UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 70-1374-MLR
IDAHO STATE UNIVERSITY	)	
	)	ASLBP No. 10-897-01-MLR-BD01
(Special Nuclear Materials License SNM-1373 License Renewal)	)	
	)	
	)	

ISU's Answer Opposing
Petition To Intervene And Request For Hearing
By Dr. Kevan C. Crawford

February 8, 2010

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I. Introduction

Idaho State University ("ISU") hereby submits its answer ("Answer") in opposition to the Request for Hearing and Petition to Intervene submitted by Dr. Kevan C. Crawford ("Petition") docketed in this proceeding on January 12, 2010. In his Petition, Dr. Crawford requests that the Nuclear Regulatory Commission ("NRC" or "Commission") conduct a hearing regarding ISU's Application for renewal of Special Nuclear Material License, SNM-1373 ("SNM-1373") and seeks to intervene in this proceeding. A hearing should not be granted because Dr. Crawford has failed to demonstrate standing to intervene and has not proposed an admissible contention.

The Commission's regulations and case law unambiguously set forth the minimum requirements that a petitioner must satisfy in order to demonstrate standing and to propose admissible contentions. The Petition fails to meet these requirements. As explained below, Dr. Crawford has failed to set forth the nature and extent of his interest in this proceeding as required to demonstrate standing. He does not allege an injury traceable to the renewal of License SNM-1373 that could be redressed within the limited scope of this proceeding. Dr. Crawford does not

request that standing be determined based on geographic proximity. Even if standing were evaluated based on proximity, Dr. Crawford neither alleges any contacts within fifty miles of the ISU facility nor alleges any off-site impacts at his residence in Salt Lake City. Furthermore, the presumption of standing for petitioners residing within fifty miles of a facility, while available in power reactor hearings, is not applicable in a special nuclear material licensing proceeding. In such a proceeding, standing can only be established if a reasonable potential for off-site harm can be shown. Dr. Crawford has made no such showing.

Besides failing to establish his standing, a failure which is sufficient in itself to warrant denial of the Petition, Dr. Crawford has failed to submit any proposed contention which meets the applicable contention admissibility standards. Contention 1 lacks adequate basis and fails to raise a genuine dispute with the Application on a material issue of law or fact. Both Contentions 2 and 3 raise issues outside the scope of this proceeding and also fail to identify a genuine dispute with the Application on a material issue of law or fact.

II. Procedural Background

This proceeding involves an application, submitted by ISU on August 27, 2008, and revised and resubmitted on February 27, 2009, to renew License SNM-1373.[1] The license covers special nuclear material associated with a subcritical assembly ("SCA") used for research, training, and education purposes in facilities at the ISU campus in Pocatello, ID. Application at 3. The SCA is an assembly of fuel plates loaded in various arrangements in a water-filled tank for the purpose of conducting experiments without a self-sustaining chain reaction (remaining subcritical). Id. The primary location of licensed activities is the Lillibridge Engineering

[1] ISU letter to the NRC of Feb. 27, 2009, available at ADAMS Accession No. ML092730441 (the "Application").

Laboratory ("LEL"), but specific one-day uses at two other buildings on the ISU campus are allowed. Id. at 3-4.

The NRC Staff docketed the Application on June 3, 2009.[2] On November 13, 2009, the NRC published a "Notice of Acceptance of Renewal Application for Idaho State University and Opportunity to Request a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation – Special Nuclear Materials License SNM-1373, Pocatello, ID." 74 Fed. Reg. 58,656 (Nov. 13, 2009). On January 12, 2010, Dr. Crawford filed his Petition.

In addition to License SNM-1373, ISU also holds a license for a small training reactor at its Pocatello campus (License R-110). The training reactor is unrelated to the SCA and License R-110 is unrelated to the scope of the Application. Dr. Crawford separately submitted a petition pursuant to 10 C.F.R. § 2.206 requesting that the NRC take enforcement action with regard to ISU's operations of the reactor under License R-110. Petition, Exh. 1.

III. The Petition Should Be Denied Because Dr. Crawford Lacks Standing To Intervene

To be admitted as a party in this proceeding, Dr. Crawford must demonstrate standing (in addition to pleading at least one admissible contention). 10 C.F.R. § 2.309(a). The petitioner bears the burden to provide facts sufficient to establish standing. U.S. Enrichment Corp. (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 N.R.C. 267, 272 (2001) (citing Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 N.R.C. 90, 98 (2000)). Dr. Crawford asserts standing "as (1) an eyewitness, (2) an expert witness, (3) a whistleblower, (4) and a victim of whistleblower retribution." Petition at 1. The Petition should

[2] Letter to ISU re: Acceptance for Review of Application for Renewal of SNM-1373 (TAC No. L32827) dated June 3, 2009 (ADAMS Accession No. ML091520550).

be denied because the asserted bases for standing do not satisfy the Commission's requirements to state a right to participate in this renewal proceeding or the nature and extent of a property, financial, or other interest in this proceeding. 10 C.F.R. § 2.309(d). Furthermore, Dr. Crawford has not provided facts adequate to establish standing.

A. Dr. Crawford Has Not Set Forth The Nature And Extent Of His Interest In This Proceeding As Required To Demonstrate Standing

When assessing whether a petitioner has set forth a sufficient interest to intervene under 10 C.F.R. § 2.309, licensing boards apply judicial concepts of standing, requiring a petitioner to "(1) allege a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision." Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102-04 (1998); Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir.), cert. denied, 515 U.S. 1159 (1995)).

1. Dr. Crawford Does Not Demonstrate A Concrete And Particularized Injury

Because Dr. Crawford has not—and, indeed, cannot—demonstrate how renewing License SNM-1373 is germane to his status "as (1) an eyewitness, (2) an expert witness, (3) a whistleblower, (4) and a victim of whistleblower retribution," Dr. Crawford has not established a concrete and particularized injury traceable to the challenged action. A petitioner must allege that he has been, or will in fact be, perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action. International Uranium (USA) Corporation (White Mesa Uranium Mill), LBP-01-15, 53 N.R.C. 344, 349, aff'd, CLI-01-21, 54 N.R.C. 247 (2001) (citing United States v. Students Challenging

Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 688-89 (1973). He has identified no property or other financial interest affected by license renewal.

Dr. Crawford's grievance is that he has been the victim of alleged attacks by representatives of the Licensee. Petition at 2. This grievance reflects a generalized concern about good government and licensee performance that is neither particularized nor individualized. It is the type of general grievance that provides no basis for standing. International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-3, 55 N.R.C. 35, 39, aff'd, CLI-02-21, 56 N.R.C. 161 (2002). In addition to his failure to allege any physical injury, Dr. Crawford has not alleged a legal injury. He has not demonstrated any alleged loss of a procedural right designed to protect against a threatened concrete or discrete injury. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 N.R.C. 87, 93-94 (1993). Therefore, the he lacks standing.

