

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Petition Review Board

Docket Number: (not provided)

Location: (conference call)

Date: Wednesday, April 18, 2007

Work Order No.: NRC-1558

Pages 1-27

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

+ + + + +

WEDNESDAY

APRIL 18, 2007

+ + + + +

The conference call was held, George C. Pangburn, Deputy Director, Office of Federal and State Materials and Environmental Management Programs, presiding.

NRC HEADQUARTERS STAFF:

GEORGE C. PANGBURN, Deputy Director, Office of Federal and State Materials and Environmental Management Programs

JOE DeCICCO, Petition Manager for 2.206 petition

DONALD COOL, Federal and State Materials and Environmental Management Programs

PAUL GOLDBERG, Petition Coordinator, Federal and State Materials and Environmental Management Programs

SANDRA HACKWORTH, Operations Officer, Office of Investigations

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 NRC HEADQUARTERS STAFF (continued):

2 VINCE HALOHAN, Research

3 GIOVANNA "JENNY" LONGO, Senior Attorney, Office
4 of General Counsel

5 JANET SCHUELTER, Director, Materials Safety and
6 State Agreements, FSME

7 MARIA SCHWARTZ, Office of Enforcement

8 PETITIONER:

9 JAMES SALSMAN, resident, Mountainview,
10 California

11 ALSO PRESENT:

12 BRIAN HARCİK, Department of the Army

13 GREG KOMP, Department of the Army

14 BHAT RAMACHANDRA, Air Force

15 MARK WROBEL, Colonel, Air Force

16

17

18

19

20

21

22

23

24

25

P-R-O-C-E-E-D-I-N-G-S

1
2 CHAIRMAN PANGBURN: Good afternoon. This
3 is George Pangburn and I'm the Deputy Director of the
4 Office of Federal and State Materials and
5 Environmental Management Programs and I serve as the
6 Chair of this 2.206 Petition Review Board. What I'll
7 do is, at this point, since we've got people on the
8 phone, is to go around there and go around here and
9 have individuals who are members of the Board with us
10 today to give their names and affiliations. So,
11 members of the Board?

12 MEMBER DeCICCO: Okay, I'm Joe DeCiccio
13 and I'm the Petition Manager.

14 MEMBER HACKWORTH: Sandra Hackworth, I'm
15 an Operations Officer, NRC Office of Investigations.

16 MEMBER LONGO: Jenny Longo, Senior
17 Attorney in the Office of General Counsel.

18 MEMBER COOL: Donald Cool, FSME.

19 MEMBER HALOHAN: Vince Halohan, Research.

20 MR. GOLDBERG: And Paul Goldberg, I'm in
21 FSME. I'm Petition Coordinator and I'm actually not
22 part of the PRB.

23 CHAIRMAN PANGBURN: And in addition?

24 MS. SCHUELTER: Janet Schuelter, I'm the
25 Director for the Division of Materials Safety and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 State Agreements.

2 CHAIRMAN PANGBURN: And if it would be
3 useful for everyone, we can go around to those people
4 who are on the phone, just to make sure everyone knows
5 everyone who's on the phone. Mr. Salsman, do you want
6 to go first?

7 MR. SALSMAN: Yes, I'm James Salsman, and
8 calling you from basically the Offices and I'm a
9 resident of Mountainview, California.

10 CHAIRMAN PANGBURN: Thank you, and others?

11 MS. SCHWARTZ: This is Marie Schwartz,
12 from the NRC's Office of Enforcement.

13 MR. KOMP: Greg Komp, Department of the
14 Army.

15 MR. RAMACHANDRA: I'm Bhat Ramachandra.

16 CHAIRMAN PANGBURN: It sounds like we've
17 got a wind storm on our line here.

18 MR. SALSMAN: I'll try to stay out of the
19 wind. I'm sorry if that was me.

20 CHAIRMAN PANGBURN: Okay, thank you.
21 Rama, we've got yours?

22 COL. WROBEL: Colonel Mark Wrobel.

23 MR. HARCİK: Brian Harcik.

24 CHAIRMAN PANGBURN: Okay, I think that's
25 everyone. Briefly for the benefit of everyone who's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on the line, I'll talk about the 2.206 process and
2 then get into where we are today. The 2.206 process
3 basically provides members of the public with the
4 means to request the Commission taking enforcement
5 related action, that is to suspend, modify, revoke a
6 license or take other appropriate enforcement action.
7 That policy is in Section 2.206 of Title 10 of the
8 Code of Federal Regulations.

