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	)	
(Special Nuclear Materials License	)	ASLBP No. 10-897-MLR-BD01
SNM-1373, Pocatello, Idaho)	)	

NRC STAFF'S RESPONSE TO KEVAN C. CRAWFORD'S
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

The Nuclear Regulatory Commission (NRC) Staff responds to Kevan C. Crawford's January 12, 2010 request for a hearing and petition for leave to intervene in the matter of Idaho State University's special nuclear material license renewal application.[1] Dr. Crawford's petition should be denied because Dr. Crawford fails to demonstrate he has standing to intervene and because he has not submitted a contention that meets the NRC's standards for contention admissibility.

II. BACKGROUND

On February 27, 2009, Idaho State University (ISU) submitted a revised license renewal request for its Special Nuclear Materials (SNM) License, SNM-1373, for a period of ten years.[2] SNM-1373 authorizes ISU to possess and use SNM for education, research, and training programs at its campus in Pocatello, Idaho.[3] On November 13, 2009, the NRC published a

[1] The Petition is dated January 11, 2010, but was submitted through the EIE on January 12, 2010. This response was originally due on February 8, 2010, but is being filed pursuant to 10 C.F.R. §2.306, on the first day after February 8, 2010 that is not a day upon which the NRC headquarters did not open due to an emergency closure.

[2] ADAMS Accession No. ML092730441.

[3] In addition to its SNM license, ISU also possesses an NRC research reactor license, R-110, and an academic broadscope license, 11-27380-01. The research reactor license was renewed for 20 years in 2006. ADAMS Accession No. ML060610619. The Petitioner filed a 10 C.F.R. § 2.206 request for action (2.206 petition) on June 26, 2009, expressing concerns about ISU's reactor license, some of which are similar to his contentions. Some of the concerns in the 2.206 petition were accepted for review; however, none of the concerns that he expresses in the contentions were accepted.

notice of opportunity to request a hearing in the Federal Register, 74 Fed. Reg. 58656. Dr. Crawford (Petitioner) timely filed a request for hearing and petition for leave to intervene on January 12, 2010.

III. DISCUSSION

A. The Petitioner has not established Standing to Intervene

1. Applicable Legal Requirements

NRC's regulations provide that the Atomic Safety and Licensing Board (Board) will grant a hearing request if it determines that the requestor/petitioner has standing under the provisions of 10 C.F.R. § 2.309(d) and at least one of its proposed contentions meets the requirements of 10 C.F.R. § 2.309(f).[4] A request for hearing or petition for leave to intervene must state:

> (i) The name, address, and telephone number of the requestor or petitioner;
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> (ii) The nature of the requestor's/petitioner's right under the [Atomic Energy Act] to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and
>
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1).

"Standing is not a mere legal technicality, it is, in fact, an essential element in determining whether there is any legitimate role for a court or an agency adjudicatory body in dealing with a particular grievance."[5] The Commission has long applied judicial concepts of standing.[6] A petitioner "must allege (1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests

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[4] 10 C.F.R. § 2.309(a).

[5] *Westinghouse Elec. Corp.* (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331-32 (1994).

[6] *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

protected by the Atomic Energy Act (or other applicable statute, such as the National Environmental Policy Act), and (4) is likely to be redressed by a favorable decision."[7] A petitioner must establish a causal nexus between the alleged injury and the challenged action. A determination that the injury is fairly traceable to the challenged action does not depend "on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible."[8] Finally, while the petitioner has the burden of demonstrating standing, the presiding officer will "construe the petition in favor of the petitioner."[9]

In proceedings for certain types of facilities, Commission practice allows petitioners an alternative to establishing standing through presumptions based on geographical proximity to the facility in question. Historically, the Commission has presumed standing in power reactor construction permit and operating license proceedings based on a petitioner's 50-mile proximity to the facility.[10] In nuclear materials licensing cases, the proximity presumption may be applied "where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences. Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source."[11] "Where there is no 'obvious' potential for radiological harm at a particular distance frequented by a petitioner, it becomes the petitioner's 'burden to show a specific and plausible means' of how the challenged action may harm him or her."[12]

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[7] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-01-02, 53 NRC 9, 13 (2001).

[8] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).

[9] *Georgia Tech.*, CLI-95-12, 42 NRC at 115.

[10] *See, e.g., Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Servs., LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC __ (Oct. 13, 2009) (slip op. at 5); *Fla. Power & Light Co.* (St. Lucie, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

[11] *Georgia Tech.,* CLI-95-12, 42 NRC at 116-17 (citations omitted).