2. The Essence Of The Relief Requested By Dr. Crawford Is Not Traceable To The Renewal Of License SNM-1373

As discussed above, Dr. Crawford has not identified any particularized or individualized injury. Furthermore, he has not identified any causal link between the renewal of License SNM-1373 and himself, let alone an injury fairly traceable to NRC renewal of the license. No such causal link is apparent from the Petition.[3] To establish standing, a petitioner must show that the injury is fairly traceable to the agency action. Bennett v. Spear, 520 U.S. 154, 162 (1997) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Valley Forge Christian College v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 471-72 (1982)). Dr. Crawford has not demonstrated any credible direct or indirect connection to the NRC action in

[3] Even assuming that ISU's intent was to attack Dr. Crawford, which it is not, it is not obvious how that would be facilitated by renewing License SNM-1373.

this proceeding. Therefore, he has not demonstrated any injury fairly traceable to the renewal of License SNM-1373; he lacks standing.

3. Dr. Crawford's Grievance Is Not Redressed By Denial Of The Renewal Of License SNM-1373

The redressability element of standing requires a party to show that its claimed actual or threatened injury could be cured by some action of the tribunal. Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 N.R.C. 9, 14 (2001). A denial of the license renewal that is the subject of the proceeding offers no redress to Dr. Crawford.

In 1993, Dr. Crawford was fired from his position as a professor at ISU following an investigation by the ISU Academic Senate into student allegations of sexual harassment against him. Since then, Dr. Crawford has made a number of unfounded allegations of regulatory, criminal, and ethical violations by ISU. His complaint alleging improper termination or adverse employment action was investigated by the U.S. Department of Labor ("DOL") and closed on November 5, 1993, concluding "your allegations cannot be substantiated because no evidence could be found which linked the alleged harassment issues to your whistle blowing activities." DOL letter to Dr. Crawford of Nov. 5, 1993 (Attachment A). Dr. Crawford never appealed this DOL determination. This Petition is little more than an impermissible collateral attack on the long-closed DOL conclusion.

The essence of the Petition is Dr. Crawford's request that the NRC require that ISU "compensate the petitioner for acts taken by the licensee to prevent reporting of these regulatory and criminal violations governing the licensed SNM materials for the protection of the public and the interests of the US government." Petition at 6. This proceeding is limited to the renewal of License SNM-1373 pursuant to the Notice of Hearing Opportunity. 74 Fed. Reg. at 58,656.

Dr. Crawford cites no authority for this Board to compensate him for the alleged "regulatory and criminal violations." Nor is ISU aware of any such authority. See generally, Pub. L. No. 102-377, Title V, § 502, 106 Stat. 1342 (1992), 5 U.S.C. § 504 note (barring the NRC from providing compensation to litigants for participating in a NRC proceeding).

But in any event, such alleged regulatory and criminal violations, even if they existed, are unrelated to the Application and provide no basis for Dr. Crawford's standing in this proceeding. Dr. Crawford's request for compensation is outside the scope of this proceeding. Nothing in this proceeding provides for injunctions, restitution, or other remedies that would redress Dr. Crawford's asserted grievance. Had Dr. Crawford prevailed in the 1993 DOL proceeding, he would have had an avenue for redress of his grievance. However, Dr. Crawford failed to establish his entitlement to any relief in that forum. This proceeding does not provide the redress Dr. Crawford eschewed when he did not pursue the appeal available from the DOL decision. Because this proceeding provides no credible redress, Dr. Crawford lacks standing.

B. Dr. Crawford Has Not Claimed And Cannot Show Standing Based On Geographic Proximity

In power reactor cases, the Commission has presumed that petitioners who reside within fifty miles of the site have standing in a proceeding concerning such plant's licensing. See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329-30 (1989). A petitioner's lack of specificity concerning the nature, extent, and duration of his contacts with the area surrounding the proposed site is a sufficient to preclude establishing standing on geographic proximity. PPL Bell Bend LLC (Bell Bend Nuclear Power Plant), CLI-10-07, 72 N.R.C. ___, slip op. at 6-7 (Jan. 7, 2010). Dr. Crawford does not claim any current geographic proximity to the site and does not provide any specificity concerning the

nature, extent and duration of his contacts with the area, at least since his employment at ISU was terminated in 1993. In fact, the Petition indicates that he resides in Salt Lake City, Utah, over 150 miles from the site. Petition at 6. The a geographic proximity presumption is only available where the petitioner establishes regular and substantial contacts with the area. Bell Bend, CLI-10-07, 72 N.R.C. ___, slip op. at 8. Even if the presumption were to apply to a non-power reactor case, Dr. Crawford's past employment at ISU is not relevant as it does not show any current regular and substantial contact with the area. The contacts with the area must be current, not in the past, to establish standing. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-358, 4 N.R.C. 558 (1976).

Furthermore, the fifty-mile presumption does not automatically apply in a non-power reactor proceeding. In such proceedings, petitioners must allege some measurable off-site impact that has a potential to impact the petitioners. The Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any "obvious potential for offsite [radiological] consequences," as well as "the nature of the proposed action and the significance of the radioactive source." Consumers Energy Co. (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 N.R.C. 423, 426, reconsideration denied, CLI-07-21, 65 N.R.C. 519 (2007) (citing Exelon Generation Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 N.R.C. 577, 580-81 (2005)). To the extent that the Petition alleges any potential for off-site impacts, none of these potential impacts reaches as far as Salt Lake City, Utah.[4]

[4] The only discussion of potential off-site impacts in the Petition is irrelevant and dated. The Petition includes allegations about an event that Dr. Crawford may have witnessed in 1992 related to a medical clinic in Pocatello, ID and the training reactor, not License SNM-1373. Petition at 4. This issue has nothing to do with Dr. Crawford's standing in this current proceeding.

C. Dr. Crawford's Status As A Witness Or A Whistleblower Does Not Establish Standing

Dr. Crawford's assertions of his status as a witness or a whistleblower are inadequate to establish standing. As discussed above, Dr. Crawford has not demonstrated standing because he does not allege, let alone demonstrate, a potential for an injury traceable to this action that could be redressed by a favorable decision in this proceeding. His assertion that he is a witness, expert witness, whistleblower, or victim of whistleblower retribution does not change this conclusion.

Dr. Crawford's asserted role as a witness provides no support for his right to admission as a party. If there is no hearing, there would be no need for witnesses. This argument is not bolstered by his claim to be an expert witness. While there might be some relevance to determining if Dr. Crawford has relevant expertise if he had requested discretionary intervention, he has made no such request; nor does the Petition discuss the other applicable factors for discretionary intervention. 10 C.F.R. § 2.309(e). Discretionary intervention is granted only in exceptional situations not applicable here. See, In re Siemaszko, CLI-06-16, 63 N.R.C. 708, 716-17 (2006).