9 The Commission may grant a request for
10 such action in whole or in part, take other action
11 that satisfies a concern by the requester or deny a
12 request. After a petition, a 2.206 is received by the
13 Office of the Executive Director for Operations, the
14 Director assigns it to the Director of the appropriate
15 office for evaluation. In this instance case that's
16 the Office of Federal and State Materials and
17 Environmental Management Program. And I'm the Deputy
18 Director of that Office.

19 The 2.206 process is a public process in
20 which the petition and all information in it will be
21 made public. The request that reads, "Health and
22 safety or other concerns without requesting
23 enforcement related action", will be reviewed by me
24 and others under 2.206 process. In the case today,
25 the petition presented by Mr. Salsman requests several

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 actions to modify the uranium and munitions licenses.
2 All the members of the PRB have copies of the petition
3 and in supplement, and in brief, those modifications
4 include to quantify dates, times, locations,
5 quantities and types of pyro munitions used; the
6 amount of urana-oxide produced under use conditions,
7 the extent of reproductive and developmental toxicity
8 from typical combustion of at least five diverse
9 species of animals using chromosome aberration
10 analysis, published in peer review in medical and
11 scientific literature (transmission problems) to A, B,
12 and C above, the things that I had just mentioned.

13 PRB met a few weeks ago. Subsequent to
14 that meeting, Mr. DeCicco talked to Mr. Salsman, the
15 Petitioner, to provide the results of that meeting.
16 And the purpose of this meeting is for Mr. Salsman to
17 provide comments on the recommendation of the PRB
18 after the first teleconference, and to provide any
19 relevant additional explanation in support for the
20 request he has made in light of the PRB's
21 recommendations.

22 This meeting, as I mentioned, in another
23 call, is not a hearing, is not intended (transmission
24 problems). We have invited the licensees to
25 participate to insure that they understand the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 concerns about their facility or activities. PRB
2 members may ask questions as needed to clarify
3 anything that Mr. Salsman may say to us today. The
4 licensees, likewise, may also ask questions to clarify
5 any issues raised.

6 Any member of the public may listen in and
7 we don't have any members of the public per se on
8 today other than the licensee, but this meeting is
9 being recorded and a transcription of the recording
10 will be made publicly available. Having said that, if
11 there are no questions on the procedure, Mr. Salsman,
12 the floor is yours.

13 MR. SALSMAN: I have some questions and
14 the first one is in regard to the reasons of the
15 petition where it was denied, how many reasons were
16 there?

17 CHAIRMAN PANGBURN: You're asking how many
18 reasons were there?

19 MR. SALSMAN: How many different reasons
20 were there that the petition was denied? Was it one
21 or two or more?

22 CHAIRMAN PANGBURN: This petition hasn't
23 been denied.

24 MR. SALSMAN: Or rejected, I'm sorry.

25 CHAIRMAN PANGBURN: No, we have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 recommendations from the PRB to the --

2 MR. SALSMAN: What are the reasons that
3 the Commission is not reviewing the petition?

4 CHAIRMAN PANGBURN: I think fundamentally
5 what Mr. DeCicco had said to you when he called you is
6 that the issues that you have raised in that request
7 have already been the subject of NRC review and
8 evaluation for which a resolution has been addressed
9 and resolved. And I believe we said that that time
10 that December 2nd you filed a petition and requested
11 the same remedies and provided the same bases as your
12 petition request of July 12th, 2006 which was resolved
13 in our letter to you of September 26th, 2006.