[12] *USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005) (quoting *Nuclear Fuel*

A claim of personal injury to an employee of a licensee or applicant, which allegedly results from mismanagement, but is not shown to result from the proposed licensing action, would not be an injury-in-fact for the purposes of standing.[13] Nor is such an injury protected under the AEA or NEPA.[14] Furthermore, "[a] desire to expose alleged mismanagement is not an injury-in-fact and does not enhance [a petitioner's] position for standing."[15] Finally, grievances in the area of employment rights would not be redressed by a Board decision on a licensing action.[16]

2. Petitioner's Standing to Intervene

The Petitioner does not address the Commission's legal requirements for standing and has not demonstrated that he has standing to intervene in this proceeding. Instead, the Petitioner's standing argument is based on his assertion that he is "(1) an eyewitness, (2) an expert witness, (3) a whistleblower, (4) and a victim of whistleblower retribution." Petition at 1.

Dr. Crawford has failed to show that he will suffer a concrete and particularized injury (1) that can be traced to ISU's license renewal, (2) that falls among an interest protected by the Atomic Energy Act (AEA), and (3) that is likely to be redressed by a Board decision in his favor. His alleged injuries appear to have occurred in the 1990s when he was an employee of ISU's research reactor, and shortly after his employment there. The Petitioner states that he has been a "victim of a series of libelous publications, slanderous statements, and criminal acts from non-nuclear degreed, inexperienced, and/or unlicensed quacks representing the licensee." Petition at 2. The Petitioner attributes his injuries to ISU having retaliated against him for raising

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Services., Inc., CLI-04-13, 59 NRC 244, 248 (2004)).

[13] *See Texas Utilities Elec. Co.* (Comanche Peak Steam Elec. Station, Unit 2), LBP-92-37, 36 NRC 370, 375 (1992).

[14] *Id.*

[15] *Id.*

[16] *Id.*

safety concerns to the NRC and other government agencies. While the Energy Reorganization Act of 1974, as amended, (ERA) provides NRC licensee employees protection from retaliation, ERA § 211, 42 U.S.C. § 5851, that is not the type of harm contemplated for establishing standing in a license renewal hearing.[17]

Regardless of whether the Petitioner's injuries occurred as he alleges, Petitioner's injuries arose from alleged licensee behavior between 1994 and, at the latest, 2002. He has not established a causal nexus between the license renewal and his injuries.[18] The present case is similar to *Comanche Peak*, where former employees of a power plant petitioned to intervene in a construction permit amendment proceeding. Some of the former employees asserted that they had been personally harmed by management misconduct, and expressed an interest in exposing that management misconduct.[19] The petitioners did not assert that they lived within close proximity to the plant, so the Board applied judicial concepts of standing and found that the claims of personal injury from mismanagement were insufficient to establish standing.[20] The types of harms alleged were not within the zone of interests of the AEA and would not be redressed by a decision to deny the construction permit amendment.[21] Likewise in the present case, the Petitioner claims that he is a former employee who was harmed by ISU's administration, and he has expressed an interest in exposing the administration's actions. He does not demonstrate that he lives in the vicinity of ISU or that he could be harmed by renewal of the SNM license.

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[17] *See id*, LBP-92-37, 36 NRC at 389 ("The alleged threats and harassment that were said to result in the [petitioners'] fleeing Texas is not an injury protected under the AEA or NEPA. A favorable decision for the [petitioners] in the subject proceeding would not remedy the alleged injury. The forum for resolving that dispute is not here. They do not have requisite interest for standing.").

[18] *Sequoyah Fuels Corp.,* CLI-94-12, 40 NRC at 75.

[19] *Comanche Peak,* LBP-92-37, 36 NRC at 373.

[20] *Id.* at 374-75.

[21] *Id.*

In the most basic terms, the type of harm generally proffered for standing in NRC licensing hearings is personal radiological harm that could result from the licensing action at issue.[22] According to his petition, Dr. Crawford lives in Salt Lake City, Utah, which is approximately 150 miles south of ISU in Pocatello, Idaho.[23] The Petitioner does not allege any actual or potential personal radiological harm from ISU's continued use of SNM. The Petition lacks any allegation of a risk of off-site consequences, let alone a risk to someone 150 miles from the site. His argument rests solely on allegations of past violations, which from the face of the Petition do not create the potential for harm to him personally. "The Commission has never held that a claimed violation of law creates a presumption of standing, without something more showing the violation could harm the petitioner."[24]

Moreover, the Petitioner's asserted injuries will not be redressed by a favorable decision by this Board, and one of the remedies he requests is unavailable through the NRC. First, the Petitioner asks the Board to deny ISU's license renewal application. Petition at 6. Although the Petitioner might find satisfaction in that outcome, denying the license renewal will not redress the harms he has alleged—he will not be compensated for past adverse employment actions.