Employment grievances do not present an injury-in-fact adequate to establish standing. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 N.R.C. 370, 375 (1992). Even if employment grievances could present an injury-in-fact, Dr. Crawford's allegations that he is a whistleblower or has suffered retribution for being a whistleblower are unfounded. Attachments A and B. Furthermore, Dr. Crawford's whistleblower allegations related to Reactor License R-110 were resolved over 15 years ago against him. Therefore, those allegations have no relevance to this license renewal proceeding on License SNM-1373.

IV. The Petition Should Be Denied Because Dr. Crawford Has No Admissible Contentions

To be admitted as a party in this proceeding, Dr. Crawford must demonstrate standing and plead at least one admissible contention. 10 C.F.R. § 2.309(a). Wholly apart from the inadequate showing on standing discussed above, the Petition should be denied because the contentions proffered are inadmissible. As described below, the Commission's current pleading standards were designed to raise the threshold for the admission of contentions. The purpose of these intentionally strict admissibility requirements is to ensure that hearings, if required, would focus on concrete issues that are relevant to the proceeding and that are supported by a factual and legal foundation sufficient to warrant further inquiry. Each of the Petition's contentions falls woefully short of reaching the required threshold. Accordingly, the Board should reject all of the contentions and deny the request for a hearing. All of the contentions are inadmissible because they fail to show that a genuine dispute exists with the Application on a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi). Separately, Contention 1 is inadmissible as it lacks an adequate basis. The factual allegation is internally inconsistent and does not logically lead to the inference Dr. Crawford tries to draw, contrary to 10 C.F.R. § 2.309(f)(1)(ii). Furthermore, both Contentions 2 and 3 are inadmissible as they do not raise any issue within the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

A. Standards For The Admissibility Of Contentions

1. Contentions Must Be Within The Scope Of The Proceeding

As a fundamental requirement, a petitioner must demonstrate that the issue raised in a contention addresses matters within the scope of the proceeding and is material to the findings that the NRC must make. 10 C.F.R. §§ 2.309(f)(1)(iii) and (iv). Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission

has given [them]." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170 (1976) (footnote omitted); accord Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 N.R.C. 287, 289-90 & n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction. Marble Hill, ALAB-316, 3 N.R.C. at 170-71; see also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

2. Contentions Must Demonstrate A Genuine, Material Dispute

In addition to the requirements previously discussed, a contention is admissible only if it provides:

- a "specific statement of the issue of law or fact to be raised or controverted;"
- a "brief explanation of the basis for the contention;"
- a demonstration "that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;"
- a "concise statement of the alleged facts or expert opinions" supporting the contention together with references to "specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;" and
- "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact," which showing must include "references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief."

10 C.F.R. § 2.309(f)(1)(i), (ii), (iv), (v) and (vi). The failure of a contention to comply with any one of these requirements requires dismissal of the contention. Arizona Public Service Co. (Palo

Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3), CLI-91-12, 34 N.R.C. 149, 155-56 (1991).

The pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now § 2.309, which was intended to "raise the threshold for the admission of contentions." Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (Aug. 11, 1989); see also Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999); Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. The Commission has stated that the "contention rule is strict by design," having been "toughened . . . in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001) (citation omitted). The pleading standards are to be enforced rigorously. "If any one of these requirements [now in 10 C.F.R. § 2.309(f)(1)] is not met, a contention must be rejected." Palo Verde, CLI-91-12, 34 N.R.C. at 155 (citation omitted). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

The Commission has explained that this "strict contention rule" serves multiple purposes, which include putting other parties on notice of the specific grievances being raised and assuring that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions. Oconee, CLI-99-11, 49 N.R.C. at 334. By raising the threshold for admission of contentions, the NRC intended to obviate lengthy hearing delays caused in the past by poorly defined or unsupported contentions. Id. As the Commission reiterated in incorporating these same standards into 10 C.F.R. Part 2, "[t]he

threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of concern and that the issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues." 69 Fed. Reg. 2,182, 2,189-90 (Jan. 14, 2004). "'Mere 'notice pleading' does not suffice.'" AmerGen Energy Co. (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 N.R.C. 111, 119 (2006) (footnote omitted).

Under these standards, a petitioner is obligated to "explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." Millstone, CLI-01-24, 54 N.R.C. at 359-60. In particular, this explanation must demonstrate that the contention is "material" to the NRC findings and that a genuine dispute about a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(iv) and (vi). The Commission has defined a "material" issue as meaning one where "resolution of the dispute *would make a difference in the outcome* of the licensing proceeding." 54 Fed. Reg. at 33,172 (emphasis added).

As the Commission observed, this threshold requirement is consistent with judicial decisions, such as Conn. Bankers Ass'n v. Bd. of Governors, 627 F.2d 245 (D.C. Cir. 1980), which held that:

> [A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an "inquiry in depth" is appropriate.

627 F.2d at 251 (footnote omitted); see also Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998) ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . . ."). While this threshold is high and

rigorously enforced, it does not require the petitioner to submit evidence or for the Board to prematurely evaluate the contention on its merits. The brief explanation of the basis required by 10 C.F.R. § 2.309(f)(1)(ii) must be sufficiently intelligible to warrant further inquiry. Progress Energy Florida (Levy County Units 1 and 2), CLI-10-02, 72 N.R.C. __, slip op. at 26 (Jan. 7, 2010); Louisiana Energy Services, (National Enrichment Facility), CLI-04-35, 60 N.R.C. 619, 623 (2004) ("LES").

As set forth below, the Contentions in the Petition do not comply with the Commission's pleading standards.

B. Contention 1 Is Inadmissible Because It Lacks Adequate Basis And Fails To Raise A Genuine Dispute With The Application On A Material Issue Of Law Or Fact

Contention 1 asserts that a serious materials safeguards problem exists as "there is reason to believe the wall on the west side (back of the SCA room where the materials covered under this renewal application are secured) is not secured with concrete as shown." Petition at 2. As discussed below, Contention 1 lacks adequate basis and fails to raise a genuine dispute with the Application on a material issue of law or fact.

1. Contention 1 Is Inadmissible Because It Lacks Adequate Basis

The SCA is in the basement of the LEL. Application at 5. Dr. Crawford asserts there is a "false wall" in the back of the room that harbors the SCA. Petition at 2. Dr. Crawford states that a licensed operator told him at some unidentified time[5] "that voices can be heard through the wall." Id. From this statement, Dr. Crawford draws the conclusion that there is a "false wall" that opens to an unsecured maintenance tunnel. Id. Dr. Crawford then asserts that his

[5] Presumably, the report was in 1993 or earlier.

conclusion was reported to an NRC investigator in 1993 but that NRC did nothing. Petition at 3. Absent some support for Dr. Crawford's assertions and the inferences that he draws from them, and especially as the Petition and its attachment are inconsistent about the reactor operator's report as explained below, there is no reason to give credence to this hearsay.