14 And we had added in our call, James, that
15 to the extent that your issues deal with regulations,
16 they are being examined in the petition for
17 rulemaking.

18 MR. SALSMAN: How many reasons in total,
19 please?

20 CHAIRMAN PANGBURN: Fundamentally, it is
21 one reason. It's what I stated, in that what -- the
22 issues you've raised have been essentially evaluated
23 and dispositioned.

24 MEMBER LONGO: I think the additional
25 information that was supplied in connection with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 current request is information that could change the
2 outcome, significantly not something that could change
3 the outcome. The additional supplied would not change
4 the outcome, therefore, you would not treat this as a
5 request for reconsideration.

6 MR. SALSMAN: How many reasons would that
7 be?

8 MEMBER LONGO: It's one big reason.

9 MR. SALSMAN: Okay, because the
10 information -- okay, okay, now I understand there's
11 only three reasons that you're allowed to decline to
12 review a petition; is that correct?

13 MEMBER LONGO: Well, the management
14 directive has several reasons for rejection and it has
15 several criteria for acceptance.

16 MR. SALSMAN: Are any of the reasons today
17 congruent with any of the reasons allowed in the
18 management directive?

19 MEMBER LONGO: Yes.

20 MR. SALSMAN: Okay, how many reasons
21 allowed in the management directive --

22 MEMBER LONGO: There's one in the
23 management directive that controls, and I'll read you
24 that language.

25 MR. SALSMAN: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN PANGBURN: On page 12, James, of
2 the management directive.

3 MEMBER LONGO: Okay, that language is,
4 "The Petitioner raises issues that have already been
5 the subject of NRC staff review and evaluation, either
6 on that facility, other similar facilities or on a
7 generic basis for which a resolution has been
8 achieved. The issues have been resolved and the
9 resolution is applicable to the facility in question.
10 This would include requests to reconsider or reopen a
11 previous enforcement action including a decision not
12 to initiate an enforcement action or a directed
13 decision. These requests will not be treated as a
14 2.206 petition unless they present significant new
15 information." That is one single reason which is the
16 one we are relying on.

17 MR. SALSMAN: Okay, so is anyone on the
18 Petition Review Board claiming that the issues raised
19 have been resolved?

20 MEMBER LONGO: Evaluated and resolved,
21 yes.

22 MR. SALSMAN: Okay, who is claiming that?

23 CHAIRMAN PANGBURN: Mr. Salsman, that's a
24 decision of the Board in total.

25 MR. SALSMAN: Okay. Okay, so you claim

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that the issues raised have been resolved.

2 CHAIRMAN PANGBURN: And that's been
3 provided to you in correspondence that I mentioned
4 earlier.

5 MR. SALSMAN: But that contradicts the
6 statement earlier that the rulemaking proceeding is
7 still in progress.

8 CHAIRMAN PANGBURN: What we're talking
9 about is dispositioning this as a 2.206 Petition.
10 What we're saying here is the information that you've
11 provided to us is being provided in consideration
12 under that separate action.

13 MEMBER LONGO: Mr. Salsman, the issues you
14 raise your current petition were evaluated and
15 resolved in the directed decision, previous directed
16 decision and in the letter to you of September 26th,
17 2006.

18 MR. SALSMAN: Does anyone on the Petition
19 Review Board claim that there was no significant new
20 information in the petition of December 2nd?

21 MEMBER LONGO: That is correct, that your
22 current petition does not contain significant new
23 information and the meaning of that phrase is
24 information that could change the outcome, change our
25 recommendation. The information you supplied is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 relevant to the rulemaking and has been forwarded to
2 the rulemaking for consideration there, but it would
3 not change the outcome of the PRB's recommendation
4 with respect to your new petition.

5 MR. SALSMAN: Okay, I have a question
6 about that. Why does the Petition Review Board
7 believe that the information that I provided could not
8 change the outcome of the decision?

9 CHAIRMAN PANGBURN: Mr. Salsman, the
10 purpose of today's call, as I said earlier was not to
11 provide a mechanism for questioning of the PRB.

