

INDEXES TO
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Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM) are presented in this document. These digests and indexes are intended to serve as a guide to the issuances.

Information elements common to the cases heard and ruled upon are:

- Case name (owner(s) of facility)
- Full text reference (volume and pagination)
- Issuance number
- Issues raised by appellants
- Legal citations (cases, regulations, and statutes)
- Name of facility, Docket number
- Subject matter of issues and/or rulings
- Type of hearing (operating license, operating license amendment, etc.)
- Type of issuance (memorandum, order, decision, etc.)

These information elements are displayed in one or more of five separate formats arranged as follows:

1. Case Name Index

The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

2. Headers and Digests

The headers and digests are presented in issuance number order as follows: the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM).

The header identifies the issuance by issuance number, case name, facility name, docket number, type of hearing, date of issuance, and type of issuance.

The digest is a brief narrative of an issue followed by the resolution of the issue and any legal references used in resolving the issue. If a given issuance covers more than one issue, then separate digests are used for each issue and are designated alphabetically.

3. Legal Citations Index

This index is divided into four parts and consists of alphabetical or alpha-numerical arrangements of Cases, Regulations, Statutes, and Others. These citations are listed as given in the issuances. Changes in regulations and statutes may have occurred to cause changes in the number or name and/or applicability of the citation. It is therefore important to consider the date of the issuance.

The references to cases, regulations, statutes, and others are generally followed by phrases that show the application of the citation in the particular issuance. These phrases are followed by the issuance number and the full text reference.

4. Subject Index

Subject words and/or phrases, arranged alphabetically, indicate the issues and subjects covered in the issuances. The subject headings are followed by phrases that give specific information about the subject, as discussed in the issuances being indexed. These phrases are followed by the issuance number and the full text reference.

5. Facility Index

This index consists of an alphabetical arrangement of facility names from the issuance. The name is followed by docket number, type of hearing, date, type of issuance, issuance number, and full text reference.

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COMBINED LICENSE; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 8A); Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); LBP-11-31, 74 NRC 643 (2011)

COMBINED LICENSE; PARTIAL INITIAL DECISION (Ruling on Contention 4A); Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); LBP-13-4, 77 NRC 107 (2013)

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SANTEE COOPER

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COMBINED LICENSE; MEMORANDUM AND ORDER (Denying Motions to Reinstate Contention); Docket Nos. 52-025-COL, 52-026-COL (ASLBP Nos. 11-914-02-COL-BD01, 11-913-01-COL-BD01); LBP-11-36, 74 NRC 768 (2011)

REQUEST FOR ACTION; MEMORANDUM AND ORDER; Docket Nos. 52-025-COL, 52-026-COL; CLI-11-5, 74 NRC 141 (2011)

STP NUCLEAR OPERATING COMPANY

OPERATING LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket Nos. 50-498-LR, 50-499-LR; CLI-15-4, 81 NRC 221 (2015); CLI-15-10, 81 NRC 535 (2015); CLI-15-15, 81 NRC 803 (2015)

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COMBINED LICENSE; MEMORANDUM AND ORDER (Denying Dominion's Motion for Clarification of LBP-11-10); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-11-22, 74 NRC 259 (2011)

COMBINED LICENSE; MEMORANDUM AND ORDER (Denying BREDL's Motion to Reopen and Admit Contention 14); Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); LBP-14-8, 79 NRC 519 (2014)

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REQUEST FOR ACTION; PARTIAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-338, 50-339 (License Nos. NPF-4, NPF-7); DD-12-2, 76 NRC 391 (2012)

REQUEST FOR ACTION; REVISED DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-338, 50-339 (License Nos. NPF-4, NPF-7); DD-15-9, 82 NRC 274 (2015)

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- CLI-11-1 PETITION FOR RULEMAKING TO AMEND 10 C.F.R. § 54.17(c), Docket No. PRM-54-6; RULEMAKING PETITION; January 24, 2011; MEMORANDUM AND ORDER
- A Even absent an express provision authorizing such relief, the Commission has occasionally considered requests to suspend proceedings or hold them in abeyance in the exercise of its inherent supervisory powers over proceedings.
- B Longstanding practice of the Commission has been to limit orders delaying proceedings to the duration and scope necessary to promote the Commission’s dual goals of public safety and timely adjudication.
- C Absent extraordinary cause, the Commission seldom interrupts licensing reviews or adjudications — particularly by an indefinite or very lengthy stay — pending the outcome of other Commission actions or adjudications.
- D Suspension of licensing proceedings is a drastic action that is not warranted absent immediate threats to public health and safety.
- E Interim docketing and Staff review of the Seabrook and similarly situated renewal applications would not jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge from ongoing Commission evaluation of licensing policies.
- F Holding relicensing applications in abeyance pending petitioners’ rulemaking request was unjustified because the Commission would have the opportunity to take a fresh look at petitioners’ concerns once rulemaking petitions have been scrutinized by public comment and agency review. Such relief would upset the status quo by effectively overturning the license renewal rule in the interim.
- G No harm, much less irreparable harm, will occur to petitioners or others by mere continuation of the Staff’s customary license renewal review process.
- H Ordinary burden to parties in pursuing litigation pending rulemaking does not justify disrupting ongoing review of license renewal applications in that litigation.
- CLI-11-2 ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR; LICENSE RENEWAL; March 10, 2011; MEMORANDUM AND ORDER
- A A Petition for Review falls short of satisfying 10 C.F.R. § 2.341(b)(4) if it does not specify the subsections upon which it relies and instead merely sets forth a series of general grievances fundamentally going to the correctness of the Board’s decision.
- B The Commission generally disfavors the filing of new contentions at the eleventh hour of an adjudication. This policy is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end. The Commission considers reopening the record for any reason to be an extraordinary action, and the Commission therefore imposes a deliberately heavy burden upon an intervenor who seeks to supplement the evidentiary record after it has been closed, even with respect to an existing contention.
- C The Commission frowns on intervenors seeking to introduce a new contention later than the deadline established by our regulations, and the Commission accordingly holds them to a higher standard for the admission of such contentions.
- D The Commission and its Licensing Boards generally consider approximately 30-60 days as the limit for timely filings based on new information. *See, e.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 494 (2010) (a 2-month delay is too long); Initial Scheduling Order (Nov. 17, 2006) at 7.*

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- E The Commission recognizes that 10 C.F.R. § 2.326(a)(1) provides an exception to the “timeliness” requirement in those rare instances where a petitioner raises an “exceptionally grave issue.”
- F Documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source do not render “new” the summarized or compiled information. The tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable.
- G Nothing in our rules prevents an applicant from amending its application at any time. Permitting an application to be “modified or improved” throughout the NRC’s review is compatible with the dynamic licensing process followed in Commission licensing proceedings.
- H Section 2.326(a)(3) of the Commission’s procedural rules provides that the proponent of a motion to reopen the record must demonstrate that a materially different result would have been likely had the newly proffered evidence been considered initially. The burden of satisfying this requirement (as is the case for each of the reopening requirements) is a heavy one. And, as the Commission recently reiterated, bare assertions and speculation do not supply the requisite support. To justify reopening the record, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition.
- CLI-11-3 ENERGY SOLUTIONS, LLC (Radioactive Waste Import/Export Licenses), Docket Nos. 110-05896 (Import), 110-05897 (Export); INPORT AND EXPORT LICENSES; June 6, 2011; MEMORANDUM AND ORDER
- A The Commission denies Petitioners’ requests for hearing, intervention, and waiver of 10 C.F.R. § 51.22(c)(15), and directs the Office of International Programs to issue import license IW029 and export license XW018 to EnergySolutions.
- B A participant may petition that a Commission rule or regulation be waived with respect to the license application under consideration. 10 C.F.R. § 110.111(a).
- C To waive a Part 110 rule or regulation, the petitioner must show special circumstances concerning the subject of the hearing such that application of the rule or regulation would not serve the purposes for which it was adopted. 10 C.F.R. § 110.111(b).
- D Section 51.22(c)(15) of 10 C.F.R. provides a categorical exclusion from the National Environmental Policy Act requirement to prepare an environmental assessment or environmental impact statement for the issuance of a low-level radioactive waste import license.
- E Section 189a of the Atomic Energy Act of 1954, as amended (AEA) provides that the Commission shall grant a hearing to any person whose interest may be affected by a proceeding under the AEA for the granting of any license.
- F To determine if a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189a, the Commission has long applied contemporaneous judicial concepts of standing.
- G To establish standing, a petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision.
- H An organization may base its standing on immediate or threatened injury to its organizational interests.
- I An organization may derive standing from a member if the organization demonstrates that the individual member has standing to participate, and has authorized the organization to represent his or her interests.
- J Petitioners’ generalized institutional interest in public forums and in preventing processing of foreign waste is insufficient to confer standing. Petitioners’ claims of potential injury are also so speculative, and separate from the import and export license, that they do not amount to cognizable harm for purposes of standing.
- K A presumption of standing based on geographic proximity may be applied in cases involving nonpower reactors where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences. Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source.
- L Conclusory allegations about potential radiological harm are insufficient to establish standing.
- M Even if Petitioners had shown standing, the Commission would not be required by the Administrative Procedure Act or Atomic Energy Act to grant a hearing because the issues Petitioners raised are not material to the proceeding.

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- N Commission regulations, in 10 C.F.R. § 110.84(a), provide for a discretionary hearing in an export or import licensing proceeding if a hearing would be in the public interest and would assist the Commission in making the statutory determinations required by the AEA.
- O A discretionary hearing to discuss the adequacy of the information provided by the applicant in a public forum would not assist the Commission in making its determinations on the export and import license applications because the applicant provided the information required by the Commission's regulations.
- P A discretionary hearing to discuss policy issues related to the import of foreign low-level radioactive waste and domestic incineration and transportation issues is not warranted as these issues are either challenges to the Commission's regulations or are outside the scope of the proceeding.
- CLI-11-4 AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility), Docket No. 70-7015; MATERIALS LICENSE; July 12, 2011; MEMORANDUM AND ORDER
- A Although NRC guidance documents are not legally binding, and compliance with them is not required, they describe an approach to compliance with our rules that is acceptable to the NRC.
- CLI-11-5 UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI (Callaway Plant, Unit 2), Docket No. 52-037-COL; AP1000 DESIGN CERTIFICATION AMENDMENT (10 C.F.R. Part 52), Docket No. NRC-2010-0131 (RIN 3150-AI81); CALVERT CLIFFS NUCLEAR PROJECT, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL; DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL; ENERGY NORTH-WEST (Columbia Generating Station), Docket No. 50-397-LR; ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; ESBWR DESIGN CERTIFICATION AMENDMENT (10 C.F.R. Part 52), Docket No. NRC-2010-0135 (RIN-3150-AI85); FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR; FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL; LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL; NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR; PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR; PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant), Docket No. 52-039-COL; PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL; SOUTH CAROLINA ELECTRIC & GAS COMPANY and SOUTH CAROLINA PUBLIC SERVICE AUTHORITY (also referred to as SANTEE COOPER) (Virgil C. Summer Nuclear Station, Units 1 and 2), Docket Nos. 52-027-COL, 52-028-COL; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL; SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL; REQUEST FOR ACTION; September 9, 2011; MEMORANDUM AND ORDER
- A The sole provision of the Commission's procedural rules explicitly authorizing stay applications is available only to parties to adjudicatory proceedings seeking stays of decisions or actions of a presiding officer pending the filing and resolution of a petition for review. However, the Commission may consider requests to suspend or hold proceedings in abeyance pursuant to its inherent supervisory authority over agency proceedings.
- B The Commission considers "suspension of licensing proceedings a 'drastic' action that is not warranted absent 'immediate threats to public health and safety,'" or other compelling reason. Where the Commission faces circumstances analogous to those it considered in the post-September 11 *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) proceeding (CLI-01-26, 54 NRC 376 (2001)), the criteria articulated then are apt. Thus, the Commission considers, first, whether moving forward will jeopardize the public health and safety. Second, the Commission examines whether continuing

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the review process will prove an obstacle to fair and efficient decisionmaking. Third, the Commission decides whether going forward will prevent appropriate implementation of any pertinent rule or policy changes that might emerge from our ongoing evaluation.

C The Commission's regulatory processes provide sufficient time and avenues to ensure that design certifications and combined licenses satisfy any Commission-directed changes before any new power plant commences operations. To the extent that the Commission's comprehensive review of the events in Fukushima, Japan, leads to new rules applicable to any pending application, the Commission has sufficient authority and time to apply them to any new license that may be issued. With respect to license renewals, the NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its "current licensing basis," which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding (perhaps even in parallel with the ongoing license renewal review). The Commission has well-established processes for imposing any new requirements necessary to protect the public health and safety and the common defense and security.

D The Commission's regulations specify the circumstances under which the Staff must prepare supplemental environmental review documents. *See* 10 C.F.R. § 51.72(a). To merit this additional review, information must be both "new" and "significant," and it must bear on the proposed action or its impacts. As the Commission has explained, the new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.

E The Commission's normal processes for filing new or amended contentions, submitting rulemaking comments, and motions (including motions to reopen) carry with them costs typically associated with participation in litigation and rulemaking. Participants accept these costs when they elect to participate in the Commission's proceedings; the Commission's rules require a level of engagement that far exceeds simple interest in the outcome of a proceeding. For example, the Commission's rules deliberately place a heavy burden on proponents of contentions, who must challenge aspects of license applications with specificity, backed up with substantive technical support; mere conclusions or speculation will not suffice. An even heavier burden applies to motions to reopen.

F To the extent that the events at Fukushima, Japan, provide the basis for contentions appropriate for litigation in individual proceedings, the Commission's procedural rules contain ample provisions through which litigants may seek admission of new or amended contentions, seek stays of licensing board decisions, appeal adverse decisions, and file motions to reopen the record, as appropriate. And, should a licensing board decision raise novel legal or policy questions, boards may certify to the Commission, in accordance with 10 C.F.R. §§ 2.319(i) and 2.323(f), those questions that would benefit from the Commission's consideration. All of these procedural mechanisms contribute toward guaranteeing the propriety of adjudicatory decisions, and allow proceedings to continue with minimal disruption to all participants. Neither new procedures nor a separate timetable for raising new issues related to the Fukushima events are therefore warranted.

CLI-11-6 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL; COMBINED LICENSE; September 9, 2011; MEMORANDUM AND ORDER

A The Board's denial of a summary disposition motion did not constitute a "*de facto* partial initial decision" or a "final decision on the merits" ripe for Commission review. Simply because a Board makes a disputed legal ruling does not necessarily warrant immediate Commission action. *See Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-10-30, 72 NRC 564, 568 (2010) (rejecting interlocutory review where it was observed that "[p]ortions of the Board's decision appear[ed] problematic, and may warrant our review later in the proceeding"). *See also Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 35 (2008); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 5 (2001).

B The Commission rejects the Staff's argument that allowing an environmental challenge to continue after the environmental impact statement (EIS) has issued constitutes a "merits" ruling that the Staff's review document is inadequate. Boards frequently hold hearings on contentions challenging the Staff's final environmental review documents, in which case the EIS and the adjudicatory record become part of the environmental record of the decision.

CLI-11-7 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW; CONSTRUCTION AUTHORIZATION; September 9, 2011; MEMORANDUM AND ORDER

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CLI-11-8 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL; COMBINED LICENSE; September 27, 2011; MEMORANDUM AND ORDER

- A The Commission's rules, in 10 C.F.R. § 2.311(b), require briefs on appeal to conform to the requirements stated in 10 C.F.R. § 2.341(c)(2). Section 2.341(c)(2) limits briefs to 30 pages in length, absent Commission order directing otherwise. Briefs on appeal should be comprehensive, concise, and self-contained; the Commission will not augment appellants' brief by incorporating "by reference" other pleadings or arguments contained in such other pleadings.
- B To justify a request for oral argument on an appeal, appellants must show how oral argument will assist the Commission in reaching a decision, as is required by 10 C.F.R. § 2.343. Where the Commission has a thorough written record containing adequate information on which to base a decision, there is no need for oral argument.
- C Like issues related to standing and contention admissibility, the question whether a pleading satisfies the requirements of section 2.326 — and therefore justifies reopening a closed proceeding — is a threshold issue. In the absence of clear error or abuse of discretion, the Commission defers to its boards' rulings on such threshold issues. The Commission will not sustain an appeal that fails to show a board committed clear error or abuse of discretion. Appellants' conclusory statement that they "proved" their position is not sufficient to show clear error or abuse of discretion on the part of the Board.
- D Appellants may not amend their contentions on appeal. Therefore, to the extent appellants' explanation alters or amends the proposed contention, the amendment must be rejected.
- E The evaluation of a contention that is performed at the contention admissibility stage should not be confused with the evaluation that is later conducted at the merits stage of a proceeding. At the contention admissibility stage, a Board evaluates whether a petitioner has provided sufficient support to justify admitting the contention for further litigation. The facts and issues raised in a contention are not "in controversy" and subject to a full evidentiary hearing unless the proposed contention is admitted. In making its contention admissibility decision, the Board appropriately applied its technical and legal expertise to evaluate the proposed contention and the support provided for that contention.
- F The Commission's rules place a heavy burden on petitioners who ask to have a record reopened. Section 2.326(a) makes it clear that a motion to reopen will not be granted unless all three of the criteria listed in that section are satisfied. Additionally, pursuant to section 2.326(b), "[t]he motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. . . . Each of the criteria must be separately addressed, with a specific explanation of why it has been met." It is true that those providing affidavits must be competent witnesses or appropriately qualified experts. But satisfying one part of section 2.326(b) is not enough. The balance of the rule also must be satisfied.
- G As the Commission has stated before, "the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention." "New information is not enough . . . to reopen a closed hearing record at the last minute; the information must be significant and plausible enough to require reasonable minds to inquire further." This is equally true where, as here, not only has the evidentiary record closed, but the entire proceeding has closed. "[T]o justify the granting of a motion to reopen the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition."
- H In addition to the three criteria listed in section 2.326(a) and the pleading specificity requirements in section 2.326(b), the Commission's reopening rule explicitly calls into play the rule governing nontimely filings. When a petitioner proposes a new contention after the record has closed, the petitioner must "address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing." Section 2.326(d) provides that "[a] motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in § 2.309(c)." Section 2.309(c), in turn, requires a balancing of eight factors. These factors must be addressed with specificity. Of the eight factors, the Board accorded the greatest weight to the first factor — good cause — consistent with the Commission's case law.
- I The Commission's contention admissibility standards, *see* 10 C.F.R. § 2.309(f)(1), "are deliberately strict," and the Commission "will reject any contention that does not satisfy" its requirements. Section

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2.309(f)(1) requires a request for hearing or petition for leave to intervene to explain proposed contentions with particularity.

- J As the Board points out, “a contention that attacks a Commission rule, or [that] seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible.” The Commission’s rules, in 10 C.F.R. § 2.335, explicitly provide that “no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding.”
- K The Commission finds no evidence that prior experience with field application of protective coatings or prior experience with a particular contractor indicates that future work to be performed at the Vogtle site will be unsatisfactory. To the extent that Appellants appear to assert that there will be future misdeeds, they fail to show a nexus between their generalized complaints, the details of the combined license application, and prospective coating application or contractor behavior — that is, management character or integrity — at the Vogtle site. Without such a link, Appellants have raised no viable issue.
- CLI-11-9 LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL; COMBINED LICENSE; September 27, 2011 (Re-served October 4, 2011); MEMORANDUM AND ORDER
- A We will grant a petition for review at our discretion, giving due weight to the existence of a substantial question with respect to one or more of the following considerations: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration that we may deem to be in the public interest.
- B We defer to licensing board rulings on contention admissibility absent error of law or abuse of discretion.
- C Section 50.54(hh)(2) sets forth the mitigative strategies requirements for licensees. It provides that: each licensee shall develop and implement guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire, to include strategies in the following areas: (i) fire fighting; (ii) operations to mitigate fuel damage; and (iii) actions to minimize radiological release.
- D Section 52.80(d) applies to combined license (COL) applicants, requiring each COL application to include a “description and plans for implementation of the guidance and strategies” required by section 50.54(hh)(2).
- E At the contention admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application.
- F The contention standard does not contemplate a determination of the merits of a proffered contention.
- G Our rules require intervenors to assert a sufficiently specific challenge that demonstrates that further inquiry is warranted.
- H For the purposes of ruling on the petition, we must look to the adjudicatory record before us.
- CLI-11-10 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL; COMBINED LICENSE; September 27, 2011; MEMORANDUM AND ORDER
- A A denial of summary disposition does not constitute a “full or partial initial decision” warranting immediate Commission review. *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 34 (2008).
- B Appellate review of interlocutory Licensing Board orders is disfavored, and will be undertaken as a discretionary matter only in extraordinary circumstances. *See Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133-37 (2009).
- CLI-11-11 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR; LICENSE RENEWAL; October 12, 2011; MEMORANDUM AND ORDER
- A Section 2.311(d)(1) provides for appeals as of right on the question whether a request for hearing should have been wholly denied.

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- B The Commission will defer to the Board’s rulings on contention admissibility absent an error of law or abuse of discretion.
- C Under section 54.29(a), an operating license may be renewed if we find, among other things, that actions have been identified and have been or will be taken with respect to managing the effects of aging during the period of extended operation on the functionality of certain identified structures and components.
- D License renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to the NRC’s ongoing compliance oversight activity.
- E The contention admissibility rules require that contentions be raised with sufficient detail to put the parties on notice of the issues to be litigated.
- F The support required for a contention necessarily will depend on the issue sought to be litigated.
- G The Commission looks to Council on Environmental Quality (CEQ) regulations for guidance, including section 1502.22. But its longstanding policy is that the NRC, as an independent regulatory agency, is not bound by those portions of CEQ’s NEPA regulations that, like section 1502.22, have a substantive impact on the way in which the Commission performs its regulatory functions.
- H The NRC’s regulatory review process for license renewal divides the environmental review into two parts: those issues deemed appropriate for generic analysis and those warranting a site-specific environmental impact assessment. Issues found not to require a plant-specific environmental analysis are designated “Category 1” issues. For “Category 1” issues, the NRC’s Generic Environmental Impact Statement (GEIS) for license renewal provides a generic environmental analysis — generally applicable either to all plants, or to a distinct subcategory of plants. Because “Category 1” issues already have been reviewed on a generic basis, an applicant’s environmental report need not provide a site-specific analysis of these issues.
- I Section 2.335(b) provides an exception to the general rule that our regulations are not subject to challenge in adjudicatory proceedings. In accordance with this section, a party to an adjudicatory proceeding may petition for a waiver of “a specified Commission rule or regulation or any provision thereof.” “The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which [it] was adopted.” In order to meet this standard, the party seeking a waiver must attach an affidavit that, among other things, “state[s] with particularity the special circumstances [claimed] to justify the waiver or exception requested.”
- J A licensing board may not add support where it is lacking.
- CLI-11-12 SHIELDALLOY METALLURGICAL CORPORATION (Decommissioning of the Newfield, New Jersey Site), Docket No. 40-7102-MLA; MATERIALS LICENSE AMENDMENT; October 12, 2011; MEMORANDUM AND ORDER
- A The pertinent statutory provisions on the scope of our authority in entering section 274 agreements are contained in sections 274b and 274d of the AEA, 42 U.S.C. §§ 2021(b), 2021(d). We construe subsection d as providing the specific conditions under which the Commission “shall” exercise the general legal authority granted to it under subsection b.
- B Given the mandatory language used in subsection d of section 274 of the AEA, we construe it as requiring us to enter into an agreement for state regulation of the particular categories of nuclear materials that a state certifies it both desires to regulate and has established a program for — provided that we find the state’s program for regulation of such materials to be adequate and compatible.
- C We find nothing in this legislative history or in the statute itself to suggest that we may, over the objections of a state desiring jurisdiction and for reasons other than health and safety or compatibility, retain regulatory authority over pending applications involving a nuclear materials category otherwise transferred to a state.
- D We do not construe Criterion 25 as in any way relating to substantive standards or the regulatory outcome of a pending license application, even where as in Shieldalloy’s case a license application has been pending at the NRC for an extended period. The purpose of that criterion is to ensure that licensing records are transferred to and received by the new agreement state in an orderly manner that ensures that no pending licensing actions will be significantly delayed or that no records will be lost or misplaced as a result of the transition of authority.
- E In entering into an agreement with any state, we fully anticipate and expect that the state’s regulatory approaches and decisions may differ from ours. We have long recognized that agreement states should be

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provided with flexibility in program implementation to accommodate individual state preferences, state legislative direction, and local needs and conditions, including the flexibility to incorporate more stringent, or similar, requirements.

F Our regulations neither explicitly nor implicitly require a comparison of the levels of protection afforded by the unrestricted and restricted decommissioning options. This is because the levels of protection of unrestricted release and restricted release are simply not susceptible to being compared meaningfully. Each option uses significantly different methods to achieve adequate protection and has significantly different risks and uncertainties associated with it. Restricted-release dose estimates inherently involve much greater uncertainty than those from unrestricted release.

G Our license termination rule provides that unrestricted release and restricted release are both available as independent regulatory options that would provide adequate protection to the public health and safety *if* the applicable dose and other criteria are met. Nothing in our license termination regulations states or implies in any way that restricted-release decommissioning, under any circumstances, is a safer, more protective, or more desirable disposal option than unrestricted release. To the contrary, in view of the inherent complexities and uncertainties associated with restricted release, we explicitly expressed a preference for unrestricted release in adopting our license termination rule.

H Our ALARA principle itself, either as a general regulatory principle or as used in our license termination rule, does not incorporate or call for any comparative analysis of doses from restricted and unrestricted release. Under our license termination regulations, the ALARA principle has been implemented for two purposes. The first purpose is traditional — to reduce doses from license termination below the applicable dose criteria to the extent reasonably achievable. This stems from our policy that small doses of radiation below dose limits, while safe and acceptable, may have some associated risk and should be reduced below limits when reasonable. The ALARA principle has also been incorporated into the restricted-use portion of the license termination rule for the purpose of providing a criterion to limit the use of restricted release — effectively, to screen out sites that should be removing contamination to achieve unrestricted use. This purpose is achieved in section 20.1403(a) through the use of a cost-benefit analysis as a regulatory tool to determine initial “eligibility” for restricted release. The eligibility criterion in section 20.1403(a) was intended to support our preference for the unrestricted-release decommissioning option.

I New Jersey’s license termination regulations are not less protective than or incompatible with ours in making the terms of restricted release considerably more difficult than those for unrestricted release. Our regulations likewise heavily favor unrestricted over restricted release. If Shieldalloy has a more difficult time pursuing restricted release in New Jersey than under our regulations, then that is the function of New Jersey’s permissibly more stringent regulatory scheme.

J We decided the compatibility issue in the license termination rulemaking, when we found, through our Level C designation, that states are free to impose more stringent requirements than ours. The New Jersey variances cited by Shieldalloy are aspects of the state’s regulations that are more stringent than ours on the same technical subject areas.

K We do not see anything unfair or unlawful in state regulations that may apply to just one licensee in a state at any given time. An agreement state must have a regulatory program in place for *all* of the nuclear material categories and activities that a state wishes to regulate, currently and potentially.

L We do not view a state’s regulations as inherently unfair because they may be designed to effectuate a state-desired regulatory outcome. It is the prerogative of a state under the section 274 agreement-state program to decide what local interests, preferences, and needs it wishes to accommodate. Our role under section 274 is to assess whether a state’s program adequately protects the public health and safety and whether it is compatible with ours.

M If a regulated entity believes that a state’s program, as implemented, is unlawful or contrary to public health and safety, it may raise its agreement-state performance concerns with us. NRC will address agreement-state performance concerns through our Integrated Materials Performance Evaluation Program (IMPEP) process or through an independent agreement-state performance concern evaluation, depending on the performance concern raised. We retain power under AEA § 274j, to revoke agreements with states and to restore NRC regulatory authority.

CLI-11-13 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW; CONSTRUCTION AUTHORIZATION; November 29, 2011; MEMORANDUM AND ORDER

A The Commission disfavors requests to invoke its inherent supervisory authority over adjudications.

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- B The procedural rule governing appeals in a 10 C.F.R. Part 2, Subpart J proceeding provides for review only in the limited circumstances prescribed in the rule.
- C The Commission generally defers to the Board on case management issues. *See generally* 10 C.F.R. § 2.319.
- CLI-11-14 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; December 22, 2011; MEMORANDUM AND ORDER
- A We permit filings not otherwise authorized by our rules only where necessity or fairness dictates.
- B Our rules of practice permit a party to choose whether to submit a petition for review, an answer in support of the petition, or neither (that is, the filing of a petition or answer is optional).
- C We expect the parties to adhere to our page-limit requirements, or timely seek leave for an enlargement of the page limitation.
- D Section 2.341(b)(3) does not, by its terms, limit the petitioning party to one reply only, but can fairly be read to permit one reply to each answer. Stated another way, the petitioning party may reply separately to each answer, especially considering that the answers may present different views or arguments.
- E Replies need not be limited to rebuttal arguments. We have long held that a reply may not contain new information that was not raised in either the petition or answers, but we have not precluded arguments that respond to the petition or answers, whether they are offered in rebuttal or in support.
- F Our rules of practice permit parties to file a petition for review of licensing board full or partial initial decisions, both of which we consider to be final.
- G A grant of summary disposition where other contentions are pending is not a final decision, and is appealable only upon a showing that the standards for interlocutory review have been met.
- H The basis for our allowing immediate appellate review of partial initial decisions rests on prior Appeal Board decisions permitting review of a licensing board ruling that disposes of a major segment of the case or terminates a party's right to participate.
- I A party seeking interlocutory review must show that the issue to be reviewed: (i) threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or (ii) affects the basic structure of the proceeding in a pervasive or unusual manner.
- J Our disfavor of piecemeal appeals leads us to grant interlocutory review only upon a showing of extraordinary circumstances.
- K Parties should not seek interlocutory review by invoking the grounds under which the Commission might exercise its supervisory authority.
- L NEPA is a procedural statute — although it requires a “hard look” at mitigation measures, it does not, in and of itself, provide the statutory basis for their implementation.
- M Licensing boards lack authority to direct the Staff's nonadjudicatory actions.
- CLI-11-15 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001; CONSTRUCTION AUTHORIZATION; December 22, 2011; MEMORANDUM AND ORDER
- CLI-12-1 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; February 9, 2012; MEMORANDUM AND ORDER
- A The Commission denies review of an Atomic Safety and Licensing Board decision that addressed and rejected a challenge to the Severe Accident Mitigation Alternatives (SAMA) analysis for the Pilgrim Nuclear Power Station.
- B The SAMA analysis is a probability-weighted assessment of the benefits and costs of mitigation alternatives that can be used to reduce the risks (probability or consequences or both) of potential severe accidents at nuclear power plants.
- C As a mitigation alternatives analysis under the National Environmental Policy Act (NEPA), the SAMA analysis is neither a worst-case nor a best-case impacts analysis. NRC-endorsed guidance on SAMA analysis methodology specifies use of the mean annual off-site dose and economic impact.
- D We have long required contention claims to be set forth with particularity. It should not be necessary to speculate about what a pleading is supposed to mean. Petitioners must raise and reasonably specify at the outset their objections to a license application.
- E The mitigation measures examined in a SAMA analysis are supplemental to those we already require under our safety regulations for reasonable assurance of safe operation. Through our reactor oversight

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process, including generic safety issue reviews, we revisit whether additional mitigation measures should be imposed as a safety matter under 10 C.F.R. Part 50.

CLI-12-2 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL; COMBINED LICENSE; February 9, 2012; MEMORANDUM AND ORDER

A In this proceeding, the Commission considers safety issues pursuant to Atomic Energy Act (AEA) § 189a, and environmental issues as required by section 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969, as amended (NEPA).

B The Notice of Hearing for this uncontested proceeding sets the parameters for the Commission's review. The Commission must determine whether the review of the application by the NRC Staff has been adequate to support the findings listed in 10 C.F.R. § 52.97 and 10 C.F.R. § 51.107(a), for each of the combined operating licenses (COLs) to be issued, and in 10 C.F.R. § 50.10 and 10 C.F.R. § 51.107(d) with respect to the limited work authorizations (LWAs).

C The Commission does not review a COL application *de novo* in a mandatory hearing; it considers instead the sufficiency of the Staff's review of that application. *See generally Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005); *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006).

D With respect to the safety of the proposed facility, the Commission examines whether the Staff's review of the COL application has been adequate to support its findings, including whether: (1) the applicable standards and requirements of the AEA and our regulations have been met; (2) any required notifications to other agencies or bodies have been made; (3) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the AEA, and our regulations; (4) the applicant is technically and financially qualified to engage in the activities authorized; and (5) issuance of the license will not be inimical to the common defense and security or the health and safety of the public. 10 C.F.R. § 52.97(a)(1)(i)-(v).

E For an LWA application, the Commission examines whether the Staff's review of the application has been adequate to support its findings, including whether: (1) the applicable standards and requirements of the AEA and our regulations applicable to the activities to be conducted under the LWA have been met; (2) the applicant is technically qualified to engage in the activities authorized; (3) issuance of the LWA will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security; and (4) there are unresolved safety issues relating to the activities to be conducted under the LWA that would constitute good cause for withholding the authorization. 10 C.F.R. § 50.10(e)(iii)-(iv).

F With respect to the environmental impacts of the COL for the proposed facility, the Commission (1) determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and the applicable regulations in 10 C.F.R. Part 51, have been met; (2) independently considers the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determines, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determines whether the NEPA review conducted by the NRC Staff has been adequate. 10 C.F.R. § 51.107(a)(1)-(4).

G With respect to a limited work authorization (LWA), the Commission (1) determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and the regulations in 10 C.F.R. Part 51, Subpart A, have been met, with respect to the activities to be conducted under the LWA; (2) independently considers the balance among conflicting factors with respect to the LWA, which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken; (3) determines whether the site redress plan will adequately redress the activities performed under the LWA, should LWA activities be terminated by the holder or the LWA revoked by the NRC, or upon effectiveness of our final decision denying the COL application; and (4) determines whether the NEPA review conducted by the NRC Staff for the LWA has been adequate. 10 C.F.R. § 51.107(d)(1)(i)-(iv).

H To satisfy requirements of NEPA, the Commission independently considers the final balance among conflicting factors in the record.

I In order to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to a testing program for squib valves.

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- J Analyses of severe accidents, aircraft impacts, and probabilistic risk assessment are covered in the design control document for the referenced reactor (AP1000) and are incorporated by reference into the combined license application. In contrast, external event risks are site dependent, and therefore must be reevaluated in the COL application.
- K After NRC review and acceptance, an applicant's or licensee's cyber security plan becomes a condition of the plant's license. The cyber security plan becomes a part of the plant's licensing basis.
- L Because applicant addressed topics that are optional at the early site permit (ESP) stage — including analyses of the economic, technical, and other costs and benefits of the project, and the evaluation of alternative energy sources — those issues were resolved in the early site permit proceeding, leaving no unresolved environmental issues. As a result, environmental review for the COL application was limited to identifying new and significant information that would have the potential to alter the conclusions reached in the early site permit environmental impact statement.
- M Because work encompassed in the applicant's second request for a limited work authorization was originally part of the first request for a limited work authorization, the early site permit environmental impact statement evaluated all relevant environmental impacts of the requested limited work authorization. The COL FSEIS referenced this analysis, and verified the adequacy of the site redress plan for the second LWA.
- N Backfill borrow sources located onsite in previously undisturbed areas were added to the COL and thus not evaluated in the ESP. The applicant voluntarily mitigated impacts to two Georgia state-listed threatened species — the sandhill milkvetch and southeastern pocket gopher — by relocating them away from the backfill borrow area.
- O The Commission imposed no license conditions relating to future requirements that may be imposed as a result of its lessons learned from the Fukushima Dai-ichi accident. Because the NRC continues to develop the technical basis for Fukushima-related requirements, any license condition would lack sufficient details necessary to impose meaningful requirements.
- CLI-12-3 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; February 22, 2012; MEMORANDUM AND ORDER
- A We will grant a petition for review at our discretion, giving due weight to the existence of a substantial question with respect to one or more of the following considerations: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration which we may deem to be in the public interest.
- B For threshold issues like contention admissibility, we give substantial deference to a board's determinations. We will affirm decisions on the admissibility of contentions where we find no error of law or abuse of discretion.
- C Motions to reopen the record are governed by 10 C.F.R. § 2.326 of our rules of practice. The movant must show that: (1) the motion is timely; (2) the motion addresses a significant safety or environmental issue; and (3) a materially different result would be or would have been likely had the newly proffered evidence been considered initially. Each of the criteria must be separately addressed, with a specific explanation of why it has been met.
- D The level of support required for a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. § 2.309(f)(1). The motion to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the three criteria for reopening have been satisfied.
- E Evidence contained in the affidavits must meet the admissibility standards in 10 C.F.R. § 2.337. That is, it must be relevant, material, and reliable. Further, the affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised.
- F A litigant seeking to reopen a closed record necessarily faces a heavy burden. After a record has closed, finality attaches to the hearing process, and after that point, only timely, significant issues will be considered.