The Petition's reliance on unsupported hearsay for the existence of a "false wall" is not an adequate basis for an admissible contention. It is incumbent on the petitioner to bring forth sufficient explanation of the basis for a contention to warrant further inquiry.[6] LES, CLI-04-35, 60 N.R.C. at 623. Boards examine alleged bases for a contention, both for what the bases say and what they do not say. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-02, 43 N.R.C. 61, 90 & n.30 (1996). An allegation does not provide a basis for a contention if its content actually contradicts the allegations in the contention. Virginia Electric & Power Co. (North Anna Power Station, Unit 3), LBP-08-15, 68 N.R.C. 294, 334-35 (2008). In this case, Petitioner alleges that the reactor operator's hearsay is supported because it was reported to an NRC investigator "as a submission of a fraudulent licensing document." Petition at 2. In contrast, no potential physical security plan deficiency was reflected in the conclusions of the NRC investigation. The NRC investigation report discusses only reactor operation and not any reports of security violations or any reports of a "false wall." NRC letter to ISU of March 23, 1995 (concluding that "[t]he investigation did not develop evidence to support the concern that the individual was denied access to the reactor facility because he had identified unsafe operational activities") (provided as Attachment B to this Answer).

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[6] The requirement that the petitioner articulate an explanation of a contention's basis mandates that the information in the petition be internally consistent and coherent to meet petitioner's burden of going forward. The Board's gate-keeper role at the contention admission stage does not amount to a premature adjudication on the merits. It is generally accepted that a petitioner need not prove his alleged facts at the contention admission stage. Gulf States Utilities Co. (River Bend Station Unit 1) CLI-94-10, 40 N.R.C. 43, 51 (1994) (citing 54 Fed. Reg. at 33,171, quoting Conn. Bankers Ass'n, supra); USEC, Inc. (American Centrifuge Plant), LBP-05-28, 62 N.R.C. 585, 596-97 (2005).

The Petition is also internally inconsistent with regard to this point. Dr. Crawford inconsistently alleges, citing the same reactor operator as the source, that maintenance tunnels connect[7] to the reactor building in the area of the SCA and that they are covered by a flimsy, non-reinforced false wall. Petition, Exh. 1 at 3. Furthermore, the Petition leaves unexplained why Dr. Crawford's proffer of the reactor operator's information differs between the Petition (the reactor operator hears voices) and its Exhibit 1 (the reactor operator reports a "false wall"). Because the information in the Petition is internally contradictory with its Exhibit 1, the alleged hearsay does not provide an adequate basis for Contention 1.

Furthermore, the Petition does not explain how the report of "hearing voices" supports an inference that the wall is just drywall and not concrete. The Petition does not explain the causal link between voices being heard and inferring that a "false wall" exists. Furthermore, the Petition does not address other possible explanations for "hearing voices" even if true.[8] Both because the allegation in the Petition is not internally consistent and because there is no credible link from the allegations to the inference asserted, Contention 1 does not articulate a basis warranting further inquiry and so fails to meet the requirement of 10 C.F.R. § 2.309(f)(1)(ii).

2. Contention 1 Does Not Support That A Genuine Dispute Exists With The Application On A Material Issue

Contention 1 is also inadmissible because it fails to establish that a genuine dispute exists with the Application on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi). Dr. Crawford has not reviewed the security information in the Application; therefore, he cannot provide a sufficient basis for the claim that a serious safeguards problem

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[7] This connection is steam supply and return piping. Neither the Petition nor its Exhibit 1 explain how this connection relates to a "false wall" in the SCA room.

[8] The steam piping alone would serve to conduct sound.

exists. In addition, the Petition's allegation of a security violation in 1992, even if true, is not material to the security plan submitted with the Application. Third, the Application does not identify the material of construction for the west wall of the SCA room; therefore, the Petition cannot create a material dispute with the Application by misrepresenting the content of the Application. Fourth, even if the allegation in the Petition that the west wall is drywall against a maintenance tunnel rather than a concrete wall were true, the Petition does not explain how this difference is material to the security plan in the Application.

a. At its essence, Contention 1 alleges inadequacies in the Physical Security Plan. The NRC's November 13, 2009 Notice of Acceptance provided instructions for potential petitioners to obtain access to SUNSI or SGI documents. Petitioner did not avail himself of the opportunity to gain access to these documents. Therefore, the Petition does not cite, and in fact cannot cite, any way in which the Physical Security Plan is inadequate. The Petition fails to identify a genuine dispute with the Application, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

b. The Petition alleges, "This tunnel was left open to the public and unguarded during building construction in 1992 violating the reactor Physical Security Plan requirements." Petition at 3. The Petition's allegation of a security violation in 1992, even if true, is not material to the security plan submitted with the Application. The Petition does not relate the 1992 event to the current Application, and cannot, as Dr. Crawford has not made use of the NRC procedures for requesting access to the Physical Security Plan in the Application. Dr. Crawford has not discharged his "ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention." 54 Fed. Reg. at 33,170 (quoting Duke Power Co. (Catawba Nuclear Station, Units

1 & 2), ALAB-687, 16 N.R.C. 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 N.R.C. 1041 (1983)). The Petition fails to support a genuine dispute with the Application on a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi).

c. The Petition alleges, "In Figure 2 (Basement of Lillibridge Engineering Building) of the license application, Page 16, there is reason to believe that the wall on the west side (back of SCA room where the materials covered under this renewal application are secured) is not secured with concrete as shown." Petition at 2. In contrast, while the Application states that the SCA room is in the basement of the LEL building, nothing that the Application states that the wall on the west side of the SCA room is "secured with concrete." See generally, Application, Figure 2 at 16. Misrepresenting the content of the application does not establish a material dispute with an application. See, e.g., Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069, 2076 (1982); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-32-107A, 16 N.R.C. 1791, 1804 (1982); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1504-05 (1982). The Petition fails to support a genuine dispute with the Application on a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi).

d. The Application does not identify the material used to construct the west wall. The Petition does not explain why the Application should. If a contention is alleging an omission, the petition must identify "each failure and the supporting reasons for the petitioner's belief." 10 C.F.R. § 2/309(f)(1)(vi). Rather than identifying an omission, the Petition mischaracterizes the Application. The Petition does not identify why the material used to construct the walls is material to the Physical Security Plan in the Application. Without reference to the Physical Security Plan, the Petition cannot assert any support for why the

construction material of the walls matters to the NRC decision. Contention 1 fails to support a genuine dispute with the Application on a material issue of law or fact germane to the NRC's decision, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi).