12 MR. SALSMAN: That's contradictory to what
13 you said earlier when you said that the Petitioner may
14 raise questions, and I'd like you to clarify, please,
15 why has the Board decided that information that I
16 provided could not change the outcome of the
17 proceedings.

18 MALE PARTICIPANT: You can provide
19 clarifying information which supplements or explains
20 what you've provided to us earlier. That's the
21 purpose of today's call.

22 MR. SALSMAN: Dr. Pangburn?

23 CHAIRMAN PANGBURN: I'm sorry, your
24 question is?

25 MR. SALSMAN: Why does the Board believe

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that the information I provided on the December 2nd
2 petition and its supplementary material could not
3 change the outcome of the proceedings?

4 CHAIRMAN PANGBURN: In reviewing that
5 information, we made a determination as a Board, as
6 Ms. Longo mentioned a few moments ago, that is was not
7 significant and that the decisions that were made
8 earlier, both the Director's decision and the
9 subsequent letter remained valid.

10 MR. SALSMAN: Well, with the information
11 that I provided --

12 CHAIRMAN PANGBURN: Let me clarify one
13 point. We take these responsibilities seriously. The
14 people who are here around this table put a lot of
15 time into this. They're fairly senior level people
16 within the Agency and we don't take these
17 responsibilities lightly. We did provide what I
18 believe was a serious evaluation of the information
19 that you provided to us and we've corresponded with
20 now two times and talked with you on two occasions.
21 And I believe what we have done is give reasonable
22 evaluation of that information and reached a
23 conclusion.

24 The information you've been provided --
25 that you've provided to us is not appropriate for this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 action under 2.206. We have, however, provided that
2 information for consideration in another venue.

3 MR. SALSMAN: Does anyone on the Petition
4 Review Board disagree with the conclusion of Dr.
5 Hayman (phonetic)?

6 CHAIRMAN PANGBURN: As I said earlier,
7 we're not going to interview, investigate or examine
8 the PRB. That simply is not going to happen during
9 this call.

10 MR. SALSMAN: So your statements have ben
11 contradictory.

12 CHAIRMAN PANGBURN: How is that?

13 MR. SALSMAN: Well, earlier I was told by
14 Joe that the reason that the Petition Review Board
15 decided that the information I provided couldn't
16 change the outcome was because the Commission doesn't
17 have the authority to regulate the wartime use of
18 depleted uranium. Is that true?

19 MEMBER DeCICCO: No, that's a separate
20 issue.

21 MR. SALSMAN: Is that a separate issue?

22 MEMBER DeCICCO: Yes, it is.

23 CHAIRMAN PANGBURN: To the extent, as I
24 think was said in the Director's decision, to the
25 extent that your petition involves the use of depleted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 uranium in other countries or in combat, we don't have
2 jurisdiction over that.

3 MR. SALSMAN: That's contrary to Greg
4 Komp's statement, at least in his letter of 2005 and
5 according to our discussion earlier. And also I mean,
6 let me just make sure I understood Joe correctly.
7 Joe, did you tell me that the reason that the Petition
8 Review Board decided that the information I provided
9 couldn't change the outcome was because the Commission
10 doesn't have the authority to regulate the work on use
11 of depleted uranium?

12 MEMBER DeCICCO: I did say that, but I
13 meant to give you the impression that it was two
14 separate issues or two separate statements. One was
15 that the information provided did not change the
16 outcome of the previous decisions. Then I also said
17 to the extent your concerns pertain to the protection
18 of health of Armed Forces currently at risk from the
19 combustion products, the petition request is rejected
20 because NRC has no authority to regulate combat for
21 foreign use. Those are two separate issues.

22 MR. SALSMAN: Okay. Now, I believe that
23 the idea that the NRC doesn't have the ability to
24 regulate wartime use of depleted uranium is incorrect.
25 Dr. Pangburn --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN PANGBURN: That may be -- okay,
2 I'd like to hear you out on that point.