The Petitioner's second relief request is for the Board to order the "licensee to 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. Neither the Board nor the NRC has the authority to compensate the Petitioner for ISU's alleged violations of NRC regulations; and

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[22] *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48 (1994) ("The Atomic Energy Act authorizes the Commission to accord protection from radiological injury to both health and property interests. *See* AEA §§ 103b, 161b, 42 U.S.C. §§ 2133(b), 2201(b).").

[23] According to google maps, http://maps.google.com/maps?f=d&source=s_d&saddr=Pocatello,+ID&daddr=Salt+Lake+City,+UT&hl=en&geocode=&mra=ls&sll=38.895112,-77.036366&sspn=0.264533,0.44014&ie=UTF8&z=7 (last visited Feb.12, 2010).

[24] *Inter'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, 30 (2001).

certainly neither has the authority to compensate the Petitioner for alleged crimes that fall outside the NRC's jurisdiction.[25]

Even giving the Petitioner deference for his *pro se* status and construing the petition in his favor, Mr. Crawford has failed to establish standing to intervene in ISU's SNM license renewal application proceeding, and his petition should be denied.[26]

B. The Petitioner's Contentions Are Inadmissible

1. Legal Requirements for Contentions

The legal standards governing admissibility of contentions are set forth in the NRC's Rules of Practice at 10 C.F.R. Part 2. In order to be admissible, a contention must:

> (i) provide a specific statement of the legal or factual issue sought to be raised;
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> (ii) provide a brief explanation of the basis for the contention;
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> (iii) demonstrate that the issue raised is within the scope of the proceeding;
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> (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and
>
> (vi) provide information sufficient to show that a genuine dispute with the applicant exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case of an application that is asserted to be deficient, the identification of such deficiencies and supporting reasons for this belief.

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[25] *See* ERA § 211b, 42 U.S.C. § 5851(b), giving the Secretary of Labor, not the NRC, the authority to compensate employees for violations of that section.

[26] As a rule, *pro se* petitioners will be held to a less rigid standard than those represented by counsel, although a totally deficient petition will be rejected. *S.C. Elec. and Gas Co. and S.C. Pub. Serv. Auth. (Also referred to as Santee Cooper)*, (Virgil C. Summer Nuclear Station Units 2 and 3), CLI-10-01, 71 NRC __, slip op. at 5 (2010); *see also, Shieldalloy Metallurgical Corp*, CLI-99-12, 49 NRC 347, 354 (1999).

10 C.F.R. § 2.309(f)(1).

Sound legal and policy considerations underlie the Commission's contention pleading requirements. The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."[27] The Commission "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing."[28] The scope of a hearing is defined by the Commission's hearing notice and order referring the proceeding to the Board; any contentions that fall outside of that scope must be denied.[29] The requirements for contention admissibility are "strict by design."[30] Failure to comply with any of the requirements in 10 C.F.R. § 2.309(f)(1) is grounds for dismissal of the contention.[31] Further, "[m]ere 'notice pleading' does not suffice."[32] The Petitioner bears the burden of providing sufficient facts and/or expert opinions necessary to support a contention. Neither speculation nor conclusory assertions, even by an expert, suffice to allow admission of a proffered contention.[33]

Additionally, to be admissible, all contentions must assert an issue of law or fact that is material to the outcome of the licensing action, "meaning that the subject matter of the contention must impact the grant or denial of a pending license application. This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also

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[27] *Changes to Adjudicatory Process (Part II)*, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

[28] *Id*.

[29] *TVA* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 204 (2004).

[30] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

[31] 69 Fed. Reg. at 2221; *Private Fuel Storage, L.L.C.,* CLI-99-10, 49 NRC 318, 325 (1999).

[32] *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal citation omitted).