C. Contention 2 Is Inadmissible Because It Is Outside the Scope Of This Proceeding And Fails To Raise A Genuine Dispute With The Application On A Material Issue Of Law Or Fact

Contention 2 claims that "[t]he facility administration has chronically demonstrated a lack of concern for public/staff health and safety and national security." Petition at 3. As bases, the Petition provides a litany of unproven allegations, most of which are over fifteen years old and relate to the Reactor License R-110 and other unrelated reactor licenses without providing any connection to the license which is the subject of this proceeding. As discussed below, Contention 2 raises issues outside the scope of this proceeding and fails to identify a genuine dispute with the Application on a material issue of law or fact.

1. Contention 2 Is Inadmissible Because It Is Outside The Scope Of This Proceeding

Contention 2 is inadmissible because it is outside the scope of this proceeding. As discussed below, 15-year-old unproven assertions associated with reactor operations, including those associated with a facility in Utah unrelated to ISU, and other allegations of retribution against Dr. Crawford, are outside the scope of this proceeding. Contention 2 does not assert an issue within the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

Dr. Crawford's unfounded allegation that issues investigated by an NRC Region IV investigation of Reactor License R-110 are still open, Petition at 3-4, is not within the scope of this proceeding. The NRC inspection took place in 1993 and ISU responded to the NRC in 1993 and 1994; the NRC accepted the resolution by ISU of the noted violations. See Attachment C.

Furthermore, the Petition does not explain how the violations related to Reactor License R-110 from more than fifteen years ago (even if unresolved, which they are not) are within the scope of this proceeding.

Dr. Crawford asserts, without support, that a security consultant to ISU is a "convicted violent criminal" and otherwise reiterates his fifteen-year-old assertions of alleged harassment. Petition at 3.[9] The Petition provides no explanation how this unfounded allegation of harassment, rejected by DOL over 15 years ago as stated in Attachment A, is relevant to the current license renewal proceeding. Furthermore, Dr. Crawford's *ad hominum* attacks on the personnel that assisted in the ISU investigation in 1993 into a student's sexual harassment complaint against Dr. Crawford when he was a professor at ISU[10] are not within the scope of this renewal proceeding.

The Petition's unfounded accusation of fraud arising from unidentified correspondence from the National Whistleblower Center at an unspecified date from an unnamed individual (Petition at 4) hardly seems a matter within the scope of this NRC proceeding. Similarly, the unsupported assertion that ISU has been involved in "illegal distribution of controlled substances" (Petition at 4) also hardly seems a matter within the scope of an NRC proceeding. The Petition's effort to conflate these unsupported accusations (Petition at 4) with four of Dr. Crawford's concerns (Petition, Exh. 1) that were recently accepted by the NRC for review under the 10 C.F.R § 2.206 process does not show relevance to this proceeding. The four concerns being reviewed relate to the Reactor License R-110 and not Materials License SNM-1373. Idaho

[9] Such unfounded, scurrilous allegations are not appropriate for NRC adjudications. The Board has the discretion to strike such material. 10 C.F.R. § 2.319(d).

[10] See, e.g., Petition, Exh. 1 at 6, 11.

State University, Receipt of Request for Action Under 10 CFR 2.206, 74 Fed. Reg. 62,841 (Dec. 1, 2009).[11]

The Petition does not explain any relationship between the alleged off-site contamination incident (Petition at 4) and the SCA facility that is the subject of this proceeding. In fact, the supporting documents submitted with the Petition assert that any such contamination event, if not apocryphal, was associated with the operation of the reactor, not the SCA. Petition, Exh. 1 at 4.[12]

Additionally, the scurrilous allegation (Petition at 4-5) of poor performance of a reactor supervisor associated with a reactor in Utah lacks credible support and is not within the scope of this proceeding if for no other reason than the reactor supervisor is no longer employed by ISU.[13]

Dr. Crawford asserts without support that, in 2002, an ISU administrator published a libelous article about Dr. Crawford in a Salt Lake City newspaper. Petition at 5. Even if true, and it is not, whether the article in question is libelous is not within the scope of NRC adjudication. This article was a letter to the editor responding to and rebutting assertions of unsafe reactor operation in an earlier letter written by Dr. Crawford that the paper published. (The published letters are provided as Attachment C). The Petition does not explain how a letter

[11] The NRC identified four concerns that were accepted for evaluation in the 10 CFR 2.2.06 process: (1) failure to conduct 10 CFR 50.59 safety review of the modification of the Controlled Access Area by the addition of an undocumented roof access for siphon breaker experiment implemented prior to 1991. The June 26, 2009, petition letter states this allowed random student access to the roof of the reactor room; (2) release of controlled by-product nuclear materials in containers not certified [10 CFR 49] for transport of such materials on public roads and not labeled with the required labeling; (3) failure to require the reactor operator conducting the startup procedures to wear protective clothing to routinely remove the activated startup channel detector from the reactor core. In the June 26, 2009, letter, Dr. Crawford states that this was cited and mishandled in the 93–1 NOV; (4) violation of 10 CFR 20 for the routine, unprotected handling of an unshielded neutron source. 74 Fed. Reg. at 62,841. None of these concerns relate to License SNM-1373.

[12] It would seem inconsistent with basic physics for a sub-critical assembly to be responsible for the off-site contamination that the Petition alleges.

[13] The irrelevant personal attacks in the Petition against a former reactor supervisor no longer employed by ISU are inappropriate in an NRC licensing proceeding and should be struck by the Board.. See 10 C.F.R. § 2.319(d).

to the editor could objectively be considered an effort to intimidate Dr. Crawford. The Petition provides no connection between published letters to the editor and the current proceeding.

The allegations raised in Contention 2 are outdated and irrelevant to Materials License SNM-1373. Therefore, Contention 2 is not within the scope of this proceeding and is inadmissible as contrary to 10 C.F.R. § 2.309(f)(1)(ii).

2. Contention 2 Does Not Show That A Genuine Dispute Exists With The Application On A Material Issue

Nowhere in Contention 2 does the Petition cite the Application or identify any deficiency in it. The Petition provides no explanation as to how the scurrilous, *ad hominum* attacks and recitation of issues both long-closed and unrelated to renewal of License SNM-1373 in any way raise a dispute or are shown to be material to this NRC proceeding. Petition at 3-5. Dr. Crawford's confused and disorganized diatribe against ISU does not demonstrate any support for his assertion that ISU lacks concern for the public health and safety and national security. Nor does the Petition explain how this allegation relates to the Application or identify any possible noncompliance with the NRC requirements applicable to the Application. ISU's technical qualifications and its safety procedures are described in the Application. Application at 6, 9-11. Contention 2 does not cite either the Application or the requirements of 10 C.F.R. § 70.22, and does not identify a deficiency material to this proceeding. In short, Contention 2 does not support that there is a genuine, material dispute with the Application, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi).