3 MR. SALSMAN: Okay, I have a letter from
4 Greg Komp which claims that the Army abides by the
5 instructions of the Nuclear Regulatory Commission in
6 these issues.

7 MR. KOMP: This is Greg Komp. Let me
8 comment on that. I think that is true. In fact, we
9 do have a letter in response to the petition of 2005,
10 and the issue is that, although the NRC does not have
11 the authority to regulate, it simplifies our program
12 to apply the same rules across the board. That way I
13 don't have a different program stateside than I do
14 whole CONUS (phonetic). That is what was meant or my
15 intention what I tried to say.

16 MR. SALSMAN: Okay, Greg, do you believe
17 that the NRC has the authority to regulation depleted
18 uranium in war?

19 MR. KOMP: No.

20 MR. SALSMAN: Okay, so I see you've
21 changed your position then. Okay, fine. Why does the
22 NRC not have the authority to regulate the use of
23 depleted uranium in war?

24 CHAIRMAN PANGBURN: Mr. Salsman, that kind
25 of conversation could go on forever as to why we don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 regulate things we don't regulate. We regulate by
2 statute and we regulate by the regulation 10 CFR. And
3 they simply don't apply to the Army's use of this
4 material in war time or any portion of the Armed
5 Services.

6 MS. SCHWARTZ: We cannot go beyond the
7 authority that's provided to us by statute. And in
8 that statute it specifically delineates what we're
9 able to regulate and not regulate. And what you're
10 talking about is something that we have not been given
11 authority to regulate by statute. Congress makes that
12 decision when they --

13 MR. SALSMAN: Well, I need to understand
14 the statutory reason that you're not allowed to
15 regulate because my reading of the statute is that you
16 do have the authority to pull the license from the
17 Army, for example, to possess or to transfer or from
18 a civil manufacturer to possess or transfer the
19 byproduct materials that you regulate. Now is there
20 any contradictory statute?

21 MEMBER LONGO: Maria, excuse me.

22 MS. SCHWARTZ: Yeah, go ahead.

23 MEMBER LONGO: Mr. Salsman, if you believe
24 that we have jurisdiction, we are happy to hear your
25 reasons for that belief, but we are not going to here

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have a debate with you about it.

2 MR. SALSMAN: No, I'm talking about
3 verification.

4 MEMBER LONGO: You know, if you have a
5 theory, a legal theory or a reason for that belief we
6 want to hear it.

7 MR. SALSMAN: I appreciate that, and I'll
8 provide that in detail. I believe I already have. My
9 question in regards to the clarification of what was
10 said earlier, there was a statutory provision that
11 decided what you were or not allowed to regulate and
12 I'd like to see if my understanding is correct or not,
13 so I'd like to clarify whether or not there are any
14 statutes that prevent you from pulling a license from
15 either the Army or a civilian manufacturer and thereby
16 making --

17 MEMBER LONGO: Again --

18 MR. SALSMAN: -- it unlawful for them to
19 possess those materials.

20 MEMBER LONGO: Again, Mr. Salsman, the NRC
21 explained in the Director's decision and in the letter
22 in September 2006, you know, why we believe we don't
23 have jurisdiction. And at this point, we are happy to
24 hear whatever explanations or theory you have as to
25 why we should exercise jurisdiction. Again, we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not going to debate with you.

2 MR. SALSMAN: Well, I'm not asking for a
3 debate. I'm just asking if you're familiar with any
4 statutes that would concern your authority to regulate
5 the wartime use of depleted uranium.

6 MEMBER LONGO: The answer is, we are
7 unaware of any law that gives us authority to
8 regulate, either in munitions in combat or foreign
9 use.

10 MR. SALSMAN: Are you unaware of any law
11 which requires that you not regulate?

12 MEMBER LONGO: It's -- I'm not going to
13 answer the question you're asking because it doesn't
14 -- frankly, it's not informative.