[33] *Fansteel, Inc.* (Muskogee, Okla. Site), CLI-03-13, 58 NRC 195, 203 (2003).

indicates some significant link between the claimed deficiency and either the health and safety of the public or the environment."[34]

The Commission has held that as part of its licensing and oversight responsibilities, it "may consider the adequacy of a licensee's corporate organization and the integrity of its management."[35] A license renewal may be an appropriate occasion for appraising the past performance of the licensee, but "[o]f course, the past performance must bear on the licensing action currently under review."[36] Accordingly, a license renewal proceeding cannot be a forum to litigate whether a licensee made mistakes in the past, but must focus on whether the licensee/applicant as currently organized can provide reasonable assurance of willingness to follow NRC regulations.[37]

2. The Petitioner has not Submitted an Admissible Contention

The Petitioner proposes three contentions challenging ISU's license renewal application. The bases for his contentions are his own observations of the facility while he was employed there from 1991 to 1993, his observations of past and present ISU employees and associates, and some information he has received from ISU employees. Of particular note, the Petitioner's contentions often cite ISU's research reactor license, which was renewed in 2006,[38] without explaining how the contentions are relevant or material to the SNM license renewal. All of the Petitioner's contentions should be rejected because he fails to comply with the pleading requirements of 10 C.F.R. § 2.309(f)(1).

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[34] *TVA* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 385 (2008) (internal citations omitted).

[35] *Georgia Tech,* CLI-95-12, 42 NRC at 120.

[36] *Id.*

[37] *Id.* at 120-21; *see also Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118 (1985) (Commission analysis of licensee integrity and competence).

[38] ADAMS Accession No. ML060610619.

a. Contention 1

The Petitioner's first contention asserts that the west wall of the subcritical assembly (SCA) room is not made of concrete, as shown. He also argues that there is a "false wall" opening to maintenance tunnels between buildings, and that the drywall can be easily breached. The Petitioner asserts that in 1992 the tunnel was left unguarded, and not checked at appropriate intervals, thus violating the research reactor's Physical Security Plan (PSP), and that the reactor supervisor cannot control access to that tunnel, which constitutes a continuing violation of the reactor PSP and Emergency Plan. Petition at 2-3. Contention 1 fails because the Petitioner does not provide sufficient information to show that a genuine dispute exists in regard to a material issue of law or fact, and does not demonstrate that this issue is material to the Staff's decision whether to renew the SNM license.[39]

First, with respect to his assertion that the SCA room wall is not made of concrete, the Petitioner refers to Figure 2 on page 16 of the Application. This figure is non-public for security reasons, and the Petitioner does not explain whether he is looking at an old version, or is relying on memory.[40] In any event, in its current application the applicant does not specify that the west wall of the SCA room is made of concrete, and a concrete wall is not required by NRC regulations. Further, with respect to his assertion regarding a false wall opening to maintenance tunnels, the information the Petitioner supplies in support of contention 1 is insufficient. He relies only on his own knowledge of the matter from 1993 and second-hand information without support. A bare assertion that there is a problem with the wall does not provide an adequate basis to support the admissibility of this contention.[41]

Additionally, the Petitioner cites past alleged violations of ISU's research reactor PSP

[39] 10 C.F.R. § 2.309(f)(1)(iv) & (vi).

[40] The NRC's Notice of Opportunity for Hearing gave petitioners the opportunity to request access to security information, but the Petitioner did not request access to information redacted from ISU's Application. 74 Fed. Reg. at 58658.

[41] *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203.

stemming from the condition of the wall. Even assuming there was a violation, mere reference to past violations, without establishing a link to the present contention is an inadequate basis for a contention.[42] Moreover, ISU's research reactor is licensed separately from its SNM. NRC regulations outline different security requirements for research reactors and the quantity of SNM ISU possesses and is applying to possess.[43] While the Applicant relies on portions of the PSP to satisfy various security requirements for the SNM license, the Petitioner does not explain how his alleged violations of the reactor PSP correspond to the SNM security requirements, and he is unable to give such an explanation because he did not request access to security information. The Petitioner has not demonstrated that there is a genuine dispute with the applicant in regard to a material issue of law or fact, nor that the issue he raises is material to the Staff's review of the SNM license renewal application; thus failing to meet the requirements of 10 C.F.R. 2.309(f)(1)(iv) and (vi). Contention 1 should be rejected.

b. Contention 2

The Petitioner's second contention alleges that ISU "facility administration has chronically demonstrated a lack of concern for public/staff health and safety and national security." Petition at 3. He lists several examples as bases for this contention. First, he states that he reported several violations of the research reactor's license in 1993. *Id.* Second, he asserts that the applicant was responsible for "scaring and threatening the petitioner not to report the regulatory and criminal violations of the NRC licensee." *Id.* Third, the Petitioner alleges that someone from ISU submitted a letter to the National Whistleblower Center in 1995 falsely representing himself as Petitioner, thus committing mail fraud. Petition at 4. Fourth, the Petitioner mentions illegal distribution of controlled substances and fraudulent documents, and

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[42] *Georgia Tech*, CLI-95-12, 42 NRC at 120.