D. Contention 3 Is Inadmissible Because It Is Outside the Scope Of This Proceeding And Fails To Raise A Genuine Dispute With The Application On A Material Issue Of Law Or Fact

Contention 3 is an incoherent description of the identification and recovery of three fuel plates in 1992. Petition at 5-6. It is uncertain what issue of law or fact Contention 3 asserts as required by 10 C.F.R. § 2.309(f)(1)(i). Contention 3 describes Dr. Crawford's search for three fuel plates in 1992 that were readily located by a reactor operator because they were in another lab as authorized by a reactor supervisor. Petition at 5 and Exh. 1 at 10. To the extent that Contention 3 raises any issue, the assertions are not within the scope of this proceeding and fail to support a genuine dispute with the Application on a material issue of law or fact.

1. Contention 3 Is Inadmissible Because It Is Outside The Scope Of This Proceeding

Contention 3 is inadmissible because it is outside the scope of this proceeding. If Contention 3 is intended to challenge to the honesty and credibility of ISU based on a 1992 event, such a challenge is too dated to be probative. The Petition alleges one event that occurred more than 18 years ago. Petition at 5. The individuals involved (including Dr. Crawford himself) are no longer employed by ISU and have not been for a long time. In fact, the Petition supporting documents acknowledge that one of the individuals died in 1994. Petition, Exh. 1 at 8. To be within the scope of a current proceeding, an assertion of improper management must be associated with personnel currently employed at the licensee. Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 N.R.C. 111, 120 (1995) (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 N.R.C. 381, 386, aff'd, ALAB-470, 7 N.R.C. 473 (1978) (whether Detroit Edison violated Commission regulations in the past is not within the scope of a proceeding on adding new owners); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 N.R.C.1118, 1128, aff'd sub nom., In re

Three Mile Island Alert, 771 F.2d 720 (3d Cir. (1985), cert. denied, 475 U.S. 1082 (1986) (personnel changes mooted the significance of leak rate falsification 6 years earlier). As no one named in Contention 3 is currently employed at ISU, no relationship to this proceeding is demonstrated by the Petition, nor can one be demonstrated. Contention 3 raises issues outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

2. Contention 3 Does Not Show That A Genuine Dispute Exists With The Application On A Material Issue

Contention 3 does not cite the Application, let alone identify any deficiency in it. The material accountability provisions are described in the Application. Application at 11-13. The Petition's description of a material accountability event from 1992 does not support a genuine dispute with the current Application on an issue material to the decision the NRC makes in this proceeding.[14]

Furthermore, the Petition does not explain how the 1992 event relates to ISU's current technical or management qualifications. The Petition alleges, "This loss of control of SNM was never cited as a violation and never recorded in any annual operation report." Petition at 5-6. The Petition does not explain why the 1992 event needed to be reported. Contention 3 does not cite either the Application or the reporting requirements of 10 C.F.R. § 70.50, let alone identify a deficiency material to this proceeding.

For the reasons stated above, Contention 3 does not support that there is a genuine, material dispute with the Application, contrary to 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi).

[14] The Petition is vague and confused as to what specific material accountability deficiency, if any, occurred in 1992. The Petition states that other personnel employed at ISU at the time besides Dr. Crawford knew where the three plates in question were. Petition at 5.

V. Selection of Hearing Procedures

Commission rules require the Atomic Safety and Licensing Board designated to rule on the Petition to "determine and identify the specific hearing procedures to be used for the proceeding." 10 C.F.R. § 2.310. The regulations are explicit that "proceedings for the . . . renewal . . . of licenses or permits subject to [10 C.F.R. Part 70] may be conducted under the procedures of subpart L." 10 C.F.R. § 2.310(a). The Notice of Hearing Opportunity stated petitioners should address the hearing procedures to be used. 74 Fed. Reg. at 58,658. Dr. Crawford did not address the selection of hearing procedures in his Petition. Accordingly, any hearing arising from the Petition should be governed by the procedures of Subpart L.

VI. Conclusion

For the foregoing reasons, the Petition should be denied.

Respectfully Submitted,

/Signed (electronically) by Jay E. Silberg /

_____

Jay E. Silberg
Robert B. Haemer
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Tel. (202) 663-8000

Counsel for Idaho State University

February 8, 2009

February 8, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 70-1374-MLR
IDAHO STATE UNIVERSITY	)	
	)	ASLBP No. 10-897-01-MLR-BD01
(Special Nuclear Materials License SNM-1373 License Renewal)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of February 2010, a copy of the foregoing "ISU's Answer Opposing Petition To Intervene And Request For Hearing By Dr. Kevan C. Crawford," dated February 8, 2010, was provided to the Electronic Information Exchange for service upon the following persons.

Alan S. Rosenthal, Chair
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rsnthl@verizon.net

Nicholas G. Trikouros
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ngt@nrc.gov, nicholas.trikouros@nrc.gov

Dr. Jeffrey D.E. Jeffries
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
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Washington, DC 20555-0001
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Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
Hearing Docket
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U.S. Nuclear Regulatory Commission
Office of the General Counsel
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/Signed (electronically)/
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E-mail: robert.haemer@pillsburylaw.com

February 8, 2010

Counsel for Idaho State University

Attachment A

Department of Labor letter to Dr. Crawford dated November 5, 1993

(1)

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Portland District Office
111 SW Columbia, Room 1010
Portland, OR 97201
(503) 326-3053

November 5, 1993

Mr. Kevan Crawford
6380 Old Ranch Road
Pocatello, ID 83204

RE: Kevin Crawford VS Idaho State University

Dear Mr. Crawford:

This letter is to notify you of the results of our compliance actions in the above case. In a previous letter from this office, you were advised that your complaint was received on October 8, 1993. We enclosed copies of Regulations, 29 CFR Part 24 and the pertinent section of the Energy Reorganization Act with the letter.

Our initial efforts to conciliate the matter did not result in a mutually agreeable settlement. A fact-finding investigation was then conducted. Our investigation did not verify that discrimination was a factor in the actions comprising your complaint. Consequently, it is our conclusion that your allegations cannot be substantiated because no evidence could be found which linked the alleged harrasment issues to your whistle blowing activities.

This letter is notification to you that, if you wish to appeal the above findings, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) calendar days of receipt of this letter, file your request for a hearing by telegram to:

The Chief Administrative Law Judge
U.S. Department of Labor
Suite 400 Techworld Bldg
800 K Street, NW
Washington, DC 20001-8002

Unless a telegram is received by the Chief Administrative Law Judge within the five-day period, this notice of determination will become the Final Order of the Secretary of Labor dismissing your complaint. By copy of this letter, Idaho State University is being advised of the determination in this case and the right to a hearing. A copy of this letter has also been sent to the Chief Administrative Law Judge with your complaint. If you decide to request a hearing, it will be necessary for you to send copies of the telegram to me at Federal Wage and Hour, 111 SW Columbia, Suite 1010 Portland, Oregon, 97201 telephone (503) 326-3057. After I receive the copy of your request, appropriate preparations for the hearing can be made. If you have any questions, do not hesitate to call me.