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- G The reopening standards in section 2.326 expressly contemplate contentions that raise issues not previously litigated. In particular, subsection (d) anticipates circumstances where the motion to reopen relates to a contention not previously in controversy among the parties.
- H We discourage incorporating pleadings or arguments by reference; we expect briefs on appeal to be comprehensive, concise, and self-contained.
- I Federal courts leave to an agency's discretion the manner in which the agency determines whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules.
- J Litigants seeking to reopen a record must comply fully with section 2.326(b). We do not expect boards to search the pleadings for information that would satisfy our reopening requirements.
- K We do not consider arguments made for the first time on appeal.
- L Whether a severe accident mitigation alternative (SAMA) is worthy of more detailed analysis in an Environmental Report or supplemental environmental impact statement hinges upon whether it may be cost-beneficial to implement. It would be unreasonable to trigger full adjudicatory proceedings based merely upon a suggested SAMA under circumstances in which the petitioners have done nothing to indicate the approximate relative cost and benefit of the SAMA.
- CLI-12-4 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943; MATERIALS LICENSE RENEWAL; February 22, 2012; MEMORANDUM AND ORDER
- A The Board lacks the authority to supervise the Staff's review.
- B Absent compelling circumstances, the Staff is expected to accord sufficient priority and devote sufficient resources to meeting its estimated safety and environmental review schedules.
- CLI-12-5 NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR; LICENSE RENEWAL; March 8, 2012; MEMORANDUM AND ORDER
- A The license renewal safety review — and any associated license renewal adjudicatory proceeding — focuses on the detrimental effects of aging posed by long-term reactor operation. *New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 224 (3d Cir. 2011).
- B Longstanding Staff guidance directly addresses the classification of electrical transformers for the purposes of license renewal, and has found them to be “active” components. Any degradation of the transformer's ability to perform its intended function is readily monitorable by a change in the electrical performance of the transformer and the associated circuits. Therefore, transformers are not subject to an aging management review during a license renewal proceeding and are outside the scope of license renewal.
- C As in any proceeding, the Board makes threshold decisions on materiality on a case-by-case basis, given the nature of the issue and the record presented before the Board. An application that complies with existing guidance may be challenged, provided that contention admissibility requirements are met.
- D For wind power to merit detailed consideration as an alternative to renewing the license for a nuclear power plant, that alternative should be capable of providing “technically feasible and commercially viable” baseload power during the renewal period.
- CLI-12-6 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; March 8, 2012; MEMORANDUM AND ORDER
- A The Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the following considerations: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration which we may deem to be in the public interest.
- B For threshold issues like contention admissibility, the Commission gives substantial deference to a board's determinations. The Commission will affirm decisions on the admissibility of contentions where it finds no error of law or abuse of discretion.
- C A litigant is not entitled to challenge a board ruling unless and until that ruling has worked a concrete injury to his personal interests.
- D The reopening standards expressly contemplate contentions that raise issues not previously litigated.

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- E Federal courts leave to an agency's discretion the manner in which the agency determines whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules.
- F As a general matter, the Commission's regulations are not subject to challenge in adjudicatory proceedings. Section 2.335(b), however, provides an exception to this general rule.
- G Section 2.335(b) permits a party to an adjudication to petition for a waiver of a rule or regulation upon a showing that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted. In order to meet this standard, the party seeking a waiver must attach an affidavit that, among other things, states with particularity the special circumstances claimed to justify the waiver or exception requested.
- H The waiver petitioner must meet all four *Millstone* factors, demonstrating that: (i) the rule's strict application would not serve the purpose for which it was adopted; (ii) there are special circumstances that were not considered, either explicitly, or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived; (iii) those circumstances are unique to the facility, rather than common to a large class of facilities; and (iv) a waiver of the rule is necessary to reach a significant safety problem.
- I Motions to reopen a closed record are governed by 10 C.F.R. § 2.326. The movant must show that: (1) the motion is timely; (2) the motion addresses a significant safety or environmental issue; and (3) a materially different result would be or would have been likely had the newly proffered evidence been considered initially. Each of the criteria must be separately addressed, with a specific explanation of why it has been met.
- J The level of support required to sustain a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. § 2.309(f)(1). The motion to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the three criteria for reopening have been satisfied.
- K Evidence contained in the affidavits must meet the admissibility standards in 10 C.F.R. § 2.337. That is, it must be relevant, material, and reliable. Further, the affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised.
- L A litigant seeking to reopen a closed record necessarily faces a heavy burden. After a record has closed, finality attaches to the hearing process, and after that point, only timely, significant issues will be considered.
- M The Commission's adjudicatory proceedings are not Environmental Impact Statement (EIS) editing sessions. The burden is on the proponent of a contention to show that the Staff's analysis or methodology is unreasonable or insufficient.
- N The National Environmental Policy Act (NEPA) allows agencies to select their own methodology as long as that methodology is reasonable.
- O Failure to challenge the existing severe accident mitigation alternatives (SAMA) analysis would be insufficient to establish a material dispute for the purposes of satisfying the general contention admissibility standards, let alone the reopening standards.
- P The Commission considers suspension of licensing proceedings a drastic action that is not warranted absent compelling circumstances.
- Q In the *Private Fuel Storage* dry cask proceeding, the Commission articulated three criteria for determining whether to suspend an adjudication. The Commission balances whether moving forward with the adjudication will: (1) jeopardize the public health and safety; (2) prove an obstacle to fair and efficient decisionmaking; and (3) prevent appropriate implementation of any pertinent rule or policy changes that might emerge from the Commission's ongoing lessons-learned evaluation.
- R NEPA requires that the agency conduct its environmental review with the best information available now. It does not, however, require that the NRC wait until inchoate information matures into something that later might affect its review.
- S The Commission's rules enable the NRC to supplement a final supplemental EIS if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts, consistent with the Supreme Court's decision in *Marsh v. Oregon Natural Resources Council*.
- CLI-12-7 LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL, COMBINED LICENSE; ENERGY NORTHWEST (Columbia Generating Station), Docket No. 50-397-LR, LICENSE RENEWAL; SOUTHERN NUCLEAR

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OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL, COMBINED LICENSE; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; March 16, 2012; MEMORANDUM AND ORDER

- A The Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the following considerations: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration which we may deem to be in the public interest.
- B Instead of section 2.311, which permits an appeal as of right on the question of whether an initial intervention petition should have been wholly denied, or alternatively, was granted improperly, in instances where an appeal involves a late-filed contention, 10 C.F.R. § 2.341 is routinely applied.
- C The standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341 — the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or an abuse of discretion.
- D If new and significant information comes to light that requires consideration as part of the ongoing preparation of application-specific National Environmental Policy Act (NEPA) documents, the agency will assess the significance of that information as appropriate.
- E NEPA imposes a continuing obligation on federal agencies to supplement an existing environmental impact statement (EIS), if the proposed action has not been taken, in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- F The Commission will supplement an EIS if there are: (1) substantial changes in the proposed action relevant to environmental concerns, or (2) new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- G To constitute a basis for supplementing an EIS, the new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.
- H As a general matter, "new" information that may be assessed for its relevance to an ongoing licensing matter may be derived in a wide variety of ways; such information is assessed for significance regardless of whether it has been acted upon in some way by the Commission, or by the NRC Staff.
- I The Commission expects the Boards in individual licensing proceedings to assess contentions against applicable procedural standards.
- J The contention admissibility rules require a proposed contention to be supported by alleged fact or expert opinion.
- K An application-specific NEPA review represents a "snapshot" in time. NEPA requires that we conduct our environmental review with the best information available today. It does not require that we wait until inchoate information matures into something that later might affect our review.
- CLI-12-8 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR; LICENSE RENEWAL; March 27, 2012; MEMORANDUM AND ORDER
- A For an alternative energy source to be considered reasonable for purpose of this proceeding, the alternative should be commercially viable and technically capable of producing an equal amount of baseload power now or in the near future, but no later than the expiration date of the current operating license.
- B The Severe Accident Mitigation Alternatives (SAMA) analysis is a site-specific analysis under NEPA. It looks for potential additional mitigation measures that could be implemented at a particular plant to further reduce severe accident risk (the probability or consequences of a severe accident). The SAMA analysis for license renewal has been a cost-benefit analysis, weighing a particular mitigation measure's estimated degree of risk reduction against its estimated cost of implementation.
- C To challenge an application, a petitioner must show that the SAMA analysis is "unreasonable" under NEPA. A contention proposing alternative inputs or methodologies must present some factual or expert basis for why the proposed changes in the analysis are warranted (e.g., why the inputs or methodology used is unreasonable, and the proposed changes or methodology would be more appropriate). Unless a petitioner

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sets forth a supported contention pointing to an apparent *error or deficiency* that may have significantly skewed the environmental conclusions, there is no genuine material dispute with the application.

CLI-12-9 SOUTH CAROLINA ELECTRIC & GAS COMPANY and SOUTH CAROLINA PUBLIC SERVICE AUTHORITY (also referred to as SANTEE COOPER) (Virgil C. Summer Nuclear Station, Units 2 and 3), Docket Nos. 52-027-COL, 52-028-COL; COMBINED LICENSE; March 30, 2012; MEMORANDUM AND ORDER

A In this proceeding, the Commission considers safety issues pursuant to Atomic Energy Act (AEA) § 189(a), and environmental issues as required by section 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969, as amended (NEPA).

B The Notice of Hearing for this uncontested proceeding sets the parameters for the Commission's review. The Commission must determine whether the review of the application by the NRC Staff has been adequate to support the findings listed in 10 C.F.R. § 52.97 and 10 C.F.R. § 51.107(a), for each of the combined operating licenses (COLs) to be issued.

C The Commission does not review a COL application *de novo* in a mandatory hearing; it considers instead the sufficiency of the Staff's review of that application. *See generally Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005); *Clinton ESP*, CLI-06-20, 64 NRC 15, 21-22 (2006).

D With respect to the safety of a proposed facility, the Commission examines whether the Staff's review of the COL application has been adequate to support its findings, including whether: (1) the applicable standards and requirements of the AEA and our regulations have been met; (2) any required notifications to other agencies or bodies have been made; (3) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the AEA, and our regulations; (4) the applicant is technically and financially qualified to engage in the activities authorized; and (5) issuance of the license will not be inimical to the common defense and security or the health and safety of the public. 10 C.F.R. § 52.97(a)(1)(i)-(v).

E With respect to the environmental impacts of the COL for a proposed facility, the Commission (1) determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and the applicable regulations in 10 C.F.R. Part 51, have been met; (2) independently considers the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determines, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determines whether the NEPA review conducted by the NRC Staff has been adequate. 10 C.F.R. § 51.107(a)(1)-(4).

F To satisfy requirements of NEPA, the Commission independently considers the final balance among conflicting factors in the record.

G The Staff's environmental review was conducted in cooperation with the Army Corps of Engineers (ACE), with the NRC acting as lead agency and the ACE as cooperating agency under a memorandum of understanding because the Applicants also needed permits from the ACE under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 in order to complete construction activities that may potentially affect wetlands.

H In order to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to a testing program for squib valves.

I The Commission imposed a license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment and spent fuel pool cooling capabilities following a beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink, at all units on the VCSNS site. The requirements of the license condition will be complete prior to fuel load.

J The Commission directed the Director of the Office of New Reactors to issue Order EA-12-051 to the license applicant, concurrent with the issuance of the COLs for VCSNS Units 2 and 3. In Order EA-12-051, the Commission determined that modifications to the spent fuel pool instrumentation required by that order represented a significant enhancement to the protection of public health and safety, and were an appropriate response to the insights from the Fukushima Dai-ichi accident. The Commission administratively exempted Order EA-12-051 from the Backfit Rule and the issue finality requirements in 10 C.F.R. § 52.63 and 10 C.F.R. Part 52, Appendix D, § VIII.

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- K The COL application included a request for a departure from the wet-bulb noncoincident temperature as described in the AP1000 Design Control Document (DCD). Because the wet-bulb noncoincident temperature is considered “Tier 1 information,” or part of the AP1000 certified design, a regulatory exemption is required. 10 C.F.R. Part 52, App. D, §§ IV.A.2.d and VIII.A.4. The exemption associated with the wet-bulb temperature departure was granted because it was authorized by law, would not present an undue risk to public health or safety, and was consistent with the common defense and security, and special circumstances were present.
- L The Staff found acceptable the applicant’s plan to use a single technical support center for existing Unit 1 and proposed Units 2 and 3 at VCSNS, to be collocated in the basement of the new nuclear operations building, between the protected areas of the three units, which is a departure from the AP1000 DCD. Relocation of the technical support centers to a central facility allows for the relocation of each of the new units’ operational support centers to the technical support center locations designated in the AP1000 DCD, adjacent to the control room. Each unit will have its own operational support center.
- CLI-12-10 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; March 30, 2012; MEMORANDUM AND ORDER
- A The Commission denies review of an Atomic Safety and Licensing Board decision that rejected three new contentions submitted by the intervenor.
- B The severe accident mitigation alternatives (SAMA) analysis involves extensive predictive judgments, many reflected in the computer modeling inputs used in the analysis. That there may be a range of conceivable choices among inputs used in the SAMA analysis goes without saying, and many alternative inputs may be reasonable choices — reflecting reasonable predictions — even though some may be more conservative and others less so. A mitigation alternatives analysis under the National Environmental Policy Act (NEPA) need not reflect the most conservative, or worst-case, analysis.
- C NEPA neither requires nor authorizes the NRC to order implementation of mitigation measures analyzed in an environmental analysis.
- D New or amended contentions must be based on new facts not previously available.
- E The reopening standards are intended to impose a heavy burden on parties seeking to supplement the evidentiary record at the 11th hour, after the record has closed. The purpose of the rule is to raise the threshold — increase the showing necessary — for last-minute claims for additional hearings. The rule provides no exception for previously unlitigated issues.
- F Reopening an evidentiary record will only be allowed where the proponent presents material, probative evidence which either could not have been discovered before or could have been discovered but is so grave that, in the judgment of the presiding officer, it must be considered anyway.
- G The reopening standard is not the equivalent of a summary disposition standard. A motion to reopen a record must demonstrate that a materially different result would be *likely* had the newly proffered evidence been considered initially. This appropriately requires the Board to consider the information in the submitted supporting affidavits. While the Board does not reach an ultimate decision on the merits of the contention, it nonetheless must apply its expertise and make a record-based judgment on the evidence. To meet the reopening standard, it is insufficient merely to point to disputed facts.
- CLI-12-11 SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL; COMBINED LICENSE; April 16, 2012; MEMORANDUM AND ORDER
- A In addition to contested hearings where interested members of the public have the right to participate and air their concerns, uncontested safety and environmental issues are considered in a so-called “mandatory” hearing. The mandatory hearing, which is required by section 189a of the AEA, does not involve public participation — regardless of whether a contested hearing with public participation has occurred. The purpose of a mandatory hearing is to determine whether the Staff’s review of the application has been adequate to support the required regulatory findings.
- B Although we have no specific rule governing stays of agency action pending judicial review, federal law requires parties seeking such stays in court to come to the agency first, and we traditionally have entertained such motions.
- C Only final NRC action is subject to judicial review. Neither the Board’s decision denying reopening nor the Commission’s decision refusing to suspend proceedings amounts to final agency action.

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- D In deciding motions seeking a stay of agency action pending judicial review, we look to the same four-part test that governs stays of licensing board decisions pending Commission review (10 C.F.R. § 2.342(e)). Of these factors, irreparable injury is the most important. Specifically, “[a] party seeking a stay must show it faces imminent, irreparable harm that is both ‘certain and great.’” Without a showing of irreparable injury, Petitioners must make “an overwhelming showing” of likely success on the merits. This has also been referred to as a demonstration of “virtual certainty.” And if a movant makes neither of these first two showings, then we need not consider the remaining factors.
- E To qualify as “irreparable harm” justifying a stay, the asserted harm must be related to the underlying claim.
- F For new information to be sufficiently “significant” to merit the preparation of a supplemental FEIS, the information “must paint a seriously different picture of the environmental landscape.” Also, NEPA case law requires EIS supplementation only where new information identifies a “previously unknown” environmental concern, but not where the new information “amounts to mere additional evidence supporting one side or the other of a disputed environmental effect.”
- G Because Petitioners did not participate in the mandatory hearing, and were not parties to it, they may not challenge the mandatory hearing decision, as such, in court.
- CLI-12-12 STRATA ENERGY, INC. (Ross In Situ Uranium Recovery Project), Docket No. 40-9091-MLA; MATERIALS LICENSE AMENDMENT; May 11, 2012; MEMORANDUM AND ORDER
- A Our rules of practice provide for appeals as of right on the question whether an intervention petition should have been “wholly denied.” 10 C.F.R. § 2.311(a)(1), (a)(2), (d)(1). Appeals of a Board’s finding of standing are proper because if that finding is in error, the petitioner would not be entitled to a hearing at all.
- B Routine contention admissibility determinations are not generally appropriate for interlocutory review. *See, e.g., South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-16, 71 NRC 486, 491 (2010); *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 137 (2009); *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-21, 62 NRC 538, 539 (2005).
- C It is well settled in Commission case law that an applicant may file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions. *Pa’ina Hawaii, LLC*, CLI-06-13, 63 NRC 508, 509 (2006). Similarly, an intervenor may not challenge the Board’s rejection of contentions where the Board has granted a hearing on any contention. *See, e.g., South Texas Project*, CLI-10-16, 71 NRC at 491; *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 465-67 (2004).
- D The Commission gives a Board’s ruling on standing “substantial deference.” *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914 (2009); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999). That is, the Commission defers to the Board’s rulings on standing absent an error of law or abuse of discretion. *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004) (citing *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001); *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998)).
- E Petitioners are not required to demonstrate their asserted injury with “certainty” with respect to standing. *See Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 74 (1994). Once the Board determines that injury to the petitioners from the proposed project is plausible, it is not required to weigh the evidence to determine whether the potential harm was beyond doubt. *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 346 (2009).
- F The Commission will generally not hold oral argument unless there is a specific showing that oral argument will assist us in reaching a decision. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 219-20 (2011) (citing *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 251 (2010) (citing, in turn, *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-2, 37 NRC 55, 59 n.4 (1993); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 68-69 (1992))).

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- CLI-12-13 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR; LICENSE RENEWAL; June 7, 2012; MEMORANDUM AND ORDER
- A Compliance with the National Environmental Policy Act (NEPA) is ultimately the responsibility of the NRC. However, license renewal applicants must submit an environmental report to aid the Staff in its preparation of a supplemental environmental impact statement.
- B We encourage our licensing boards to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding.
- C In adjudicatory proceedings, regardless of whether the applicant comes forward with supplemental information, our rules of practice place the initial burden of raising issues based on such new information on petitioners and intervenors. In other words, the “trigger point” for the timely submission of new or amended contentions is when new information becomes available, and our process places on the intervenor the obligation to raise new contentions based on such information.
- D By participating in our proceedings, intervenors accept the obligation of uncovering relevant, publicly available information.
- E We expect intervenors to file contentions on the basis of the applicant’s environmental report and not delay their contentions until after the Staff issues its environmental analysis.
- F We grant interlocutory review only upon a showing of extraordinary circumstances. That is, a petition for interlocutory review must show that the issue to be reviewed: (i) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer’s final decision; or (ii) affects the basic structure of the proceeding in a pervasive or unusual manner.
- G We have long held that routine contention admissibility decisions do not affect the basic structure of a proceeding in a “pervasive or unusual manner.”
- CLI-12-14 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL; COMBINED LICENSE; June 7, 2012; MEMORANDUM AND ORDER
- A It is the Commission’s longstanding practice in our proceedings that, once all contentions have been decided, the contested proceeding is terminated. *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 140-41 (2012); *Luminant Generation Co. LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 236 (2011); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 217 n.1 (2011). The courts of appeals have approved the Commission’s practice of closing the hearing record after resolution of the last live contention, and of holding new contentions to the higher reopening standard. *See, e.g., New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 232-33 (3d Cir. 2011); *State of Ohio v. NRC*, 814 F.2d 258, 262-64 (6th Cir. 1987); *Oystershell Alliance v. NRC*, 800 F.2d 1201, 1207-08 (D.C. Cir. 1986).
- CLI-12-15 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; June 7, 2012; MEMORANDUM AND ORDER
- A The Commission denies a petition for review of an Atomic Safety and Licensing Board decision that rejected a new contention.
- B The Severe Accident Mitigation Alternatives (SAMA) analysis is a probability-weighted analysis carried out for the limited purpose of identifying mitigation alternatives that meet a defined benefit-cost criterion. Mitigation measures assessed in the SAMA analysis under the National Environmental Policy Act (NEPA) are supplemental to those we already require under our safety regulations for reasonable assurance of safe operation, and likewise supplemental to those we may order or require under our ongoing regulatory oversight over reactor safety, pursuant to the Atomic Energy Act (AEA).
- C To satisfy the standard for reopening the evidentiary record, a motion to reopen the record must (1) be timely (or, if untimely, raise an exceptionally grave matter); (2) address a significant safety or environmental issue; and (3) demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially. The motion must be supported by an affidavit written by an individual with knowledge of the facts alleged, and the affidavit must explain why each of the criteria has been met.
- D Contentions challenging a SAMA analysis must identify a deficiency that plausibly could alter the overall result of the analysis in a material way.

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- E Our standard for reopening the record requires an affidavit-based showing that a materially different result would have been likely had the newly proffered evidence been considered initially. To meet the reopening standard, it is insufficient merely to point to disputed facts.
- F NEPA is not intended to encompass every possible impact, and does not encompass potential losses due merely to individuals' perception of a risk.
- G NEPA does not require that we wait until incomplete information matures into something that might possibly affect the NRC's review.
- CLI-12-16 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL, COMBINED LICENSE; DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, COMBINED LICENSE; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR, LICENSE RENEWAL; ENTERGY OPERATIONS, INC. (Grand Gulf Nuclear Station, Unit 1), Docket No. 50-416-LR, LICENSE RENEWAL; ENTERGY OPERATIONS, INC. (Grand Gulf Nuclear Station, Unit 3), Docket No. 52-024-COL, COMBINED LICENSE; EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR, LICENSE RENEWAL; EXELON NUCLEAR TEXAS HOLDINGS, LLC (Victoria County Station Site), Docket No. 52-042, EARLY SITE PERMIT; FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR, LICENSE RENEWAL; FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL, COMBINED LICENSE; LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Dockets 52-034-COL, 52-035-COL, COMBINED LICENSE; NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR, LICENSE RENEWAL; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR, LICENSE RENEWAL; PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant), Docket No. 52-039-COL, COMBINED LICENSE; PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL, COMBINED LICENSE; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR; LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL, COMBINED LICENSE; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR, LICENSE RENEWAL; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL, COMBINED LICENSE; August 7, 2012; MEMORANDUM AND ORDER
- CLI-12-17 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL; COMBINED LICENSE; September 25, 2012; MEMORANDUM AND ORDER
- A Petitioners' request, though styled a "Petition for Review," asked the Commission to reconsider its own prior ruling, and was therefore properly considered according to the standards governing a motion for reconsideration.
- B A petition for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision. *See* 10 C.F.R. § 2.323(e). A party's failure to seek leave is sufficient grounds for denying the request, although the requesting party may seek leave simultaneously with filing its motion. *See Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 252 (2010).
- C A motion for reconsideration must present a compelling argument, such as the existence of a clear and material error in a decision, which the movant could not reasonably have anticipated. *See* 10 C.F.R. § 2.345(b). Such a motion should be based on an "elaboration of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification," rather than simply reasserting the

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arguments already made. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 410 (2005) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-02-1, 55 NRC 1, 2 (2002)).

- CLI-12-18 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; LICENSE RENEWAL; October 12, 2012; MEMORANDUM AND ORDER
- A The Commission denies a petition for interlocutory review of an Atomic Safety and Licensing Board order granting a motion for cross-examination of witnesses.
- B Pursuant to 10 C.F.R. § 2.341(f)(2), the Commission may, at its discretion, grant a party's request for interlocutory review of a Board decision. Review may be granted only where the party demonstrates that the issue for which it seeks review: (1) threatens the party with immediate and serious irreparable impact which cannot be alleviated through an appeal following the presiding officer's final decision; or (2) affects the basic structure of the proceeding in a pervasive or unusual way.
- C Subpart L hearing rules are intended to shift most questioning of witnesses from parties to the Board itself. Given that the parties provide prefiled direct testimony in Subpart L cases, and further submit a list of confidential proposed questions for the board to ask the witnesses, the need for the parties themselves also to conduct questioning should be a rare circumstance, except where questions of credibility, motive, or intent are at issue. Cross-examination should be reserved for cases where the Board determines that it is truly necessary to develop a sound record.
- CLI-12-19 EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR; LICENSE RENEWAL; October 23, 2012; MEMORANDUM AND ORDER
- A The Commission's rules of practice provide an appeal as of right on the question whether a hearing request should have been wholly denied.
- B The Commission generally defers to board contention admissibility rulings in the absence of an error of law or abuse of discretion.
- C In order to grant a hearing request, a board must find that the petitioner has standing and has proposed at least one admissible contention.
- D Section 2.335(a) provides that a contention may not challenge an agency rule or regulation in any adjudicatory proceeding absent a waiver from the Commission; subsections (b) through (d) set forth the procedure for obtaining a waiver.
- E Section 51.53(c)(3)(ii)(L) requires a license renewal applicant's environmental report to include a consideration of alternatives to mitigate severe accidents if the Staff has not previously considered them for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment.
- F As in any case where the viability of an existing rule is questioned in an adjudication, the Commission's waiver provision in section 2.335(b) provides an avenue for a petitioner who seeks to litigate a contention in an adjudicatory proceeding that otherwise would be outside the permissible scope of the proceeding. Section 2.335(b) requires a showing of "special circumstances" demonstrating that application of the rule would not serve the purpose for which it was adopted.
- CLI-12-20 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-CAL, 50-362-CAL; CONFIRMATORY ACTION LETTER; November 8, 2012; MEMORANDUM AND ORDER
- A The Atomic Safety and Licensing Board is not the appropriate vehicle for reviewing 2.206 petitions. Instead, interested persons must follow the established 2.206 practice.
- B A confirmatory action letter (CAL) may constitute a *de facto* license amendment that triggers hearing rights. It is appropriate for the Atomic Safety and Licensing Board to evaluate the hearing petition, determine whether the CAL proceeding is, in effect, a license amendment proceeding, and then ultimately determine whether the intervention petition can satisfy the standing and contention admissibility requirements of 10 C.F.R. § 2.309.
- CLI-12-21 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR; LICENSE RENEWAL; December 6, 2012; MEMORANDUM AND ORDER
- A We will grant a petition for review at our discretion, giving due weight to the existence of a substantial question with respect to one or more of the following considerations: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a

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substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration that we may deem to be in the public interest.

- B A motion to reopen a closed record must be timely. When determining whether a new contention is timely for the purposes of reopening a record, we look to whether the contention could have been raised earlier — that is, whether the information on which it is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information’s availability.
- C Although “timely” is not expressly defined by months or days in our regulations, we, as well as our licensing boards, typically consider 30 to 60 days from the initiating event a reasonable deadline for proposing new or amended contentions.
- D Our contention pleading rules are designed with the expectation that petitioners will alert us to issues early on — when they arise — so that we may address them as part of the license application review. By participating in our proceedings, intervenors accept the obligation of uncovering relevant, publicly available information.
- E Our reopening rule provides an exception to the timeliness requirement, permitting consideration of an exceptionally grave issue even if it is untimely presented.
- F An untimely raised environmental issue could be exceptionally grave depending on the circumstances of the case and the facts presented. This narrow exception will be granted rarely and only in truly extraordinary circumstances.

CLI-13-1 HONEYWELL INTERNATIONAL, INC. (Metropolis Works Uranium Conversion Facility), Docket No. 40-3392-MLA; MATERIALS LICENSE AMENDMENT; January 9, 2013; MEMORANDUM AND ORDER

- A With limited exceptions, section 40.36 of our regulations requires source material licensees to demonstrate that they can pay for the decommissioning of their regulated facilities. Generally, a nongovernment licensee must demonstrate such financial assurance by using one of three methods — (1) prepayment; (2) use of a surety method, insurance, or other guarantee method; or (3) use of an external sinking fund.
- B As a form of “other guarantee method,” section 40.36(e)(2) permits bond-issuing licensees to provide a self-guarantee of funds for decommissioning costs based on a financial test set forth in Appendix C of Part 30.
- C The objective of decommissioning is to remove a facility or site safely from service, and to reduce residual radioactivity to a level that permits either release of the property for unrestricted use or release under restricted conditions, followed by termination of the NRC license. To meet this objective, we require source materials licensees to submit a Decommissioning Funding Plan far in advance of submitting the actual plans for decommissioning. This Plan must include a periodically adjusted cost estimate and specify the method for assuring that sufficient funds will be available when needed. The licensee also must certify that the amount assured for decommissioning meets or exceeds estimated decommissioning costs.
- D “Unrestricted use” means that, from a radiological standpoint, no hazards exist at the site, the license can be terminated, and the site can be considered an unrestricted area. In practical terms, the objective of decommissioning is to reduce residual radioactivity in structures, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that nuclide.
- E We recently promulgated a new rule to permit licensees to include *intangible* assets in their proposed “net worth” calculations, based on our conclusion that this change would not unduly risk a shortfall in decommissioning funds. Our new rule, which went into effect in late 2012, reflects this new feature. The financial test in section II.A.1 of Appendices A, C, and D of Part 30 “allow[s] the use of intangible assets . . . to meet specified criteria in the financial tests for . . . self-guarantees.” This new provision will be balanced by a new *minimum* tangible net worth requirement for the self-guarantee financial test applicable to bond-issuing companies. The financial tests in 10 C.F.R. Part 30, Appendix A (parent companies), Appendix C (bond-issuing companies), and Appendix D (companies without rated bonds) impose different tangible net worth requirements. The new rule will impose a *minimum* tangible net worth requirement for all self-guaranteeing licensees, using a cost-adjustment feature to reflect inflation. For licensees covered by Part 30, Appendix C, the adjusted cost at the time of the rule’s adoption will be \$21 million.

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- F A licensee can seek an exemption from the decommissioning financial assurance requirements pursuant to section 40.14(a) of our regulations. That section provides that “[t]he Commission may . . . grant such exemptions from the requirements of the regulation[s] in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.” Although our regulations thus authorize exemptions, we consider an exemption to be an “extraordinary” equitable remedy to be used only “sparingly.”
- G The reason for this high standard is simple. Every NRC regulation has gone through the rulemaking process, including public notice-and-comment, and its underlying rationale has been explained in our Statements of Considerations. Although our authority under the Atomic Energy Act and other statutes to adopt rules of general application “entails a concomitant authority to provide exemption procedures in order to allow for special circumstances,” our rules presumably apply until an exemption requester has met the high burden we place upon such requests. Our exemption regulations are in place to provide equitable relief only when supported by compelling reasons — they are not intended to serve as a vehicle for challenging the fundamental basis for the rule itself. Challenges to the rule itself are more appropriately lodged through a request for rulemaking. To the extent such challenges are presented in an adjudication, they also contravene our rule prohibiting collateral attacks on regulations.
- H An exemption standing alone does not give rise to an opportunity for hearing under our rules. But when a licensee requests an exemption in a related license amendment application, we consider the hearing rights on the amendment application to encompass the exemption request as well.
- I In analyzing a board’s findings of fact, we apply the deferential “clear error” standard. Our deference to the Board’s findings in this adjudication is grounded in the fact that exemption requests are by their very nature equitable — and therefore fact-driven. This level of deference is particularly high where a board’s factual determinations are based in significant part on its assessment of expert testimony and the credibility of the witnesses offering that testimony.
- J At Honeywell’s request (and without objection by the Staff), the Board reviewed the legal aspects of the exemption request *de novo*. LBP-12-6, 75 NRC 256, 268 (2012). But the Board did not consider the difference between a license amendment, which is something to which a licensee is *entitled* if it satisfies our regulatory requirements, and an exemption, which is an action solely within the Staff’s *discretion* to provide. Here, the exemption was the essence of the requested relief, and the license amendment’s sole function was to document the exemption. For this reason, the Board should have applied the “abuse of discretion” standard of review applicable to an exemption determination rather than the *de novo* standard applicable to a Staff decision on a license amendment application. This conclusion is consistent with our own standards when reviewing other discretionary Staff actions not subject to a hearing opportunity.
- K A proposed rule, by its very nature, cannot impose regulatory criteria upon licensees.
- L We have repeatedly stated — and our hearing rules explicitly provide — that our adjudications are not the proper arena for challenges to our regulations. Under the APA, changes to our regulatory regime must result from a deliberative rulemaking proceeding that provides the public with both notice of the proposed regulation and the opportunity to comment. Otherwise, our agency necessarily would address, on a case-by-case basis, the inevitable multitude of requests for individual exemptions — with the resulting diversion of resources that would be better allocated to the agency’s primary mission of ensuring that licensees comply with safety and environmental standards.
- CLI-13-2 ALL OPERATING BOILING WATER REACTOR LICENSEES WITH MARK I AND MARK II CONTAINMENTS: ORDER MODIFYING LICENSES WITH REGARD TO RELIABLE HARDENED CONTAINMENT VENTS (EFFECTIVE IMMEDIATELY), Docket No. EA-12-050; ALL POWER REACTOR LICENSEES AND HOLDERS OF CONSTRUCTION PERMITS IN ACTIVE OR DEFERRED STATUS: ORDER MODIFYING LICENSES WITH REGARD TO RELIABLE SPENT FUEL POOL INSTRUMENTATION (EFFECTIVE IMMEDIATELY), Docket No. EA-12-051; ENFORCEMENT; January 31, 2013; MEMORANDUM AND ORDER
- A Before any hearing is granted on an order issued pursuant to 10 C.F.R. § 2.202, a threshold question, intertwined with both standing and contention admissibility issues, is whether the hearing requests are within the scope of the proceeding. The issue to be determined at hearing is whether the order should be sustained or denied, not whether the order should be enhanced. *Bellotti v. NRC*, 725 F.2d 1380, 1382 (D.C. Cir. 1983), *aff’d Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982); *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station), CLI-04-23, 60 NRC 154, 157 (2004).

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- B Where an enforcement order imposes measures to enhance safety, a petitioner cannot obtain a hearing to litigate whether additional safety measures should be imposed. *Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 408 (2004), *reconsideration denied*, CLI-04-38, 60 NRC 652 (2004).
- C As a result of the *Bellotti* decision and subsequent Commission rulings, a petitioner may obtain a hearing on a section 2.202 order only if the measures to be taken under the order would, *in themselves*, harm the petitioner.
- D The Commission rejected the argument that *Bellotti* should apply only to enforcement orders involving “discretionary punishments.” The Commission also rejected the reasoning that the reactors subject to the section 2.202 confirmatory orders would have to shut down if the orders were not sustained, which in turn would benefit the petitioners.
- CLI-13-3 NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR; LICENSE RENEWAL; February 20, 2013; MEMORANDUM AND ORDER
- A Appeals of contention admissibility rulings under section 2.311 are available in two limited circumstances — (1) upon the denial of a petition to intervene and/or request for hearing, on the question of whether it should have been granted; or (2) upon the grant of a petition to intervene and/or request for hearing, on the question of whether it should have been wholly denied.
- B Interlocutory review under 10 C.F.R. § 2.341(f)(2) is discretionary, and we will grant it only upon a showing that the issue for which review is sought: (i) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer’s final decision; or (ii) Affects the basic structure of the proceeding in a pervasive or unusual manner. These criteria, as well as Commission precedent, reflect disfavor of piecemeal review of licensing board rulings during ongoing proceedings.
- C The Commission will address such rulings after a licensing board has issued a final decision in a case, barring “extraordinary circumstances.” As a general matter, the Commission does not consider contention admissibility decisions to be extraordinary, particularly where the petitioner has been admitted as a party and has other contentions pending.
- CLI-13-4 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL; COMBINED LICENSE; March 11, 2013; MEMORANDUM AND ORDER
- A Section 103d of the AEA prohibits the NRC from issuing a license for a production and utilization facility to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” 42 U.S.C. § 2133(d). This statutory provision is implemented in a similarly worded regulation, 10 C.F.R. § 50.38. That section, in turn, applies to combined license applicants by virtue of 10 C.F.R. § 52.75(a), which provides that “[a]ny person except one excluded by § 50.38 . . . may file an application for a combined license for a nuclear power facility with the Director, Office of New Reactors, or Director, Office of Nuclear Reactor Regulation, as appropriate.”
- B Reconsideration of the agency’s guidance, as a general matter, should not be resolved in an application-specific proceeding. But with the passage of time since the agency first issued substantive guidance on the foreign ownership provision of AEA § 103d, a reassessment is appropriate. The Commission is therefore directing the Staff, outside the adjudicatory context, to review issues relating to foreign ownership and recommend whether the Commission should consider modifications to agency guidance or practice. As part of that assessment, we are directing the Staff to consider stakeholder input. We have provided direction to the Staff in a similar fashion twice in recent years.
- C Given the current status of the application, a review of the Board’s decision now essentially would constitute an advisory opinion, a practice the Commission disfavors. In view of the uncertainty surrounding the application at issue here, we are reluctant to engage in review now, where our opinion might constitute a mere academic exercise.
- D If and when Applicants file a revision of their application, the Staff should renote the application as to its ownership aspect. Any fresh intervention petitions then would be subject to our usual rules of practice, as described in the notice. As to new or amended contentions not related to the question of ownership that an interested person may wish to file during the pendency of the combined license application, our usual rules of practice will apply, including our rules governing reopening the record of a closed proceeding.

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- E Issue-preclusion doctrines such as *res judicata* and collateral estoppel, if applicable, would preclude re-litigation of issues that already have been adjudicated in this contested proceeding.
- CLI-13-5 THE SHAW GROUP INC., NRC Investigation Case No. 2-2013-001; ENFORCEMENT; April 2, 2013; MEMORANDUM AND ORDER
- A The Commission denies a motion filed by the Shaw Group Inc. pursuant to 10 C.F.R. § 2.702(f) to quash a subpoena duces tecum issued by the NRC Office of Investigations.
- B Subpoenas issued by the NRC Office of Investigations are enforceable if the inquiry is within the scope of the agency's authority, the subpoena is neither too broad nor too indefinite, and the compelled information is relevant to the NRC's investigation.
- C The recipient of a subpoena issued by the NRC's Office of Investigations may move to quash the subpoena pursuant to 10 C.F.R. § 2.702(f).
- D The Atomic Energy Act of 1954, as amended, provides the NRC authority to conduct any investigations it deems necessary and proper to the administration or enforcement of its authority, which includes any regulations or orders issued pursuant to the AEA. 42 U.S.C. § 2201(c).
- E NRC subpoenas have previously been quashed or limited where the subpoena was not closely drawn, or the NRC did not consider alternative means for obtaining the requested information "to avoid unnecessary infringement of [First Amendment] associational rights." *United States v. Garde*, 673 F. Supp. 604, 607 (D.D.C. 1987). *See also In re Richard E. Dow*, CLI-91-9, 33 NRC 473, 479 (1991). A less burdensome alternative need not be considered if the recipient of the subpoena challenges neither the relevance of the requested information, the agency's need for the information, nor the specificity of the subpoena, and there is no claim of infringement of a legally protectable interest.
- F A subpoena recipient's concerns about the NRC's administration of FOIA cannot overcome the agency's duty to investigate alleged violations and its statutory obligation to protect the public health and safety. 42 U.S.C. § 2201(c).
- G The NRC protects allegation and investigation information from release consistent with FOIA. These requirements and exemptions reflect a balancing of public disclosure with confidentiality that Congress struck when enacting FOIA. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989). This balancing does not, however, affect the NRC's authority to obtain the requested information.
- H The NRC recognizes the importance of confidentiality for an effective employee concerns program. However, under certain circumstances, a licensee or vendor might be required to disclose confidential ECP information (including the identity of a concerned individual) at the behest of a government agency (including the NRC), or in response to a subpoena.
- CLI-13-6 SHIELDALLOY METALLURGICAL CORPORATION (Decommissioning of the Newfield, New Jersey Site), Docket No. 40-7102-MLA; MATERIALS LICENSE AMENDMENT; August 5, 2013; MEMORANDUM AND ORDER
- A Nothing in our license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options. The doses yielded by the restricted-release and unrestricted-release decommissioning options are not susceptible to being compared meaningfully because of the significantly different risks and uncertainties associated with each option.
- B Due to the inherent complexities and uncertainties associated with restricted release, our preference is for unrestricted-release decommissioning. In light of our preference for unrestricted release, we incorporated into section 20.1403(a) a threshold eligibility provision for restricted release that requires licensees to demonstrate that remediation to the level of adequate protection for license termination cannot be achieved cost-beneficially through unrestricted release before allowing them to pursue restricted-release decommissioning.
- C The eligibility test in section 20.1403(a) postulates a cost-benefit inquiry that, in its technical approach, is modeled on a traditional ALARA cost-benefit analysis (i.e., a comparison of the potential costs and benefits of incremental reductions in radioactivity levels below a particular radiation level), but that, in this context, serves a different regulatory purpose. The ALARA analysis required under section 20.1403(a) calls for a licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site so that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls.
- D The words "further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402" are the subject of the central inquiry mandated by section 20.1403(a). That inquiry focuses on

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a specific activity — making the “further reductions in residual radioactivity” that would be necessary to decommission a site pursuant to an unrestricted-release plan — and requires the licensee to demonstrate why those reductions “were not being made.”

