

**FOI/PA REQUEST**

**From:** uid no body <nobody@nrc.gov>  
**To:** <foia@nrc.gov>  
**Date:** Mon, Mar 15, 2004 1:30 PM  
**Subject:** WWW Form Submission

**Case No.** 2004-0160  
**Date Recd.** 3-15-04  
**Action Off.** POOL  
**Request Case:** \_\_\_\_\_

Below is the result of your feedback form. It was submitted by

( ) on Monday, March 15, 2004 at 13:29:53

FirstName: Jonathan

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Desc: A note from Howard K. Shapar to Joseph Hennessey (dated April 3, 1967) in which Mr. Shapar explains to Mr. Hennessey "at length" why "the Commission has consistently interpreted the provision [section 189a of the Atomic Energy Act] to require a trial-type hearing."

This record is referenced in footnote 4 of a memorandum from Howard K. Shapar to NRC Chairman AHearne, "Prior Notice Requirement for Rule Change" (June 19, 1980), which is one of the enclosures attached to 70-143 (6/27/80), memo from Commission Peter A. Bradfor to Service List NFS-Erwin Proceeding (June 27, 1980).

FeeCategory: Educational

MediaType:

FeeCategory\_Description:

Expedite\_ImminentThreatText:

Expedite\_UrgencyToInform: on

Expedite\_UrgencyToInformText: The information in this request relates directly to whether there is any truth in the NRC's claim--in support of its recent rulemaking changing Part 2 adjudicatory rules--that there

is no congressional requirement for formal hearing processes.

If the requested record information contains the information indicated in the source for this request, a copy of the record and the information in it will be placed before a United States Court of Appeal reviewing the legality of the rule. This information is needed as soon as possible for briefing this matter to the Court.

**Waiver\_Purpose:** Record will be provided to a Court of the United States Court of Appeals.

**Waiver\_ExtentToExtractAnalyze:** If the record contains the information stated in the document referring to it, it will be used in its entirety and referred to in presenting that information to a reviewing court.

**Waiver\_SpecificActivityQuals:** The records will be used in preparation for a case of judicial review of the NRC's recent rulemaking altering the adjudicatory process available to members of the public interested in NRC licensing proceedings. They are part of research into the legislative and agency history of the meaning of section 189a of the Atomic Energy Act of 1954 and as amended. The requester is an experienced attorney who represents a non-profit public interest organization that is seeking judicial review of the recent rulechange. As in previous use of similar material, it will become part of the public record of the case and will also be disseminated as widely as possible through the organization's website.

**Waiver\_ImpactPublicUnderstanding:** If this document contains the information that the referring document states that it does it will provide an extremely crucial insight into the reasons why the AEC claimed that Congress intended there be a formal hearing process even though the Atomic Energy Act on its face appears silent on that point.

**Waiver\_NatureOfPublic:** All persons who may be affected by the recent NRC rulemaking altering the adjudicatory process--an extremely substantial number of persons--could be affected by release of this information for the indicated intended purposes. In addition, the judges on the panel in the United States Court of Appeal that hears this case will also have a different understanding of the issues on the basis of having access to this document.

**Waiver\_MeansOfDissemination:** The document will be disseminated to the general public by becoming part of the public record in a judicial review of NRC action and will also be available on the requesting organization's web site.

**Waiver\_FreeToPublicOrFee:** Access to information will be free of charge.

**Waiver\_PrivateCommericalInterest:** There is no commerical or private interest. The information will be used by a public interest, non-profit organization whose purposes are educational. The information will become part of the public record in the case and generally available to any interested person at no charge on the organization's website.

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