order....

In response to a request for a hearing, the Commission is obligated to expeditiously set a schedule for that hearing including designation of presiding officer (which would be from ASLB)....

In response to a challenge to the immediate effectiveness aspect, the ASLB would consider this narrow issue and would seek to speak to the issue likely before 12/31....if the ASLB upholds the immediate effectiveness, then the licensee would be obliged to follow the order while the hearing process on the content of the order itself unfolds should that process go on beyond 12/31...

Larry, Mitzi....did I come close...clarifications welcome!

Thanks,

Joe

>>> Laura Gerke 11/15/01 07:46AM >>>

If a licensee appeals an order to shutdown, what happens if the date to shutdown (i.e., 12/31) comes while the Commission is reviewing the appeal?