E The phrase “reductions in residual radioactivity” in section 20.1403(a) refers only to dose reductions to the public that can be accomplished solely through the steps associated with unrestricted-release decommissioning — i.e., removal of contaminated material or decontamination.

F The first sentence of section 20.1403(a) requires licensees seeking restricted release to examine why “*further* reductions in residual radioactivity . . . were not being made” (emphasis added). “Further reductions” necessarily refers to further reductions from the level of residual radioactivity that a licensee proposes to leave in place under its proposed restricted-release decommissioning plan.

G A licensee seeking to demonstrate eligibility to pursue restricted release must show that further reductions — to a dose level of 25 mrem — of the levels of residual radioactivity proposed to be left in place under a restricted-release plan either “[1] would result in net public or environmental harm or [2] were not being made because the residual levels associated with restricted conditions are ALARA.” This means that a licensee is required to demonstrate — through either a “net harm” analysis, or an analysis that considers the costs and benefits examined under a traditional “ALARA” analysis — that further reducing proposed residual radioactivity to unrestricted-release levels would not be cost-beneficial.

H The determination expressly required by the text of section 20.1403(a) — whether “further reductions in residual radioactivity . . . were not being made because the residual levels . . . are ALARA” — is an inquiry that, by definition, focuses on how far it is possible, on a cost-effective basis, to further reduce the “residual levels” and thereby reduce the dose to the public solely by taking the actions necessary to accomplish unrestricted release (i.e., removing or decontaminating radioactive materials).

I Construed in context with the entire introductory clause in section 20.1403(a), the inquiry whether “residual levels associated with restricted conditions are ALARA” calls for a licensee to demonstrate that “further reductions” (that is, further removal of contaminated soil or decontamination) from *proposed* residual radioactivity levels to the level necessary to achieve unrestricted release are “not being made” because the proposed “residual levels” are *already* as low as is reasonably achievable, such that “further” removal or decontamination would not be cost-beneficial.

J Licensees pursuing restricted release must reduce residual radioactivity levels as low as is reasonably (i.e., cost-beneficially) achievable through removal and decontamination *before* relying on engineered barriers and institutional controls to reduce doses to the public to regulatory compliance levels.

K Even if unrestricted release cannot be achieved cost-effectively, requiring that a licensee reduce residual radioactivity to the lowest cost-effective level under a restricted-release plan serves the beneficial regulatory purpose of optimizing protection of public health and safety and is consistent with our preference for unrestricted release.

L To reasonably calculate the benefits of unrestricted release, the licensee must account for the costs of restricted release that the licensee will avoid through unrestricted release. But, such a limited comparison, necessary for the cost-benefit analysis of reducing residual radioactivity to a qualifying level for unrestricted release, does not constitute a comparison between the doses to the public under restricted and unrestricted release.

CLI-13-7 EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR; OPERATING LICENSE RENEWAL; October 31, 2013; MEMORANDUM AND ORDER

A Challenges to Category 1 findings based on new and significant information require a waiver of 10 C.F.R. Part 51, Subpart A, Appendix B, in order to be litigated in a license renewal adjudication.

B The exception in 10 C.F.R. § 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in certain license renewal adjudications.

C The Commission reviews waiver petitions under 10 C.F.R. § 2.335, as well as Commission case law.

D In interpreting section 2.335, the Commission identified four factors — often referred to as the “*Millstone* factors” — that waiver petitioners must satisfy.

E A licensing board may not disregard binding Commission case law.

F Although the Commission disfavors piecemeal review of licensing board decisions, boards may refer rulings that, although interlocutory, raise significant and novel legal or policy issues or require the Commission’s resolution to materially advance the orderly disposition of the proceeding.

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- G Section 2.335(b) provides a limited exception to our general prohibition against challenges to NRC rules or regulations in adjudicatory proceedings.
- H To litigate an issue that otherwise would be outside the scope of an adjudication, a petitioner must file a petition for waiver showing that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted. The waiver petitioner must include an affidavit that states with particularity the special circumstances that justify waiver of the rule.
- I The waiver standard is stringent by design. The NRC has discretion to transact its business broadly, through rulemaking, or case by case, through adjudication. When the Commission engages in rulemaking, it is “carving out” issues from adjudication for generic resolution. Therefore, to challenge the generic application of a rule, a petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply.
- J In 2005, in the *Millstone* license renewal proceeding, the Commission compiled the waiver case law to reflect the four-part test that it has long used. To set aside a Commission rule or regulation in an adjudicatory proceeding, a petitioner must demonstrate that: (i) the rule’s strict application would not serve the purposes for which it was adopted; (ii) special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived; (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and (iv) waiver of the regulation is necessary to reach a significant safety problem.
- K The fourth *Millstone* factor also may apply to a significant environmental issue.
- L Like all of the Commission’s environmental regulations in 10 C.F.R. Part 51, section 51.53(c)(3)(ii)(L) is aimed at satisfying the NRC’s obligations under the National Environmental Policy Act (NEPA). NEPA requires the NRC to prepare a “detailed statement,” i.e., an environmental impact statement (EIS), discussing the environmental impacts, alternatives, and mitigation measures for any “major Federal action[] significantly affecting the quality of the human environment.” To assist the NRC in the preparation of a supplemental EIS, the NRC requires license renewal applicants to prepare an environmental report. Section 51.53(c)(3)(ii)(L), in particular, requires that an environmental report include a discussion of SAMAs if the NRC has not considered them previously for the applicant’s plant.
- M To litigate SAMA-related issues in an adjudicatory proceeding, the Commission requires the demonstration of a potentially significant deficiency in the SAMA analysis — that is, a deficiency that credibly could render the SAMA analysis unreasonable under NEPA standards.
- CLI-13-8 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001; CONSTRUCTION AUTHORIZATION; November 18, 2013; MEMORANDUM AND ORDER
- A The Commission may, in its discretion, exercise its inherent supervisory authority over agency proceedings when a matter is not strictly adjudicatory in nature or otherwise does not fit cleanly within the procedures described in our rules of practice. *See, e.g., Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-13-6, 78 NRC 155 (2013) (responding to judicial remand); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476 (2008); *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002).
- B The U.S. Court of Appeals for the District of Columbia Circuit issued a writ of mandamus directing the NRC to resume the licensing process for the Department of Energy’s Yucca Mountain high-level radioactive waste repository construction authorization application. *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013), *reh’g en banc denied* (Oct. 28, 2013).
- C The appeals court directed the NRC to expend appropriated funds in completing the license review, but afforded the agency broad discretion in choosing a pragmatic course of action. *City of Los Angeles v. Adams*, 556 F.2d 40, 49-50 (D.C. Cir. 1977) (“If Congress does not appropriate enough money to meet the needs of a class of beneficiaries prescribed by Congress, and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications.”).
- D The Commission chose to spend its existing appropriation in completing the safety review of the Yucca Mountain license application without resuming the adjudication. This departure from the agency’s rules was considered necessary for the orderly transaction of business and would not prejudice the litigants if and when the adjudication resumes. *See American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 539 (1970) (“[E]xcept upon a showing of substantial prejudice to the complaining party,” “[i]t is

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always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.” (citation and internal quotation marks omitted; bracket in original)); *National Whistleblower Center v. NRC*, 208 F.3d 256, 262 (D.C. Cir. 2002) (“[T]he NRC possesses the authority ‘to change its procedures on a case-by-case basis’” (citing *City of West Chicago v. NRC*, 701 F.2d 632, 647 (7th Cir. 1983))).

CLI-13-9 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-CAL, 50-362-CAL; CONFIRMATORY ACTION LETTER; December 5, 2013; MEMORANDUM AND ORDER

A Section 2.315(d) provides for the filing of amicus curiae briefs when the Commission has taken up a matter pursuant to section 2.341 or *sua sponte*.

B Generally, a case will be moot when the issues are no longer “live,” or the parties lack a cognizable interest in the outcome.

C While the same legal question may arise in a future proceeding with different litigants, it is appropriate for the Commission to wait and decide it in the context of a concrete dispute, with self-interested parties vigorously advocating opposing positions.

D The Commission has recognized an exception to the mootness doctrine, where a case may not be moot if it is capable of repetition, yet evading review: i.e., if the challenged action were too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again.

E Unreviewed board decisions do not create binding legal precedent.

F The Commission will vacate unreviewed board decisions as a prudential matter when appellate review is cut short by mootness.

G When vacating for mootness, the Commission neither approves nor disapproves the underlying board ruling.

H Future litigants can cite a vacated board decision as support for an argument; the Commission or a licensing board then may consider whether such an argument is persuasive.

CLI-13-10 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-LA, 50-362-LA; OPERATING LICENSE AMENDMENT; December 5, 2013; MEMORANDUM AND ORDER

A Upon receipt of a motion to withdraw an application, the Commission may place terms and conditions on the withdrawal, deny the application, or dismiss the application with prejudice.

B The possibility that an issue may arise in the future is not grounds to continue with an appeal in a proceeding where no live controversy remains between the litigants.

C The Commission has recognized an exception to the mootness doctrine when the same litigants are likely to be subject to similar future action. In the same vein, the Commission has recognized an exception to the mootness doctrine when a case is capable of repetition, yet evading review.

D It is the Commission’s customary practice to vacate a challenged licensing board decision when, during the pendency of an appeal, the proceeding becomes moot.

E The Commission’s decision to vacate a Board decision does not intimate any opinion on its soundness.

F Unreviewed board decisions are not binding on future boards. They may, however, be cited by future litigants as persuasive authority.

CLI-14-1 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001; CONSTRUCTION AUTHORIZATION; January 24, 2014; MEMORANDUM AND ORDER

A The Commission has inherent authority to supervise both the Staff’s work and adjudicatory proceedings relating to license applications. See *Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-13-6, 78 NRC 155 (2013); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476 (2008); and *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002).

B The Commission has the authority to reconsider or clarify its decisions, if necessary. See *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-80-41, 12 NRC 650, 652 (1980) (citing *Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980)).

CLI-14-2 CROW BUTTE RESOURCES, INC. (Marsland Expansion Area), Docket No. 40-8943-MLA-2; MATERIALS LICENSE AMENDMENT; February 14, 2014; MEMORANDUM AND ORDER

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- A A party who neglects to fully participate in a proceeding is subject to sanctions including dismissal of its contention. *See* 10 C.F.R. § 2.320. *See also* *Washington Public Power Supply System* (WPPSS Nuclear Project No. 1), LBP-00-18, 52 NRC 9, 13-14 (2000); *Boston Edison Co.* (Pilgrim Nuclear Generating Station, Unit 2), LBP-76-7, 3 NRC 156, 157 (1976); *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 250 (1974).
- B An Indian Tribe has an organizational interest in protecting cultural artifacts connected with it.
- C A petitioner may claim deficiencies in the application’s cultural resources discussion even though it is generally not expected that the applicant’s cultural resources discussion will be comprehensive. A petitioner should not wait for the Staff to perform its responsibilities under the NHPA before it raises a claim that information is lacking. The fact that the Staff will develop additional information relevant to cultural resources, as part of its NHPA review, does not preclude a challenge to the application’s cultural resources discussion.
- D The Commission gives the Board’s rulings on contention admissibility substantial deference, even where the support for the contention appears weak, or where the claim’s materiality presents a “close question.” *See NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 326-27, 329 (2012).
- E Confinement of the aquifers is an issue material to the environmental impacts of an application for a license to operate an ISL uranium recovery facility.
- CLI-14-3 TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR; OPERATING LICENSE RENEWAL; February 12, 2014; MEMORANDUM AND ORDER
- A Section 2.311 does not provide for the filing of replies.
- B We permit filings not otherwise authorized by our rules only where necessity or fairness dictates.
- C Electronic filing is required unless we grant an exemption permitting an alternative filing method for good cause shown, or unless the filing falls within the scope of the exception identified in 10 C.F.R. § 2.302(g)(1).
- D Section 2.311(c) and (d)(1) of our rules of practice permits an appeal as of right from a board’s ruling on an intervention petition in two limited circumstances: (1) upon the denial of a petition to intervene and/or request for hearing, on the question as to whether it should have been granted; or (2) upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied. This limited interlocutory appeal right attaches only when the Board has fully ruled on the initial intervention petition — that is, when it has admitted or rejected all proposed contentions.
- E A board must rule on all pending contentions before an appeal may be lodged pursuant to section 2.311(c) or (d)(1).
- CLI-14-4 FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Unit 2), Docket No. 50-389; SPECIAL PROCEEDING; April 1, 2014; MEMORANDUM AND ORDER
- A A stay pursuant to 10 C.F.R. § 2.342 is available only in those circumstances where a presiding officer or licensing board has issued a decision or taken action in a proceeding to which the movant is a party.
- B Merely raising the specter of a nuclear accident does not demonstrate irreparable harm.
- CLI-14-5 AEROTEST OPERATIONS, INC. (Aerotest Radiography and Research Reactor), Docket Nos. 50-228-LR, 50-228-LT, 50-228-EA; LICENSE RENEWAL, LICENSE TRANSFER, AND ENFORCEMENT; April 10, 2014; MEMORANDUM AND ORDER
- A Any discretionary diversion, in a license transfer case, from the Subpart M procedural track will be rare — requiring “extraordinary” circumstances.
- B NRC regulations contemplate separate hearings on individual proceedings unless they are consolidated.
- CLI-14-6 EXELON GENERATION COMPANY, LLC (Byron Nuclear Power Station, Units 1 and 2; Braidwood Nuclear Power Station, Units 1 and 2), Docket Nos. 50-454-LR, 50-455-LR, 50-456-LR, 50-457-LR; OPERATING LICENSE RENEWAL; May 2, 2014; MEMORANDUM AND ORDER
- A The Commission denies a request for a protective stay of the license renewal proceeding.
- B Under 10 C.F.R. § 2.802(d), a rulemaking petitioner may request that a licensing proceeding in which the petitioner is a participant be suspended pending disposition of the rulemaking petition.
- C Under NRC practice, once all contentions have been decided, the contested adjudicatory proceeding is terminated. The Commission generally has denied requests to hold adjudicatory proceedings in abeyance

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pending the outcome of other Commission actions. Nor do NRC rules contemplate motions filed as a placeholder for a further motion to be filed later.

- D The Commission is not inclined to issue a protective stay, suspending a proceeding, based on a petitioner's bare assertion that it intends to file a petition for rulemaking at some unknown time in the future.
- CLI-14-7 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, COMBINED LICENSE; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR, OPERATING LICENSE RENEWAL; FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR, OPERATING LICENSE RENEWAL; FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL, COMBINED LICENSE; NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR, OPERATING LICENSE RENEWAL; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR, OPERATING LICENSE RENEWAL; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL, COMBINED LICENSE; TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL, COMBINED LICENSE; July 17, 2014; MEMORANDUM AND ORDER
- A The NRC's rules of practice permit a rulemaking petitioner who is also a participant in a licensing proceeding to request suspension of that proceeding pending the outcome of the rulemaking petition.
- B Suspending a proceeding is a drastic action that the Commission will not take absent immediate threats to public health and safety, or other compelling reason.
- C To determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes.
- CLI-14-8 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL, COMBINED LICENSE; DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, COMBINED LICENSE; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR, OPERATING LICENSE RENEWAL; ENTERGY OPERATIONS, INC. (Grand Gulf Nuclear Station, Unit 1), Docket No. 50-416-LR, OPERATING LICENSE RENEWAL; ENTERGY OPERATIONS, INC. (Grand Gulf Nuclear Station, Unit 3), Docket No. 52-024-COL, COMBINED LICENSE; EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR, OPERATING LICENSE RENEWAL; FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR, OPERATING LICENSE RENEWAL; FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL, COMBINED LICENSE; LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL, COMBINED LICENSE; NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR, OPERATING LICENSE RENEWAL; NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), Docket No. 72-10-ISFSI, INDEPENDENT SPENT FUEL STORAGE INSTALLATION; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR, OPERATING LICENSE RENEWAL; PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant), Docket No. 52-039-COL, COMBINED

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LICENSE; PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52-022-COL, 52-023-COL, COMBINED LICENSE; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL, COMBINED LICENSE; TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR, OPERATING LICENSE RENEWAL; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL, COMBINED LICENSE; August 26, 2014; MEMORANDUM AND ORDER

- A Generic determinations regarding the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's licensed operating life have been the subject of extensive public participation in the rulemaking process and, therefore, are excluded from litigation in individual proceedings.
- CLI-14-9 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, COMBINED LICENSE; DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 2), Docket No. 50-341-LR, OPERATING LICENSE RENEWAL; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR, OPERATING LICENSE RENEWAL; FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR, OPERATING LICENSE RENEWAL; FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL, COMBINED LICENSE; LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL, COMBINED LICENSE; NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR, OPERATING LICENSE RENEWAL; NUCLEAR INNOVATION NORTH AMERICA, LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2). Docket Nos. 50-275-LR, 50-323-LR, OPERATING LICENSE RENEWAL; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL; COMBINED LICENSE; TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR, OPERATING LICENSE RENEWAL; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL, COMBINED LICENSE; October 7, 2014; MEMORANDUM AND ORDER
- CLI-14-10 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; COMBINED LICENSE; December 16, 2014; MEMORANDUM AND ORDER
- A The Commission will grant a petition for review at its discretion, upon a showing that the petitioner has raised a substantial question as to whether: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration that the Commission may deem to be in the public interest.

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- B The Commission gives substantial deference to licensing board findings of fact, and it will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety.
- C Regardless of a party's resources, fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations.
- D The Commission gives broad discretion to licensing boards in the conduct of NRC adjudicatory proceedings, and it generally defers to board case-management decisions.
- E Licensing boards are expected to set procedures to ensure the case is managed efficiently, in a manner that is fair to all of the parties.
- F A board may take disciplinary action against a party that fails to comply with any prehearing order, as long as the action is just.
- CLI-14-11 FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Unit 2), Docket No. 50-389; OPERATING LICENSE AMENDMENT; December 19, 2014; MEMORANDUM AND ORDER
- A Agency approval is a necessary component of Commission action that affords a hearing opportunity under section 189a of the Atomic Energy Act. To determine whether an approval constitutes a *de facto* license amendment, the Commission has articulated two key factors to consider: Whether the approval (1) granted the licensee any greater operating authority or (2) otherwise altered the original terms of a license. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326 (1996).
- B NRC Staff oversight activities conducted to gather information about and evaluate plant performance do not alter the conditions of a license and, therefore, do not constitute a *de facto* license amendment.
- C Members of the public may only challenge an action taken by a licensee under 10 C.F.R. § 50.59 by means of a petition for enforcement action under 10 C.F.R. § 2.206. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).
- CLI-15-1 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; COMBINED LICENSE; January 13, 2015; MEMORANDUM AND ORDER
- A The Commission will grant a petition for review at its discretion, upon a showing that the petitioner has raised a substantial question as to whether: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration that the Commission may deem to be in the public interest.
- B The Commission's rules of practice permit persons who are not parties to file a brief *amicus curiae* if a matter is taken up by the Commission under 10 C.F.R. § 2.341 or *sua sponte*.
- C The Commission's rules of practice require contentions to be raised at the earliest possible opportunity.
- D Although environmental contentions are, in essence, challenges to the Staff's compliance with the National Environmental Policy Act, those contentions must be raised, if possible, in response to an applicant's environmental report.
- E Petitioners who choose to wait to raise contentions that could have been raised earlier do so at their peril. They risk the possibility that there will not be a material difference between the application and the Staff's review documents, thus rendering any newly proposed contention on previously available information impermissibly late.
- F The Commission's rules of practice require a material difference between the information on which the contention is based and the information that was previously available — for example, a difference between the environmental report and the draft environmental impact statement (EIS) or the draft EIS and the final EIS.
- G Section 2.340(b) sets forth the standard for *sua sponte* review in a combined license proceeding. With the Commission's express approval, a licensing board may make findings on a serious safety, environmental, or common defense and security matter not put into controversy by the parties. This authority shall be used only in extraordinary circumstances.
- CLI-15-2 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; OPERATING LICENSE RENEWAL; February 18, 2015; MEMORANDUM AND ORDER

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- CLI-15-3 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; OPERATING LICENSE RENEWAL; February 18, 2015; MEMORANDUM AND ORDER
- CLI-15-4 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, COMBINED LICENSE; DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 2), Docket No. 50-341-LR, OPERATING LICENSE RENEWAL; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR, OPERATING LICENSE RENEWAL; FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR, OPERATING LICENSE RENEWAL; FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL, COMBINED LICENSE; LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL, COMBINED LICENSE; NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR, OPERATING LICENSE RENEWAL; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR, OPERATING LICENSE RENEWAL; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; STP NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL, COMBINED LICENSE; TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR, OPERATING LICENSE RENEWAL; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL, COMBINED LICENSE; MEMORANDUM AND ORDER; February 26, 2015
- A The Commission is not required, under the Atomic Energy Act of 1954, as amended, to make predictive findings regarding the technical feasibility of spent fuel disposal as part of its reactor licensing decisions.
- CLI-15-5 OMAHA PUBLIC POWER DISTRICT (Fort Calhoun Station, Unit 1), Docket No. 50-285; OPERATING LICENSE AMENDMENT; March 9, 2015; MEMORANDUM AND ORDER
- A Licensing actions that alter the terms of a license or otherwise authorize additional operating activities trigger hearing rights for the public under section 189a of the Atomic Energy Act. Agency actions not formally labeled as license amendments nevertheless can constitute *de facto* license amendments and trigger hearing rights if the agency action (1) granted the licensee any greater authority or (2) otherwise altered the original terms of the license. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326 (1996).
- B NRC Staff activities undertaken under its oversight role to ensure a licensee's compliance with the requirements of its existing license do not trigger hearing rights for the public under section 189a of the Atomic Energy Act.
- C The prospect that license amendments will be necessary in the future does not trigger hearing rights today.
- CLI-15-6 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; OPERATING LICENSE RENEWAL; March 9, 2015; MEMORANDUM AND ORDER
- A The goal of the NRC's license renewal safety review is to ensure that the licensee can successfully manage the detrimental effects of aging. The focus of the license renewal regulations in 10 C.F.R. Part 54 is to ensure that the licensee can manage the effects of aging on certain long-lived, passive components that are important to safety.
- B The license renewal review is not intended to duplicate the NRC's ongoing oversight of operating reactors. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8-10 (2001).

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- C Structures and components are subject to aging management review if they perform an intended function “without moving parts or without a change in configuration or properties” and are not subject to routine replacement. 10 C.F.R. § 54.21(a)(1)(i). These structures and components are generally referred to as “passive” components, although the terms “active” and “passive” do not appear in the license renewal regulations.
- D The NRC determined that many of the environmental effects associated with renewing the licenses of existing facilities can be effectively assessed generically. The environmental effects of existing plants are well understood from operating experience, and the future effects of continued operation are reasonably predictable.
- E The License Renewal Rule generically excludes active components from aging management review because functional degradation resulting from the effects of aging on active functions is more readily determinable, and existing programs and requirements are expected to directly detect the effects of aging. The Maintenance Rule, along with existing monitoring, surveillance, inspection, and testing programs, serves the purpose for active components that an aging management program would serve for a passive component.
- F The Commission typically defers to a Board’s judgment on issues of whether a contention had adequate factual support to raise a genuine dispute. The Commission affords substantial deference to a licensing board’s decision to admit a contention. *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014).
- G Whether the expert opinion supporting a proposed contention petition adequately counters a long-standing Staff factual position reflected in a guidance document is a merits determination.
- H Staff guidance documents do not have the force of law, but a Board should afford the Staff’s factual determinations reflected in those documents “special weight.”
- I Active components are excluded from aging management review because they are “readily monitorable,” that is, because their function can be directly verified (and their failure immediately detected). While managing the effects of aging for both active and passive components requires the ability to detect degradation prior to failure, a component may still be considered active even if the “direct verification” of its function does not indicate incremental degradation.
- J The Staff’s generic analysis in the Generic Environmental Impact Statement for License Renewal determined that the “probability-weighted consequences” of postulated accidents during the period of extended operation are small for all reactors. This determination precluded a discussion of whether the consequences of a severe accident for the “environmental justice population” surrounding the reactor in a specific license renewal proceeding might be “disproportionately high and adverse.”
- K The adequacy of emergency planning is evaluated by the Commission on an ongoing basis as part of its oversight of operating reactors, and emergency planning issues are outside the scope of license renewal.
- L An Environmental Impact Statement is a “‘snapshot’ in time” of expected environmental consequences. *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391-92 (2012).
- M The environmental record of decision may be supplemented by the hearing and relevant Board and Commission decisions.
- CLI-15-7 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL; COMBINED LICENSE; April 14, 2015; MEMORANDUM AND ORDER
- A The prohibition on foreign ownership, control, and domination is primarily concerned with safeguarding the national defense and security.
- B While nuclear safety and security are not the only considerations in determining whether an applicant is under foreign ownership, control, or domination, they are the most significant considerations.
- C Board did not err in factual finding that applicant was not under foreign ownership, control, or domination.
- D Where the record did not show any means for foreign minority owner of applicant to control applicant’s decisions, nor any attempts by the foreign owner to do so, the Board could permissibly conclude that the foreign minority owner did not “control” the applicant.
- CLI-15-8 PPL SUSQUEHANNA, LLC (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387, 50-388, 72-28; LICENSE TRANSFER; April 14, 2015; MEMORANDUM AND ORDER
- A The Commission denies a request for a hearing and to intervene in this license transfer proceeding.

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- B A license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility. Our decommissioning funding rule in 10 C.F.R. § 50.75 cites specific formulas (based on reactor type and power level) for determining the minimum amounts required to demonstrate reasonable assurance of decommissioning funding.
- C Requests for Additional Information (RAIs) are a routine means for the Staff to ask for clarification or additional corroborating information from an applicant. They reflect followup questions, an ongoing dialogue between the Staff and applicant. Rarely will pointing to an RAI, without more, suffice as support for an admissible contention.
- D A license transfer proceeding is not the appropriate venue for raising day-to-day operational safety concerns unconnected to the proposed transaction. Rather, it focuses on the impacts of the proposed license transfer. A license transfer proceeding does not encompass a full-scale safety review of a plant. Through the NRC's regulatory oversight of operating reactors, all plants are subject to ongoing monitoring and assessment.
- E License transfer applications need not include an environmental analysis under the National Environmental Policy Act. No Environmental Report is required.
- CLI-15-9 SHAW AREVA MOX SERVICES, LLC (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA (Possession and Use License); MATERIALS LICENSE; April 23, 2015; MEMORANDUM AND ORDER
- A We review questions of law *de novo*, but we defer to the Board's findings with respect to the underlying facts unless they are clearly erroneous. The standard for showing clear error is a difficult one to meet: Intervenors must demonstrate that the Board's determination is not even plausible in light of the record as a whole.
- B No fundamental principle of regulatory interpretation precludes licensees from using one or more specific actions, commitments, capabilities, structures, systems, or components to address the requirements of more than one regulation.
- C Section 74.57(b) of 10 C.F.R., which requires a licensee to "resolve the nature and cause of any MC&A alarm within approved time periods," does not specify a particular time period for alarm resolution. A licensee must therefore provide reasonable assurance that it can achieve the performance objectives set out in this section of our regulations.
- D NRC adjudications are limited to the scope of admitted contentions. In interpreting the scope of an admitted contention, we look back to the bases set forth in support of the contention.
- E A licensing proceeding is not the appropriate venue for generic rulemaking issues.
- F The adequacy of the NRC Staff's review is not a litigable issue in a licensing case.
- CLI-15-10 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, COMBINED LICENSE; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL, COMBINED LICENSE; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; STP NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; DOMINION VIRGINIA POWER (North Anna Power Station, Unit 3), Docket No. 52-017-COL; COMBINED LICENSE; April 23, 2015; MEMORANDUM AND ORDER
- A The Continued Storage Rule (10 C.F.R. § 51.23) deems the environmental impacts of continued storage incorporated into environmental impact statements for initial reactor licensing and subsequent license renewal actions. Additional supplementation of environmental impact statements for these actions is not required.
- B The Continued Storage rulemaking proceeding satisfied the dual goals of the National Environmental Policy Act — it informed decision makers of the environmental impacts of continued storage and made ample information available to interested states, local governments, and members of the public.
- C In completing licensing actions dependent upon the Continued Storage Rule where a final environmental impact statement was completed before the Continued Storage rule was issued, the NRC Staff must consider whether, and to what extent, the impacts of continued storage affect previously completed

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- environmental impact statements. In conducting this analysis, the NRC Staff must determine whether or not to prepare a supplemental environmental impact statement based on the criteria in 10 C.F.R. § 51.92.
- CLI-15-11 UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR; OPERATING LICENSE RENEWAL; April 23, 2015; MEMORANDUM AND ORDER
- A The Continued Storage Rule (10 C.F.R. § 51.23) generically satisfies the NRC’s obligations to consider the environmental impacts of spent fuel storage after the end of a reactor’s license term in the environmental analyses supporting initial reactor licensing, reactor license renewal, and independent spent fuel storage licensing and renewal actions.
- B “[N]o rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding” unless the petitioner first obtains a waiver. 10 C.F.R. § 2.335(a).
- CLI-15-12 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; COMBINED LICENSE; April 23, 2015; MEMORANDUM AND ORDER
- CLI-15-13 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL; COMBINED LICENSE; April 30, 2015; MEMORANDUM AND ORDER
- A Atomic Energy Act § 189a requires that the Commission hold a hearing on each application to construct a nuclear power plant, regardless of whether an interested member of the public requests a hearing on the application. The Notice of Hearing for the “uncontested” or “mandatory” portion of the proceeding outlines the standards for the Commission’s review.
- B On the safety side, the Commission must determine whether: (1) the applicable standards and requirements of the Atomic Energy Act and the Commission’s regulations have been met; (2) any required notifications to other agencies or bodies have been duly made; (3) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Atomic Energy Act, and the Commission’s regulations; (4) the applicant is technically and financially qualified to engage in the activities authorized by the license; and (5) issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.
- C On the environmental side, the Commission must consider and determine: (1) whether the requirements of NEPA § 102(2)(A), (C), and (E), and the applicable regulations in 10 C.F.R. Part 51 (the NRC regulations implementing NEPA), have been met; (2) the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; and (4) whether the NEPA review conducted by the Staff has been adequate.
- D The Commission does not review DTE’s application *de novo*; rather, it considers the sufficiency of the Staff’s review of the application — that is, whether the Staff’s review was sufficient to support the required findings.
- E The scope of an uncontested proceeding is defined by the scope of the contested proceeding: all of the safety and environmental issues in DTE’s combined license application, except for the contested matters, are subject to the Commission’s review in the uncontested proceeding.
- F The Board’s jurisdiction terminates when there are no longer any contested matters pending before it.
- G When a party requests action from the presiding officer in an NRC adjudicatory proceeding, the request must come in the form of a motion.
- H Section 7 of the Endangered Species Act requires an agency, in consultation with and with the assistance of the Secretary of the Interior or the Secretary of Commerce (as appropriate), to ensure that “any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species.”
- I NEPA § 102(2)(A) requires agencies to use “a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts” in decisionmaking that may impact the environment.
- J NEPA § 102(2)(E) calls for agencies to study, develop, and describe appropriate alternatives.
- K NEPA § 102(2)(C) requires agencies to assess the relationship between local short-term uses and long-term productivity of the environment, to consider alternatives, and to describe the unavoidable

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adverse environmental impacts and the irreversible and irretrievable commitments of resources associated with the proposed action.

- CLI-15-14 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323; SPECIAL PROCEEDING; May 21, 2015; MEMORANDUM AND ORDER
- A Claims regarding inadequacies in a licensee's technical evaluations or noncompliance with its license, standing alone, do not suffice to identify an activity that may constitute a license amendment. Such concerns are appropriately addressed by the NRC Staff in the enforcement context.
- B Licensee action without an NRC approval of an increase in authority or alteration of the terms of the license does not constitute a *de facto* amendment.
- C Ordinarily, threshold hearing issues are decided by our Boards in the first instance.
- D Although the agency has on occasion suspended final licensing decisions, these and other cases establish that a decision to do so is highly dependent upon the facts and requires a judgment that the significance of the matter raised is so substantial as to warrant suspension.
- CLI-15-15 DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL, COMBINED LICENSE; FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR, OPERATING LICENSE RENEWAL; LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL, COMBINED LICENSE; NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL, COMBINED LICENSE; PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL, COMBINED LICENSE; STP NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR, OPERATING LICENSE RENEWAL; TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL, OPERATING LICENSE; VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Nuclear Power Station, Unit 3), Docket No. 52-017-COL, COMBINED LICENSE; June 9, 2015; MEMORANDUM AND ORDER
- CLI-15-16 EXELON GENERATION COMPANY, LLC (Dresden Nuclear Power Station, Units 2 and 3), Docket Nos. 50-237-EA, 50-249-EA; ENFORCEMENT; June 11, 2015; MEMORANDUM AND ORDER
- A The duty to report material significant developments in a matter under adjudication arises immediately upon discovery of that information. This obligation extends to all parties.
- CLI-15-17 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943-OLA (License Renewal); MATERIALS LICENSE AMENDMENT; August 6, 2015; MEMORANDUM AND ORDER
- A Board's order denying Petitioner a stay of the effectiveness of renewed license did not threaten Petitioner with immediate, irreparable, and serious harm because the renewed license did not change the status quo. Therefore, immediate Commission review was not warranted.
- B Board's order denying Petitioner a stay of the effectiveness of renewed license did not threaten Petitioner with immediate, irreparable, and serious harm because Petitioner had not substantiated its claim of immediate harm to cultural resources with particularity, nor had it substantiated its claim that continued operations would contaminate the Petitioner's drinking water. Therefore, immediate Commission review was not warranted.
- C Board's ruling admitting new contentions did not have a pervasive and unusual effect on the basic structure of the proceeding. Mere expansion of issues for litigation does not warrant immediate Commission review. *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 136-37 (2009); *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 35 (2008) ("[T]he broadening of issues for hearing caused by the Board's admission of a contention that the applicant opposes does not constitute a 'pervasive and unusual effect on the litigation.'"); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 374 (2001); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91, 93-94 (1994).

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- D Claim that the Board expanded the issues for litigation by raising matters *sua sponte* did not show a pervasive and unusual effect on the basic structure of the proceeding. Therefore, immediate Commission review was not warranted.
- CLI-15-18 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 2), Docket No. 50-341-LR; OPERATING LICENSE RENEWAL; September 8, 2015; MEMORANDUM AND ORDER
- A The Commission's contention admissibility rules are designed to ensure that only focused, well-supported issues are admitted for hearing.
- B Contentions must be set forth with particularity and must meet all six contention admissibility factors.
- C The Commission will defer to licensing board rulings on standing and contention admissibility absent error of law or abuse of discretion.
- D Although boards have some discretion to reformulate or narrow contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding, this authority is not without limit. A licensing board, for example, may not supply information that is lacking in a contention that otherwise would be inadmissible.
- E Although a petitioner may respond to the legal or logical arguments presented in the answers to its hearing request, a petitioner may not use its reply to raise new issues for the first time.
- F The Commission requires adherence to the deadlines and procedures in the rules so that the other litigants are not taken by surprise and are accorded an appropriate opportunity to respond to new arguments or new information. For any new arguments or new support for a contention, a petitioner must, among other things, explain why it could not have raised the argument or introduced the factual support earlier.
- G Although licensing boards are expected to review the relevant documents to determine whether the arguments presented by the litigants are properly supported, a board may not substitute its own support for a contention or make arguments for the litigants that were never made by the litigants themselves.
- CLI-15-19 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL; OPERATING LICENSE; September 24, 2015; MEMORANDUM AND ORDER
- A The Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations listed in 10 C.F.R. § 2.341(b)(4).
- B Motions to reopen the record in Commission adjudicatory proceedings are governed by 10 C.F.R. § 2.326. The Commission's case law interpreting 10 C.F.R. § 2.326 makes clear that the regulations place an intentionally heavy burden on parties seeking to reopen the record.
- C A motion to reopen will not be granted unless the movant satisfies all three of the criteria listed in 10 C.F.R. § 2.326(a) and the motion is accompanied by an affidavit that satisfies 10 C.F.R. § 2.326(b).
- D Section 2.335(a) of 10 C.F.R. prohibits challenges to our rules and regulations in the context of adjudicatory proceedings.
- E The Commission considers suspension of licensing proceedings a "drastic" action that is not warranted absent immediate threats to public health and safety or other compelling reason.
- CLI-15-20 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LA; OPERATING LICENSE AMENDMENT; October 1, 2015; MEMORANDUM AND ORDER
- A The Commission affirms an Atomic Safety and Licensing Board decision that denied a request for hearing and petition to intervene in this license amendment proceeding.
- B The Emergency Response Data System (ERDS) is a direct electronic data link between computer data systems used by licensees of operating reactors and the NRC Operations Center. The system is a method of transmitting to the NRC near real-time data from a licensee during an alert or higher emergency classification. The ERDS rule and its Statements of Consideration make clear that the rule is inapplicable to those nuclear power facilities that are permanently or indefinitely shut down.
- C Pursuant to 10 C.F.R. § 50.54(q)(3), licensees may make changes to an emergency plan without prior NRC approval if the licensee completes and retains an analysis demonstrating that the revised emergency plan satisfies a two-part test: (1) the plan as changed must continue to meet the requirements in Part 50, Appendix E, and the standards in section 50.47(b); and (2) the changes must not reduce the effectiveness of the plan.
- D The NRC's contention admissibility rules are found in 10 C.F.R. § 2.309(f)(1). They are intentionally strict. For each contention, the petitioner must state the issue of law or fact to be raised or controverted and a brief explanation of the basis for the contention. Contentions cannot be based on speculation but must have some reasonably specific factual or legal basis. Our rules require a petitioner to state the alleged

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facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the contention at hearing.