[43] ISU possesses and is applying to possess special nuclear material of low strategic significance. *See* 10 C.F.R. § 73.2. Facilities with special nuclear material of low strategic significance must comply with 10 C.F.R. § 73.67(f), which does not require a PSP be submitted to the NRC.

refers to a petition for enforcement action he submitted to the NRC under 10 C.F.R. § 2.206, which has been partially accepted by the Staff for review. *Id.* Fifth, the Petitioner briefly mentions a contamination event at a neo-natal unit in 1992, which he reported to the NRC. Sixth, the Petitioner alleges that a former reactor supervisor and a current reactor operator were decertified as operators at another research reactor facility. *Id.* And finally, the Petitioner alleges that the current reactor administrator published a libelous article in the *Salt Lake Tribune* in 2002 in order to intimidate the Petitioner. *Id.*

As with contention 1, contention 2 fails because the Petitioner does not demonstrate that these allegations are relevant or material to the Staff's review of the license renewal application, and he does not provide information sufficient to demonstrate that a genuine dispute of material fact or law exists with ISU.[44]

The Petitioner is questioning ISU's character, but his allegations are vague, and he does not plead with any particularity how the alleged actions relate to the licensing action at issue here. The Commission has held that "character" and an applicant's ability to operate safely may properly be part of licensing proceedings.[45] But that does not mean "that every licensing action throws open an opportunity to engage in a free-ranging inquiry into the 'character' of the licensee. There must be some direct and obvious relationship between the character issues and the licensing action in dispute."[46] ISU's alleged actions occurred several years ago, some by persons who may no longer employed by ISU, and several of the alleged actions took place outside of the facility and outside of NRC jurisdiction. The Petitioner has not connected how the past actions affect ISU's ability to safely possess SNM if the SNM license is renewed.[47]

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[44] 10 C.F.R. § 2.309(f)(iv) & (vi).

[45] *Georgia Tech*, CLI-95-12, 42 NRC at 120-21; *Georgia Power Co.* (Vogtle Elec. Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993).

[46] *Vogtle*, CLI-93-16, 38 NRC at 32.

[47] *Georgia Tech*, CLI-95-12, 42 NRC at 120-21.

The "enforcement action" the Petitioner offers as a basis for Contention 2 is the Staff's acceptance of his June 26, 2009 2.206 petition for further review. The Staff has not concluded that the violations the Petitioner alleges occurred. And again, the allegations contained in that 2.206 petition refer to violations of the research reactor license, not the SNM license. What is more, even if this matter results in the opening of an investigation, a pending investigation in and of itself does not indicate that there is a substantive problem, that there has been a violation, or that there is an unresolved safety issue, and therefore does not provide a basis for a contention.[48]

The fact that a licensee made mistakes in the past does not establish an admissible contention without a demonstration that there is a connection to the current applicant's willingness and ability to comply with NRC requirements.[49] In the past the Commission has admitted contentions about management improprieties or the integrity of an applicant, but those cases differ significantly from the present one. For example, in *Georgia Tech*, the petitioner offered evidence of a serious contamination incident by submitting the NRC's inspection and investigation reports, the Applicant's SAR, expert opinion, and other evidence.[50] The NRC had concluded that the incident was a Severity Level III violation that resulted in suspension orders and a civil penalty, and the incident was attributed to management failures.[51] The same management that was involved in the contamination incident was still in place at the time of the license renewal.[52] The petitioner also asserted that a restructuring that occurred after the incident did not ensure adequate independence of the radiation safety personnel from the

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[48] *Pacific Gas & Elec. Co.* (Diablo Canyon, Units 1 and 2), LBP-93-9, 37 NRC 433, 446 (1993) (citing *La. Power and Light Co.* (Waterford Steam Elec. Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986)).

[49] *Georgia Tech*, CLI-95-12, 42 NRC at 120.

[50] *Id.* at 121.