It should be made clear to all parties that the U.S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Sincerely,

Pamela Yaeger for

Robert H. Provencio
District Director

cc: NRC
Enforcement Coordinator
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76012

cc: Chief Administrative Law Judge
Suite 400 Techworld Building
800 K Street, NW
Washington DC 20001-8002

cc: William Buhl, Acting Regional Administrator
Wage & Hour Division Regional Office
1111 3rd Avenue, Room 600
Seattle, WA 98174

cc: Robert Friel, Regional Solicitor
Department of Labor
1111 3rd Avenue, Suite 945
Seattle, WA 98101

cc: Michael C. Gallagher
Vice President of Academic Affairs
Campus Box 8063
Pocatello, ID 83209-8063

Attachment B

NRC Region IV letter to Dr. Crawford dated April 13, 1993; and
NRC Region IV letter to ISU dated March 23, 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

APR 1 3 1993

Kevin Crawford, Ph.D.
College of Engineering
833 South 8th Street
Pocatello, ID 83209

Dear Dr. Crawford:

Reference: Allegation No. RIV-93-A-0028

This is in reference to your March 5, 1993, telephone conversation with the NRC Operations Center. During this conversation, you expressed concern that you were denied access to university reactor facility.

Our review of this matter has been completed. Our findings are documented in this letter. NRC believes that the President of the University took appropriate actions to reduce the potential of significant problems at Idaho State University.

Technical Specifications (TS) Section 6.1.3, states in part that, ".... the Reactor Administrator shall have final authority, and ultimate responsibility for the operation, maintenance, and safety of the reactor facility,..." Additionally, "..... he shall be responsible for appointing personnel to all positions reporting to him as described in Section 6.1 of the TS." Finally, the Radiation Safety Committee appears to have taken appropriate actions to resolve the matter by appointing an Acting Reactor Supervisor, increased oversight by the Reactor Administrator, and decertification of the previous and present Reactor Supervisors.

We believe that the actions taken in this matter were responsive to the concerns that were identified. Unless NRC receives additional information that suggests our conclusions should be altered, Region IV plans no further action on this matter.

Sincerely,

Russell Wise

Russell Wise
Allegations Coordinator

cc:
Allegation file

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

March 23, 1995

Idaho State University
ATTN: Michael Gallagher
Vice President Academic Affairs
Box 8063
Pocatello, Idaho 83209

SUBJECT: CLOSURE OF INVESTIGATION CASE NO. 4-93-024

This is in reference to an investigation conducted by the NRC's Office of Investigations (OI) at the Idaho State University's reactor facility. The investigation (4-93-024) involved a concern that the Reactor Supervisor had been denied access to the facility when he attempted to identify unsafe operational activities at the reactor facility.

The investigation did not develop evidence to support the concern that the individual was denied access to the reactor facility because he had identified unsafe operational activities. Therefore, this investigation is closed and no further action is planned with respect to the investigative conclusions.

Please contact us should you have any questions about this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC's Public Document Room.

Sincerely,

Samuel J. Collins, Director
Division of Radiation Safety
and Safeguards

Dockets: 50-284
Licenses: R-110

cc:
Idaho State University
ATTN: Dr. A. Stephens
Director of Nuclear Engineering
Pocatello, Idaho 83209

Idaho State University
ATTN: Mr. R. D. Clovis
Reactor Supervisor
College of Engineering
Box 8060
Pocatello, Idaho 83209

Idaho State University
ATTN: Mr. Tom Gessell
Radiation Safety Officer
Physics Department
Box 8106
Pocatello, Idaho 83209

Radiation Control Program Director
Division of Environment
450 West State, 3rd Floor
Boise, Idaho 83720

Attachment C

NRC Region IV letter to ISU dated December 21, 1993; and
NRC Region IV letter to ISU dated May 12, 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

DEC 21 1993

Docket: 50-284
License: R-110
EA 93-232

Idaho State University
ATTN: Mr. Michael Gallagher
Vice President Academic Affairs
Box 8063
Pocatello, Idaho 83209

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 50-284/93-01)

Thank you for your letter of December 3, 1993 in response to our letter and Notice of Violation dated November 4, 1993. We have reviewed your reply and find it responsive to the concerns raised in our Notice of Violation. We will review the implementation of your corrective actions during a future inspection to determine that full compliance has been achieved and will be maintained.

Sincerely,

Dwight D. Chamberlain
Acting Director
Division of Radiation Safety
and Safeguards

cc:
Idaho State University
ATTN: Dr. V. H. Charyulu
Reactor Administrator
Dean of Engineering
College of Engineering
Pocatello, Idaho 83209

(4)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

MAY 12 1994

Docket: 50-284
License: R-110

Idaho State University
ATTN: Mr. Michael Gallagher
Vice President Academic Affairs
Box 8063
Pocatello, Idaho 83209

SUBJECT: NRC INSPECTION REPORT 50-284/93-01 ACKNOWLEDGEMENT

Thank for your letter of April 22, 1994, informing us of the status of your corrective actions taken in response to the violations identified during NRC Inspection 50-284/93-01. We will review the results of your corrective actions during a future inspection.

Sincerely,

Samuel J. Collins, Director
Division of Radiation Safety
and Safeguard

cc:
Idaho State University
ATTN: Dr. V. H. Charyulu
Reactor Administrator
Dean of Engineering
College of Engineering
Pocatello, Idaho 83209

Idaho State University
ATTN: R. D. Clovis
Reactor Supervisor
College of Engineering
Box 8060
Pocatello, Idaho 83209

Attachment D

Letters to the Editor of the Salt Lake City Tribune (2002)

Idaho State University's Lax Policies Pose a Nuclear Security Threat

BY KEVAN CRAWFORD

A small fraction of our own civilian nuclear activities are operated, managed, administered and regulated by quacks and crooks. Deliberate or not, these facilities could provide significant assistance to the enemies of the United States by eliminating long-distance transportation problems.

Experts have warned that terrorist groups have identified Russia as a source of radioactive and fissile weapons materials. However, focusing on Russia may detract from guarding against thefts of a more practical source of Radioactive and Special Nuclear Materials (SNM).

Realistically, transporting any acquired materials great distances through surveilled territory and across national boundaries is a much more difficult task for terrorists than acquiring the material right here in the United States. Drawing full attention to Russia merely diverts focus away from our own weaknesses, our own targets and easy terrorist solutions.