- E The issue raised in a contention must fall within the scope of the proceeding and be material to the findings that the NRC must make. A contention, therefore, must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact. A petitioner must refer to the specific portions of the application that the petitioner disputes, along with the supporting reasons for each dispute; or, if the petitioner believes that an application fails altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief.
- F The Commission generally defers to Board decisions on contention admissibility unless it finds an error of law or abuse of discretion.
- G NRC generic communications regarding ERDS have been addressed to all holders of operating licenses for operating reactors, *except* those license holders that have ceased operations and have certified that fuel has been permanently removed from the reactor vessel. While the ERDS rule does not address the removal of ERDS, in practice the NRC has allowed licensees that have permanently defueled their reactors to remove ERDS.
- H Section 50.54(q)(3), by its own terms, allows a licensee to revise an emergency plan without prior NRC approval if the rule's screening criteria are met.
- CLI-15-21 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR; OPERATING LICENSE RENEWAL; November 9, 2015; MEMORANDUM AND ORDER
- A The Commission's standard of review is highly deferential; the Commission will not overturn a licensing board's ruling on threshold issues like intervention absent error of law or abuse of discretion.
- B For a successful intervention petition or request for hearing, a petitioner must, in addition to demonstrating standing, propose at least one contention that: (1) provides a specific statement of the issue of law or fact to be raised or controverted; (2) provides a brief explanation of its basis; (3) demonstrates that the issue raised is within the scope of the proceeding; (4) demonstrates that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provides a concise statement of the alleged facts or expert opinions that support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and (6) provides sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, with references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the contention must identify each failure and the supporting reasons for the petitioner's belief.
- C The Commission's contention admissibility requirements are strict by design; only focused, well-supported issues will be admitted for hearing.
- D The Commission's rules of practice also place limits on the types of issues a petitioner may raise. As relevant here, 10 C.F.R. § 2.335(a) prohibits challenges to an agency rule or regulation in an adjudicatory proceeding without a waiver of that rule or regulation.
- E Because the Commission's rules were promulgated with the expectation that they will apply generically, rather than on a case-by-case basis, the Commission sets a high bar for waivers: a waiver request must demonstrate that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted.
- F To determine whether the waiver standard has been met, the Commission applies a four-factor test. The petitioner must demonstrate that: (i) the rule's strict application would not serve the purposes for which it was adopted; (ii) special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived; (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and (iv) waiver of the regulation is necessary to reach a significant safety or environmental problem.
- G Contentions that challenge an agency rule or regulation without a waiver, in addition to being expressly prohibited by 10 C.F.R. § 2.335(a), are outside the scope of the proceeding.

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- H The Commission's license renewal regulations rely on the regulatory processes applicable to all currently operating reactors to address most safety and security issues, limiting license renewal proceedings to consideration of only certain issues related specifically to plant aging.
- CLI-15-22 ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LA; OPERATING LICENSE AMENDMENT; November 9, 2015; MEMORANDUM AND ORDER
- A When the Commission has determined that compliance with a regulation is sufficient to provide reasonable assurance of public health and safety, a licensing board cannot impose requirements that exceed those in the regulation.
- B These regulations in 10 C.F.R. §§ 50.61 and 50.61a provide alternate methods by which a licensee can demonstrate reasonable assurance of protection against pressurized thermal shock events.
- C Licensees using 10 C.F.R. § 50.61a of the Commission's regulations are required to use any data that demonstrate the embrittlement trends for materials in the reactor pressure vessel.
- D Absent a waiver granted under 10 C.F.R. § 2.335, challenges to the NRC's regulations are not permitted in adjudicatory proceedings.
- CLI-15-23 ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LA-2; OPERATING LICENSE AMENDMENT; November 9, 2015; MEMORANDUM AND ORDER
- A Proponents of contentions must satisfy the Commission's contention admissibility criteria in 10 C.F.R. § 2.309(f). Contentions must, among other things, demonstrate a genuine dispute with the application and provide a basis for the contention.
- B Licensing Boards may not formulate contentions or provide bases to admit contentions that are not provided by petitioners.
- C An expert opinion must provide a reasoned basis or explanation to support the expert's conclusion; merely stating a conclusion without support is insufficient.
- CLI-15-24 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR; OPERATING LICENSE RENEWAL; November 9, 2015; MEMORANDUM AND ORDER
- A The Commission disfavors interlocutory review, and is particularly disinclined to interfere with a Board's case management decisions. Such rulings can be reviewed, if necessary, at the end of the case. *See, e.g., Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-12-18, 76 NRC 371, 374 (2012) (declining to take interlocutory review of Board's decision to allow cross-examination); *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187, 192 (2008) (declining to take interlocutory review of Board's decision to cancel oral argument).
- B Interlocutory Commission review of a Board's statements concerning the probative value of a particular document was not warranted. The petitioner was not threatened with irreparable harm to its ability to present its case and will be able, following a final decision, to object to the weight afforded to that particular document.
- C Board's decision to allow a third party to argue in favor of protecting its own document as proprietary did not affect the basic structure of the proceeding in a pervasive and unusual manner nor did it pose a serious, irreparable harm to petitioner.
- D Board's decision not to withdraw the proprietary designation of certain documents may be reviewed following the Board's initial decision, and did not call for immediate Commission review.
- CLI-15-25 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250-LA, 50-251-LA; OPERATING LICENSE AMENDMENT; December 17, 2015; MEMORANDUM AND ORDER
- A The Commission does not hold *pro se* petitioners to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere.
- B The Commission's standard of review of a licensing board's determination on standing is deferential: the decision will be upheld absent a clear misapplication of facts or law.
- C We defer to a Board's contention admissibility rulings unless the appeal points to an error of law or abuse of discretion.
- D The Commission applies contemporaneous judicial concepts of standing. Petitioners must claim an injury in fact that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.
- E We expect our licensing boards to reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding.

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- CLI-15-26 AEROTEST OPERATIONS, INC. (Aerotest Radiography and Research Reactor), Docket No. 50-228-LT; LICENSE TRANSFER; December 23, 2015; MEMORANDUM AND ORDER
- CLI-15-27 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 2), Docket No. 50-341-LR; OPERATING LICENSE RENEWAL; December 23, 2015; MEMORANDUM AND ORDER

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- LBP-11-1 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; February 2, 2011; MEMORANDUM AND ORDER (Denying Motion to Dismiss Portions of Contention 4 as Moot)
- A In this decision, the Board concludes that Intervenor’s challenges to the adequacy of the Applicant’s environmental report (ER) with respect to the environmental impacts of dewatering associated with the proposed Levy Nuclear Plant (LNP) continue to serve as viable challenges to the similar sections of the Staff’s draft environmental impact statement (DEIS) and thus are not moot. The Applicant, Progress Energy Florida (PEF), has not shown that the differences between the DEIS and the ER (e.g., relocation of LNP production wells, DEIS discussion of certain groundwater use conditions imposed by the State of Florida) establish a change in circumstances sufficient to render this Contention 4 (C-4) moot.
- B Publication of the NRC Staff’s DEIS in a proceeding may moot a contention challenging the environmental analysis in the applicant’s ER, if the DEIS dispenses with the issues raised in the original contention challenging the ER. In such a case, the intervenor may file a new or amended contention challenging the relevant new or differing portion of the DEIS.
- C The DEIS, like the ER, must cover all significant environmental impacts associated with the LNP project, including offsite environmental impacts.
- D Contention 4, which challenges the adequacy of the analysis of the environmental impacts associated with dewatering, is not rendered moot by the fact that PEF proposes to move its groundwater production wells from the site to an adjacent property.
- E Although the NRC Staff does not need to duplicate the environmental studies done by the State of Florida and may reference and rely on the groundwater use conditions imposed by the State, such studies and conditions do not relieve the NRC of its duty under NEPA to conduct an independent “hard look” analysis of all environmental impacts related to active dewatering during operations at the LNP. The existence of a state study or state conditions does not moot NRC’s obligations under NEPA.
- F PEF has not shown that the aspects of the NRC Staff’s DEIS that differ from PEF’s ER sufficiently moot or resolve the issue of adequacy of the environmental impact assessment.
- G The Commission’s “migration tenet” applies to C-4 in this proceeding, in that once the NRC Staff issues its DEIS, a contention that was originally admitted as a challenge to the ER may be treated as a challenge to the similar section of the DEIS.
- H The migration tenet obviates the requirement to file the same contention (and litigate its admissibility) three times — once against the ER, once against the DEIS, and once against the final environmental impact statement (FEIS).
- I The migration tenet applies where, as here, the information in the DEIS is sufficiently similar to the information in the ER.
- LBP-11-2 NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR (ASLBP No. 10-906-02-LR-BD01); LICENSE RENEWAL; February 15, 2011; MEMORANDUM AND ORDER (Ruling on Petitions for Intervention and Requests for Hearing)
- A This 10 C.F.R. Part 54 proceeding concerns the application of NextEra Energy Seabrook, LLC, to renew the operating license for Seabrook Station, Unit 1, a nuclear power reactor located in Rockingham County, New Hampshire. Two groups petitioned to intervene and requested a hearing: (1) Beyond Nuclear, the Seacoast Anti-Pollution League, and the New Hampshire Sierra Club; and (2) Friends of the Coast and the New England Coalition. Having determined that each of the petitioning organizations demonstrated standing and that the sole contention proffered by the first group and three of the four contentions proffered

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by the second group are admissible, in whole or in part, under 10 C.F.R. § 2.309(f)(1), the Board grants the petitions and admits each petitioner as a party.

- B To intervene as a party in an adjudicatory proceeding addressing a proposed license action, a petitioner must (1) establish it has standing; and (2) proffer at least one admissible contention. 10 C.F.R. § 2.309(a).
- C To determine whether a late-filed petition will be considered, the licensing board must balance the eight factors set out in 10 C.F.R. § 2.309(c)(1), of which “good cause . . . for the failure to file on time” is the most important. *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 549 n.61 (2009) (referring to 10 C.F.R. § 2.309(c)(1)(i)).
- D Persistent difficulties with the NRC electronic filing system despite good-faith efforts shows good cause for submitting a petition shortly after the deadline, especially in light of petitioners’ having served all parties by e-mail just minutes after the deadline.
- E Where the board allowed petitioners to file a corrected version of an expert declaration that contained numerous typographical errors, and where some of petitioners’ corrections clearly went beyond what the board expected, the board did not try to parse which changes were authorized and did not consider or rely on the corrected version.
- F An organization may represent the interests of its members using representational standing if it can: (1) show that the interests it seeks to protect are germane to its own purpose; (2) identify, by name and address, at least one member who qualifies for standing in his or her own right; (3) show that it is authorized by that member to request a hearing on his or her behalf; and (4) show that neither the claim asserted nor the relief requested requires an individual member’s participation in the organization’s legal action. *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007) (citations omitted).
- G Traditional judicial standing concepts require a showing that the individual has suffered or might suffer a concrete and particularized injury that is (1) fairly traceable to the challenged action; (2) likely redressible by a favorable decision, *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)); and (3) arguably within zone of interests protected by the governing statutes, *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (quoting *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983)) — here the Atomic Energy Act (AEA), 42 U.S.C. §§ 2011-2297, and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347.
- H The NRC presumes that an individual has standing to intervene without the need to address traditional standing concepts upon a showing that he or she lives within, or otherwise has frequent contacts with, a geographic zone of potential harm. *St. Lucie*, CLI-89-21, 30 NRC at 329. The pertinent zone in operating license renewal proceedings and other power reactor license matters is the area within a 50-mile radius of the site. *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009).
- I An admissible contention must: (1) state the specific legal or factual issue sought to be raised; (2) briefly explain the basis for the contention; (3) demonstrate that the issue raised is within the proceeding’s scope; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) concisely state the alleged facts or expert opinions that support the petitioner’s position and upon which the petitioner intends to rely at the hearing, including references to the specific sources and documents on which the petitioner intends to rely; and (6) show that a genuine dispute exists on a material issue of law or fact by referring to specific portions of the application that the petitioner disputes or, if the application is alleged to be deficient, by identifying such deficiencies and the supporting reasons for this allegation. 10 C.F.R. § 2.309(f)(1)(i)-(vi).
- J “[N]o rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding” unless the petitioner first obtains a waiver. 10 C.F.R. § 2.335(a).
- K When a contention alleges the need for further study of an alternative, from an environmental perspective, “such reasonableness determinations are the merits, and should only be decided *after* the contention is admitted.” *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 86 (2009) (emphasis in original), *rev’d in part on other grounds*, CLI-10-2, 71 NRC 27, 29 (2010).

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- L Although “remote and speculative” alternatives need not be addressed in an applicant’s environmental report, *see Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978) (quoting *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837-38 (1972)), there is an obligation to consider alternatives “as they exist and are likely to exist.” *Carolina Environmental Study Group v. United States*, 510 F.2d 796, 801 (D.C. Cir. 1975).
- M Just as the NRC Staff does not accept an applicant’s representation that an aging management plan is consistent with the GALL Report without its own, independent confirmation of the facts, petitioners are not foreclosed from asserting a contention that, at a minimum, likewise requires such confirmation.
- N Whether electrical transformers are active or passive components remains an unresolved issue because the Commission has never directly spoken to the issue. Only passive components are subject to aging management review.
- O The key functions of buried systems, structures, and components that are the focus of the license renewal safety review under 10 C.F.R. Part 54 do not include the prevention of inadvertent radioactive leaks. *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station) CLI-10-14, 71 NRC 449, 461 (2010). Buried pipelines, channels, and tanks that fall under aging management provide safety-related functions by maintaining adequate flow and pressure.
- P In order to demonstrate that their concerns raise a material dispute with a SAMA analysis, petitioners must provide sufficient information to show that, if their proposed refinements were incorporated, it is “genuinely plausible” that cost-benefit conclusions might change.
- Q “NEPA ‘imposes no legal duty on the NRC to consider intentional malevolent acts . . . in conjunction with commercial power reactor license renewal applications.’” *Pilgrim*, CLI-10-14, 71 NRC at 476 (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129 (2007)).
- R Spent fuel pool storage is exempt from required analysis of alternatives to mitigate severe accidents because it is a Category 1 issue. 10 C.F.R. Part 51, Subpart A, Appendix B.
- S Citation of studies indicating that source terms from the Modular Accident Analysis Progression (MAAP) code are lower than results from Source Term Code Package or NUREG-1150 satisfies the requirements of 10 C.F.R. § 2.309(f)(1)(v).
- T A contention that applicant’s SAMA analysis improperly ignored radioactive waste disposal is outside the scope of the proceeding because it directly challenges the generic determinations in Table B-1 of Appendix B to Part 51.
- U Challenges to the \$2000/person-rem conversion factor, to use of a single dose-rate reduction effectiveness factor, and to evacuation times and assumptions are not admissible because petitioners presented no facts or expert opinion of error.
- V Contention that other costs were ignored is not admissible because petitioners presented no facts or expert opinion that show it to be plausible that including them might affect the outcome of the SAMA analysis.
- W In the absence of any assertion that Subpart G procedures should be used to resolve any of the admitted contentions, the Subpart L hearing procedures will be used to adjudicate each admitted contention.
- LBP-11-3 MATTINGLY TESTING SERVICES, INC. (Molt and Billings, Montana), Docket No. 30-20836-EA (ASLBP No. 10-905-02-EA-BD01); ENFORCEMENT; February 22, 2011; MEMORANDUM AND ORDER (Accepting Proposed Settlement and Dismissing Proceeding)
- LBP-11-4 LUMINANT GENERATION COMPANY, LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 09-886-09-COL-BD01); COMBINED LICENSE; February 24, 2011; MEMORANDUM AND ORDER (Ruling on Motion for Summary Disposition of Contention 18 and Alternatives Contention A)
- A The Licensing Board grants the Applicant’s motion for summary disposition of the last remaining contention in the proceeding, which concerns: (1) Intervenors’ allegation that Applicant had not considered the feasibility under NEPA of an alternative consisting of a combination of solar and wind energy, energy storage methods, and natural gas supplementation, to produce baseload power; (2) the reasonable availability of the parts of the combination for consolidation into an integrated system; (3) the feasibility of the use of the combination in the area served by Applicant’s plant; (4) the extent to which there might be efficiencies arising from overlapping uses of land for each of the four parts of the combination as well as for other reasonable purposes; and, (5) if shown to be environmentally preferable, the extent to which operation and maintenance costs of solar in such combination might be a comparative benefit.

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Alternatively, the Board finds the contention moot, based on the NRC Staff's consideration of these matters in its DEIS, and Applicant's motion and support therefor.

B In 10 C.F.R. Part 2, Subpart L proceedings, NRC regulations require, in 10 C.F.R. § 2.1205(c), that in ruling on motions for summary disposition licensing boards are to apply the standards of 10 C.F.R. Part 2, Subpart G, which in section 2.710(d)(2) provides that summary disposition should be granted "if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law."

C In ruling on summary disposition motions it is appropriate for licensing boards to look to NRC regulatory and case law, and also to federal court case law on summary judgment under Rule 56 of the Federal Rules of Civil Procedure. *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010).

D The party moving for summary disposition bears the burden of demonstrating that there is no genuine issue as to any material fact and that it is entitled to a decision in its favor. If the proponent of the motion fails to make the requisite showing, the licensing board must deny the motion — even if the opposing party chooses not to respond or its response is inadequate. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993).

E In assessing whether a party moving for summary judgment has met his or her burden, all inferences to be drawn from underlying facts must be viewed in the light most favorable to the party opposing the motion. "[T]he record must show the movant's right to [summary judgment] 'with such clarity as to leave no room for controversy,' and must demonstrate that his opponent 'would not be entitled to [prevail] under any discernible circumstances.'"" Summary judgment "'should be awarded only when the truth is quite clear.'" "If the moving party meets its burden, then and only then is the nonmoving party required to proffer evidence that contradicts the moving party's showing and that proves the existence of a genuine issue of material fact. . . . If the moving party does not meet its burden, however, the nonmoving party is, without making any showing, entitled to a denial of the motion. . . . Although it is risky for a nonmoving party to fail to proffer evidence in response to the moving party's showing, such a failure does not automatically mandate granting of the motion." *McKinney v. Dole*, 765 F.2d 1129, 1135 (D.C. Cir. 1985).

F If, considering only the moving party's support for its motion, the board determines that it has met its burden, the board then looks to whether an opponent of the motion has overcome the movant's case by showing a genuine dispute on a material issue of fact.

G In attempting to overcome a movant's case, "a party opposing the motion may not rest upon [] mere allegations or denials,' but must state 'specific facts showing that there is a genuine issue of fact' for hearing. It is not sufficient . . . for there merely to be the existence of *some* alleged factual dispute between the parties, for 'the requirement is that there be no *genuine* issue of *material* fact.' 'Only disputes over facts that might affect the outcome' of a proceeding would preclude summary disposition. 'Factual disputes that are . . . unnecessary will not be counted.' . . . If the evidence in favor of the nonmoving party is 'merely colorable' or 'not significantly probative,' summary disposition may be granted." *Pilgrim*, CLI-10-11, 71 NRC at 297 (quoting 10 C.F.R. § 2.710(b), (d)(2); *Anderson v. Liberty Lobby*, 477 U.S. 242, 247-52 (1986) (noting emphasis in original)).

H If the question is a close one it must be carefully ascertained whether any factual disputes asserted are genuine and relate to a material issue or issues. If the opposing party fails to meet this standard, *and* the moving party has successfully shown that there is no genuine dispute on a material issue of fact and that it is entitled to a decision as a matter of law, then the motion must be granted, but any doubt as to the existence of a genuine issue of material fact is resolved against the moving party.

I In this proceeding Applicant agrees that the four-part combination alternative at issue is developed, proven, available, and reasonable, if natural gas provides the majority of the power, and concedes that, even if natural gas does not provide the majority of power, the four-part combination is at least theoretically feasible, but also points out that no such combination exists anywhere in the world, shows that a wind-solar-storage combination would produce less than half the 3200 MWe the proposed units would produce, and states that it is not reasonable or prudent for a utility or merchant generator to use a technology that has not been demonstrated, either at an existing commercial generating facility or in a pilot project or small-scale facility that shows it works and is cost-effective. Applicant goes into detail on the environmental impacts of the four-part combination, compares these impacts to those of the proposed

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new units, and concludes that the impacts of the combination would be greater, primarily as to land use and aesthetics.

J Intervenors make various arguments but provide little in the way of facts to support their arguments, and contest only five provisions of Applicant's statement of material facts. Intervenors contest neither any part of the environmental impacts section of Applicant's statement, nor the final comparison in Applicant's statement of the environmental effects of the two new proposed units and the four-part combination.

K The Licensing Board finds that Applicant considered all material facts, showed that there existed no genuine issue of material fact, and showed that a decision in its favor was warranted as a matter of law. Considering (1) the only facts in Applicant's Statement of Material Facts that Intervenors did contest and the manner in which they contested them, and (2) any other parts of Intervenors' submissions that even arguably contradicted any of the showings of the Applicant, the board finds these do not rise to a level of materiality that would establish a genuine dispute on a material issue of fact. Thus, the Licensing Board finds that Intervenors, in addition to being disorganized and incomplete in some instances, failed to demonstrate any genuine dispute on any material issue of fact, so as to overcome Applicant's showing of no genuine dispute on a material issue of fact. It may be that future technology will produce renewable energy alternatives or combination alternatives that are environmentally preferable to nuclear and that can also produce equivalent power, but based on the record before the Licensing Board, this is not the case at the present time, even resolving all doubts in Intervenors' favor. The Board's preliminary conclusion that Applicant met its burden, of showing that there existed no genuine issue as to any material fact and that it was entitled to a decision in its favor as a matter of law, therefore remains its conclusion, even considering Intervenors' submissions and resolving any doubts in a light most favorable to them.

L In view of the provision of 10 C.F.R. § 2.710(a) that "[a]ll material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party," and the provision that requires a party opposing summary disposition to provide a "statement of the material facts as to which it is contended there exists a genuine issue to be heard," if a movant for summary disposition asserts certain facts in its statement of material facts, this makes such facts at least arguably material to matters within the scope of the contention, and therefore subject to being disputed and controverted by the opponent of summary disposition, until and unless they are subsequently found to be immaterial by the body deciding the matter. If any response goes beyond the scope of the fact(s) being responded to, then that portion that goes beyond that scope may be ruled inadmissible on that ground, and a party responding to a summary disposition motion may not raise "distinctly new asserted deficiencies." *See Pilgrim*, CLI-10-11, 71 NRC at 310. But a party, which has certain rights in an NRC proceeding, could not appropriately be foreclosed from responding at all, by simply and straightforwardly disputing a statement put forward by an opposing party as a material fact. Intervenors were not denied the right to respond to Applicant's statement of material facts.

M In ruling on whether a contention is moot, a licensing board looks to whether a "justiciable controversy" still exists, and whether an issue is still "live," such that a party still has a legal interest in the issue. The Licensing Board in this case finds, based on both the NRC Staff's DEIS and the Applicant's consideration of the matters at issue in its motion for summary disposition and supporting documents, that no justiciable controversy still exists with respect to the contention at issue and that none of the issues contained within the contention are still "live," such that Intervenors have any further legal interest in those issues.

LBP-11-5 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR (ASLBP No. 10-890-01-LR-BD01); LICENSE RENEWAL; February 25, 2011; MEMORANDUM AND ORDER (Concerning Protective Order and Nondisclosure Agreement)

A The Board declines to issue a proposed protective order jointly submitted by all of the parties where it failed to require the privilege claimant to identify the legal basis for the claim that the document should be protected.

B The Board declines to issue a proposed protective order jointly submitted by all of the parties where it provided circular definitions to certain key terms, and failed to define certain other important terms, such as the terms "sensitive unclassified non-safeguards security information" and "SUNSI," that were used in the proposed order. The Board will not issue a proposed protective order that it does not understand.

C The Board declines to issue a proposed protective order jointly submitted by the Staff and all of the parties because the Board is concerned that the proposed protective order would violate NRC's strong

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policy in favor of openness and transparency and cast too broad a cloak of secrecy over adjudicatory hearings that are required to be public under section 181 of the Atomic Energy Act and 10 C.F.R. § 2.328.

- D In lieu of issuing the problematic protective order proposed jointly by all of the parties, the Board issues a protective order and nondisclosure agreement that it considers to be clear and legally sound.
- LBP-11-6 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; February 28, 2011; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene)
- A To participate in a proceeding as an intervenor, a petitioner must (1) establish standing and (2) proffer at least one admissible contention. *See* 10 C.F.R. § 2.309(a).
- B The standing requirements for NRC adjudicatory proceedings derive from the Atomic Energy Act (AEA), which requires the NRC to provide a hearing “upon the request of any person whose interest may be affected by the proceeding.” 42 U.S.C. § 2239(a)(1)(A).
- C Under the general standing requirements in our implementing regulations, a petitioner must state (10 C.F.R. § 2.309(d)(1)): “(i) The name, address and telephone number of the requestor or petitioner; (ii) The nature of the requestor’s/petitioner’s right under the [relevant statute] to be made a party to the proceeding; (iii) The nature and extent of the requestor’s/petitioner’s property, financial or other interest in the proceeding; and (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor’s/petitioner’s interest.”
- D In determining whether a petitioner has demonstrated standing, the Commission applies contemporaneous judicial concepts of standing, which require a petitioner to “(1) allege an ‘injury in fact’ that is (2) ‘fairly traceable to the challenged action’ and (3) is ‘likely’ to be ‘redressed by a favorable decision.’” *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotations omitted)). In the context of reactor licensing proceedings, however, a petitioner is deemed to have standing pursuant to the Commission’s so-called “proximity” presumption rule by showing that he or she resides in, or frequents the area within, a 50-mile radius of the facility. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010).
- E An organization may establish standing to intervene based on a theory of representational standing. To demonstrate representational standing, an organization must: (1) show that at least one of its members might be affected by the proceeding, which can be accomplished by showing that a member satisfies either the 50-mile “proximity” presumption or traditional standing elements; (2) identify that member by name and address; and (3) show that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf. *See Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000). Additionally, the interests the “organization seeks to protect must be germane to its own purpose,” and “neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action.” *Palisades*, CLI-07-18, 65 NRC at 409; *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).
- F An organization may establish organizational standing. *See International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001).
- G Pursuant to Commission regulation, a municipality is deemed to have standing in a reactor licensing proceeding that involves a facility located within its boundaries. *See* 10 C.F.R. § 2.309(d)(2). Where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality’s boundaries, it can, for purposes of establishing standing, rely on the 50-mile “proximity” presumption to the same extent as an individual or an organization. Thus, a municipality satisfies Commission standing requirements in a reactor licensing proceeding by showing either that its residents live within 50 miles of the facility, or that its boundaries extend to within 50 miles of the facility.
- H Pursuant to the rationale in *Private Fuel Storage*, it may reasonably be presumed that the interests a municipality seeks to represent on behalf of its residents are germane to its own purposes. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 32 (1998); *accord Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29 (1999).
- I For a timely filed contention to be admissible, it must satisfy the requirements in 10 C.F.R. § 2.309(f). Pursuant to those standards, an admissible contention must: (1) “[p]rovide a specific statement of the issue of law or fact to be raised”; (2) “[p]rovide a brief explanation of the basis for the contention”; (3) “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding”; (4)

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“[d]emonstrate that the issue raised . . . is material to the findings the NRC must make to support the action that is involved in the proceeding”; (5) “[p]rovide a concise statement of the alleged facts or expert opinions . . . together with references to the specific sources and documents on which the requestor/petitioner intends to rely”; and (6) “provide sufficient information to show that a genuine dispute exists . . . on a material issue of law or fact,” including “references to specific portions of the application . . . the petitioner disputes . . . or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure . . .” 10 C.F.R. § 2.309(f)(1).

J A contention must be rejected if: (1) it constitutes an attack on applicable statutory requirements; (2) it challenges the basic structure of the Commission’s regulatory process or is an attack on the regulations; (3) it merely expresses the petitioner’s view of what a governing policy ought to be; (4) it seeks to raise an issue improper for adjudication in the proceeding or not applicable to the facility in question; or (5) it seeks to raise an issue that is not concrete or is otherwise not litigable. *See Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

K The multifactor contention admissibility test in section 2.309(f)(1) — which is “‘strict by design’” (*AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006)) — was crafted by the Commission to “raise the threshold bar for an admissible contention.” *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999). Under the previous contention-admissibility rule, a contention could be admitted and litigated “based on little more than speculation Admitted intervenors often had negligible knowledge of nuclear power issues and, in fact, no direct case to present, but instead attempted to unearth a case through cross-examination.” *Id.* “Congress therefore called upon the Commission to make ‘fundamental changes’ in its public hearing process to ensure that ‘hearings serve the purpose for which they were intended: to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors.’” *Id.* (quoting H.R. Rep. No. 97-177, at 151 (1981)).

L The contention admissibility rule serves to ensure that admitted contentions (1) focus on real disputes that can be resolved in an adjudication, (2) establish a sufficient factual and legal foundation to warrant further inquiry, and (3) put other parties on notice of the disputed issues so they will know precisely those claims they must support or oppose. *See Oconee*, CLI-99-11, 49 NRC at 334.

M Pursuant to Commission regulations that implement the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331 et seq., every COL application must be accompanied by an ER to aid the Commission in its preparation of an Environmental Impact Statement (EIS) in compliance with section 102(2) of NEPA. *See* 10 C.F.R. § 51.14(a). An ER must discuss: (1) the impacts of the proposed action on the environment; (2) adverse environmental effects of the proposed action that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources associated with the proposed action. *See* 10 C.F.R. § 51.45(b). The ER shall “include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects.” *Id.* § 51.45(c). The ER “must also contain an analysis of the cumulative impacts of the activities to be authorized by the [COL].” *Id.* The ER shall discuss environmental impacts “in proportion to their significance” (10 C.F.R. § 51.45(b)(1)), and it “should contain sufficient data to aid the Commission in its development of an independent analysis.” *Id.* § 51.45(c).

N In enacting NEPA, Congress’s twin aims were to: (1) require an agency to consider every significant aspect of the environmental impact of a proposed action; and (2) ensure the agency will inform the public that it has considered environmental concerns in its decisionmaking process. *See Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). To effect these aims, NEPA requires an agency to “take a ‘hard look’ at the environmental consequences before taking a major action” and to report the result of that hard look in an EIS. *Id.* Section 102(2) of NEPA, 42 U.S.C. § 4332(2), prescribes the scope of environmental concerns that must be considered in the EIS.

O In analyzing the admissibility of a proffered contention, a licensing board need not turn a blind eye to those portions of a petitioner’s exhibits that might militate against admissibility. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated on other grounds*, CLI-90-4, 31 NRC 333 (1990) (“[B]oards must do more than uncritically accept a party’s mere assertion that a particular document supplies the basis for its contention, without even reviewing the document itself to determine if it . . . appears to support a litigable contention.”).

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- P Preparation of the ER is the first step in the NEPA process. Its purpose is to aid the NRC Staff in the performance of its NEPA responsibilities, which consist of preparing the draft EIS (10 C.F.R. §§ 51.70, 51.71), releasing the draft EIS to the public for comments (*id.* §§ 51.73, 51.74), and preparing and distributing the final EIS after receipt and consideration of comments. *Id.* §§ 51.90, 51.91, 51.93, 51.94. A decision by a licensing board rejecting a contention challenging the adequacy of a portion of an ER does not necessarily mean the NRC will satisfy its NEPA obligations by simply importing that portion of the ER into the EIS. Rather, the EIS must comply with NEPA and the above-cited Commission regulations, which describe the scope of the “detailed statement” (42 U.S.C. § 4332(2)(C)) that must be contained in the EIS. When the NRC Staff issues the EIS, Commission regulations provide an opportunity to either amend admitted contentions or proffer new contentions based on “data or conclusions in the NRC draft or final [EIS] . . . or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.” 10 C.F.R. § 2.309(f)(2).
- Q The mere existence of requests for additional information, if generated by the NRC Staff, do not, in and of themselves, establish grounds for a litigable contention. *See Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 164 (2006). This principle applies *a fortiori* in the context of comments and questions generated by a state agency that is examining a state application to determine compliance with state legal and technical standards.
- R The NRC regulations implementing NEPA require an applicant to submit an ER discussing “[t]he impact of the proposed action *on the environment*” (10 C.F.R. § 51.45(b)(1) (emphasis added)) and “‘appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources’” (*id.* § 51.45(b)(3)) (citing NEPA § 102(2)(E), 42 U.S.C. § 4332(2)(E)). This regulation requires an analysis of the *environmental* impacts of and alternatives to the proposed action; it does *not* extend to the impacts on another ongoing or proposed restoration effort in isolation from environmental impacts.
- S A contention of omission is one that alleges an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006). A contention can contain an omission component and an adequacy component. *See id.* at 742 n.7.
- T A contention must “identify the disputed portion of the application, and provide ‘supporting reasons’ for the challenge to the application. Similarly if a petitioner believes that an application fails to contain information on a ‘relevant matter as required by law,’ the contention must identify each failure and the supporting reasons for the petitioner’s belief.” *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 456 (2006) (internal footnotes omitted).
- U An ER need only discuss reasonably foreseeable environmental impacts of a proposed action. *See, e.g., Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 46 (2010).
- V The NRC Staff, incident to its preparation of the Safety Evaluation Report, has an obligation to ensure an applicant’s proposed plant’s design basis will protect public health and safety (*see* 10 C.F.R. § 52.97(a)(1)(v)), and the Staff accomplishes this objective by, *inter alia*, verifying that the design basis will withstand maximum flooding events. *See id.* Part 50, App. A, § I, Criterion 2 (“Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunamis, and seiches without loss of capability to perform their safety functions.”). An applicant has a continuing obligation to ensure its design basis will withstand such events. *Cf.* Supplemental Staff Guidance to NUREG 1555, “Environmental Standard Review Plan,” for Consideration of the Effects of Greenhouse Gases and of Climate Change at 11 (Apr. 8, 2010) (“If it becomes evident that long-term climate changes influence the most severe of natural phenomena reported in the site vicinity, then a license holder may need to take action to ensure the licensing basis is preserved.”). To the extent future climate-related evidence might indicate the design basis of a nuclear power plant will not withstand a maximum flooding event, Commission regulations provide a remedial mechanism for members of the public whereby “[a]ny person may file a request to institute a proceeding . . . to modify, suspend or revoke a license” 10 C.F.R. § 2.206(a).
- W NEPA “itself does not mandate a cost-benefit analysis,” but the statute “is generally regarded as calling for some sort of a weighing of the environmental costs against the economic, technical, or other public benefits of a proposal.” *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3,

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47 NRC 77, 88 (1998) (citations omitted). “‘Need for power’ is a shorthand expression for the ‘benefit’ side of the cost-benefit balance which NEPA mandates for a proceeding considering the licensing of a nuclear power plant.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 90 (1977), *aff’d*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir. 1978)).

- X The Commission has explained that preparing a “need for power” discussion should not be an onerous task: “[W]hile a discussion of need for power is required, the Commission is not looking for burdensome attempts by the applicant to precisely identify future market conditions and energy demand, or to develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power.” Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,910 (Sept. 29, 2003); *see also South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 17 (2010). A state public service commission’s determination of need for power may be relied on by the NRC in its own analysis, as long as that determination “is neither shown nor appears on its face to be seriously defective.” *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-490, 8 NRC 234, 241 (1978). The NRC Staff has issued guidance for how it evaluates the adequacy of a state determination of need for power; namely, the state’s process must be “(1) systematic, (2) comprehensive, (3) subject to confirmation, and (4) responsive to forecasting uncertainty.” U.S. Nuclear Regulatory Commission, Environmental Standard Review Plan, Standard Review Plans for Environmental Reviews for Nuclear Power Plants, NUREG-1555, at 8.1-2 (Oct. 1999).
- Y “[I]nherent in any forecast of future electric power demands is a substantial margin of uncertainty.” *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 365 (1975).
- Z Although NUREGs are not legally binding, they are guidance documents (*Private Fuel Storage, LLC*. (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001)), and an applicant’s failure to comply with such documents can potentially give rise to an admissible contention.
- AA The Commission has long acknowledged the uncertainty inherent in long-range demand forecasts: “[E]very prediction has associated uncertainty and . . . long-range forecasts of this type are especially uncertain in that they are affected by trends in usage, increasing rates, demographic changes, industrial growth or decline, the general state of the economy, etc. These factors exist even beyond the uncertainty that inheres to demand forecasts: assumptions on continued use from historical data, range of years considered, the area considered, extrapolations from usage in residential, commercial, and industrial sectors, etc.” *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609-10 (1979).
- BB The possible impact of proposed legislation and regulations need not be addressed in the ER, because any effect they might have is not “reasonably foreseeable” until they are enacted or promulgated.
- CC An alternative that fails to meet the purpose of the project does not need to be further examined in the ER. *See Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-08 (2005).
- DD Before issuing a COL under Part 52, the NRC must conclude “there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.” 10 C.F.R. § 50.47(a)(1)(ii). The NRC is to “base its finding on a review of the Federal Emergency Management Agency (FEMA) findings,” and “[i]n any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability.” *Id.* § 50.47(a)(2).
- EE As the Commission stated in *American Centrifuge*, CLI-06-10, 63 NRC at 457: “It is simply insufficient . . . for a petitioner to point to an Internet Web site or article and expect the Board on its own to discern what particular issue a petitioner is raising, including what section of the application, if any, is being challenged as deficient and why. A contention must make clear why cited references provide a basis for a contention.”
- FF Governing case law requires a petitioner’s reply to “be ‘narrowly focused on the legal or logical arguments presented in the [applicant] or NRC staff answer.’” *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004) (citations omitted).
- GG NUREG-0654, which discusses evacuation or sheltering in the context of a general emergency, states in relevant part: “The general emergency class involves actual or imminent substantial core degradation or

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melting with the potential for loss of containment. The preferred initial protective action for this class is to evacuate immediately about 2 miles in all directions from the plant and about 5 miles downwind, unless other conditions make evacuation dangerous.” NUREG-0654, “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,” Rev. 1, Supplement 3, App. 2 at 1-3 (July 1996).