15 MR. SALSMAN: Well, I'm trying to clarify
16 the --

17 MEMBER LONGO: Let me finish, please, Mr.
18 Salsman. As we explained in the Director's decision,
19 in the United States under our Constitution, the
20 government has limited powers. The government is not
21 -- there's no emperor, there's no king. People can't
22 do whatever they want. Congress gives the regulatory
23 agencies and the Executive Branch authority to do
24 certain things under law. And if we don't have the
25 authority, we just can't do it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SALSMAN: Well, what would be the
2 point of issuing any of those -- whether it be the
3 civilian manufacturer or any of the government
4 agencies' licenses if it wasn't meaningful if those
5 licenses were removed? What would be the meaning? I
6 mean --

7 MEMBER LONGO: Mr. Salsman, the statements
8 in the Director's decision and our letter was that the
9 NRC has no authority, no jurisdiction, to regulate
10 combat use or foreign use of diminutions (phonetic).
11 As we explained previously, the NRC has authority to
12 license the manufacture and testing, which we do do,
13 under -- we have issued licenses to do that but --

14 MR. SALSMAN: Doesn't the statute require
15 that you uphold public health and safety?

16 MEMBER LONGO: Within the bounds of our
17 statutory authority. We don't have power to regulate
18 all aspects of health and safety, public health and
19 safety.

20 MR. SALSMAN: Well, which law removes the
21 ability for you to regulate the --

22 MEMBER LONGO: It's not a matter of
23 removing. I think there's a misconception on your
24 part and this is, I think, the third time now. The
25 NRC and federal agencies only have authority that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 granted by Congress. They cannot go and do something
2 and say, "Well, it wasn't prohibited, therefore, I can
3 do it". That is not how this government and our
4 Constitution works. It just doesn't.

5 MR. SALSMAN: Have you been granted the
6 authority to issue HEK Systems (phonetic) and the Army
7 licenses for the possession and transfer of depleted
8 uranium?

9 CHAIRMAN PANGBURN: Yes, their license
10 specifies possession, use, transfer and there are also
11 license conditions under which they can do --

12 MEMBER LONGO: Okay, but the use is not
13 for combat or foreign --

14 CHAIRMAN PANGBURN: Correct.

15 MEMBER LONGO: -- use. It does not extend
16 because our jurisdiction does not extend to those
17 areas. Only within the United States and for testing.

18 MR. SALSMAN: What limits your
19 jurisdiction?

20 MEMBER LONGO: The Atomic Energy Act.

21 MR. SALSMAN: Which part?

22 MEMBER LONGO: Mr. Salsman, I've explained
23 it and this is the last time I'm going to explain it.
24 In our system of government, agencies have limited
25 powers. That means that they have only the powers

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that are granted. Congress has not passed statutes
2 saying, "You may not do A, B, C but you can do
3 anything else". That's not --

4 MR. SALSMAN: Okay, all right, and I don't
5 want to make you explain it again if you believe that
6 you're going in circles, but I do want to ask just a
7 few more questions.

8 Are there -- okay, you said that you would
9 like to have information about your jurisdiction and
10 I do believe I am correct in that you have the
11 authority to issue those licenses and remove or
12 establish conditions on those licenses that the
13 agencies who have been issued those licenses or the
14 companies who have been issued those licenses are
15 required to be -- would all be required to abide by
16 those conditions or, you know, would not have the
17 authority to transfer the materials that they
18 otherwise -- we're going to have to agree to disagree
19 about that.

20 My question is, I'd like to know whose
21 responsibility is this -- if I'm right and you do have
22 the authority to regulate these things, whose
23 responsibility is it that you've chosen not to?

24 CHAIRMAN PANGBURN: That's a hypothetical
25 question. If you're right, whose responsibility --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we're not going to engage in that type of debate.
2 It's academic at best.

3 MR. SALSMAN: Well, I'm -- I beg to
4 differ. I believe that people do have responsibility
5 and the responsibility would be determined by who the
6 dissented from the Board's decision and who assented
7 to it. Does anybody have any information to the
8 contrary?