A small fraction of our own civilian nuclear activities are operated, managed, administered and regulated by quacks and crooks. Deliberate or not, these facilities could provide significant assistance to the enemies of the United States by eliminating long-distance transportation problems.

The fact that incompetence or criminal activity exists at our own nuclear facilities is supported by the federal record. To demonstrate that the sparsely populated Intermountain West is not exempt from terrorist activities, the U.S. Nuclear Regulatory Commission (USNRC) provides a shameful example with its non-power Reactor License No. R-110, Docket No. 50-284, Inspection Report 93-1, Notice of Violation for Idaho State University.

The notice specifically mentions the unlawful distribution of controlled substances which could be used in a "dirty" bomb. What the notice does not mention is that before 1992 the university routinely and unlawfully distributed SNM from its subcritical assembly. With more processing, this could have been used in a nuclear weapon.

Furthermore, the notice does not mention that modifications to the Controlled Access Area (CAA) perimeter were made without the safety reviews required by law. Even the initial Safety Analysis Report for the facility, which was submitted fraudulently, is missing a secret access to the subcritical assembly room. In addition, the university has fraudulently claimed that all accesses to these materials are checked for intrusion once every eight hours, which, of course, does not include the unreviewed CAA perimeter modifications or the secret access.

These and dozens of other cited and uncited regulatory violations at Idaho State University continued as procedures formally implemented by the university administration and routinely inspected by the USNRC for more than 20 years, some violations of which undoubtedly continue to this day. A campus full of Ph.D.s was "not smart enough" for more than 20 years to know that unlawful distribution of controlled substances and submission of fraudulent Safety Analysis Reviews and Annual Operating Reports are criminal activities.

The operations staff was always so incompetently trained by licensed "experts" hired as professors that no one had the sense to put a halt to these criminal activities until 1993, when these violations were reported to the USNRC Office of Investigations by a newly hired Reactor Supervisor. The USNRC inspectors who allowed these criminal activities to continue for more than 20 years must share blame.

There are two very frightening legacies from the investigation and violation citation of Idaho State University which we must face today in addition to the fact that Idaho State University radiation exposure and contamination victims were never notified as required by law.

First, Idaho State University has trained more than 25 years of graduating engineers that with the proper administrative support, laws can be carelessly or deliberately violated, public health and national security can be placed at risk, and any means to cover up these activities is acceptable. Members of the nuclear profession must now contain and attempt to eliminate this cancer from the profession.

The second frightening legacy is that even after the USNRC documented this unacceptable situation, it has done nothing to change their own procedures to address the specific problems identified at Idaho State University. Apparently, the USNRC has forgotten how to learn from its mistakes. From this example there is no reason for the public to believe that the USNRC can or will protect public health and national security.

For our society to live safely with nuclear technology, it is urgent that we as a society and nuclear professionals boycott and fiscally strangle those licensed entities which have been associated with blatant risk to public health and national security. Nuclear professionals should engage in that effort for the purpose of professional credibility and survival of the technology. The record clearly demo that the USNRC cannot us from the few qua crooks associated with activities.

Kevan Crawford Lake City received a B engineering from the Ur of Utah in 1986. He has licensed reactor operat 1978 and has supervis research reactor faciliti 1981. He has been a proj the University of Utah A&M University and State University, and a professor at the Bel State Technical Univer was honored by the U.S as a Fulbright Senior in 1994-95, serving in the Soviet Republic of Bela has performed nuclear ing in Saudi Arabia, Au and Wales.

to what gets in or does not get in the paper. [illegible]

First there was [illegible] deadline, the layout person for Sunday's Opinion section learned that the obituaries would not fill all of the 2½ pages that had been set aside for them. Therefore, the space would have to be filled with opinions and syndicated columnists. Under the [illegible]

[illegible] tives) retraction.

Whew! Let's all just exhale. We have eight more days to go.

The Reader Advocate's phone number is (801) 257-8999. Write to the Reader Advocate, The Salt Lake Tribune, P.O. Box 867, Salt Lake City, Utah 84110. E-mail: reader.advocate@sltrib.com.

2/17/02 SL Tribune

Tiny ISU Nuclear Reactor Is No Threat to Public

BY JAY F. KUNZE

I was shocked and disappointed to read the article published in the Feb. 10 edition of your newspaper titled "Idaho State University's Lax Policies Pose a Nuclear Security Threat." The article was written by Kevan Crawford and alleges that Idaho State University (ISU) engaged in various criminal and fraudulent actions in relation to its non-power reactor. I am disappointed not only by the libelous and outrageous nature of Crawford's statements, but also that *The Tribune* chose to print them. Even if this particular forum is intended to be an "anything goes" medium, the inflammatory headline was surely written by *The Tribune* staff.

Lest your readers envision a "Hanford-type" nuclear reactor, they should know that the reactor at ISU is a small, low-power training reactor donated to the university in the 1960s by a contractor of the Department of Energy to be used in connection with ISU's Nuclear Engineering and Science program for training students and conducting basic reactor physics and irradiation experiments. The sub-critical facility associated with the reactor develops no measurable power. Both are benign nuclear devices, safe to operators, students and the public. The reactor is limited to power no more than that of a standard incandescent night light or a single Christmas tree bulb.

The facilities at ISU are regulated by the Nuclear Regulatory Commission and are inspected by their officers on a regular basis. In 1993 the NRC did issue the notice of violation referred to by Crawford, and ISU immediately responded by taking corrective action in all areas noted. None of them resulted in any criminal or civil penalties.

These corrective actions were followed up with inspections by the NRC, and ISU remains in compliance today. ISU's policy and practice, then and now, is to take safety and security seriously, and to vigilantly strive to remain in compliance with applicable regulations and safety standards.

We unequivocally reject the assertion by Crawford that either the NRC or ISU are lax in their enforcement or compliance with applicable regulations and safety standards or that ISU has engaged in any criminal or fraudulent conduct in relation to its nuclear reactor. Our security plan is periodically reviewed both by the NRC and in-house, and since 9-11 the facility has been under heightened security, as have all nuclear facilities in the nation.

Finally, your readers should also know that Crawford's motives and current knowledge of ISU's program are suspect. He is a dismissed former employee who was last employed at ISU in January 1994. How he purports to have the kind of current information allowing him to conclude that "some violations [of the USNRC] undoubtedly continue to this day" is anyone's guess. The truth is the ISU facility represents no danger to ISU personnel or the public.

As noted, the NRC does regularly inspect ISU's facility, and the regulatory issues that occurred while Crawford was affiliated with ISU, even as the reactor supervisor, were addressed long ago. We have endured Crawford's vitriolic diatribes for years, and one would hope he would move on to something more substantive and productive, although based on experience, he will probably only see this response itself as further confirmation of his "conspiracy" beliefs.

Jay F. Kunze is dean of the College of Engineering at Idaho State University.