- HH Governing regulations (10 C.F.R. § 50.47(b)(10)) require that sheltering be considered in developing the recommended range of protective actions in the emergency plan.
- II A contention of omission may be summarily rejected as inadmissible if (1) there is no requirement to address the topic allegedly omitted from the application, or (2) the topic that allegedly is omitted is, in fact, included in the application. *See American Centrifuge*, CLI-06-10, 63 NRC at 456.
- JJ It is not the province of the NRC (and thus this Board) to enforce another agency’s regulations. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 120-22 & n.3 (1998).
- KK Because Greater-Than-Class-C (Low-Level Radioactive Waste) LLRW “is the responsibility of the federal government” and thus unaffected by the closure of the Barnwell facility, the Commission has held that challenges to a COL applicant’s failure to provide information on long-term storage of Greater-Than-Class-C LLRW are outside the scope of a COL proceeding. *See Levy County*, CLI-10-2, 71 NRC at 47-48.
- LL Applicants are obligated under 10 C.F.R. § 51.45(b) to prepare Environmental Reports that discuss, *inter alia*, “[t]he impact of the proposed action on the environment” and “[a]ny adverse environmental effects which cannot be avoided should the proposal be implemented.” 10 C.F.R. § 51.45(b)(1)-(2).
- MM It is not the function of a licensing board to comb through the record searching for arguments in support of a proffered contention. *See, e.g., SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (“Judges are not like pigs, hunting for truffles buried in briefs.”) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)).
- NN NRC regulations require that a COLA contain an FSAR that includes “information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license . . . [regarding t]he kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter . . .” 10 C.F.R. § 52.79(a)(3). NRC regulations also require a COLA to “identify . . . the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable [or ALARA].” *Id.* § 50.34a(a).
- OO Section 2.309(c)(1) requires balancing the following factors to the extent they apply to the particular late-filed contention: (1) the existence *vel non* of good cause; (2) the nature of the petitioner’s right to be a party to the proceeding; (3) the nature and extent of the petitioner’s interest in the proceeding; (4) the possible effect of the proceeding’s outcome on the petitioner’s interest; (5) the availability of other means to protect the petitioner’s interest; (6) the extent the petitioner’s interest will be represented by existing parties; (7) the extent the petitioner’s participation will broaden the issues or delay the proceeding; and (8) the extent the petitioner’s participation might assist in developing a sound record. The Commission has instructed that “good cause” is the most important factor. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 261 (2009).
- PP Although citations to factually supported concerns raised by a state agency reviewing a proposed project are not necessarily insufficient to satisfy section 2.309(f)(1)(v), a petitioner may not rely on a document generated by a state agency if that document contains nothing more than a request for information. *See, e.g., Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 550-52 (2009).
- QQ “A petitioner’s issue will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’” *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *Oyster Creek*, CLI-00-6, 51 NRC at 208).
- RR If at least one petitioner demonstrates standing and proffers an admissible contention so that its petition to intervene is granted, section 2.315(c) allows an interested local governmental body that has not been admitted as a party to participate in a hearing as an interested nonparty. A local governmental body that is participating as an interested nonparty may designate a single representative “to introduce

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evidence, [to] interrogate witnesses” (if the admitted parties are permitted cross-examination), to “advise the Commission without requiring the [local governmental body’s] representative to take a position with respect to the issue, [to] file proposed findings in those proceedings where findings are permitted, and [to] petition for review by the Commission under [10 C.F.R.] § 2.341 with respect to the admitted contentions.” 10 C.F.R. § 2.315(c).

- SS Section 2.310(a) provides that the hearing procedures in Subpart L of 10 C.F.R. Part 2 will ordinarily be used in proceedings for the “grant, renewal, licensee-initiated amendment, or termination of licenses or permits.” See 10 C.F.R. § 2.310(a). Section 2.310(d) describes an exception to this rule in cases where the presiding officer determines by order that a contested matter necessitates resolution of a material issue of fact relating to a past activity “where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter” (*id.* § 2.310(d)), in which case the hearing for resolution of the contested matter will be conducted under Subpart G of 10 C.F.R. Part 2. See *id.* Section 2.309(g) permits a petitioner to “address the selection of hearing procedures, taking into account the provisions of [10 C.F.R.] § 2.310”
- LBP-11-7 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-12-COL, 52-13-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; February 28, 2011; MEMORANDUM AND ORDER (Rulings on Question Regarding Intervenors’ Challenge to NRC Staff Denial of Documentary Access, on Motions for the Summary Disposition of Contention CL-2, and on the Admissibility of New DEIS Contentions)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Nuclear Innovation North America LLC (NINA or Applicant) for combined licenses (COL) to construct and operate two new nuclear units, using the Advanced Boiling Water Reactor (ABWR) certified design, at its site in Matagorda County, Texas, ruling on motions by Intervenors seeking to admit six new contentions, and by Applicant and Staff seeking summary disposition of a previously admitted contention, as well as ruling on a matter remanded by the Commission regarding access to a draft guidance document, the Licensing Board (1) grants Intervenors’ motion in part, admitting Contention DEIS-1, as narrowed by the Board; (2) denies Applicant’s and Staff’s motion for summary disposition of Contention CL-2; (3) and concludes the matter of Intervenors’ access to the draft document is moot because Intervenors’ have since waived access to it.
- B Summary disposition, like summary judgment, is an extreme remedy, which should be granted with caution, especially before the parties have been afforded an opportunity to marshal their evidence. Additionally, when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper. During summary disposition, it is not appropriate for boards “to untangle the expert affidavits and decide ‘which experts are more correct.’” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 509 (2001) (quoting *Norfolk Southern Corp. v. Oberly*, 632 F. Supp. 1225, 1243 (D. Del. 1986)).
- C As applied specifically to Severe Accident Mitigation Alternatives (SAMA) analyses, the Commission has explained that a licensing board’s inquiry should not be whether there are “plainly better” methodologies or “whether the SAMA analysis can be refined further.” Rather, a licensing board’s inquiry is to be whether the SAMA analysis resulted in erroneous conclusions on which SAMAs and Severe Accident Mitigation Design Alternatives (SAMDA) are found cost-beneficial to implement. Accordingly, there is no purpose for further refining a SAMDA analysis, “[u]nless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 317 (2010).
- D After reviewing the Technical Support Document (TSD) for the ABWR, the Commission determined that General Electric’s SAMDA analysis conclusion that there are no additional cost-beneficial SAMDAs for the ABWR should be applied in future licensing proceedings referencing the ABWR certified design as long as that facility’s site parameters are within the range specified in the TSD. See Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design, 62 Fed. Reg. 25,800, 25,827 (May 12, 1997). However, because there is no list of site parameters specified in the TSD, a prerequisite for resolving SAMDA issues by rule is lacking. It is therefore impossible to demonstrate that the South Texas Project site parameters fall within the envelope defined by that list. This renders impossible the application of 10 C.F.R. Part 52, Appendix A, § VLB.7 to resolve SAMDA issues by rule. NRC Staff’s creation of a list of site parameters for use in this proceeding cannot cure the absence of a list of site parameters in the TSD.
- E Although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the

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statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998) (citations omitted). Section 51.107(a)(3) of the NRC's rules addresses this mandate by requiring a "weighing [of] the environmental, economic, technical, and other benefits against environmental and other costs." 10 C.F.R. § 51.107(a)(3). Therefore, as part of the NRC's NEPA analysis for licensing a nuclear power plant, the agency must balance the costs and benefits resulting from issuance of a license.

F When balancing benefits and costs under section 51.107(a)(3), one significant benefit of a combined license is the capacity of a new nuclear power plant to satisfy a need for additional electric power. See *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979). Concomitantly, the NRC must address any purported need for additional power during its environmental review of the combined license application. See 10 C.F.R. § 51.71(d) (requiring the Draft EIS to "consider[] . . . the economic, technical, and other benefits and costs of the proposed action"); see also *id.* § 51.103(a)(3) (requiring the record of decision to discuss "relevant factors including economic and technical considerations" among alternatives).

G A need for power assessment need not "precisely identify future market conditions and energy demand, or . . . develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power." See, e.g., 68 Fed. Reg. at 55,910 (citing *Claiborne*, CLI-98-3, 47 NRC at 88, 94). Rather, it is sufficient if the need for power analysis is at a level of detail "sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions." *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 17 (2010) (citing 68 Fed. Reg. at 55,910). Otherwise "[q]uibbling over the details of an economic analysis" would effectively "stand[] NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 145 (2004) (internal quotation marks omitted). Finally, we note that because a need for power assessment necessarily entails forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, need for power assessments are inherently conservative. See *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 365-68 (1975), cited with approval in *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609-10 (1979).

H Among other requirements for admitting a contention, Intervenor must demonstrate that the issue raised in the contention is material to a licensing decision, i.e., that the *issue would make a difference* in the licensing decision. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333-34 (1999). Intervenor need not demonstrate that the *issue will make a difference* in the licensing decision. As a recent Board enunciated, at the contention admissibility stage of a proceeding, Intervenor need not marshal their evidence as though preparing for an evidentiary hearing. See, e.g., *Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 416 (2009) (noting that requiring petitioners to proffer additional and conclusive support for the effect of their proposed contention "would improperly require . . . Boards to adjudicate the merits of contentions before admitting them"). Our regulations prudently avoid litigating issues whose resolution would not affect the outcome of a proceeding, but also contemplate that a fuller decision may be made at a later stage in litigation and on the merits.

LBP-11-8 DAVID GEISEN, Docket No. IA-05-052 (ASLBP No. 06-845-01-EA); ENFORCEMENT; March 10, 2011; MEMORANDUM AND ORDER (Denying Application for Attorneys' Fees)

A By its terms, EAJA applies to any "adjudication required by statute to be determined on the record" in which the government is represented by counsel. See 5 U.S.C. §§ 504(b)(1)(C) and 554. Insofar as is relevant here, the NRC's regulations explain that the foregoing statutory language is meant to include "[a]dversary adjudications conducted by the Commission pursuant to any other statutory provision that requires a proceeding before the [NRC] to be so conducted as to fall within the meaning of 'adversary adjudication' under [EAJA]." 10 C.F.R. § 12.103.

B EAJA provides four distinct definitions of "adversary adjudication," including, as pertinent here, "an adjudication under section 554 of [the Administrative Procedure Act ("APA")] in which the position of the United States is represented by counsel or otherwise." 5 U.S.C. § 504(b)(1)(C). In turn, section 554 of the APA applies "in every case of adjudication required by statute to be determined on the record after

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opportunity for an agency hearing.” 5 U.S.C. § 554(a).

C After analyzing the relevant statutory provisions, the Commission stated “it is not unreasonable to conclude that no NRC proceeding other than an appeal to a board of contract appeals under the Contract Disputes Act or a Program Fraud Civil Remedies Act hearing is covered by the EAJA.” Equal Access to Justice Act: Implementation, 59 Fed. Reg. 23,119, 23,120 (May 5, 1994).

D The Appeal Board in *Advanced Medical Systems* thus held that materials license suspension proceedings are not covered by EAJA even though the NRC may voluntarily choose to employ on-the-record formal procedures, because such proceedings are not *required* by statute to be APA § 554 on-the-record hearings. *Advanced Med. Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 291 (1990).

E The Applicant’s argument that EAJA should apply to the enforcement proceeding brought against him because it was in fact “an on-the-record hearing that was very much like a trial proceeding,” regardless of whether or not it was statutorily required to be so, runs headlong into holdings that an agency’s discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether EAJA applies to a particular proceeding. *See, e.g., Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129, 137 (1991); *Friends of the Earth v. O’Reilly*, 966 F.2d 690, 695 (D.C. Cir. 1992); *Advanced Med. Sys.*, ALAB-929, 31 NRC at 289-91 (citing *St. Louis Fuel and Supply Co. v. Federal Energy Regulatory Commission*, 890 F.2d 446, 448-49 (D.C. Cir. 1989); *Owens v. Brock*, 860 F.2d 1363, 1366 (6th Cir. 1988); *Smeldberg Machine & Tool, Inc. v. Donovan*, 730 F.2d 1089, 1092-93 (7th Cir. 1984)); *see also Ardestani*, 502 U.S. at 134.

F Even if due process did mandate an on-the-record hearing conducted according to APA § 554 in this case, such procedural requirements stemming from the Constitution alone would not suffice to make Mr. Geisen eligible for an EAJA award. Rather, EAJA applies only when an adjudication is “required by statute” to be conducted on the record, and, peculiarly, not when it is so required by the higher authority of the Constitution. *See Advanced Med. Sys.*, ALAB-929, 31 NRC at 291 n.14.

G The underlying purpose of EAJA is twofold: (1) “to eliminate financial disincentives for those who would defend against unjustified governmental action”; and thereby (2) “to deter the unreasonable exercise of Government authority.” *See Ardestani*, 502 U.S. at 138.

H With regard to the assertion that the meaning of “incur” in the context of EAJA is clear, “[n]either EAJA nor the legislative history provides a definition of the word ‘incur[.]’” and courts of appeals have interpreted and applied the term differently. *Securities and Exchange Commission v. Comserv*, 908 F.2d 1407, 1413 (8th Cir. 1990); *see also Ed A. Wilson, Inc. v. General Services Administration*, 126 F.3d 1406, 1408 (Fed. Cir. 1997). For instance, although the Fourth Circuit and the Eighth Circuit, through *Paisley* and *Comserv*, have held that otherwise eligible applicants who have been indemnified by an ineligible third party have not “incurred” fees under EAJA, the Seventh Circuit and the Federal Circuit have held that eligible applicants who have had their fees paid by ineligible third parties did “incur” fees under EAJA. *See, e.g., United States v. Thouvenot, Wade & Moerschen, Inc.*, 596 F.3d 378, 383 (7th Cir. 2010); *Wilson*, 126 F.3d at 1410; *cf. Morrison v. Commissioner of Internal Revenue*, 565 F.3d 658, 666 (9th Cir. 2009).

I According to the Supreme Court, for the purposes of EAJA, the government’s position should be considered substantially justified if “a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988). Thus, for the NRC Staff’s position in this case to have been substantially justified, it did not have to be “‘justified to a high degree,’” but instead only had to be “‘justified in substance or in the main’ — that is, justified to a degree that could satisfy a reasonable person.” *Id.* at 565.

J In determining whether the government’s position was substantially justified, courts must look to the totality of the circumstances. *Roanoke River Basin Association v. Hudson*, 991 F.2d 132, 139 (4th Cir. 1993). Thus, the Board “must examine the government’s conduct in both the prelitigation and litigation contexts.” *United States v. Hallmark Construction Co.*, 200 F.3d 1076, 1080 (7th Cir. 2000) (citation omitted); *see also Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 967 (D.C. Cir. 2004). In doing so, however, the Board “does not make separate determinations regarding each stage but ‘arrive[s] at one conclusion that simultaneously encompasses and accommodates the entire civil action.’” *Hallmark*, 200 F.3d at 1080 (quoting *Jackson v. Chater*, 94 F.3d 274, 278 (7th Cir. 1996)). This determination is made on the basis of the written record, and, in this case, oral argument. 10 C.F.R. § 12.306(a).

K A judgment against the government on the merits, such as is the case here, does not create a presumption that the government’s case was not substantially justified. *Scarborough v. Principi*, 541 U.S.

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401, 415 (2004) (citations omitted); *Pierce*, 487 U.S. at 569. “While a court’s ‘merits reasoning may be quite relevant to the resolution of the substantial justification question,’ we have cautioned that ‘[t]he inquiry into the reasonableness of the Government’s position . . . may not be collapsed into our antecedent evaluation of the merits.’” *Halverson v. Slater*, 206 F.3d 1205, 1208 (D.C. Cir. 2000) (quoting *F.J. Vollmer Co., Inc. v. Magaw*, 102 F.3d 591, 595 (D.C. Cir. 1996)).

LBP-11-9 SHAW AREVA MOX SERVICES (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01); MATERIALS LICENSE AMENDMENT; April 1, 2011; MEMORANDUM AND ORDER (Admitting New Contentions 9, 10, and 11)

A Contentions based on new information in a document that was not previously available and that is materially different from a document that was previously available are not untimely simply for not being included in an intervenor’s initial hearing request filed at the outset of a proceeding.

B An applicant’s change of legal position, its claims that such change in legal position no longer entails a need for an exemption from the regulations, and its identification of new means/systems to satisfy the regulations are all types of materially different new information that can enable a contention to satisfy the timely new or amended contention requirements of 10 C.F.R. § 2.309(f)(2)(i)-(ii).

C Intervenors’ challenges to an enhanced version of an application alone are insufficient to vitiate the Intervenors’ obligation to file any challenges to the original version of that application at the outset of the proceeding. Where, however, an applicant deletes a material portion of its application and replaces it with a changed explanation of legal compliance, that replacement is materially different information that was previously unavailable and thus can satisfy the requirements of 10 C.F.R. § 2.309(f)(2)(i)-(ii).

D The Commission’s directive to treat *pro se* litigants more leniently than litigants with counsel allows a board to take into account complex procedural hurdles presented to intervenors and to structure its rulings accordingly.

E Understandable misapprehension of the start of the filing period for contentions, leading to inadvertent late filing of new contentions, establishes good cause to excuse missing the filing deadline pursuant to 10 C.F.R. § 2.309(c)(1).

F Considering that the filing deadline for new contentions is triggered only when a defined set of somewhat imprecise circumstances exists under 10 C.F.R. § 2.309(f)(2), the exact time at which those circumstances come into being is not always entirely clear. The trigger date for this filing period can be especially unclear where both public and nonpublic documents associated with a proceeding are produced and where an applicant’s stated compliance with NRC regulations shifts over time. This is sufficient good cause for Intervenors’ uncertainty, over a 10-day period, regarding the start of a rolling deadline for submitting new contentions.

G Commission precedent allows the finding that a petitioner, who had constructive and actual notice of a filing deadline, lacks good cause for filing its intervention petition 7 days late. But the existence of inherent uncertainty in the trigger date for a rolling deadline can preclude a finding of constructive and/or actual notice of the filing deadline, and thus can leave room for a finding of good cause for the late filing.

H Lack of clarity in the terms and application of the agency’s newly established sensitive unclassified nonsafeguards information (SUNSI) policy contributed to Intervenors’ misapprehension that they were required to demonstrate a “need for the information” in order to request SUNSI documents, and thus makes excusable their belated awareness of the information in those documents.

I Where Intervenors are the only parties admitted, they satisfy the criteria, contained in 10 C.F.R. § 2.309(c)(1)(v) and (vi), related to showing that their interests are not adequately represented by other means or by other parties. Especially after the NRC Staff has already issued requests for information and its safety evaluation report, there is no other means to represent Intervenors’ interests.

J Looking to 10 C.F.R. § 2.309(c)(vii), where the public interest has been served by an applicant taking almost 4 years to submit the entirety of its application and associated documents and changing its position on the underlying justification for an aspect of its license, and the NRC Staff has taken over 2-1/2 years to address a problem with an applicant’s noncompliance with NRC regulations through requests for additional information, Intervenors’ pursuit of newly filed contentions on those subjects cannot be said to be the cause of untoward delay in the proceeding.

K The public interest can well be served by revisions to an application that ends up “getting it right” and by the Staff’s expected thorough analysis of such revisions. Those necessary processes, invoked by the Applicants or at their behest, can be quite time-consuming. By the same token, an inquiry launched by the Intervenors after a 10-day delay does not unduly prolong the proceeding.

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- L Litigation of substantively admissible contentions addressing important security issues that are of the highest safety order deserve to be heard and thus will not inappropriately broaden the issues in the proceeding, especially in light of the varied approaches that have been presented to justify an applicant's proposal and the applicant's previous admission that it failed to satisfy the relevant security regulations.
- LBP-11-10 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; April 6, 2011; MEMORANDUM AND ORDER (Declining to Admit New Contentions 12 and 13)
- A To issue the Early Site Permit (ESP), the NRC must comply with the National Environmental Policy Act (NEPA). That statute requires that an Environmental Impact Statement (EIS) include a detailed statement by the responsible agency official on, among other things, (i) "the environmental impact of the proposed action," (ii) "any unavoidable adverse environmental effects which cannot be avoided should the proposal be implemented," and (iii) "alternatives to the proposed action." The agency responsible for preparing the EIS must define the scope of the issues it will address.
- B Section 1502.4 of 40 C.F.R. directs that "[a]gencies shall use the criteria for scope (40 C.F.R. § 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." Section 1508.25 directs that, in defining the scope of the EIS, all "connected actions" must be analyzed in one statement. Separate actions may be considered "connected" if, among other things, they "[a]re interdependent parts of a larger action and depend on the larger action for their justification." An ESP authorizes the use of a specific site for the construction and operation of a new nuclear power plant, with the actual construction and operation authorized by a subsequently issued COL. Although a licensee that has obtained an ESP is not required to apply for a COL or to actually construct and operate a nuclear power plant at the authorized site, it is difficult to see any reason to obtain an ESP other than as an initial step toward those actions. The ESP and the COL are therefore "in effect, a single course of action" and "interdependent parts of a larger action [that] depend on the larger action for their justification." Thus, the issuance of an ESP and the subsequent authorization of construction and operation of a new nuclear power plant qualify as "connected actions" under section 1508.25, and should be evaluated in one EIS.
- C New and amended contentions submitted after an intervenor's initial hearing request are evaluated under 10 C.F.R. § 2.309(f)(2) for timeliness and, if found timely, their general admissibility is analyzed pursuant to 10 C.F.R. § 2.309(f)(1).
- D If a contention is not timely filed, it must meet the eight-factor test under section 2.309(c)(1) to be deemed admissible as a nontimely contention. The Commission has considered the "good cause" factor to be the most important of those eight.
- E NRC regulations permit a COL applicant to make a reference to a docketed-but-not-yet-certified design "at its own risk." As the *Summer* licensing board noted: "along the way, and certainly once a final design is certified, each COLA applicant will have to determine whether it will adopt *in toto* the certified design, or whether it will take exemptions thereto and/or departures therefrom. An applicant will also have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design." *South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Units 2 and 3)*, LBP-09-2, 69 NRC 87, 100 (2009), *aff'd in part and rev'd and remanded on other grounds*, CLI-10-1, 71 NRC 1 (2010) (footnotes and internal citations omitted).
- F Under NRC regulations, a COL applicant incorporating a certified design may include in its COLA a "request . . . for an exemption from any part of a referenced design certification rule," which may be granted as long as the NRC "determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with [10 C.F.R.] § 52.63 if there are no applicable exemption provisions in the referenced design certification rule." In turn, section 52.63(b)(1) conditions grants of exemptions from referenced design certification rules on the Commission's finding that the request complies with section 52.7 and that the "special circumstances" provided for in section 52.7 "outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption." For COL applicants, section 52.7 itself cross-references the standards of section 50.12 for granting exemptions to NRC regulations.
- G NRC regulations require that, for an ESP or COL site and associated design bases to be deemed geologically and seismically suitable, "[t]he geological, seismological, and engineering characteristics of a

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site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site, to provide sufficient information to support evaluations performed to arrive at estimates of the Safe Shutdown Earthquake [SSE] Ground Motion, and to permit adequate engineering solutions to actual or potential geologic and seismic effects at the proposed site.” Appendix S of 10 C.F.R. Part 50 defines SSE as “the vibratory ground motion for which certain structures, systems, and components must be designed to remain functional.”

LBP-11-11 AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility), Docket No. 70-7015-ML (ASLBP No. 10-899-02-ML-BD01); MATERIALS LICENSE; April 8, 2011; FIRST PARTIAL INITIAL DECISION (Uncontested/Mandatory Hearing on Safety Matters)

A In this 10 C.F.R. Part 70 proceeding regarding the application of AREVA Enrichment Services, LLC (AES), for authorization to possess and use source, byproduct, and special nuclear material to enrich natural uranium by the gas centrifuge process at its planned Bonneville County, Idaho Eagle Rock Enrichment Facility (EREF), the Licensing Board provides its findings and conclusions concerning uncontested Atomic Energy Act (AEA)/safety-related matters, concluding that (1) the AES application contains sufficient information to support license issuance; and (2) the NRC Staff’s review of the application has been adequate to support license issuance, subject to a license condition regarding the qualifications of the facility’s nuclear criticality safety (NCS) manager and an unresolved decommissioning funding financial assurance issue that awaits Commission consideration of a pending Board-certified question.

B Because the Commission received no petitions to intervene in response to a notice of hearing and opportunity to intervene, no contested hearing was convened. Nonetheless, if an applicant seeks authorization to construct and operate a uranium enrichment facility, a mandatory/uncontested hearing must still be held. AEA § 193(b)(1) provides that “[t]he Commission *shall* conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility.” 42 U.S.C. § 2243(b)(1) (emphasis added).

C AEA § 274c(1), 42 U.S.C. § 2021(c)(1), gives the NRC a clear statutory mandate to regulate the construction and operation of a uranium enrichment facility. *See* 74 Fed. Reg. 38,052, 38,057 (July 30, 2009) (CLI-09-15, 70 NRC 1, 17 (2009)). Further, AEA §§ 53 and 63, 42 U.S.C. §§ 2073, 2093, which concern special nuclear material and byproduct material, provide the general statutory basis under which the NRC has adopted the variety of regulations that govern a proposed enrichment facility’s construction and operation. Finally, AEA §§ 189a and 193, *id.* §§ 2239a, 2243, provide the statutory footing for the procedural precepts that apply to a uranium enrichment facility licensing action, including the need for (1) the NRC to conduct only a single licensing action and adjudicatory proceeding to authorize the construction and operation of a uranium enrichment facility; and (2) a mandatory hearing regarding the application and the Staff’s associated safety and environmental reviews, even in the absence of a petitioner seeking to interpose a challenge to the applicant’s request for such a single license.

D Part 70 of Title 10 of the *Code of Federal Regulations* establishes the basic regulatory framework that governs the licensing of an entity to construct and operate an enrichment facility. Nonetheless, a number of other rules and regulations in 10 C.F.R. Chapter I, including Parts 19, 20, 21, 25, 30, 40, 51, 71, 73, 74, 95, 140, 170, 171, are applicable to licensing a facility to receive, possess, use, transfer, deliver, and process byproduct, source, and special nuclear material in the quantities necessary to conduct the activities contemplated at a uranium enrichment facility. *See* 74 Fed. Reg. at 38,057 (CLI-09-15, 70 NRC at 17).

E A significant body of case law exists indicating what a licensing board’s responsibilities are, and are not, in the context of licensing a proposed uranium enrichment facility. Essentially a licensing board is to “conduct a simple ‘sufficiency’ review” rather than a *de novo* review on both AEA and National Environmental Policy Act (NEPA) issues. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005). Thus, boards “should decide simply whether the safety and environmental record is ‘sufficient’ to support license issuance. In other words, the boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact.” *Id.* There is, however, a caveat in that boards are instructed to make independent environmental judgments with respect to certain NEPA findings, though even then they “need not rethink or redo every aspect of the NRC Staff’s environmental findings or undertake their own fact-finding activities.” *Id.* at 44; *see also Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 559-60, *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007). The board’s role thus is to “carefully probe [Staff] findings by asking appropriate questions and by requiring supplemental information when necessary,” but “the NRC Staff’s underlying technical and factual findings are not

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open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient.” *Clinton ESP*, CLI-05-17, 62 NRC at 39-40.

F The NEPA findings associated with a mandatory hearing require the licensing board independently to (1) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Subpart A of 10 C.F.R. Part 51 have been complied with in the proceeding; (2) consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values. *See* Licensing Board Initial Scheduling Order attach. A, at 9 (May 19, 2010) (unpublished) [hereinafter Initial Scheduling Order]. In addition, relative to NEPA, the licensing board is to determine whether the review conducted by the Staff pursuant to 10 C.F.R. Part 51 has been adequate. *See id.*

G In a mandatory hearing for the licensing of a uranium enrichment facility, a licensing board “must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance.” *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006).

H In a mandatory hearing for the licensing of a uranium enrichment facility, relative to AEA-related safety items (as opposed to NEPA-related environmental issues), a licensing board must consider whether the application satisfies the standards set forth in the Commission’s notice of hearing and the applicable standards of 10 C.F.R. Parts 30 (regarding byproduct material), 40 (regarding source material), and 70 (regarding special nuclear material) as they apply to the construction and operation of a uranium enrichment facility. *See* 74 Fed. Reg. at 38,053-54 (CLI-09-15, 70 NRC at 7). More specifically, the Commission has directed that if the proceeding is not a contested proceeding, i.e., the proceeding is an uncontested/mandatory hearing rather than one in which a petitioner seeks to challenge the application in accord with the procedures specified in 10 C.F.R. Part 2, Subpart C, then in connection with AEA-related safety matters a licensing board is to determine whether (1) the application and record of the proceeding contain sufficient information; and (2) whether the NRC Staff’s review of the application has been adequate to support findings to be made by the Office of Nuclear Materials Safety and Safeguards (NMSS) Director with respect to whether the AES application meets the applicable standards of Parts 30, 40, and 70. *See id.*; *see also* Initial Scheduling Order attach. A, at 9.

I Under 10 C.F.R. § 70.62, each applicant for a Part 70 license is required to establish and maintain a safety program, which includes performing an integrated safety analysis (ISA). *See* 10 C.F.R. § 70.62(c). Among other things, the ISA must consider potential accident sequences caused either by deviations in the processes that will be conducted at the proposed facility or by credible external events, including natural phenomena. *See id.* § 70.62(c)(1)(iv).

J To perform an appropriate ISA, the Staff’s NUREG-1520 standard review plan (SRP) guidance for fuel cycle facilities indicates that the applicant should identify the process designs, accident sequences, and items relied upon for safety (IROFS) that are associated with the facility. *See* NMSS, NRC, [SRP] for the Review of a License Application for a Fuel Cycle Facility, NUREG-1520, at 3-9 (rev. 1 May 2010)) [hereinafter Revised Staff Fuel Cycle SRP]; *see also* NMSS, NRC, [SRP] for the Review of a License Application for a Fuel Cycle Facility, NUREG-1520, at 3-8 to -9 (Mar. 2002) [hereinafter Staff Fuel Cycle SRP]. In that regard, the process designs should be described in a level of detail that is sufficient to allow a Staff reviewer to understand the theory of operation for the process. Similarly, the IROFS should be described in sufficient detail to allow a Staff reviewer to understand the IROFS’s functions in relation to the performance standards in section 70.61, which specifies limitations on the levels of risk for credible high- and intermediate-consequence accidents and nuclear criticality accidents. *See* Revised Staff Fuel Cycle SRP at 3-9 to -10.

K Along with the requirement to perform an ISA is the requirement to provide the Staff with an ISA summary (ISAS). *See* 10 C.F.R. § 70.65(b). The ISAS is to contain descriptions of (1) site and facility characteristics that could affect safety and potential accidents and their consequences; (2) processes, hazards, and accident sequences, which includes a description of every process analyzed in the ISA, the hazards for each process, and the accident sequences associated with such hazards having unmitigated consequences that exceed the section 70.61 performance requirements; (3) the methods and team used by the applicant to perform the ISA; and (4) IROFS and the IROFS management measures used to ensure that

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IROFS are available and reliable to perform their functions when needed. *See id.*; *see also* Revised Staff Fuel Cycle SRP at 3-8.

- L The AEA and agency regulations govern the extent to which a foreign entity may own or control an NRC-licensed activity. The form of that regulatory oversight depends on the type of license sought. Because applications for uranium enrichment facilities are governed by AEA §§ 53 and 63, 42 U.S.C. §§ 2073, 2093, foreign ownership and control issues are evaluated under AEA §§ 57 and 69, *id.* §§ 2077, 2099, rather than AEA §§ 103, 104, or 193(f), *id.* §§ 2133, 2134, 2243(f). *See* 74 Fed. Reg. at 38,058 (CLI-09-15, 70 NRC at 19). The principal difference between those two respective sets of provisions (i.e., AEA §§ 57 and 69 v. AEA §§ 103, 104, and 193(f)) is that while both prohibit the Commission from granting a license that would be “inimical to the common defense and security or the health and safety of the public,” only under the latter would the Commission be prohibited from granting a license “if the Commission knows or has reason to believe [the applicant] is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” *Compare* 42 U.S.C. § 2099 *with id.* § 2133(d). Therefore, in a proceeding for the licensing of a uranium enrichment facility the agency may deny the applicant a license based on foreign ownership, control, or domination concerns to the extent it concludes granting such a license would be inimical to the common defense and security or the health and safety of the public. *See Crowe Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 571 (2009) (materials license regulations contain no express prohibition on foreign ownership, but require Staff to make a finding that license issuance will not be inimical to the common defense and security or the health and safety of the public).
- M The Commission implemented AEA §§ 57 and 69 in 10 C.F.R. § 70.31(d) and 10 C.F.R. § 40.32(d), respectively. *See* 74 Fed. Reg. at 38,058 (CLI-09-15, 70 NRC at 19). In both regulatory sections, the pertinent language tracks the statutory language identically, i.e., “inimical to the common defense and security or the health and safety of the public.”
- N The Commission implemented AEA §§ 103, 104, and 193(f) in various regulations, including 10 C.F.R. § 40.38(a) (relating to the United States Enrichment Corporation (USEC)), 10 C.F.R. § 50.38 (concerning nuclear power reactors), and 10 C.F.R. § 70.40 (also relating to USEC), in which the pertinent language again tracks the statutory language identically. While sections 40.38(a) and 70.40 do apply to enrichment facility licensee USEC, their application is limited to USEC alone, so that they have no relevance to any other enrichment facility applicant.
- O For power reactors, in implementing these regulations the agency developed a Commission-approved SRP to assist in evaluating applications for reactor licenses or applications for the transfer of such licenses. *See* Final [SRP] on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355, 52,355 (Sept. 28, 1999). The SRP indicates that after conducting a threshold review, as supplemented by additional information, if the Staff concludes that “the applicant may be considered to be foreign owned, controlled, or dominated, or that additional action would be necessary to negate the foreign ownership, control, or domination,” the applicant “shall be promptly advised and requested to submit a negation action plan.” *Id.* at 52,359. The purpose of the negation action plan would be to implement measures that effectively negate or deny foreign control or domination. *See id.*
- P Relative to the issue of foreign ownership or control, the NRC also imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information. *See* 10 C.F.R. Part 95. Under 10 C.F.R. § 70.22(m), the application for a uranium enrichment facility is required to contain a description of the security program to protect against unauthorized disclosure of classified matter in accord with Part 95. And under Part 95, the applicant would be required, among other things, to complete the NRC facility security clearance process, which entails an NRC-approved classified matter plan, onsite inspections, and the granting of individual NRC personnel security clearances. A facility security clearance also requires a determination that granting the clearance “would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made.” 10 C.F.R. § 95.17(d)(1). Thus, for a uranium enrichment facility, foreign ownership or control is evaluated in the context of the facility security clearance process as well.
- Q Consistent with the Commission’s direction that foreign ownership and control concerns about a uranium enrichment facility application should be evaluated pursuant to AEA §§ 57 and 69, the pertinent analysis becomes whether granting a license to the facility would be “inimical to the common defense and security or the health and safety of the public.” 74 Fed. Reg. at 38,058 (CLI-09-15, 70 NRC at 19).

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At the same time, Commission regulations require a uranium enrichment facility applicant to obtain a facility security clearance, which would include a determination that granting the clearance “would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made.” 10 C.F.R. §95.17. Thus, for a uranium enrichment facility, foreign ownership and control also are evaluated by way of the facility clearance process.

- R As was noted in the Commission’s recent staff requirements memorandum regarding the procedures the Commission will employ in conducting the mandatory hearings associated with the 10 C.F.R. Part 52 combined license proceedings for new reactors, a principal focus of the Commission will be upon “non-routine matters.” Memorandum from Annette L. Vietti-Cook, NRC Secretary, to Stephen G. Burns, NRC General Counsel, and Brooke Poole, Director, NRC Office of Commission Appellate Adjudication at unnumbered p. 2 (Dec. 23, 2010) (ADAMS Accession No. ML103570203). Almost by definition, license conditions imposed on an applicant as a result of the Staff’s review process and applicant-requested exemptions from agency regulatory requirements that are granted by the Staff have a strong potential to fall into such a “non-routine matter” category. Indeed, these items have been the subject of scrutiny in a variety of other mandatory hearing contexts. *See, e.g., Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC 433 (2009), *Commission review declined*, Memorandum from Annette L. Vietti-Cook, NRC Secretary, to Board and Parties (Jan. 4, 2010) (ADAMS Accession No. ML100040233); *USEC Inc.* (American Centrifuge Plant), LBP-07-6, 65 NRC 429 (2007), *Commission review declined*, Letter from Annette L. Vietti-Cook, NRC Secretary, to Geoffrey Sea (June 11, 2007) (ADAMS Accession No. ML071620395).
- S Under Parts 70, 40, and 30, which provide the regulatory basis for the licensing of the different types of nuclear materials utilized in the operation of the EREF, the agency is permitted in issuing a license to impose such additional conditions, requirements, and limitations as may have been necessary to effectuate the purposes of the AEA and the agency’s regulations. *See* 10 C.F.R. §§ 30.34(e), 40.41(e), 70.31(a), (b)(2). Regarding the Staff’s evaluation findings concerning a particular application, in its fuel cycle facility SRP guidance the Staff notes that it may “recommend license conditions to address any issues that were not previously resolved by an applicant’s commitments. Such conditions are discussed with an applicant before issuing the license (or license amendment) and become commitments to performance in addition to those commitments that the applicant presented in the application.” Revised Staff Fuel Cycle SRP at 7.
- T Additionally, Parts 30, 40, and 70 provide for exemptions to their requirements, with each containing a provision stating that the agency may grant exemptions to the requirements imposed by that part if the agency determines such an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. *See* 10 C.F.R. §§ 30.11(a), 40.14(a), 70.17(a). According to the Staff’s SRP guidance for fuel cycle facilities, an applicant seeking an exemption should “clearly describe[] any exemptions or authorizations of an unusual nature and adequately justify[] them for the NRC’s consideration.” Revised Staff Fuel Cycle SRP at 1-7.
- U Several of the license conditions imposed on an applicant appear to be in the nature of standard directives that could be incorporated into the rules that govern Part 70 applicants and licensees. Nonetheless, given that the choice between rulemaking and adjudication (i.e., issuing orders or other license revisions) is within the agency’s discretion, *see Private Fuel Storage, LLC*. (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 474 (2001), this ultimately is a matter of efficiency for the Staff to determine.
- V Under sections 40.41(g) and 70.32(k) of the NRC’s regulations, a uranium enrichment facility cannot be operated until the agency verifies through inspection that the facility has been constructed in accordance with the license. As a consequence, an inspection manual chapter (IMC) is developed for the facility that defines the construction inspection program (CIP) intended to (1) provide reasonable assurance that the design, construction, and implementation of IROFS will protect against natural phenomena and the consequences of potential accidents; (2) verify the quality assurance program was adequately implemented during construction; and (3) verify that the construction of the IROFS was completed in accordance with the documents comprising the license application, including the applicant’s safety analysis report (SAR) and the ISAS, and the Staff’s safety evaluation report (SER). The CIP applies to all construction activities, including design, procurement, fabrication, construction, and preoperational testing activities. *See* NMSS, NRC, NRC IMC 2696, LES Gas Centrifuge Facility Construction and Pre-operational Readiness Review

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Inspection Programs (Oct. 19, 2006).