9 CHAIRMAN PANGBURN: I think we've made it
10 clear as to what our responsibility is and the fact
11 it's limited by statute which -- under which we
12 develop the regulations which govern the licensing and
13 it does not extend to the circumstances that you've
14 put before us.

15 MR. SALSMAN: Okay, my question is,
16 wouldn't it be the responsibility of the members of
17 the Board who assented to the Board's decision, if I'm
18 correct and you do have the authority to issue these
19 licenses and the licenses do mean something if they're
20 removed or amended, then the responsibility would go
21 to the people who assented to the Board's decision; is
22 that correct?

23 MEMBER LONGO: I don't even understand
24 your question. I think it would be helpful if instead
25 of continually trying to answer hypothetical questions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to simply state what you believe is the NRC's
2 responsibility and authority.

3 MR. SALSMAN: I believe your
4 responsibility to amend the licenses to require the
5 licensees, in particular the civilian manufacturers,
6 so you don't charge money to taxpayers, to figure out
7 how dangerous these things are because so far no one
8 has done that.

9 CHAIRMAN PANGBURN: And we've addressed
10 that in the Director's decision and we're going over
11 old territory yet again. And I simply don't see this
12 as being useful.

13 MR. SALSMAN: Okay, I have a final
14 question. I'd like to ask that the record of who
15 assented and dissented the Board's decision for each
16 member of the Board be recorded because I believe it
17 could be the subject of a subpoena.

18 MEMBER LONGO: Mr. Salsman, you have the
19 names of all participants and we cannot give you legal
20 advice over how to proceed. So we're not going to
21 answer your question.

22 MR. SALSMAN: I'm just asking that you
23 preserve the record of the Board's decision, including
24 describing who assented to the Board's decision and
25 who dissented from it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN PANGBURN: As Ms. Longo said,
2 we're not going to do that.

3 MR. SALSMAN: Why not?

4 CHAIRMAN PANGBURN: I told you before,
5 we're not going to engage in an investigation or an
6 interview or examination of the PRB, Mr. Salsman. I
7 think we have provided more than adequate time to
8 consider your request. We've spoken with you on the
9 phone a number of times. We've written to you on a
10 number of occasions and I believe this has been a
11 reasonable effort to consider the argument that you
12 made, but I'm not going to sit here and have this
13 Board interviewed or investigated as you're seeking to
14 do here today.

15 MR. SALSMAN: Well, I'd like to ask the
16 question about whether or not that information
17 actually exists at present. How did the Board come to
18 its decision?

19 CHAIRMAN PANGBURN: The Board discussed
20 the issues you raised.

21 MEMBER LONGO: Mr. Salsman, I think we are
22 reploting the same ground and Mr. Pangburn had
23 indicated that we want to give you every opportunity
24 to present whatever information, whatever argument in
25 support of your petition you wish to make. Do you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have anything else?

2 MR. SALSMAN: Well, I'd like to ask you
3 whether you agree that the responsibility would fall
4 to those who assent to the Board's decision if I'm
5 right.

6 MEMBER LONGO: And the same answer, Mr.
7 Salsman.

8 MR. SALSMAN: Which is?

9 MEMBER LONGO: The same answer I just gave
10 you. We want to give you every opportunity to present
11 whatever information, whatever argument you wish to
12 make in support of your petition request.

13 MR. SALSMAN: Do you believe that if I'm
14 correct about the NRC's authority to regulate the use
15 of depleted uranium and the transfer and manufacture
16 that --

17 MEMBER LONGO: Same answer, same answer.

18 CHAIRMAN PANGBURN: Mr. Salsman, this is
19 repetitive and frankly, it's getting to be a waste of
20 the time of the people around the table here and the
21 people on the phone. We're not getting into new
22 ground. You're not presenting the information that
23 would sway the Board's decision and with that, I
24 regret to do this but unfortunately, I'm going to
25 adjourn this call. Thank you everyone.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SALSMAN: I have additional questions.
2 Ms. Longo, may I speak to you on the telephone later
3 today?

4 (Whereupon, the above-entitled matter
5 concluded.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25