[51] *Id.*

[52] *Id.* at 118.

management.[53] In addition, the license renewal proceeding was the first opportunity the petitioner had to seek adjudication of the management issue.[54]

In contrast, in the present case the Petitioner has not submitted any evidence to link the alleged violations to the Applicant's current operation. He has not demonstrated that there is a present or future safety concern at ISU based on the past actions, again, many of which were alleged violations of the reactor license.[55] And finally, this is not the Petitioner's first or only opportunity to raise his concerns—the reactor license was renewed in 2006, at which time the Petitioner could have filed a hearing request,[56] and his concerns are currently under review in the 2.206 petition process, where the Petitioner does not have to demonstrate standing or submit an admissible contention. Accordingly, the Petitioner has not established a dispute with the applicant with respect to its SNM renewal application, which is the subject of this proceeding, on a material issue of law or fact.[57] Because Contention 2 fails to meet the pleading standards of 10 C.F.R. § 2.309(f)(1), the Board should deny it.

c. Contention 3

The third contention is similar to the first two, in that it rests on an allegation of a past violation as a basis for admissibility. Contention 3 states that "[t]here is no honesty, and hence no credibility in this licensee" and recounts an inventory the Petitioner conducted in 1992 during which he found three fuel plates outside the area covered by the research reactor PSP and Emergency Plan. Contention 3 should be rejected because it fails to comply with 10 C.F.R. §

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[53] *Id.*

[54] *Id.* at 119.

[55] In 2006 the research reactor license was renewed with the requisite finding that there was reasonable assurance that ISU would operate in conformance with its license, the AEA, and NRC regulations. The NRC also found reasonable assurance that ISU would conduct activities without endangering the public health and safety. ADAMS Accession No. ML060610619, Safety Evaluation Report at 17-1.

[56] The Notice of Opportunity for Hearing was published on January 8, 1996, 61 Fed. Reg. 563. The NRC did not receive any requests for a hearing or petitions for leave to intervene.

[57] 10 C.F.R. § 2.309(f)(1)(vi).

2.309(f)(1). The Petitioner has not explained with particularity how the misplacement of fuel plates 18 years ago will affect the Staff's decision whether to grant or deny the application, or how the violation affects the public health and safety.[58] He accuses several 1992 employees of mishandling materials, but does not explain whether those persons are still employed by the licensee or how they might now affect the safe operation of the facility. While a history of past violations might be a basis for rejecting a license application, or at least reviewing it with more scrutiny, the allegation of an 18-year-old violation does not provide an adequate basis for a contention with nothing more. The Petitioner has not demonstrated that this alleged past action in any way affects the current organization's ability or willingness to comply with NRC requirements, and so he has not raised a genuine dispute with the Applicant on a material issue of law or fact.[59] Nor has he linked the past violation to a current risk to the public health and safety.[60] Because the petitioner has not shown that contention 3 is material to the Staff's decision whether to grant ISU's license renewal, or presents a dispute with the applicant on an issue of fact or law material to the proceeding, contention 3 should be denied.[61]

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[58] *Bellefonte*, LBP08-16, 68 NRC at 385.

[59] *Georgia Tech*, CLI-95-12, 42 NRC at 120.

[60] *See Bellefonte*, LBP-08-16, 68 NRC at 385.

[61] 10 C.F.R. § 2.309(f)(1)(iv), and (vi).

IV. CONCLUSION

Dr. Crawford has failed to demonstrate that he has standing to intervene in this licensing action. He also has not submitted a contention that meets the NRC's contention admissibility standards. Accordingly, Dr. Crawford's hearing request and petition to intervene must be denied.

Respectfully submitted,

/signed (electronically) by/

Molly L. Barkman
Counsel for NRC Staff

Dated at Rockville, MD
this 12th day of February, 2010.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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IDAHO STATE UNIVERSITY	)	
(Special Nuclear Materials License	)	ASLBP No. 10-897-MLR-BD01
SNM-1373, Pocatello, Idaho)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter in accordance with 10 C.F.R. § 2.314(b).

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Name of Party:	NRC Staff

Respectfully submitted,

/Signed (electronically) by/

Molly L. Barkman
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 12th day of February, 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	)	
(Special Nuclear Materials License	)	ASLBP No. 10-897-MLR-BD01
SNM-1373, Pocatello, Idaho)	)	

CERTIFICATE OF SERVICE

I hereby certify that "NRC STAFF'S RESPONSE TO KEVAN C. CRAWFORD'S REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE" and "NOTICE OF APPEARANCE OF MOLLY L. BARKMAN" were submitted to the Electronic Information Exchange (EIE) this12th day of February 2010, which to the best of my knowledge resulted in transmittal to those on the EIE Service List for the above captioned proceeding.

Respectfully submitted,

/Signed (electronically) by/

Molly L. Barkman
Counsel for the NRC Staff