- W An applicant's commitment as part of the license review process to undertake certain actions to satisfy the Staff's technical or other safety-related concerns, and a license condition imposed by the Staff to require that an applicant take certain actions deemed necessary to protect the public health and safety, are important aspects of the licensing process. Both are intended to address matters that fall outside the specific coverage of the requirements of Parts 30, 40, and 70 that implement the AEA mandate to protect the public health and safety. As a consequence, ensuring that each commitment or condition is tracked by the Staff and is the subject of appropriate followup to assure the applicant does what it committed or is required to do is a hallmark of an effective regulatory process.
- X The following technical issues are discussed: Availability of IROFS Boundary Information for Preoperational Inspections; Axial Volcanic Zone; Construction Inspection Program; Decommissioning/Decontamination (Financial Assurance); Emergency Response Preparedness Training Frequency; Financial Qualifications (Construction Funding Availability); Fire Protection Measures; Foreign Ownership and Control; IROFS Commercial Grade Component Designation; IROFS Relating to Human Factors Engineering; IROFS Relating to Digital Instrumentation and Controls; Information Security; Loss of Offsite Power; Nuclear Criticality Safety Manager Qualifications; Nuclear Liability Insurance; Preconstruction Activities; Preconstruction Radiation Survey; Probabilistic Seismic Hazard Assessment; Probabilistic Volcanic Hazard Analysis; Site-Specific Process-Related Hazards (Uranium Enrichment Facility); Source Material Control and Accounting Program Changes; Volcanic Hazards; Wildfires.
- LBP-11-12 PA'INA HAWAII, LLC, Docket No. 30-36974-ML (ASLBP No. 06-843-01-ML); MATERIALS LICENSE; April 22, 2011; MEMORANDUM AND ORDER (Terminating Proceeding)
- A The Licensing Board grants the NRC Staff's unopposed motion to terminate the proceeding.
- LBP-11-13 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR (ASLBP No. 11-907-01-LR-BD01); LICENSE RENEWAL; April 26, 2011; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for Hearing)
- A This 10 C.F.R. Part 54 proceeding concerns the application of FirstEnergy Nuclear Operating Company to renew the operating license for Davis-Besse Nuclear Power Station, Unit 1, located on the southwestern shore of Lake Erie in Ottawa County in northwestern Ohio. Four organizations petitioned to intervene and requested a hearing: Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio. Having determined that each of the petitioning organizations demonstrated standing and they collectively proffered at least one contention that is admissible, in whole or in part, under 10 C.F.R. § 2.309(f)(1), the Board grants the petition and admits the Petitioners as a party.
- B Any person or organization seeking to intervene as a party in an NRC adjudicatory proceeding addressing a proposed licensing action must: (1) establish standing; and (2) proffer at least one admissible contention. 10 C.F.R. § 2.309(a).
- C While the petition itself — complete with active embedded links to most of the exhibits — the standing declarations, and eight exhibits were submitted before the deadline, nearly seventy more exhibits were filed overnight and into the next day. Because the *pro se* first-time filer experienced problems with the E-Filing system, the Board concludes the Petitioners' efforts demonstrate the requisite good cause for acceptance of the nontimely exhibits for consideration with the timely filed petition.
- D When an organization seeks to intervene in a representative capacity on behalf of its members' interests, it must: (1) show that the interests it seeks to protect are germane to its own purpose; (2) identify, by name and address, *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293 (2000), at least one member who qualifies for standing in his or her own right; and (3) show that it is authorized by that member to request a hearing on his or her behalf. *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007).
- E The NRC generally applies traditional judicial standing concepts, which require a showing that the individual has suffered or might suffer a concrete and particularized injury that is (1) fairly traceable to the challenged action; (2) likely redressible by a favorable decision, *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)); and (3) arguably within the zone of interests protected by the governing statutes, *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996) (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21,

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38 NRC 87, 92 (1993)), *e.g.*, the Atomic Energy Act (AEA), 42 U.S.C. §§ 2011-2297, and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347.

F In reactor license renewal cases, petitioners are entitled to invoke the proximity presumption, which excuses the need to show an injury “if a petitioner (or a representative of a petitioner organization) resides within *approximately* 50 miles of the facility in question” or “has frequent contacts with” this geographic zone of potential harm. *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009) (emphasis added). This presumption’s rationale is that “persons living within the *roughly* 50-mile radius of the facility ‘face a realistic threat of harm’ if a release from the facility of radioactive material were to occur.” *Id.* at 917 (quoting *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 183 (2009)) (emphasis added).

G A “duly authorized member or officer” may represent his or her “partnership, corporation, or unincorporated association” even if he or she is not an attorney at law, but the representative’s notice of appearance must state “the basis of his or her authority to act on behalf of the party.” 10 C.F.R. § 2.314(b).

H Although a member should have demonstrated that his organization authorized him to represent it *pro se*, subsequent notice of appearance by an attorney cured any possible deficiency in representation.

I An individual may not intervene in his or her own right while simultaneously being represented by another petitioner in the same proceeding. *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 390 (2010).

J An admissible contention must: (i) provide a specific statement of the issue of law or fact to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the proceeding’s scope; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (vi) show that a genuine dispute exists on a material issue of law or fact by referring to specific portions of the application that the petitioner disputes or, if the application is alleged to be deficient, by identifying such deficiencies and the supporting reasons for this allegation. 10 C.F.R. § 2.309(f)(1)(i)-(vi).

K To be evaluated in depth as a reasonable alternative to license renewal, an alternative must be available now or in the near future and in any event no later than the expiration date of the current license.

L Any argument about the need for power from the nuclear power plant during the license renewal period is outside the scope of the license renewal proceeding and inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) because it challenges 10 C.F.R. § 51.53(c)(2), which states that a license renewal ER “is not required to include discussion of need for power.”

M Having claimed that interconnectedness and energy storage allow wind and solar power to provide baseload power and having proffered expert support and specific references to support this claim, petitioners have pled an admissible contention concerning reasonable alternatives to the relicensing application.

N Challenge to the agency regulation codifying the Commission’s determination that, for any license renewal of a nuclear power plant, the probability-weighted consequences of a severe accident are small, 10 C.F.R. Part 51, Subpart A, App. B, tbl. B-1, is outside the scope of the license renewal proceeding.

O Because Petitioners have not obtained a waiver or exception to the regulations that, for all plants, onsite dry or pool storage can “safely accommodate” spent fuel accumulated from a 20-year license extension with “small environmental effects,” 10 C.F.R. Part 51, Subpart A, App. B, tbl. B-1, and “additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation,” *see id.* tbl. B-1 n.2, their challenge is outside the scope of the license renewal proceeding.

P Intentional malevolent acts, such as sabotage and terrorism, are not material to the SAMA findings the NRC must make in deciding whether to extend a commercial power reactor license.

Q Because the petitioners do not explain how the cost of a severe accident could have been underestimated due to the MACCS2 code’s conservative assumption that decontaminating farmlands by fire hosing and plowing would not reduce ingestion doses, their criticism of these decontamination methods does not dispute the application.

R For SAMA contentions, the materiality standard requires only that petitioners “provide sufficient information to show that, if their proposed refinements were incorporated, it is ‘genuinely plausible’ that cost-benefit conclusions might change.” *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28, 62 (2011)).

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- LBP-11-14 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; May 20, 2010; MEMORANDUM AND ORDER (Denying Motions for Summary Disposition of Contentions 6 and 8; Denying in Part and Granting in Part Motion to Strike)
- A The environmental report's ("ER's") adequacy is examined under the National Environmental Protection Act ("NEPA"), as well as under Part 51, because the ER is the basis upon which the NRC's Environmental Impact Statement ("EIS") for Fermi Unit 3 will be prepared. The ER must therefore contain a sufficient analysis of potential environmental consequences and alternatives to enable the NRC Staff to prepare an EIS that fulfills the agency's obligations under NEPA.
- B The scientific reports on which intervenors rely are hearsay under the rules of evidence; that is, they are out-of-court statements offered to prove the truth of the matter asserted. Fed. R. Evid. 801(c). The Board is not precluded, however, from considering these documents despite their hearsay nature. 10 C.F.R. § 2.319(d) ("In proceedings under this part, strict rules of evidence do not apply to written submissions."). Even though the Board is not precluded from considering hearsay, under section 2.319(d) it may on motion or on its own initiative strike any portion of a written presentation that is unreliable.
- C The Board recognizes that NEPA is a procedural statute. Thus, "[i]f the adverse environmental impacts of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." Accordingly, NEPA does not require that Applicant or the NRC Staff eliminate adverse impacts of the proposed action. Instead, NEPA requires sufficient public disclosure of environmental consequences and a rigorous exploration of reasonable alternatives to the proposed action.
- D The Commission's rule that the scope of an admitted contention is determined by "the bases set forth in support of the contention" means that a contention's scope is bounded by the "brief explanation of the basis for the contention" required by 10 C.F.R. § 2.309(f)(1)(ii). As long as the facts now relied on by intervenors in opposition to the summary disposition motion fall within the scope of that explanation, they are properly before the Board. No more is required because a petitioner does not have to set forth all of its factual evidence at the admissibility stage.
- LBP-11-15 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; June 29, 2011; MEMORANDUM AND ORDER (Denying CASE's Motion to Admit Newly Proffered Contentions)
- A To be admissible, a newly proffered contention must satisfy: (1) either the timeliness standards in 10 C.F.R. § 2.309(f)(2) *or* the standards in 10 C.F.R. § 2.309(c)(1) for newly proffered nontimely contentions; *and* (2) the contention admissibility standards in 10 C.F.R. § 2.309(f)(1).
- B A newly proffered contention that does not satisfy the timeliness requirements of section 2.309(f)(2) may still be considered for admission if it satisfies section 2.309(c)(1).
- C Under NRC regulations, a power reactor's emergency plan must contain and describe "[a]dequate provisions . . . for emergency facilities and equipment, including . . . [a]t least one onsite and one offsite communications system; each system shall have a backup power source." 10 C.F.R. Part 50, App. E, § IV.E.9.
- D Pursuant to 10 C.F.R. § 50.47(b)(10), a COL application must include an Emergency Plan that contains, in the event of a reactor emergency resulting in a radiological release, "[a] range of protective actions . . . for the public [located within about a 10-mile radius from the plant]. In developing this range of actions, consideration [will be] given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide (KI), as appropriate." 10 C.F.R. § 50.47(b)(10). Section 50.47(b)(10) thus requires an Emergency Plan to have "[a] range of protective actions" for persons within about a 10-mile radius (*id.*), and it also requires that "[g]uidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place . . ." *Id.* This regulation, on its face, eschews an inflexible "one size fits all" approach to planning for radiological emergencies.
- E NRC regulations provide for two emergency planning zones (EPZs) around nuclear power plants in the event of a nuclear accident: (1) the plume exposure pathway EPZ, which consists of an area about 10 miles in radius around a plant, the principal concern of which is radiation exposure to the public (whole-body external exposure and inhalation exposure) from a radioactive plume; and (2) the ingestion exposure pathway EPZ, which consists of an area about 50 miles in radius around a plant, the principal concern of which is ingestion of contaminated water or foods (e.g., milk or fresh vegetables). *See* 10 C.F.R.

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§ 50.47(c)(2); *id.*, Part 50, App. E; *cf.* 44 C.F.R. § 350.2(g)-(i) (defining plume and ingestion exposure pathway EPZs for federal emergency management purposes).

F The equal protection component of the Fifth Amendment’s Due Process Clause applies to *federal* action, while the Equal Protection Clause of the Fourteenth Amendment applies to *state* action. *See Schweiker v. Wilson*, 450 U.S. 221, 226 & n.6 (1981). As relevant here, equal protection principles require “that all persons similarly situated shall be treated alike.” *Nguyen v. Immigration and Naturalization Service*, 533 U.S. 53, 63 (2001) (quoting *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985)).

G During a nuclear emergency in the United States, the individual licensee and the appropriate state and local government officials have direct responsibilities for the coordinated response to the event. *See* 10 C.F.R. Part 50, App. E, § IV.A. The NRC — in its capacity as the federal agency charged with regulating the nuclear industry in a manner that protects public health and safety (Atomic Energy Act, 42 U.S.C. § 2232(a); 10 C.F.R. § 1.11(b)) — monitors the emergency (10 C.F.R. Part 50, App. E, § VI) and is available to provide recommendations for emergency actions to either the licensee or local government officials, including a recommendation for a more extensive evacuation area as warranted by actual circumstances.

LBP-11-16 EXELON NUCLEAR TEXAS HOLDINGS, LLC (Victoria County Station Site), Docket No. 52-042 (ASLBP No. 11-908-01-ESP-BD01); EARLY SITE PERMIT; June 30, 2011; MEMORANDUM AND ORDER (Rulings on Standing, Contention Admissibility, and Selection of Hearing Procedures)

A In this Memorandum and Order, the Board addresses Texans for a Sound Energy Policy’s (TSEP or Petitioner) petition to intervene and request for hearing challenging the environmental report and site safety analysis report filed by Exelon Nuclear Texas Holdings, LLC (Exelon or Applicant) regarding the early site permit for one or more nuclear power reactors at the Victoria County Station site. After finding that TSEP does have standing and admitting TSEP as a party in the proceeding, the Board admits eight contentions, in part or in whole, for further adjudication.

B Under the 10 C.F.R. Part 52, Subpart A, licensing process, an entity may apply for an early site permit authorizing it to resolve key site-related environmental, safety, and emergency planning issues before selecting the design of a nuclear power facility for the subject site.

C In cases involving the possible construction or operation of a nuclear power reactor, the NRC considers proximity to the proposed facility to be sufficient to establish standing. This “proximity presumption” applies when an individual or organization, or an individual authorizing an organization to represent his/her interests, seeks to establish its representational standing, resides within 50 miles of the proposed facility, or has “frequent contacts” with the area affected by the proposed facility.

D To demonstrate representational standing, the petitioner must show that at least one of its members would be affected by the proceeding and must identify that member by name and address. Further, the organization must show that the member would have standing to intervene in his/her own right and that the identified members have authorized the organization to request a hearing on their behalves. To determine if these elements are met, the petition is construed in favor of the petitioner.

E To become a party in an adjudicatory proceeding, a petitioner must submit at least one admissible contention. A contention must satisfy six criteria to be admissible in a given adjudicatory proceeding: It must (1) provide a specific statement of the issue of law or fact to be raised or controverted; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised in the contention is within the scope of the proceeding; (4) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged fact or expert opinions which support the petitioner’s position on the issue and on which the petitioner intends to rely, together with references to the specific sources and documents on which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including either references to specific portions of the application that the petitioner disputes, or where the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.

F The petitioner’s supporting information may be viewed in a light most favorable to the petitioner, but the petitioner is required to supply all of the required elements for a valid intervention petition. Mere notice pleading is insufficient.

G A petitioner need not prove its contentions at the admissibility stage, as boards do not adjudicate disputed facts at this juncture. The factual support required for an admissible contention need not be of

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the quality necessary to withstand a summary disposition motion, but need only demonstrate that material facts are in dispute.

- H Absent a waiver, contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications.
- I To the extent growth faults constitute a mechanism of nontectonic deformation, the agency's siting criteria in 10 C.F.R. § 100.23(d) require their analysis in an early site permit application.
- J Even though this plant's cooling pond is not a safety-related structure under paragraph VI(b)(3) to Appendix A of 10 C.F.R. Part 100, Appendix A nevertheless requires knowledge of the faulting under the pool and the impact this faulting might have on the pool's operation.
- K Under 10 C.F.R. § 52.17, an applicant need not submit information regarding control room habitability and ventilation system design in the site safety analysis report portion of an early site permit application.
- L A contention claiming that the application insufficiently addresses the safety implications of low water availability is inadmissible for failure to raise a genuine dispute with the application because the contention does not provide specific references to relevant sections of the site safety analysis report that address low water considerations.
- M To show that it is within the realm of reason that the federal government may assert an implied water right, which would obligate an applicant to address this hypothetical scenario in its environmental report under 10 C.F.R. § 51.45, a petitioner must provide some indicia of an attempt, plan, or intention that the federal government will assert this hypothetical water right.
- N Climate change is considered an environmental impact that must be addressed, when applicable, to satisfy Commission regulations in 10 C.F.R. § 51.45.
- O A contention that alleges an omission, not an inadequacy, of an environmental report's analysis of socioeconomic impacts raises an issue that is not material to any finding the NRC must make in this early site permit proceeding and so is outside the scope of the proceeding because (1) 10 C.F.R. § 51.50(b)(2) states that the environmental report section of an early site permit application need not include an assessment of the economic, technical, or other benefits and costs of the proposed action and (2) 10 C.F.R. § 51.105(b) provides that the presiding officer in any early site permit hearing shall not admit contentions concerning the benefits assessment if the applicant does not address those issues in the early site permit application.
- P Applicants must evaluate alternative sites to determine whether there is any obviously superior alternative to the site proposed. The alternatives analysis is the "heart" of the environmental impacts analysis.
- Q A contention challenging the Waste Confidence Rule may not be admitted absent a waiver or exception. A ubiquitous issue that clearly applies to a large class of people or facilities is ineligible for a waiver.
- R Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot.
- LBP-11-17 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR (ASLBP No. 07-858-03-LR-BD01); LICENSE RENEWAL; July 14, 2011; MEMORANDUM AND ORDER (Ruling on Motion and Cross-Motions for Summary Disposition of NYS-35/36)
- A Summary disposition of a contention is appropriate when there no longer exists any genuine dispute over a material fact and the moving party is entitled to judgment as a matter of law. Section 2.1205(c) of 10 C.F.R. (directing that, in a proceeding governed by Subpart L, the Board is to apply the standards of Subpart G when ruling on motions for summary disposition); *id.* § 2.710(d)(2) (permitting a motion for summary disposition to be granted in a proceeding governed by Subpart G "if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.").
- B To evaluate a license renewal application for a nuclear power reactor, the NRC reviews (1) the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54, in which the NRC addresses its obligations under the Atomic Energy Act, and (2) the environmental impacts and alternatives to the proposed action in accordance with 10 C.F.R. Part 51, in which the NRC addresses its obligations under NEPA. 10 C.F.R. §§ 51.10(a) (declaring that the regulations in 10 C.F.R. Part 51 implement NEPA),

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54.29(a)-(b) (outlining the scope of reactor operating license renewal reviews); *see also* LBP-08-13, 68 NRC 43, 66 (2008) (citations omitted).

C The “aging-based safety review” set out in Part 54 is analytically separate from Part 51’s environmental inquiry and “does not in any sense ‘restrict NEPA.’” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 13 (2001) (citations omitted). Accordingly, the NEPA review in license renewal proceedings, which is conducted pursuant to Part 51, is not limited to aging management related issues. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 288 (2010).

D The Commission’s Part 51 regulations, which implement NEPA in NRC proceedings, classify the environmental impacts of license renewal as either Category 1 impacts, which are generically addressed by the NRC’s Generic Environmental Impact Statement for License Renewal, or Category 2 impacts, which are analyzed on a site-specific basis.

E Where the Staff has not already considered site-specific severe accident mitigation alternatives (SAMAs) for a facility, alternatives to mitigate severe accidents must be considered as part of an applicant’s Environmental Report (ER) and, ultimately, as part of the NRC Staff’s supplemental EIS in a power reactor license renewal proceeding. 10 C.F.R. § 51.53(c)(3)(ii)(L); *id.* Part 51, Subpart A, App. B, tbl. B-1. SAMA review identifies and assesses possible plant changes — such as improvements in hardware, training, or procedures — that could cost-effectively mitigate the environmental impacts that would otherwise flow from a potential severe accident. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 5 (2002).

F The sufficiency of the NRC’s hard look at the benefits of SAMAs in comparison to their costs is subject to litigation in a license renewal proceeding. LBP-10-13, 71 NRC at 679 n.17 (2010) (citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989))).

G While a license renewal applicant is compelled to implement those safety SAMAs that deal with aging management, LBP-10-13, 71 NRC 673, 679 & n.18 (2010) (citing *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 293-94 n.26 (2010)), the Staff’s obligations under Part 51 and NEPA are not limited to only those SAMAs that address aging management.

H The NRC Staff is bound to take a hard look, consistent with NEPA and the APA, at all SAMAs (both aging-related and non-aging-related) before deciding whether to grant a license renewal application. *Cf. Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976) (“The only role for a court is to insure that the agency has taken a ‘hard look’ at environmental consequences.”); *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-05-8, 61 NRC 202, 207 (2005) (citations omitted) (“NEPA . . . imposes a procedural requirement on an agency’s decision-making process by mandating that an agency consider the environmental impacts of a proposed action and inform the public that it has taken those impacts into account in making its decision. In other words, an agency must take a ‘hard look’ at the environmental consequences of a proposed action before taking that action.”).

I The NRC Staff has the authority to require implementation of non-aging management SAMAs through its current licensing basis (CLB) backfit review under Part 50 or through setting conditions of the license renewal. LBP-10-13, 71 NRC at 679 & n.19 (2010) (citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 388 n.77 (2002); 10 C.F.R. § 50.109(a)(3) (“[T]he Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.”)).

J A federal agency, such as the NRC, would be acting arbitrarily and capriciously if it did not look at relevant data and sufficiently explain a rational nexus between the facts found in its review and the choice it makes as a result of that review. *Shieldalloy Metallurgical Corp. v. NRC*, 624 F.3d 489, 492-93 (D.C. Cir. 2010) (citations omitted).

LBP-11-18 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; July 19, 2011; PARTIAL INITIAL DECISION (Rejecting, Upon Remand, Pilgrim Watch’s Challenge to Meteorological Modeling in SAMA Analysis in Entergy’s License Renewal Application)

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- A This proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. for renewal of the operating license for its Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. On remand, a majority of the Licensing Board concludes that accounting for the meteorological patterns, atmospheric transport modeling, and data issues raised by Intervenor Pilgrim Watch cannot credibly alter which severe accident mitigation alternatives are potentially cost-beneficial to implement.
- B The requirements of the National Environmental Policy Act (NEPA) as applied to severe accident mitigation alternatives (SAMA) analysis do not demand a fully developed plan or detailed examination of specific measures that will be employed to mitigate adverse environmental effects. SAMA analysis is neither a worst-case nor a best-case impacts analysis, and the agency's obligations under NEPA are tempered by a practical rule of reason.
- C Use of mean consequences in severe accident mitigation alternatives analysis is consistent with Commission policy and precedent, whereas the 95th percentile approach requested by Intervenor is akin to a worst-case scenario analysis — which is not required by the Commission.
- D The goal of a severe accident mitigation alternatives analysis is to identify potential changes to a nuclear power plant, or its operations, that might reduce the risk (the likelihood or the impact, or both) of a severe reactor accident for which the benefit of implementing the changes outweighs the cost of the implementation.
- E Based on uncontroverted evidence, the effects of the two meteorological patterns at issue, the “sea breeze” effect and the “hot spot” effect, must cause the expected average offsite damages to increase by at least a factor of two for the next most costly severe accident mitigation alternative to be cost-effective, i.e., to credibly alter the conclusions regarding which severe accident mitigation alternatives are cost-beneficial to implement. Uncontroverted expert testimony establishes that more accurate modeling of the meteorology would not result in differences approaching a factor of two for any particular meteorological condition, and therefore could not cause the computed resultant deposition of radioactive products released during any particular severe accident scenario to be in error by more than a factor of two.
- F The evidence before us indicates that more accurate meteorological modeling of the “hot spot” phenomenon cannot alter the severe accident mitigation alternatives cost-benefit analysis because (1) experts testified that the phenomenon is unsubstantiated and would not affect the severe accident mitigation alternatives cost-benefit conclusions if it did exist, (2) the Intervenor has not provided any scientific or technical support for its generalized assertions about “hot spots,” and (3) Intervenor's declarant's unsubstantiated assertion of the phenomenon's importance was made without his being qualified as an expert in meteorology.
- LBP-11-19 HONEYWELL INTERNATIONAL, INC. (Metropolis Works Uranium Conversion Facility), Docket No. 40-3392-MLA (ASLBP No. 11-910-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; July 27, 2011; MEMORANDUM AND ORDER (Granting Request for Hearing)
- A If the 20-day deadline for requesting a hearing in 10 C.F.R. § 2.103(b) applies, the Staff's failure to comply with its own responsibilities under that provision bars the Staff from invoking it. Having failed to notify Applicant of the regulatory deadline for requesting a hearing — as 10 C.F.R. § 2.103(b) requires — the Staff will not be heard to enforce it.
- B Where Applicant has raised sufficient question as to the appropriate deadline, the Board may conclude that it would be unfair to penalize Applicant on account of what might be ambiguity in the NRC's own regulations.
- LBP-11-20 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; August 11, 2011; MEMORANDUM AND ORDER (Denying Pilgrim Watch's Requests for Hearing on Certain New Contentions)
- A This proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. for renewal of the operating license for its Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. Between the time when the Commission remanded a limited issue to the Board and when the Board disposed of that issue, Intervenor Pilgrim Watch filed requests for hearing on five proposed new contentions. The first concerns agency responsibility for and regulation of accident cleanup, and the second and third challenge the aging management plan for non-environmentally qualified inaccessible cables. Addressing only the first three proposed new contentions in this order, a majority

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of the Licensing Board denies the requests for hearing because Intervenor did not address or meet the standards for reopening a closed evidentiary record.

B Intervenor's failure to address the reopening standards set out in 10 C.F.R. § 2.326 creates a yawning deficiency in its submissions because the evidentiary record in this Board hearing has been closed and the Board's jurisdiction in this remanded proceeding does not extend to, nor does the remand reopen, except for its narrow scope, any other aspect of this hearing or any other issue regarding the requested license renewal.

C The board cannot reconstruct the intervenor's pleadings to find that they might be interpreted to satisfy the requirements for reopening a closed evidentiary record where the intervenor itself has explicitly argued it need not, and explicitly elected not to attempt to do so, and the intervenor's arguments fail to supply the necessary substance.

D Arguments along the lines of the need to perform more conservative severe accident mitigation alternatives analysis, to use 95th percentile computations, and not to use a discount factor to evaluate the time effects of cleanup costs regard policy matters that are solely within the jurisdiction of the Commission and represent inadmissible challenges to binding Commission rulings regarding what is required in a severe accident mitigation alternatives analysis.

E Possible new information, from studies of the events at the Fukushima reactors, as to potential consequences of a severe accident at Applicant's nuclear power plant is simply irrelevant to any uncertainty that might exist regarding which agency has authority over cleanup after a severe accident in the United States. To the extent that such information might become a future basis for modifications of SAMA analysis standards, such speculation is outside the scope of this proceeding.

F The contention is inadmissible for its failure to satisfy the explicit and intentionally stringent requirements for reopening a record. When a motion to reopen is required, 10 C.F.R. § 2.326(b) requires an expert's affidavit to supply the factual and legal foundation for assertions that the reopening criteria are satisfied.

G For this contention to be admissible the "new" information must, in and of itself, be sufficient to support its admissibility because the proposed new contention's subject — inaccessible cables — was addressed in the Applicant's original license renewal application. The particular information notice upon which Intervenor relies as a foundation for its assertion that there is new information merely summarized information that was previously available which does not, therefore, present new information upon which a new contention can be based. Therefore, Intervenor's proposed new contention fails to satisfy 10 C.F.R. § 2.326(a)(1) and therefore is inadmissible.

H The subject of inaccessible cable inspection and maintenance was covered by aging management plans in Applicant's original license renewal application and any shortcomings of those plans were appropriate for contention at the time. Although Applicant later elected to enhance its existing aging management plan for non-environmentally qualified inaccessible medium-voltage cables, an enhancement to a program does not constitute new information sufficient to support a new contention.

LBP-11-21 SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY (South Texas Project, Units 1 and 2), Docket Nos. 50-498-LR, 50-499-LR (ASLBP No. 11-909-02-LR-BD01); LICENSE RENEWAL; August 26, 2011; MEMORANDUM AND ORDER (Ruling on Petition for Leave to Intervene and Request for Hearing)

A In this 10 C.F.R. Part 54 proceeding regarding the application of South Texas Project Nuclear Operating Company (STPNOC) for renewal of licenses authorizing operation of its two nuclear power reactors, STP Units 1 and 2, located near Wadsworth, Texas, ruling on a petition for leave to intervene and request for a hearing by the Sustainable Energy and Economic Development (SEED) Coalition, the Licensing Board denies the petition, finding the four proffered contentions inadmissible.

B License renewal applicants must file pursuant to the NRC's license renewal regulations, 10 C.F.R. Part 54. The general requirements regarding the contents of a license renewal application are set forth in 10 C.F.R. §§ 54.19-54.23. The environmental requirements regarding the contents of a license renewal application are set forth in 10 C.F.R. § 51.53(c). Additionally, in accordance with 10 C.F.R. § 51.95(c), the NRC Staff will prepare a Supplemental Environmental Impact Statement (SEIS) to the Commission's Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437. The standard for issuing the renewed license is set forth in 10 C.F.R. § 54.29.

C Under NRC regulations, a petitioner must demonstrate standing to intervene in a licensing process. 10 C.F.R. § 2.309(a). In general, a proper showing includes (1) the name, address, and telephone number

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of the petitioner; (2) the nature of the petitioner's right under a relevant statute to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order that might be issued in the proceeding on the petitioner's interest. *Id.* § 2.309(d)(1)(i)-(iv). In reactor license renewal proceedings, the Commission recognizes a proximity presumption, whereby a petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power facility. *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 & n.15 (2009); *see also Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

D If the petitioner is an organization seeking to intervene in an NRC proceeding in its own right, it must allege that the challenged action will cause a cognizable injury to its interests or to the interests of its members. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). Alternatively, when seeking to intervene in a representational capacity, as is the case here, an organization must identify at least one member who is affected by the licensing action and who qualifies for standing in his or her own right, and show that the member has authorized the organization to intervene on his or her behalf. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).

E A petitioner bears the burden of providing facts sufficient to establish its standing. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010).

F The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." *Id.* The Commission has emphasized that the rules on contention admissibility are "strict by design." *See, e.g., Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003). Further, absent a waiver, contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications. *See* 10 C.F.R. § 2.335(a). Failure to comply with any of these requirements precludes admission of a contention. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004).

G The license renewal process is not an open invitation for new, broad-scoped inquiries into compliance that are separate from and parallel to the Commission's day-to-day operational oversight duties. 56 Fed. Reg. at 64,952. The Commission has rejected many such broad-based conceptual inquiries as beyond the bounds of a license renewal proceeding: safety culture, operational history, quality assurance, quality control, management competence, human factors, and emergency planning. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC at 481, 491 (2010) (citing 56 Fed. Reg. at 64,959, 64,967-68); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001). To require a full reassessment of these issues during license renewal would be both unnecessary and wasteful. *Turkey Point*, CLI-01-17, 54 NRC at 7. Accordingly, the NRC's license renewal review focuses upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs.

H Section 50.54(hh)(2), which arose as a post-9/11 security regulation, requires licensees to develop guidance and strategies for addressing the loss of large areas of the plant due to explosions or fires from a beyond-design basis event. Power Reactor Security Requirements, 74 Fed. Reg. 13,926, 13,926, 13,957 (Mar. 27, 2009). Section 50.54(hh)(2) applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52. *Id.* at 13,957. Thus, section 50.54(hh)(2) focuses on preplanning for beyond-design basis events and applies to all nuclear facilities regardless of age; consequently, challenges to that provision are neither germane to age-related degradation nor unique to the license renewal period. *Cf. Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 561 (2005) (emergency planning contention).

I As with safety contentions, the NRC's regulations put limits on NEPA contentions in a license renewal proceeding. 10 C.F.R. § 2.309(f)(1)(iii). The ER for the operating license renewal stage need not contain environmental analysis of the "Category 1" issues identified in Appendix B to Subpart A of 10 C.F.R. Part 51. *Id.* § 51.53(c)(3)(i). Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. § 2.335, because they "involve environmental effects that are essentially similar for all plants [and] need not be assessed repeatedly on a site-specific basis." *Turkey*

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Point, CLI-01-17, 54 NRC at 11. But the ER must contain analyses of the environmental impacts of the proposed action for those matters identified as “Category 2” license renewal issues in Appendix B. 10 C.F.R. § 51.53(c)(3)(ii). The ER must also “contain a consideration of alternatives for reducing adverse impacts, as required by [10 C.F.R. § 51.45(c)], for all Category 2 license renewal issues in [Appendix B].” *Id.* § 51.53(c)(3)(iii). Finally, “[i]f the staff has not previously considered severe accident mitigation alternatives for the applicant’s plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided” in the ER. *Id.* § 51.53(c)(3)(ii)(L). Category 2 issues must be reviewed on a site-specific basis because they have not been determined to be “essentially similar” for all plants. 10 C.F.R. Part 51, Subpart A, App. B, n.2. Therefore, challenges relating to these issues are properly part of a license renewal proceeding.

- J The agency’s regulations require that an ER provide sufficient information about alternatives to enable the NRC Staff to prepare an Environmental Impact Statement in compliance with NEPA. *See* 10 C.F.R. § 51.45(b)(3). An ER that provides an incomplete or misleading picture of an alternative would fail in that essential purpose. *See Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (an EIS that contains an incomplete or misleading comparison of alternatives is deficient).
- LBP-11-22 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; September 1, 2011; MEMORANDUM AND ORDER (Denying Dominion’s Motion for Clarification of LBP-11-10)
- A Terminating an adjudication has significant implications for the rights of intervenors under AEA § 189a, which instructs the Commission to grant a hearing to and to admit as a party to any licensing proceeding “any person whose interest may be affected by the proceeding.”
- B Until the SER and Staff NEPA documents have been issued, a licensing board is generally prohibited from holding the hearing on the license application. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-17, 65 NRC 392, 395 (2007). In the interim, the intervenor may submit proposed new contentions based on new information. 10 C.F.R. § 2.309(f)(2). The filing of new contentions based on the SER and Staff NEPA documents is expressly contemplated by the Model Milestones in 10 C.F.R. Part 2, App. B.
- C The Board’s authority is not confined to a specific set of previously admitted contentions; rather, the Board’s delegated authority to provide the hearing mandated by AEA § 189a is sufficient to permit it to keep adjudication open to take account of the dynamic nature of the licensing process.
- D The proceeding before the Licensing Board will terminate when (1) the deadlines in the Board’s scheduling orders for filing new or amended contentions have expired and (2) the Board has resolved all contentions that were admitted or proposed before those deadlines expired.
- E Terminating this adjudication for lack of pending contentions would force the Intervenor to meet the stringent requirements for reopening the proceeding in order to propose new contentions based on information not currently available or that has only recently become available, and such action would thus be inconsistent with the agency’s obligation under AEA § 189a to provide a hearing at the Intervenor’s request on any issue material to the licensing decision.
- F A licensing board may exercise only the jurisdiction conferred upon it by the Commission. The Commission’s hearing notice defines both the nature of the proceeding and the Board’s jurisdiction over the proceeding. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985).
- G Where the hearing notice does not restrict the hearing to any particular set of issues, the hearing should be understood as encompassing all issues raised by a party to the licensing proceeding that may properly be litigated under AEA § 189a. The potential subject matter of the hearing includes all material issues that have a bearing on the licensing decision, which necessarily includes material issues based on new information in the SER and the required Staff NEPA document.
- H The plain language of 10 C.F.R. § 2.318(a) supports the conclusion that a licensing board does not lose its jurisdiction whenever there is no pending contention during some period of the lengthy and dynamic licensing process. Section 2.318(a) delineates three occasions that could trigger termination of the presiding officer’s jurisdiction: “when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is

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earliest.” The fact that the regulation sets forth three specific circumstances in which a board’s jurisdiction ends implies that jurisdiction does not end in other circumstances not listed.

- I Nothing in the regulations suggests that an intervenor loses its status as a party to the licensing proceeding or forfeits its right to a hearing whenever its admitted contention has become moot prior to the issuance of the SER and required Staff NEPA documents. Although intervenor status may only be granted to a petitioner if it proffers at least one admissible contention, and the intervenor must have at least one pending contention by the time of the evidentiary hearing, nothing in section 2.309 requires that throughout the course of the adjudicatory proceeding there must always be at least one contention pending before the board.
- LBP-11-23 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; September 8, 2011 (Corrected and Reissued December 13, 2011); MEMORANDUM AND ORDER (Corrected Version of September 8, 2011 Memorandum and Order Denying Pilgrim Watch’s Requests for Hearing on New Contentions Relating to Fukushima Accident)
 - A This proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. for renewal of the operating license for its Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. Between the time when the Commission remanded a limited issue to the Board and when the Board disposed of the remanded issue, Intervenor Pilgrim Watch filed several requests for hearing on proposed new contentions. In this Order, a majority of the Licensing Board denies two hearing requests that Pilgrim Watch filed after the accident at the Fukushima Daiichi Nuclear Power Plant in Japan.
 - B The standards for reopening apply not only when a party is seeking to introduce new evidence on a previously admitted contention after the evidentiary record is closed, but also when a party is seeking to introduce a new contention after the record is closed.
 - C The contention regards limitations and phenomena that were widely known, and should have been known to intervenor, at the outset of this proceeding, and thus could have been raised long ago, rendering it untimely now.
 - D Unsupported speculation that fresh analysis might lead the NRC to require additional mitigation measures simply does not rise to the level required to raise a significant safety issue or *a fortiori* an exceptionally grave issue.
 - E Because severe accident mitigation alternatives analysis is a cost-benefit analysis (which has no bearing on safety significance) and is not a direct safety analysis, it does not, and by its very nature cannot, raise any exceptionally grave issue.
 - F The standard for when an environmental issue is “significant” in the context of reopening a closed record is the same as the standard for when supplementation of an environmental impact statement is required; i.e., the new and significant information must paint a seriously different picture of the environmental landscape.
 - G Because intervenor does not provide an affidavit substantively addressing why a materially different result is likely, the contention fails to satisfy the regulatory requirement to demonstrate that a materially different result would have been likely in this proceeding. Bare unsupported assertions do not (and cannot) demonstrate that a materially different result would have been likely and thus will not support reopening.
 - H The contention is not supported by a concise statement of alleged fact or expert opinion. The intervenor’s assertion is not self-evident and is clearly of the class of statements that must be supported by expert opinion. The documents and statements intervenor submitted do not provide the requisite support, and also fail because neither sets out credentials showing that its author is an expert on the subject.
 - I The intervenor’s vague claim that it will rely on testimony from an expert witness and government documents does not provide the requisite concise statement of facts or expert support.
 - J A material issue means one where resolution of the dispute would make a difference in the outcome of the licensing proceeding.
 - K The contention is not timely because all of the information the intervenor asserts to be newly derived was analyzed in the original license renewal application and regards issues that have been widely recognized for many years.
 - L Matters challenging the design of the nuclear power plant are outside the scope of the license renewal proceeding.

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- M The absence of a competent affidavit, as required by 10 C.F.R. § 2.326(b), deprives the Licensing Board of the ability (even the opportunity) substantively to consider whether a materially different result would be obtained.
- LBP-11-24 U.S. DEPARTMENT OF ENERGY (High-Level Waste Repository), Docket No. 63-001-HLW (ASLBP No. 09-892-HLW-CAB04); CONSTRUCTION AUTHORIZATION; September 30, 2011; MEMORANDUM AND ORDER (Suspending Adjudicatory Proceeding)
- A In light of current fiscal constraints and consistent with the Commission’s Memorandum and Order of September 9, 2011, CLI-11-7, 74 NRC 212, the Board suspends the proceeding on the Department of Energy’s application for authorization to construct a national high-level nuclear waste repository at Yucca Mountain, Nevada.
- LBP-11-25 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; September 30, 2011; MEMORANDUM AND ORDER (Ruling on Admissibility of Intervenors’ New Foreign Control Contention)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of Nuclear Innovation North America LLC (NINA or Applicant) for combined licenses (COL) to construct and operate two new nuclear units, using the Advanced Boiling Water Reactor (ABWR) certified design, at its site in Matagorda County, Texas, ruling on a motion by Intervenors seeking to admit one new contention, alleging that statutory and regulatory prohibitions on foreign ownership, control, or domination (FOCD) forbid the licensing of the proposed facility, the Licensing Board grants Intervenors’ motion, admitting Contention FC-1.
- B According to Commission guidance, an entity is under foreign ownership, control, or domination “whenever a foreign interest has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.” Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355, 52,358 (Sept. 28, 1999), *cited with approval in Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 920 (2009). However, the Commission has cautioned that there is no specific ownership percentage above which it would conclusively find that an applicant is per se controlled by foreign interests. 64 Fed. Reg. at 52,358; *Calvert Cliffs*, CLI-09-20, 70 NRC at 920. Rather, foreign control “must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares.” 64 Fed. Reg. at 52,358; *Calvert Cliffs*, CLI-09-20, 70 NRC at 920-21.
- C Even substantial foreign funding or involvement — where “a foreign entity contributes 50%, or more, of the costs of constructing a reactor” or “participates in the project review” and is “consulted on policy and costs issues” — does not require a finding of foreign control, where safeguards ensure U.S. national defense and security. 64 Fed. Reg. at 52,358.
- D The Atomic Energy Act (AEA) and the Commission’s FOCD regulations prohibit licensees from being owned, controlled, or dominated by a foreign entity. Therefore, as a prospective licensee, an applicant must not be owned, controlled, or dominated by a foreign entity for it to obtain a license. That an applicant’s Combined License Application (COLA) parses duties under the license, envisioning that it would have sole authority to construct the proposed facility while a co-license applicant would have sole authority to operate the proposed facility, is simply an irrelevant distinction for claiming that one of the applicants should not be subject to a FOCD inquiry. Both are prospective licensees subject to the limitations on foreign ownership, control, or domination.
- E At the contention admissibility stage of a proceeding, Intervenors need not marshal their evidence as though preparing for an evidentiary hearing. *See, e.g., U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 416 (2009) (noting that requiring petitioners to proffer additional and conclusive support for the effect of their proposed contention “would improperly require . . . Boards to adjudicate the merits of contentions before admitting them”). Intervenors need only raise a genuine dispute as to the COLA, e.g., the effectiveness of the negation action plan at combating unlawful foreign ownership, control, or domination.
- LBP-11-26 AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility), Docket No. 70-7015-ML (ASLBP No. 10-899-02-ML-BD01); MATERIALS LICENSE; October 7, 2011; SECOND AND FINAL PARTIAL INITIAL DECISION (Uncontested/Mandatory Hearing on Environmental Matters)
- A In this 10 C.F.R. Part 70 proceeding regarding the application of AREVA Enrichment Services, LLC (AES) for authorization to possess and use source, byproduct, and special nuclear material to

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enrich natural uranium by the gas centrifuge process at its planned Bonneville County, Idaho Eagle Rock Enrichment Facility (EREF), the Licensing Board provides its findings and conclusions concerning uncontested National Environmental Policy Act (NEPA)/environmental-related matters, concluding, *inter alia*, that (1) the application and record of the proceeding, including the NRC Staff's environmental impact statement (EIS), contain sufficient information to support license issuance; (2) the review conducted by the Staff pursuant to 10 C.F.R. Part 51 has been adequate; and (3) after independently weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, the license requested under the AES application at issue in this proceeding should be issued.

- B Atomic Energy Act (AEA) § 274c(1), 42 U.S.C. § 2021(c)(1), gives the NRC a clear statutory mandate to regulate the construction and operation of a uranium enrichment facility. *See* LBP-11-11, 73 NRC 455, 474 (2011). Further, AEA §§ 53 and 63, 42 U.S.C. §§ 2073, 2093, which concern special nuclear material and byproduct material, provide the general statutory basis under which the NRC has adopted the variety of regulations that govern a proposed enrichment facility's construction and operation. Finally, AEA §§ 189a and 193, *id.* §§ 2239a, 2243, provide the statutory footing for the procedural precepts that apply to a uranium enrichment facility licensing action, including the need for (1) the NRC to conduct only a single licensing action and adjudicatory proceeding to authorize the construction and operation of a uranium enrichment facility; and (2) a mandatory hearing regarding the application and the Staff's associated safety and environmental reviews, despite the absence of a petitioner seeking to interpose a challenge to the applicant's request for such a single license.
- C Part 70 of Title 10 of the *Code of Federal Regulations* establishes the basic regulatory framework that governs the licensing of an entity to construct and operate an enrichment facility. Nonetheless, a number of other rules and regulations in 10 C.F.R. Chapter I, including Parts 19, 20, 21, 25, 30, 40, 71, 73, 74, 95, 140, 170, 171, and the agency's NEPA regulations in Part 51, are applicable to licensing a facility to receive, possess, use, transfer, deliver, and process byproduct, source, and special nuclear material in the quantities necessary to conduct the activities contemplated at a uranium enrichment facility. *See* LBP-11-11, 73 NRC at 474-75.
- D With regard to a licensing board's responsibilities in the context of a mandatory hearing, a board is to "conduct a simple 'sufficiency' review" rather than a *de novo* review on both AEA and NEPA issues. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005). Thus, boards "should decide simply whether the safety and environmental record is sufficient to support license issuance. In other words, the boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact." *Id.* There is, however, a caveat in that boards are instructed to make independent environmental judgments with respect to certain NEPA findings, though even then they "need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities." *Id.* at 44; *see also Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 559-60 (2007). The board's role thus is to "carefully probe [Staff] findings by asking appropriate questions and by requiring supplemental information when necessary," but "the NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient." *Clinton ESP*, CLI-05-17, 62 NRC at 39-40.
- E In a mandatory hearing for the licensing of a uranium enrichment facility, a licensing board "must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance." *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006).
- F The NEPA findings associated with a mandatory hearing require the licensing board to (1) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Subpart A of 10 C.F.R. Part 51 have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values. *See* Licensing Board Initial Scheduling Order (May 19, 2010), Attach. A, at 9 (unpublished) [hereinafter Initial Scheduling Order]. Additionally, the Commission has directed that if a proceeding is not a contested proceeding, i.e., the

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proceeding is an uncontested/mandatory hearing rather than one in which a petitioner seeks to challenge the AES application in accord with the procedures specified in 10 C.F.R. Part 2, Subpart C, then in connection with environmental matters the licensing board is to determine whether (1) the application and record of the proceeding contain sufficient information to support license issuance; (2) the Staff's review of the application has been adequate to support findings to be made by the Office of Nuclear Materials Safety and Safeguards (NMSS) Director with respect to whether (a) the application satisfies the standards set forth in the Commission's hearing notice and the applicable standards in 10 C.F.R. Parts 30, 40, and 70, and (b) the requirements of NEPA and the agency's implementing regulations in Part 51 have been met; and (3) the review conducted by the Staff pursuant to 10 C.F.R. Part 51 has been adequate. *See* Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility), 74 Fed. Reg. 38,052, 38,053-54 (July 30, 2009) (CLI-09-15, 70 NRC 1, 7 (2009)); *see also* Initial Scheduling Order, Attach. A, at 9.

G As part of its NEPA analysis, the agency must provide information that addresses the purpose and need for the proposed action. *See* 10 C.F.R. Part 51, App. A, § 4.

H Staff materials licensing-related guidance regarding the preparation of the purpose and need analysis in the applicant's environmental report (ER) and the Staff's EIS state that the Applicant and Staff treatment of this subject should explain "why the proposed action is needed," going on to indicate that the discussions should describe "the underlying need for the proposed action and should not be written merely as a justification of the proposed action, nor to alter the choice of alternatives. . . . Examples of need include a benefit provided if the proposed action is granted or descriptions of the detriment that will be experienced without approval of the proposed action. In short, the need describes what will be accomplished as a result of the proposed action." Exh. NRC000189, at 5-2, 6-1 (NMSS, NRC, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, NUREG-1748 (Aug. 2003)).

I In the context of the agency's NEPA-related review of the need for a uranium enrichment facility, several factors ultimately sustain a finding of "need" for the facility. The first supporting element is the need to ensure the continued availability of diverse, reliable sources of domestic enrichment services to provide low-enriched uranium for domestic power reactors. The importance of this general principle has been recognized in previous licensing proceedings. *See USEC Inc.* (American Centrifuge Plant), LBP-07-6, 65 NRC 429, 473 (2007); *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 443, *petition for review denied*, CLI-05-28, 62 NRC 721, 726 (2005).

J Another factor bolstering the need for a facility is the recognized "margin level" that exists in the existing enrichment market to offset potential supply problems as well as maintain a level of reasonable market competition.

K Support for the need for a facility also comes from the current status of industry commitments for the proposed facility's enrichment services. Evidence of significant actual utility commitments provides a compelling showing in support of the need for an enrichment facility. *See LES*, LBP-05-13, 61 NRC at 444-45.

L As was noted in the *Vogtle ESP* proceeding, *see Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC 433, 503-04 (2009), in contrast to the regulatory scheme that permits certain "construction" activities to be undertaken at a reactor site pursuant to a limited work authorization so long as a site redress plan is submitted, *see* 10 C.F.R. § 50.10(d), (g), there is no agency requirement that an applicant submit a redress plan relative to preconstruction activities nor, absent state or local requirements, take any remediation action regarding preconstruction activities if it decides not to complete the project or is denied agency authorization to construct and operate the facility.

M At all levels of government, policymakers are attempting to account for and address greenhouse gas (GHG) emissions. At the NRC, the Commission has directed the Staff to consider GHGs in its environmental reviews for major licensing actions. The Commission also directed that in the interest of consistency, for power reactors the Staff review should encompass emissions from the uranium fuel cycle as well as from construction and operation of the reactor facility to be licensed. *See Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009).

N Under NEPA, the NRC must assess the environmental impacts of a proposed facility, including those impacts associated with GHG emissions by the proposed facility. *See Lee*, CLI-09-21, 70 NRC at

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931. In assessing GHG impacts, the NRC must devote its resources to taking a “hard look” at the issue. *Pa’ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 74 (2010); *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998). This standard requires the agency to rigorously explore and objectively analyze impacts, so that merely offering “general statements about “possible” effects and “some risk” do[es] not constitute a “hard look” absent a justification regarding why more definitive information could not be provided.” *Pa’ina*, CLI-10-18, 72 NRC at 74 (quoting *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998)). Taking a hard look “foster[s] both informed decision-making and informed public participation,” and thus ensures that the agency does not act upon “incomplete information, only to regret its decision after it is too late to correct.” *Claiborne*, CLI-98-3, 47 NRC at 88 (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)).

O At the same time, the agency need not undertake an unceasing impacts analysis. Rather, because NEPA is premised on a “rule of reason,” the agency need only consider the reasonable alternatives to a proposed action. *See Pa’ina*, CLI-10-18, 72 NRC at 75. As a result, the NRC may decline to examine “remote and speculative risks” or events with “inconsequentially small” probabilities. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989). In that regard, according to the Council on Environmental Quality (CEQ), the “rule of reason” is “a judicial device to ensure that common sense and reason are not lost in the rubric of regulation.” Final Rule: “National Environmental Policy Act Regulations; Incomplete or Unavailable Information,” 51 Fed. Reg. 15,618, 15,621 (Apr. 25, 1986).

P Irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation NRC regulations categorize impacts into three types: direct, indirect, and cumulative. *See* 10 C.F.R. § 51.14(b) (adopting various CEQ regulations, including definitions of direct, indirect, and cumulative effects/impacts in 40 C.F.R. §§ 1508.7, 1508.8, 1508.25). Direct impacts are those caused by the action that is the subject of the EIS, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable. *See id.* § 1508.8. In contrast, cumulative impacts are those that “result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7. But regardless of their classification as direct, indirect, or cumulative, impacts that are reasonably foreseeable are to be assessed. *See* 10 C.F.R. Part 51, App. A, § 7.

Q As a tool for assessing the significance of potential impacts, NRC regulations establish a standard scheme. *See, e.g., id.* Part 51, App. B, table B-1 n.3. This protocol was created based on the approach outlined in section 1508.27 of the CEQ regulations, which indicates that agencies should consider both the context and intensity of impacts. *See* 40 C.F.R. § 1508.27. The NRC has established three levels of impacts — SMALL, MODERATE, and LARGE — that are defined as follows:

SMALL. The environmental effects are not detectable or are so minor that they would neither destabilize nor noticeably alter any important attribute of the resource.

MODERATE. The environmental effects are sufficient to noticeably alter but not to destabilize important attributes of the resource.

LARGE. The environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

Exh. NRC000134, at xxxi (1 Office of Federal and State Materials and Environmental Management Programs, NRC, [EIS] for the Proposed [EREF] in Bonneville County, Idaho, NUREG-1945 (Feb. 2011)) [hereinafter FEIS].

R Under NEPA, the agency must assess the environmental impacts of a proposed facility. *See* 42 U.S.C. § 4332(2)(C)(i). Following this general NEPA directive to evaluate impacts, the Staff assesses air quality impacts as a matter of course. *See, e.g., USEC Inc.* (American Centrifuge Plant), LBP-07-6, 65 NRC 429, 487-88 (2007). In keeping with its standard impact evaluation protocol, the Staff categorizes these impacts as SMALL, MODERATE, or LARGE.

S In parallel with the Staff’s role under NEPA to assess environmental impacts, the Environmental Protection Agency (EPA) possesses authority under the Clean Air Act to set numerical standards for air pollutants from emission sources. *See* 42 U.S.C. § 7411. EPA’s National Ambient Air Quality Standards (NAAQS) set maximum levels for air pollutants in the ambient air deemed to provide protection for human

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health and welfare. EPA also has granted authority to some states to implement, maintain, and enforce their own EPA-compliant air quality programs through State Ambient Air Quality Standards (SAAQS). *See* 42 U.S.C. § 7410(a)(1). That, however, does not relieve the NRC of its duty under NEPA to assess the environmental impacts of air pollutants associated with a proposed facility, including giving appropriate consideration both to whether any pollutant surpasses the NAAQS and the consequences of that pollutant exceeding the NAAQS.

T Under 10 C.F.R. Part 20, App. B, and section 70.59, Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment. Although the question of the sufficiency and adequacy of the applicant's program for radiological effluent monitoring and radiological environmental monitoring would be part of the Staff's AEA/safety-related review of the application and would be addressed in the Staff's safety evaluation report, in the context of the agency's NEPA responsibility to consider the radiological effects of a proposed action and the alternatives available for reducing or avoiding such impacts, *see* 10 C.F.R. § 51.71(d), an applicant's radiological measurements and monitoring program also is subject to scrutiny.

U Two Staff guidance documents set forth the information that should be provided in the ER and the EIS regarding a radiological monitoring program and monitoring program acceptance criteria, *see* Exh. NRC000189, at 5-26, 6-29 to -30 (NMSS, NRC, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, NUREG-1748 (Aug. 2003)) [hereinafter Staff Environmental Review Guidance]; Exh. NRC000031, at 9-12 to -15 (NMSS, NRC, [SRP] for the Review of a License Application for a Fuel Cycle Facility, NUREG-1520 (Mar. 2002)); while two other Staff guidance documents outline what the Staff believes are acceptable methods for designing a radiological monitoring program and submitting required semiannual reports specifying principal radionuclide releases to unrestricted areas for the purpose of estimating maximum potential annual public doses from such releases, *see* Exh. NRC000208, at 6-16 (Office of Nuclear Regulatory Research (RES), NRC, Quality Assurance for Radiological Monitoring Program, Regulatory Guide [(RG)] 4.15 (rev. 2 July 2007)); Exh. NRC000209, at 3-7, A-1 (RES, NRC, Monitoring and Reporting Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Cycle Facilities, RG 4.16 (rev. 2 Dec. 2010)).

V The National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. § 470, requires that all adverse effects to any National Register of Historic Places (NRHP)-eligible historic or cultural resource be considered during any federal undertaking, such as an NRC licensing action for a proposed uranium enrichment facility. NRC fulfills its responsibilities under the NHPA in the context of the historical and cultural resources impact assessment that is part of its NEPA environmental review. *See* Staff Environmental Review Guidance at 1-7 to -8. An historical/cultural resource is considered eligible for listing on the NRHP if it meets one or more of the following criteria: (1) association with an historic person; (2) association with an historic event; (3) representation of the work of a master; or (4) potential to provide information on the history or prehistory of the United States. *See* 36 C.F.R. § 60.4. Further, under NHPA § 106, the area of potential effect (APE) of the federal undertaking must be designated, e.g., the area directly affected by preconstruction/construction of a proposed facility, and the lead federal agency associated with the undertaking must conduct a consultation with the State Historic Preservation Officer regarding the presence and protection of historic and cultural resources in the designated APE, as well as any federally recognized Native American groups with an ancestral interest in the property, to determine if resources important to the tribe are present. *See* FEIS at 4-5.

W The following technical issues are discussed: AERMOD Model; Albedo; Bowen Ratio; Construction Inspection Program; Effluent Monitoring Program; Enriched Uranium Availability; Fugitive Dust; Greenhouse Gas Emissions; Historic/Cultural Resource Monitoring and Preservation; Hydrate Plug; Need for Uranium Enrichment Services; Particulate Matter; Planetary Boundary Layer; Preconstruction Activities; Preconstruction/Construction Air Quality Impacts; Radiological Environmental Monitoring Program; Seismic Avoidance Area; Site Remediation; Site Selection Criteria (Winter Weather- and Earthquake-related); Surface Roughness; Visual Impacts.

LBP-11-27 PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant), Docket No. 52-039-COL (ASLBP No. 11-914-02-COL-BD01), COMBINED LICENSE; LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 11-914-02-COL-BD01), COMBINED LICENSE; ENERGY NORTHWEST (Columbia Generating Station), Docket No. 50-397-LR (ASLBP No. 11-912-03-LR-BD01), LICENSE RENEWAL; SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos.

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52-025-COL, 52-026-COL (ASLBP Nos. 11-914-02-COL-BD01, 11-913-01-COL-BD01), COMBINED LICENSE; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL (ASLBP No. 11-913-01-COL-BD01), COMBINED LICENSE; October 18, 2011; MEMORANDUM AND ORDER (Denying Motions to Reopen Closed Proceedings and Intervention Petition/Hearing Request as Premature)

LBP-11-28 NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR (ASLBP No. 10-906-02-LR-BD01); LICENSE RENEWAL; October 19, 2011; MEMORANDUM AND ORDER (Denying Motions to Admit New Contention)

A In this license renewal proceeding, the licensing board denies motions to admit a new contention arguing that the Applicant's environmental report for Seabrook Station, Unit 1 (Seabrook) fails to satisfy the National Environmental Policy Act because it does not address findings and recommendations raised by the July 2011 NRC Near-Term Task Force Report on the Fukushima Dai-ichi accident in Japan. The Board denies the motions because the proffered contention is premature and insufficiently focused on the license renewal application for Seabrook.

B The purpose of an applicant's environmental report is to assist the NRC in preparing the agency's own environmental analysis. 10 C.F.R. § 51.14(a)(3), 51.71(a). Once the NRC performs its own analysis, alleged defects in an applicant's environmental report may be moot.

C A draft supplemental environmental impact statement need only address "new" and "significant" information. 10 C.F.R. § 51.72(a)(2). To constitute "new" and "significant" information, the information must "present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned." *Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 167-68 (2011).

D To proffer an admissible contention, interveners must demonstrate a genuine dispute suitable for evidentiary hearing. 10 C.F.R. § 2.309(f)(1)(vi).

LBP-11-29 FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Unit 1), Docket No. 50-335-LA (ASLBP No. 11-911-01-LA-BD01); LICENSE AMENDMENT; October 19, 2011; MEMORANDUM AND ORDER (Denying Petition for Leave to Intervene and Request for Hearing)

A In a proceeding regarding the amendment of a license granted under the Atomic Energy Act (AEA), section 189a of the AEA requires the NRC to "grant a hearing upon the request of any person whose interest may be affected by the proceeding, and . . . admit any such person as a party to such proceeding." 42 U.S.C. § 2239(a)(1)(A). To be granted a hearing, a petitioner seeking a hearing must demonstrate standing pursuant to 10 C.F.R. § 2.309(d) and proffer at least one admissible contention in accordance with 10 C.F.R. § 2.309(f). 10 C.F.R. § 2.309(a).

B In license amendment proceedings, petitioners may not claim "standing simply upon a residence or visits near the plant, *unless* the proposed action quite 'obvious[ly]' entails an increased potential for offsite consequences." *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999) (quoting *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)) (emphasis added).

C Extended power uprate (EPU) proceedings necessarily trigger application of the 50-mile proximity presumption given that such license applications entail an obvious increase in the potential for offsite consequences.

D The NRC follows contemporaneous judicial concepts of standing, which call for a particularized showing of "a 'concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision,' where the injury is 'to an interest arguably within the zone of interests protected by the governing statute.'" *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

E To demonstrate representational standing, an organization must (1) show that at least one of its members would be affected by the agency's approval of the requested license, (2) identify such members, and (3) establish (preferably through an affidavit) that such members of the organization have authorized it to act as the members' representative and to request a hearing on the members' behalf.

F Petitioners may not raise in adjudicatory proceedings contentions attacking the agency's rules and regulations (or contentions that are the subject of ongoing rulemakings).

G The Commission's regulations are "strict by design" in order to "help assure that our hearing process will be appropriately focused upon disputes that can be resolved in the adjudication." *Dominion Nuclear*

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Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 233 (2008) (citations omitted). Therefore, to be admissible, contentions must include specific grievances beyond mere notice pleading.

- H The proposed contention does not provide “sufficient information to show that a genuine dispute exists” with the license amendment request (LAR). Additionally, the petition lacks “alleged facts or expert opinions” to support the contention. Because the petitioner neither explains the “factual differences” it has with the applicant’s LAR nor provides alleged facts or expert opinions to support them, the contention is deficient under 10 C.F.R. § 2.309(f)(1)(v) and (vi). The proposed contention is thus inadmissible.
- I We infer from the structure of 10 C.F.R. § 50.47(a)(1)(i) that a license amendment request does not require an updated or separate emergency plan unless such a plan would be germane to the type of LAR under review or is part of a licensee’s periodic update of emergency plans.
- J Section 51.53(c)(3) requires a *license renewal* applicant to include in its ER “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.” It does not apply to license amendment applicants.
- LBP-11-30 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943 (ASLBP No. 08-867-08-OLA-BD01); LICENSE RENEWAL; October 31, 2011; MEMORANDUM (Bringing Matter of Concern to Commission’s Attention)
- A The Commission, but not the Licensing Board, has the power to address a protracted delay in the proceeding and to direct, if so inclined, appropriate remedial measures.
- B The extreme delay in the completion of the Staff’s environmental review, and thus the equal delay in hearing the Intervenor’s claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act. It is reasonable to conclude that Congress assumed that individuals establishing a right to be heard in opposition to a license application would be heard with reasonable expedition. A delay exceeding 3 years, and possibly extending to 4 years or more, hardly so qualifies. Particularly is this the case where the petitioner is an Indian Tribe, to which the federal government owes a fiduciary duty.
- C The licensing boards were long ago informed by the Commission that they are not empowered to superintend, to any extent, the conduct of Staff technical reviews. *See, e.g., Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 67 (2004).
- LBP-11-31 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; November 4, 2011; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 8A)
- A The Board grants the Applicant’s motion for summary disposition because there is no genuine issue of material fact as to the contents of the Applicant’s plan for onsite management of low-level radioactive waste and the plan satisfies the legal requirements of 10 C.F.R. § 52.79(a)(3).
- B In a Subpart L adjudication, a motion for summary disposition will be granted “if there is no genuine issue as to any material fact and . . . the moving party is entitled to a favorable decision as a matter of law.” 10 C.F.R. §§ 2.710(d)(2), 2.1205(c).
- C No genuine factual dispute exists as to the contents of the challenged portion of a combined license application — the applicant’s plan for onsite management of low-level radioactive waste in the period beyond the initial 2 years of operation. The only question is a legal one: Does the plan satisfy 10 C.F.R. § 52.79(a)(3)?
- D Under 10 C.F.R. § 52.79(a), a combined license application must specify the means the applicant will use for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20 (*see* 10 C.F.R. § 52.79(a)(3)) at a level of information sufficient to enable the Commission to reach a *final conclusion* on these safety matters *before* the license may be issued.
- E It is permissible for the final safety analysis report to give the applicant several options whereby it will control and limit radioactive effluents and radiation exposures “within the limits set forth in part 20” as required by 10 C.F.R. § 52.79(a)(3), provided that each option is described with a “level of information sufficient to enable the Commission to reach a final conclusion” on these safety determinations before the license is issued. Postponing the choice between several options, each of which is concretely stated and compliant with 10 C.F.R. § 52.79(a), does not violate the regulation.
- F The Applicant’s Revised Extended LLRW Plan makes affirmative, concrete, and enforceable commitments as to how and where the Applicant will manage its low-level radioactive wastes onsite if offsite facilities are not available. These commitments can be examined to determine if they provide a

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“level of information sufficient to enable the Commission to reach a final conclusion” on the relevant safety matters before the issuance of any combined license, pursuant to 10 C.F.R. § 52.79(a).

- G The Applicant’s Revised Extended LLRW Plan satisfies 10 C.F.R. § 52.79(a) because its concrete and enforceable commitments provide a “level of information sufficient to enable the Commission to reach a final conclusion” *before* the issuance of the combined license, and confirm that the Applicant has demonstrated that it has the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20.
- LBP-11-32 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR (ASLBP No. 10-900-01-LR-BD01); LICENSE RENEWAL; November 18, 2011; MEMORANDUM, ORDER, AND REFERRAL (Denying Motion to Admit New Contention and Referring Ruling to Commission)
- A The Board denies a motion filed by the San Luis Obispo Mothers for Peace seeking to admit a new environmental contention based on the “findings and recommendations raised by the Nuclear Regulatory Commission’s Fukushima Task Force Report” issued on July 12, 2011.
- B The National Environmental Policy Act applies to agencies of the Federal Government, such as the NRC, but does not apply to private parties such as applicants for NRC licenses.
- C Environmental Reports (ERs) are creatures of 10 C.F.R. Part 51, not NEPA. Part 51 is the source of the legal requirement that an applicant submits an ER, and it prescribes the required contents thereof.
- D Although NEPA and Part 51 require that the NRC Staff supplement its draft or final Environmental Impact Statement (EIS) if new and significant information arises after the publication of the EIS, *see* 10 C.F.R. §§ 51.72(a)(2), 51.92(a)(2), an applicant has no such legal duty to supplement or update its Environmental Report (ER) to incorporate new and significant information that arises after submission of an originally compliant ER. This is because NEPA does not apply to private parties such as the applicant, and Part 51 does not mandate that the ER be supplemented in such circumstances.
- E Although 10 C.F.R. §§ 51.72(a)(2) and 51.92(a)(2) specifically mandate that the draft Environmental Impact Statement (EIS) and final EIS, respectively, be supplemented if new and significant information arises after they are issued, 10 C.F.R. § 51.53(c)(3)(iv), in contrast, does not mandate that the Environmental Report (ER) be supplemented if new and significant information arises after the ER is submitted.
- F The requirement in 10 C.F.R. § 51.53(c)(3)(iv) that the Environmental Report (ER) “contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware” refers to new and significant information that has arisen in the time period subsequent to the issuance of the initial operating license. This regulation does not require an applicant to supplement a license renewal ER if new and significant information arises after that ER was submitted.
- G The requirements in 10 C.F.R. §§ 50.9(a) and 54.13(a) that the “[i]nformation provided to the Commission by an applicant . . . shall be complete and accurate in all material respects” does not require an applicant to supplement an originally compliant Environmental Report if new and significant information arises after it was submitted.
- H The requirements in 10 C.F.R. §§ 50.9(b) and 54.13(b) that “[e]ach applicant shall notify the Commission of information identified by the applicant as having, for the regulated activity, a significant implication for public health and safety or common defense and security” does not require an applicant to supplement an originally compliant Environmental Report if new and significant information arises after it was submitted.
- I The requirement in 10 C.F.R. § 54.21(b) that specifies that “an amendment to the renewal application must be submitted [annually] that identifies any changes to the [Current Licensing Basis] of the facility that materially affects the contents of the license renewal application, including the [Final Safety Analysis Report] supplement” does not require an applicant to supplement an originally compliant Environmental Report if new and significant information arises after it was submitted.
- J Although the NRC regulations do not require a license renewal applicant to supplement its Environmental Report (ER) based on new and significant information arising after the ER was filed, so too, the regulations do not bar the applicant from voluntarily doing so. Nor do the regulations bar the Staff from filing a request for additional information asking the applicant to supplement the ER.
- K The conclusion that 10 C.F.R. § 51.53(c)(3)(iv) does not require that an Environmental Report (ER) be supplemented to include “new and significant information” associated with events that occur after the ER was filed, does not mean that a “new” contention, challenging the adequacy of the ER, can never be

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filed under 10 C.F.R. § 2.309(f)(2). The latter regulation authorizes the filing of a new environmental contention, if it is based on information that was “not previously available” and that is “materially different” and that shows that the ER, as originally filed, was inadequate.

LBP-11-33 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; November 21, 2011; MEMORANDUM AND ORDER (Denying Request to Suspend Licensing Proceeding, Granting Motion to Supplement, and Denying Admission of Proposed New Fukushima Contention)

A The regulations that govern the conditions for supplementing environmental review documents direct the NRC Staff, not the license applicant, to supplement the draft Environmental Impact Statement if “[t]here are substantial changes in the proposed action that are relevant to environmental concerns” or “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 10 C.F.R. § 51.72(a); *see also id.* § 51.92(a) (requiring similar supplementation after issuance of final EIS).

B Until the NRC Staff issues its draft or final Environmental Impact Statement, it cannot plausibly be argued that the document is inadequate or otherwise fails to satisfy NEPA.

C The NRC Staff, pursuant to its obligation to prepare an adequate Environmental Impact Statement (*see* LBP-11-6, 73 NRC 149, 177 n.25 (2011)), is empowered to issue requests for additional information relevant to an applicant’s Environmental Report (*see* 10 C.F.R. § 51.41), and an applicant may update an Environmental Report if relevant new and significant information becomes available. An applicant, however, is under no regulatory or statutory obligation to effect such an update.

D The governing regulations provide that a “petitioner may amend [its] contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement [EIS], . . . or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.” 10 C.F.R. § 2.309(f)(2). This regulation confers a remedy on intervenors to the extent they believe the Staff’s draft or final EIS fails to account for new and significant information.

E NEPA only mandates an examination of “reasonably foreseeable environmental impacts of the proposed project.” *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 46 (2010). Until the Commission defines and imposes on licensees new requirements arising from the Fukushima events, such requirements are highly speculative. And any potential environmental impacts they might cause are likewise highly speculative and not ripe for challenge. Further, until any requirements are finalized and implemented, it is impossible to foresee what environmental impacts they would yield.

LBP-11-34 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR (ASLBP No. 11-907-01-LR-BD01); LICENSE RENEWAL; November 23, 2011; MEMORANDUM AND ORDER (Denying Motion to Admit New Contention)

A This proceeding concerns FirstEnergy Nuclear Operating Company’s application to renew its operating license for the Davis-Besse Nuclear Power Station. The intervenors have proposed a new contention based upon the near-term report of the task force that the Nuclear Regulatory Commission created to investigate the implications for United States nuclear power plants of the events and accident at the Fukushima Dai-ichi plant in Japan. Their motion to admit the proposed new contention must be rejected under 10 C.F.R. § 2.323(b), and their proposed new contention is inadmissible under subsections (iii), (iv), and (vi) of 10 C.F.R. § 2.309.

B The Board does not consider intervenor’s petition, which requests rulemaking and suspension of the proceeding, because the discussion in the petition’s body specifically directs those requests to the Commission, which has already responded to these requests.

C Intervenors have not shown good cause for filing their opposition to the motions to strike 3 days late. Intervenors’ explanation that their counsel “has been overwhelmed with work” and inadvertently confused federal court procedural rules with this agency’s is wholly inadequate. The Commission has repeatedly stated that failure to read carefully NRC regulations does not constitute good cause for accepting late-filed petitions. Nor do parties’ other professional obligations relieve them of their obligation to meet regulatory deadlines.

D The proper scope of a reply brief is limited to the scope of the arguments set forth in the original motion or petition. Intervenors cannot mend their original contention, which lacked any reference to the

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Davis-Besse license renewal application or environmental report, by providing those references in their reply brief.

E Section 2.323(b) provides that a motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue raised in the motion, and that the movant's efforts to resolve the issue have been unsuccessful. Intervenors' motion to admit a new contention must be rejected because they made no attempt to contact the applicant or its counsel to resolve the issues raised in the motion and because their motion does not contain the certification required by section 2.323(b).

F While the Atomic Safety and Licensing Appeal Panel is no longer in existence, the decisions of its Appeal Board continue to be binding on Licensing Boards to the degree they concern a regulation or regulatory matter that has not been revised or otherwise materially altered.

G Having merely slapped a two-sentence introduction onto a pleading filed in an unrelated license renewal proceeding, intervenors have not proposed an admissible new contention because the contention does not refer to the license renewal application or environmental report at issue in this proceeding.

H The National Environmental Policy Act, which applies to agencies of the federal government, cannot be read to require a license applicant to update its environmental report.

LBP-11-35 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; November 28, 2011; MEMORANDUM AND ORDER (Denying Commonwealth of Massachusetts' Request for Stay, Motion for Waiver, and Request for Hearing on a New Contention Relating to Fukushima Accident)

A This proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. for renewal of the operating license for its Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. Between the time when the Commission remanded a limited issue to the Board and when the Board disposed of the remanded issue, the Commonwealth of Massachusetts filed (1) a motion to hold this proceeding in abeyance, (2) a motion to admit a proposed new contention based on information about the events at the Fukushima Dai-ichi Nuclear Power Plant in Japan, (3) a request to waive agency regulations providing that spent fuel pool issues are outside the scope of license renewal proceedings, and (4) a motion to supplement the basis of its proposed new contention. A majority of the Licensing Board grants the motion to supplement and denies the abeyance motion, the waiver request, and the motion to admit the proposed new contention.

B The Majority denies petitioner's request to hold the licensing proceeding in abeyance until the Commission resolves petitioner's request to suspend the proceeding pending evaluation of the events at the Fukushima Dai-ichi Nuclear Power Plant because the Commission has denied the suspension request.

C Absent demonstration that the petitioner's alleged special circumstances are unique to the facility rather than common to a large class of facilities, the request for waiver of regulations excluding spent fuel pool issues from license renewal proceedings is denied. There are more than 20 Boiling Water Reactor Mark-I plants which share the characteristics of the facility at issue, and each and every nuclear power plant in the country has a spent fuel pool.

D Having indicated no linkage whatsoever between the events at the Fukushima Dai-ichi Plant and the potential for a beyond-design-basis duration of station blackout at the applicant's nuclear plant, petitioner proffers no new information relevant to the subject plant regarding station blackout or mitigation measures to prevent or ameliorate its effects, and the events therefore cannot form the basis for an assertion of timeliness for the purposes of 10 C.F.R. § 2.326.

E Because the issue of whether the proposed alternative method for estimating a macroscopic frequency of occurrence of a severe offsite radiological release should have been used in the SAMA analysis could have been raised at the time of the submittal of the original license renewal application, it is not timely now.

F Because petitioner indicates neither any particular positive impact from severe accident mitigation alternative implementation nor any specific negative environmental impact from failure to do so, its contention can hardly be said to paint the required "seriously different picture of the environmental landscape" that would satisfy 10 C.F.R. § 2.326(a)(2).

G To show under 10 C.F.R. § 2.326(a)(3) that a materially different result in the outcome of the severe accident mitigation alternatives analysis would be or would have been likely had the newly proffered evidence been considered initially, the petitioner would have at least had to provide some information

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indicating how much the mean consequences of the severe accident scenarios could reasonably be expected to change as a result of considering the proffered information, together with at least some minimal information as to the cost of implementation of other severe accident mitigation alternatives the petitioner believes might become cost-effective.

H Petitioner's declaration fails to specifically explain, to the level required by 10 C.F.R. § 2.326(b), (1) why a materially different result would have been likely had the information presently available from the Fukushima accident been considered *ab initio* in the severe accident mitigation alternatives analysis or (2) why that information presents a significant safety or environmental issue. The declaration sets out no factual or technical basis; it merely represents a statement of belief.

I The contention fails to satisfy the good cause requirements of 10 C.F.R. § 2.309(c)(i) because its foundational argument does not rest upon new and materially different information and could (and should) have been filed at the outset of this proceeding. And section 2.309(c)(vii) weighs heavily against granting admission of the contention because the addition of a hearing on its subject matter will unduly broaden the issues presently being considered and undoubtedly materially delay this proceeding.

J The proposed new contention fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1), and is therefore inadmissible, because neither it nor the supporting declaration has indicated with any specificity how the severe accident mitigation alternatives analysis results could be affected. Further, neither points to nor references any specific portion of the application that is disputed, simply asserting that the severe accident mitigation alternatives results might be different.

LBP-11-36 LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-034-COL, 52-035-COL (ASLBP No. 11-914-02-COL-BD01), COMBINED LICENSE; ENERGY NORTHWEST (Columbia Generating Station), Docket No. 50-397-LR (ASLBP No. 11-912-03-LR-BD01), LICENSE RENEWAL; SOUTHERN NUCLEAR OPERATING COMPANY (Vogtle Electric Generating Plant, Units 3 and 4), Docket Nos. 52-025-COL, 52-026-COL (ASLBP Nos. 11-914-02-COL-BD01, 11-913-01-COL-BD01), COMBINED LICENSE; DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52-018-COL, 52-019-COL (ASLBP No. 11-913-01-COL-BD01), COMBINED LICENSE; November 30, 2011; MEMORANDUM AND ORDER (Denying Motions to Reinstate Contention)

LBP-11-37 TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4), Docket Nos. 52-014-COL, 52-015-COL (ASLBP No. 08-864-02-COL-BD01); COMBINED LICENSE; November 30, 2011; MEMORANDUM AND ORDER (Ruling on Request to Admit New Contention)

A In this 10 C.F.R. Part 52 proceeding regarding the application of the Tennessee Valley Authority (TVA) for issuance of combined licenses (COLs) authorizing the construction and operation of two new Advanced Passive (AP)1000 design reactors at TVA's existing Bellefonte Nuclear Power Plant (BNPP) site, the Licensing Board rules on the admissibility of Joint Intervenor's new contention regarding the Nuclear Regulatory Commission's (NRC) Fukushima Near-Term Task Force (Task Force) July 11, 2011 report, concluding that the contention is inadmissible for litigation in this proceeding because it fails to meet the timeliness standards of 10 C.F.R. § 2.309(c)(1), (f)(2) and does not present a genuine dispute on a material issue of law or fact as required by section 2.309(f)(1)(vi).

B In an ongoing proceeding in which a hearing petition has been granted and there are contentions pending for merits resolution, intervenors must satisfy two sets of requirements to gain the admission of a newly proffered contention. The first relates to "timeliness" under 10 C.F.R. § 2.309(f)(2) or section 2.309(c)(1). The second concerns section 2.309(f)(1) which governs contention admissibility. *See* LBP-08-16, 68 NRC 361, 383-86 (2008) (contention admission standards); Licensing Board Memorandum and Order (Ruling on Request to Admit New Contention) (Apr. 29, 2009) at 5, 9 (unpublished) (timeliness standards).

C In rejecting the Task Force report-related contentions before them that are, for all practical purposes, identical to the contention before the Board in this proceeding, other licensing boards have identified two principal deficiencies. One is the fact that the Commission's recent disposition of a petition to suspend the issuance of new or renewed licenses for nuclear power plants in the United States, *see Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141 (2011), essentially renders premature the claim for relief in the similarly situated licensing proceeding contentions. In its decision on those petitions, the boards note, the Commission indicated that whether any new regulatory requirements will arise out of the Task Force report, and when the applicability/impact of those requirements in individual licensing adjudications will be appropriate for consideration, is a matter for future determination. As a consequence, given that the

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Fukushima contentions before them are based on the same information that was before the Commission, in light of the Commission's disposition of the petition, the licensing boards have determined that the issue statements before them were filed prematurely and/or failed to establish the requisite genuine dispute on a material issue of law or fact so as to fulfill the section 2.309(f)(1)(vi) contention admissibility requirement. See *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC 591, 599-602 (2011), *motion to reinstate contention denied, Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-36, 74 NRC 768 (2011); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 607-10 (2011); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 670-71 (2011); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675, 682 (2011).

D Other licensing boards also have found that a Commission staff requirements memorandum (SRM) issued subsequent to the Task Force report that directs the NRC Staff to take steps to suggest possible regulatory and policy changes and appropriate implementing mechanisms, such as rulemakings, orders, section 50.54 letters, or generic letters, but does not define or impose any new requirements arising from the events at Fukushima, likewise fails to establish a genuine dispute on a material issue of law or fact under section 2.309(f)(1)(vi). See *Diablo Canyon*, LBP-11-32, 74 NRC at 671; *Turkey Point*, LBP-11-33, 74 NRC at 683; *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC 685, 698-99; see also *Comanche Peak*, LBP-11-36, 74 NRC at 771-72.

E The other deficiency identified by licensing boards regarding the Task Force report-related contentions is that those contentions allege that the Task Force report evidences a shortcoming in the applicant's environmental report (ER) that must be corrected. This is insufficient to frame a litigable issue, the boards have maintained, because there is no agency regulatory requirement that an applicant needs to update or otherwise supplement an ER subsequent to the time that the Staff finds that report acceptable for review as part of a license application. According to the boards, absent some voluntary action on the part of the applicant to amend its ER, an intervenor wishing to raise some new or revised post-ER environmental concern must await the issuance of the Staff's draft environmental impact statement. See *Diablo Canyon*, LBP-11-32, 74 NRC at 665-70; *Turkey Point*, LBP-11-33, 74 NRC at 681-82; *Davis-Besse*, LBP-11-34, 74 NRC at 697-98.

F The additional support Joint Intervenors seek to provide for their new contention in the form of an affidavit likewise is unavailing because, at a minimum, that information causes the contention to run afoul of the timeliness requirements of section 2.309(c)(1), (f)(2). There is nothing material provided in the affidavit in support of the contention that could not have been introduced at the outset of this proceeding as the basis for an environmental or safety contention.

G In the absence of some future change in the Commission's requirements or policies relative to the subject matter of the affidavit supporting a new contention that might provide the all-important "good cause" under section 2.309(c)(1) or the "new information" mandated by section 2.309(f)(2), as a basis for a new contention the information in the affidavit is no more than a belated attempt to introduce a matter that could have been identified for litigation when the hearing petition was filed initially. See *Bell Bend*, LBP-11-27, 74 NRC at 602 n.54 (intervenor attempt to tie National Environmental Policy Act environmental justice claim to Task Force report is improper effort to interpose concerns that could have been raised at the outset of the *Vogtle* COL proceeding).

LBP-11-38 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; December 29, 2011; FIRST PARTIAL INITIAL DECISION (Ruling on Contention CL-2)

A In this 10 C.F.R. Part 52 proceeding regarding the application of Nuclear Innovation North America LLC (NINA or Applicant) for combined licenses (COLs) to construct and operate two new nuclear units, using the Advanced Boiling Water Reactor (ABWR) certified design, at its site in Matagorda County, Texas, after conducting an evidentiary hearing on the merits of Contention CL-2 that challenges the estimated replacement power costs used in the Applicant's Environmental Report (ER) analysis of the proposed units, the Licensing Board rules that Applicant and the NRC Staff (Staff) have carried their respective burdens of proof to demonstrate the adequacy of the environmental review in accordance with NEPA and 10 C.F.R. Part 51.

B Severe accidents are reactor accidents more severe than design basis accidents and involve substantial damage to the reactor core. Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants, 50 Fed. Reg. 32,138, 32,138 (Aug. 8, 1985). Although the likelihood of severe

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accidents occurring is lower than that for design basis accidents (i.e., those accidents the reactor is designed to withstand), the consequences of severe accidents are generally greater. *Id.* Design or procedural modifications that could mitigate the consequences of a severe accident are known as severe accident mitigation alternatives (SAMAs). SAMAs are somewhat broader than Severe Accident Mitigation Design Alternatives (SAMDA), which focus on design changes and do not consider procedural modifications. A SAMDA analysis examines whether implementing a SAMDA would decrease the probability-weighted consequences of severe accidents. *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 291 (2010).

C Generally, an applicant in a licensing proceeding, 10 C.F.R. § 2.325, must meet its burden of proof by a preponderance of the evidence. *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 521 (2008). But for NEPA contentions, the burden shifts to Staff, because the NRC, not the applicant, bears the ultimate burden of complying with NEPA. *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983).

D In judging the adequacy of a SAMDA analysis, the pertinent legal question becomes not whether “plainly better” SAMDA analysis assumptions or methodologies could have been employed, or whether a particular SAMDA analysis could have been refined further. *Pilgrim*, CLI-10-11, 71 NRC at 315-16 (citations omitted). Rather, the inquiry is to ascertain whether “it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions” for the SAMDA analysis. *See id.* at 316-17. The reason for this, in the Commission’s words, is that “[u]ltimately, NEPA requires the NRC to provide a ‘reasonable’ mitigation alternatives analysis, containing ‘reasonable’ estimates, including, where appropriate, full disclosures of any known shortcomings in available methodology, disclosure of incomplete or unavailable information and significant uncertainties, and a reasoned evaluation of whether and to what extent these or other considerations credibly could or would alter” the analysis on which SAMDAs are considered. *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208-09 (2010) (citations omitted); *see also* 10 C.F.R. § 51.53(c)(3)(L).

E The scope of a contention is limited to the issues of law and fact pled with particularity in the contention and any factual and legal material in support thereof. *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100 (2010); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002); *see also Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 & n.11 (1988) (stating that the “intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses”), *aff’d in part and remanded in part on other matters, Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 899 (1991).

F The following technical issues are discussed: Scaling SAMDA Implementation Costs (Inflation Rate, Regional Cost-of-Living Adjustment, Risk Reduction Factor), and Scaling SAMDA Implementation Benefits (Discount Rate, Power Pricing Data, Power Market Effects, Consumer Impacts, Power Price Spikes, Loss of Grid).

LBP-11-39 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket No. 52-012-COL, 52-013-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; December 29, 2011; MEMORANDUM AND ORDER (Ruling on Admissibility of Intervenors’ New Contention Regarding Fukushima Task Force Report)

A New contentions may be admitted as long as they (1) meet the timely contention criteria in 10 C.F.R. § 2.309(f)(2) or the nontimely contention criteria in 10 C.F.R. § 2.309(c)(1), and (2) fulfill the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).

B A timely new contention challenging the sufficiency of Staff’s National Environmental Policy Act (NEPA) documents may be filed where data or conclusions in these documents “differ significantly” from data or conclusions in previous versions of these documents or in the applicant’s environmental report. Alternatively, a party may seek leave of the Board to file a new contention that challenges the sufficiency of Staff’s NEPA documents where: (i) the information upon which the new contention is based was not previously available; (ii) the information upon which the new contention is based is materially different than information previously available; and (iii) the new contention has been submitted in a timely fashion based on the availability of the subsequent information.

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- C NEPA imposes procedural obligations on federal agencies proposing to take “actions significantly affecting the quality of the human environment.” This procedural obligation is carried out through an agency’s issuance of an environmental impact statement (EIS) documenting the agency’s “hard look” at the potential environmental impacts of the proposed action and reasonable alternatives to the proposed action. Although the EIS’s hard look must examine “reasonably foreseeable” environmental impacts emanating from the proposed action, the EIS is subject to a rule of reason that grants the agency a degree of deference exempting it from examining impacts that it in good faith deems to be “remote and speculative” or “inconsequential small.”
- D The NRC’s review of a COL application is the type of proposed action obliging the Staff to prepare an EIS or a supplement thereto. Before taking the proposed action, the Staff must issue a supplemental EIS where there are substantial changes in the proposed action that are relevant to environmental concerns or there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Only where new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned is supplementation of an EIS required.
- E Unless and until it is reasonably clear that the NRC’s Near-Term Task Force on Fukushima’s recommendations will result in new safety or design basis prerequisites for granting a combined license, it is not evident that those recommendations could have any material impact on the conclusions made by Staff in an already-issued FEIS, or that they present a seriously different picture of the already-analyzed impacts of the proposed action.
- LBP-12-1 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 06-848-02-LR); LICENSE RENEWAL; January 11, 2012; MEMORANDUM AND ORDER (Denying Pilgrim Watch’s Request for Hearing on a New Contention Relating to Fukushima Accident)
- A This proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. for renewal of the operating license for its Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. After the Board disposed of a limited issue on remand from the Commission, but before disposing of several hearing requests filed while the remanded issue was pending, Intervenor Pilgrim Watch filed a request for hearing on a proposed new contention concerning the accident at the Fukushima Dai-ichi Nuclear Power Plant in Japan. In this Order, a majority of the Licensing Board denies the hearing request.
- B Because the evidentiary record in this proceeding had been previously closed, the Commission’s demanding requirements for reopening the record must be satisfied in order for the hearing request to be granted.
- C Regarding the requirements of 10 C.F.R. § 2.326(a)(1) that the motion be timely, the motion must be based on new information, relevant to the application and the plant at issue, that is materially different from information previously available.
- D A contention based on the Fukushima accident must be relevant to the present proceeding, and must link the events at Fukushima to the risk of a severe accident at the site that is the subject of the proceeding.
- E A nontimely contention may still satisfy the requirements of 10 C.F.R. § 2.326(a)(1) if it raises an exceptionally grave issue. The Commission has defined the relevant legal standard: an exceptionally grave issue is one which raises “a sufficiently grave threat to public safety.” Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,536 (May 30, 1986).
- F For an environmental issue to be “significant” for the purposes of reopening a closed record, there must be new and significant information which will “paint a *seriously* different picture of the environmental landscape.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 28 (2006).
- G An assertion that other severe accident mitigation alternatives (SAMAs) *might* become cost-effective if implemented, without an indication of any particular positive environmental impact from any such implementation or any specific negative environmental impact from failure to do so, fails to present an exceptionally grave issue.
- H For an intervenor to demonstrate that a revised SAMA analysis would produce a materially different result requires, at least, that the intervenor provide some information indicating how much the mean consequences of the severe accident scenarios could reasonably be expected to change as a result of

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consideration of the new information, together with at least some minimal information as to the cost of implementation of other SAMAs it believes might become cost-effective.

- I A speculative assertion that the NRC would consider other SAMAs than have been previously considered does not “demonstrate” that the issue raised is material to the NRC’s decision, as required by 10 C.F.R. § 2.309(f)(1)(iv).
- LBP-12-2 SHAW AREVA MOX SERVICES (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01); MATERIALS LICENSE AMENDMENT; February 9, 2012 (January 7, 2013, abridged adaptation for publication); MEMORANDUM AND ORDER (Dismissing Contention 4)
- A The Board proceeded with this motion to dismiss an admitted contention by analogy to Rule 12(d) of the Federal Rules of Civil Procedure. That Rule permits courts to treat motions to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)) and motions for judgment on the pleadings (under Rule 12(c)) as motions for summary judgment under Rule 56 if “matters outside the pleadings are presented to and not excluded by the court.” Fed. R. Civ. P. 12(d).
- LBP-12-3 STRATA ENERGY, INC. (Ross In Situ Recovery Uranium Project), Docket No. 40-9091-MLA (ASLBP No. 12-915-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; February 10, 2012; MEMORANDUM AND ORDER (Ruling on Standing and Contention Admissibility)
- A In this proceeding regarding the application of Strata Energy, Inc. (SEI) for a combined source and Atomic Energy Act (AEA) § 11e(2) byproduct materials license pursuant to 10 C.F.R. Part 40 that would authorize SEI to construct and operate an in situ recovery (ISR) uranium project at the Ross site in Crook County, Wyoming, the Licensing Board concludes that Joint Petitioners Natural Resources Defense Council and the Powder River Basin Resource Council have provided sufficient support to establish their standing “as of right” to intervene in the proceeding and have proffered four admissible National Environmental Policy Act (NEPA)/environmental-related contentions so as to warrant the grant of their hearing petition and their admission into the proceeding as parties.
- B For an individual or organization to be deemed a “person whose interest may be affected by the proceeding” under AEA § 189a, 42 U.S.C. § 2239(a)(1)(A), so as to have standing “as of right” such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must include a statement of (1) the petitioner’s name, address, and telephone contact information; (2) the nature of the petitioner’s right under the AEA to be made a party; (3) the nature of the petitioner’s interest in the proceeding, whether property, financial, or otherwise; and (4) the possible effect of any decision or order that might be issued in the proceeding on the petitioner’s interest. *See* 10 C.F.R. § 2.309(d)(1)(i)-(iv). In assessing this information to determine whether the petitioner has established its standing, the Commission generally applies contemporaneous judicial standing concepts in section 189a adjudicatory proceedings, inquiring whether the participant has established that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interest arguably protected by the governing statutes (e.g., the AEA, NEPA); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- C An organization that asserts it has standing to intervene in its own right, i.e., organizational standing, must establish a discrete institutional injury to the organization’s interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding. *See International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001). Alternatively, an entity may seek to demonstrate its standing to intervene on behalf of its members, i.e., representational standing, but that entity must then show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).
- D In assessing a petition to determine whether the elements of standing are met, which a presiding officer must do even if there are no objections to a petitioner’s standing, there are a number of important benchmarks that the presiding officer is to apply. Initially, “the petitioner bears the burden to provide facts sufficient to establish standing.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010). Generally speaking, to meet this burden it is sufficient “if the petitioner provides plausible factual allegations that satisfy each element of standing.” *U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), LBP-10-4, 71 NRC

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216, 229 (2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)), *aff'd*, CLI-10-20, 72 NRC 185 (2010). Moreover, in assessing whether a petitioner has demonstrated its standing, a licensing board is to “construe the petition in favor of the petitioner.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). At the same time, however, if a petitioner’s factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether the standing element at issue has been satisfied. *See Schofield Barracks*, LBP-10-4, 71 NRC at 230 & n.14 (citing *Bell Bend*, CLI-10-7, 71 NRC at 139; *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)).

E The precept that a licensing board must afford latitude to a pro se petitioner in considering that petitioner’s pleadings, *see PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 396-97 (2009), *aff'd on other grounds*, CLI-10-7, 71 NRC at 41, is not a consideration when a petitioner is represented by counsel.

F General environmental and policy interests that an organization champions, whether on a national or more regional/local basis, and that the organization asserts could be degraded or impaired by licensing action are “of the sort [that] repeatedly have [been] found insufficient for organizational standing.” *White Mesa*, CLI-01-21, 54 NRC at 252; *see Cogema Mining, Inc.* (Irigaray and Christensen Ranch Facilities), LBP-09-13, 70 NRC 168, 191 (2009).

G In a materials licensing action, for the purpose of ascertaining if a hearing requestor has standing based on radiological impacts, “whether a petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner’s distance from the source, the nature of the licensed activity, and the significance of the radioactive source.” *Schofield Barracks*, CLI-10-20, 72 NRC at 188 (footnote omitted). And the standing regime to which a presiding officer must look in the first instance is whether, in lieu of the usual injury and causation showings, the petitioner has been able to establish “proximity plus” by showing “(1) that the proposed licensing action involves a ‘significant source’ of radiation, which has (2) an ‘obvious potential for offsite consequences.’” *Id.* at 189 (footnote omitted) (quoting *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)). If these elements of proximity-based standing are not demonstrated, then standing must be established according to traditional standing principles that, along with the usual showing of redressability, require a specific showing of injury and causation. *See id.*; *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005).

H If a petitioner makes no attempt to establish that any “proximity plus” presumption should be applicable to the licensing action being challenged, *see Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 272-73 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535, 544-48 (2009) [hereinafter *Crowe Butte I*], the presiding officer must look to the traditional standing precepts of injury and causation, as well as redressability, to determine whether the petitioner has made a sufficient factual and legal demonstration regarding its standing to intervene.

I When petitioners “considerably upgradient of the mining area . . . fail to explain how contaminated material from the [ISR] site might plausibly enter their drinking water, they fail to demonstrate they fulfill the causation element necessary to establish their standing.” *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 388 (2010). And this is particularly so when the challenged allegation lacks any relevant scientific or technical support. *See Schofield Barracks*, LBP-10-4, 71 NRC at 230 n.14.

J As the distance increases from an ISR facility, the petitioner with an upgradient water source must expect that it will be called upon to deal with the factual circumstances that exist and provide the licensing board with some analysis as to how any contamination will come to affect any wells alleged to be impacted by the facility, given the distance involved. *See Dewey-Burdock*, LBP-10-16, 72 NRC at 385.

K Standing claims based on economic impacts are only cognizable in agency proceedings with regard to NEPA-based concerns. *See Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station), ALAB-582, 11 NRC 239, 242 (1980) (citing *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977)).

L What is necessary to establish standing based on economic loss is a showing from the petitioner (or the individual it seeks to represent) that the purported economic loss has some objective fundament, rather than being based solely on the petitioner’s (or affiant’s) perception of the economic loss in light of the proposed

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licensing action. *See Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 432 (2002) (generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing), *aff'd*, CLI-03-1, 57 NRC 1 (2003). This nonsubjective showing could, for example, be provided by demonstrating that the value of property at a comparable distance from another ISR facility had dropped from what it was prior to the submission of a license application. Alternatively, such a showing might be based on actual sales/offers before and after the licensing proposal at issue in the proceeding, or by providing the declaration of a local realtor or property appraiser who furnishes an independent assessment of the property's value before and after the licensing action was proposed before the agency.

M A more subjective appraisal of declining property values might be permissible in the context of a licensing action associated with an applicant or facility shown to have engaged in a "continuous and pervasive" course of illegal conduct. *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 184 (2000).

N While a petitioner has some latitude to supplement or cure a standing showing in its reply pleading, any additional arguments should be supported by either the declaration that accompanied the original hearing request or a supplemental affidavit. *See South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010) (reply pleading and supplemental declarations appropriately clarified original affidavits).

O There is no "contention-based" requirement mandating that to have standing, besides showing that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury, a petitioner also must establish a link between that injury and the issues it wishes to litigate in challenging an application. *See Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339-40 (2009); *Yankee Nuclear*, CLI-96-1, 43 NRC at 6.

P Section 2.309(f)(1) of the Commission's rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the Nuclear Regulatory Commission (NRC) must make to support the action that is involved in the proceeding." *Id.* § 2.309(f)(1)(iii), (iv). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Summer*, CLI-10-1, 71 NRC at 7 & n.33.

Q All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-36 (2011).

R It is the petitioner's obligation to present factual allegations and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006). While a licensing board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 143, 155 (1991). Neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor the petitioner, nor may the board supply information that is lacking. *See Crow Butte I*, CLI-09-12, 69 NRC at 553; *Palo Verde*, CLI-91-12, 34 NRC at 155. Likewise, simply attaching material or documents as a basis for a

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contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05.

S All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the safety analysis report/technical report and the environmental report (ER)) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed. *See Crow Butte I*, CLI-09-12, 69 NRC at 557; *American Centrifuge Plant*, CLI-06-10, 63 NRC at 462-63.

T For a contention that a petitioner characterizes as firmly footed in NEPA, the additional assertion, intended to preserve a future AEA-based challenge, that issuing a license with the alleged NEPA deficiency unresolved would violate the AEA's mandate to issue only licenses that are not inimical to the common defense and security and the public health and safety is a "bootstrap" approach that is neither necessary nor appropriate relative to the contention. If a petitioner is unable to prevail under NEPA with respect to the issues raised in the contention, then the AEA will not afford additional solace.

U While NEPA requires that the NRC consider the reasonably foreseeable environmental impacts of the proposed licensing action, the agency need not consider remote and speculative impacts, particularly if the impact cannot easily be estimated at the current time, and an appropriate future opportunity will exist for the agency to analyze the impact. *See Sierra Club v. Marsh*, 769 F.2d 868, 878 (1st Cir. 1985).

V NRC regulations implementing NEPA require the agency to consider the cumulative impacts of a proposed licensing action, i.e., those that result from the incremental effects of the proposed action in conjunction with past, present, and reasonably foreseeable future actions. In particular, the definitions in 10 C.F.R. § 51.14(b) incorporate the CEQ regulations that define the scope of an environmental impact statement (EIS) to include cumulative impacts, *see* 40 C.F.R. §§ 1508.7, 1508.25(c). To assist the Staff with preparing its cumulative impacts analysis, the Staff guidance document for environmental reports requests that license applicants include their own cumulative impacts analysis. *See* Office of Nuclear Material Safety and Safeguards, [NRC], NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" at 6-4 (2003).

W Because the Staff uses the ER as the basis for its EIS, and because hearing petitioners are required to style their NEPA contentions against the ER, *see* 10 C.F.R. § 2.309(f)(2), a contention would be admissible if it raises a genuine dispute with the sufficiency of the cumulative impacts analysis, or the lack thereof, in the ER. *See, e.g., Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 102 (2009) (admitting cumulative impacts contention relative to applicant's ER), *aff'd in part and rev'd in part on other grounds*, CLI-10-2, 71 NRC 27 (2010); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 258-59 (2007) (same).

X It is not the licensing board's responsibility to provide support for an intervenor's contention so as to make it admissible. *See Crow Butte I*, CLI-09-12, 69 NRC at 553 & n.81; *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

Y The generic EIS (GEIS) for ISR mining, not having been incorporated into the agency's regulations, can be challenged in an adjudicatory proceeding concerning an ISR licensing request. But a petitioner's failure to provide any citation to what it is among a GEIS's programmatic discussions that the ER neglects to address leaves it to the licensing board to identify the grounds that support the petitioner's contention, which is something the board need not do. *See Fansteel*, CLI-03-13, 58 NRC at 204-05; *see also Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 534 (2009) ("The Commission should not be expected to sift unaided through . . . documents filed before the Board to piece together and discern a party's argument and the grounds for its claims") (internal quotations omitted).

LBP-12-4 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; February 28, 2012; MEMORANDUM AND ORDER (Granting FPL Motion for Summary Disposition of CASE Contention 7)

A The hearing procedures of 10 C.F.R. Part 2, Subpart L provide that motions for summary disposition "must be in writing and must include a written explanation of the basis of the motion, and affidavits to support statements of fact." 10 C.F.R. § 2.1205(a). Such motions are to be evaluated pursuant to the same "standards for summary disposition set forth in [10 C.F.R. Part 2,] subpart G." *Id.* § 2.1205(c). Those Subpart G standards state that a motion for summary disposition shall be granted "if the filings in the

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proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a decision as a matter of law.” *Id.* § 2.710(d)(2).

- B The standards governing summary disposition “are based upon those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010). Pursuant to those standards, the moving party bears the initial burden of showing the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party opposes the motion, it cannot rest on the allegations or denials of a pleading; instead, it must “go beyond the pleadings and by [the nonmoving party’s] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Id.* at 324 (internal quotation marks omitted); *see* 10 C.F.R. § 2.710(b). If, however, the nonmoving party declines to oppose the moving party’s *prima facie* showing of undisputed material facts, Commission regulations provide that those facts will be considered admitted. 10 C.F.R. § 2.710(a).
- C That a nonmoving party declines to oppose a motion for summary disposition does not perforce mean the moving party is entitled to a favorable judgment. “[T]he party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and if he does not discharge that burden then he is not entitled to judgment. No defense to an insufficient showing is required.” *Adikes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970) (quoting 6 James Wm. Moore et al., *Moore’s Federal Practice* ¶ 56.22[2], at 2824-25 (2d ed. 1966)). In other words, where a nonmoving party declines to oppose a motion for summary disposition, the Board shall accept as admitted the moving party’s *prima facie* showing of material facts. The Board cannot grant summary disposition on those facts, however, unless the moving party discharges its burden of demonstrating that it “is entitled to a decision as a matter of law.” 10 C.F.R. § 2.710(d)(2); *see United States v. 5800 SW 74th Ave.*, 363 F.3d 1099, 1101-02 (11th Cir. 2004); *Anchorage Associates v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 174-76 (3d Cir. 1990); *Jaroma v. Massey*, 873 F.2d 17, 20 (1st Cir. 1989).
- D A combined license (COL) application must include a Final Safety Analysis Report (FSAR) containing certain “information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of” the COL, including “[t]he kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in [10 C.F.R. Part 20].” 10 C.F.R. § 52.79(a)(3). Part 20 “outlines a number of radiation protection requirements with which licensees must comply,” such as “procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable.” *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 37 (2009) (referencing 10 C.F.R. § 20.1101(b)).
- E The level of low-level radioactive waste (LLRW) “storage information required by 10 C.F.R. § 52.79(a)(3) is tied to the COL applicant’s particular plans for compliance through design, operational organization, and procedures” (*Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 46 (2010) (citing *Vogtle*, CLI-09-16, 70 NRC at 37)), including how that applicant “intends to handle an accumulation of LLRW.” *Id.* at 47.
- F The scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that “is tied to the applicant’s ‘particular plans for compliance through,’ but not necessarily the details of, ‘design, operational organization, and procedures’ associated with any contingent long-term LLRW facility.” *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 444 (2010) (quoting *Vogtle*, CLI-09-16, 70 NRC at 37). To comply with section 53.79(a)(3)’s requirement to provide “sufficient [information] to enable the Commission to reach a final conclusion on all safety matters” regarding “the means” a COL applicant will use to comply with 10 C.F.R. Part 20 (10 C.F.R. § 52.79(a)(3)), a COL applicant’s FSAR must identify particular plans pertaining to “design, operational organization, and procedures” that demonstrate how it intends “to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 [including, but] not limited to [LLRW] handling and storage.” *Vogtle*, CLI-09-16, 70 NRC at 37.
- LBP-12-5 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-12-COL, 52-13-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; February 29, 2012; SECOND PARTIAL INITIAL DECISION (Contention DEIS-1-G)

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- A In this 10 C.F.R. Part 52 proceeding regarding the application of Nuclear Innovation North America LLC (NINA or Applicant) for combined licenses (COLs) to construct and operate two new nuclear units, using the Advanced Boiling Water Reactor (ABWR) certified design, at its site in Matagorda County, Texas, after conducting an evidentiary hearing on the merits of Contention DEIS-1-G that challenges the estimated need for power that proposed STP Units 3 and 4 would satisfy, the Licensing Board rules that the NRC Staff (Staff) has carried its burden to demonstrate the adequacy of the environmental review in accordance with the National Environmental Policy Act (NEPA) and 10 C.F.R. Part 51.
- B Generally, an applicant in a licensing proceeding, 10 C.F.R. § 2.325, must meet its burden of proof by a preponderance of the evidence. *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 521 (2008). But for NEPA contentions, the burden shifts to Staff, because the NRC, not the applicant, bears the ultimate burden of complying with NEPA. *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983).
- C In emphasizing that need-for-power forecasts are required only to be reasonable, *see Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 366-67 (1975), *cited with approval in U.S. Energy Research and Development Administration* (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 77 (1976), the Commission has observed that such forecasts need not “precisely identify future market conditions and energy demand, or . . . develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power.” *See, e.g., Nuclear Energy Institute; Denial of Petition for Rulemaking*, 68 Fed. Reg. 55,905, 55,910 (Sept. 29, 2003) (citing *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88, 94 (1998)). Rather, it is sufficient if the need-for-power assessment is at a level of detail “sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions.” *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 17 (2010) (citing 68 Fed. Reg. at 55,910). Otherwise “[q]uibbling over the details of an economic analysis” would effectively “stand[] NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as estimated.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 145 (2004) (internal quotation marks omitted).
- D When a contention of omission is cured by the subsequent issuance of licensing-related documents, “the contention must be disposed of or modified.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002) (emphasis added) (citing *Catawba*, CLI-83-19, 17 NRC at 1050). At that time, the intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information. *See* 10 C.F.R. § 2.309(f)(1); *McGuire/Catawba*, CLI-02-28, 56 NRC at 383 (footnote and citations omitted). Resolution of the mooted contention requires no more than a finding by the presiding officer that the matter has become moot. *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444-45 (2006).
- E As the Commission has affirmed, “[b]oards frequently hold hearings on contentions challenging the Staff’s final environmental review documents. In such cases, “[t]he adjudicatory record and Board decision (and . . . any Commission appellate decisions) become, in effect, part of the FEIS.” *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 208-09 (2011) (citing *Claiborne*, CLI-98-3, 47 NRC at 89, and *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985)). In other words, Staff’s review (the FEIS itself) and the adjudicatory record become the pertinent environmental record of decision. *See, e.g., Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 526 (2008), *petition for review denied on other grounds, San Luis Obispo Mothers for Peace v. NRC*, 635 F.3d 1109 (9th Cir. 2011).
- F The following technical issues are discussed: energy savings from renovations for existing building, energy savings from energy-efficient building codes, assessing need for power from a proposed power plant.
- LBP-12-6 HONEYWELL INTERNATIONAL, INC. (Metropolis Works Uranium Conversion Facility), Docket No. 40-3392-MLA (ASLBP No. 11-910-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; February 29, 2012; INITIAL DECISION

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- A In accordance with 10 C.F.R. § 40.36, a source materials licensee must demonstrate that sufficient funds will be available to cover the cost of decommissioning its facility. Through its regulations, the NRC seeks to ensure “that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems.” Proposed Rule: “Decommissioning Planning,” 73 Fed. Reg. 3812, 3812-13 (Jan. 22, 2008).
- B A licensee has numerous options for meeting its decommissioning funding obligation, including: (1) prepayment into an account segregated from the licensee’s assets and outside its control; (2) an external sinking fund in which deposits are made annually, coupled with a surety method or insurance that decreases in value as the accumulated assets in the sinking fund increase; or (3) a surety or insurance method (surety bond, letter of credit, line of credit, or insurance policy) where proceeds are payable to a trust established for decommissioning costs. See 10 C.F.R. § 40.36(e). Only one permissible method — a guarantee of available funds by the licensee itself — does not involve the protection of either a prepaid segregated account or having a third party committed to paying the licensee’s projected decommissioning costs if the licensee is unable, or otherwise fails, to do so. Understandably, the Commission requires a licensee that wishes to be the sole guarantor of its own liabilities to satisfy a stringent test.
- C To use the self-guarantee mechanism to fulfill its decommissioning funding obligation, a licensee that issues bonds must annually satisfy the financial test set forth in 10 C.F.R. Part 30, Appendix C, § II.B.3.
- D Section 40.14 of 10 C.F.R. provides that the NRC “may” grant such exemptions from the applicable regulatory requirements “as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.”
- E The Board concludes, as a matter of law, that special circumstances must exist before it may grant the requested exemption. A Licensing Board is not free to reexamine fundamental policy judgments that are reflected in Commission regulations by creating exceptions to them in situations that will frequently recur. In such situations, the proper recourse lies in petitioning the Commission to change the regulation, not in seeking piecemeal revision of the Commission’s rules by a licensing board. It is the role of the Commission to review licensing board decisions, and not the role of licensing boards to review and to reconsider the wisdom of the Commission’s regulations.
- F When interpreting “special circumstances” under 10 C.F.R. § 2.335 — which employs language very similar to the definition of “special circumstances” under 10 C.F.R. § 50.12(a)(2)(ii) upon which Applicant relies — the Commission has made clear that more is required than that enforcement of a regulation might not be necessary in certain individual circumstances. Rather, it is also required that those circumstances be unusual if not unique, and that the Commission did not previously consider such circumstances — either explicitly or by necessary implication — when it promulgated the relevant regulation in the first place.
- G The Commission’s regulations do not operate as a one-way street or safe harbor. In other words, they do not merely establish a standard that an applicant is entitled to invoke for its benefit, but that may then be disregarded whenever an applicant wants to argue its case on an individual, fact-specific basis. Not only would such a practice in effect transfer much ultimate policymaking from the Commission to its Staff, but addressing case by case the inevitable multitude of requests for individual exemptions would divert resources that are better allocated to the agency’s primary mission of ensuring that licensees comply with safety and environmental standards.
- H The Licensing Board will not consider an exemption request that was not made to the NRC Staff in the first instance. Although the Commission has delegated to the Board authority to adjudicate the issues raised by Applicant’s hearing request, it has not empowered the Board to serve as an initial reviewer of exemption requests. See 10 C.F.R. §§ 2.319, 2.321(c). That role belongs to the NRC Staff. See 10 C.F.R. §§ 2.100-2.103; *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-77-35, 5 NRC 1290, 1291 (1977).
- I In the circumstances of the case, Applicant’s request for an exemption fails to satisfy the requirements of 10 C.F.R. § 40.14. Because granting the requested exemption could adversely affect the likelihood that adequate funds would be available to decommission Applicant’s facility, granting the exemption would potentially endanger life or property. Thus, granting Applicant’s requested exemption would not be in the public interest.
- LBP-12-7 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE;

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March 29, 2012; MEMORANDUM AND ORDER (Denying CASE's Motions to Admit Newly Proffered Contentions 9 and 10, and Dismissing CASE from This Proceeding)

- A The "good cause" factor in 10 C.F.R. § 2.309(c)(1) is the "most important" and entitled to the most weight. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 261 (2009). Where a petitioner fails to establish good cause, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73 (1992). A petition that attempts to proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected. *See Oyster Creek*, CLI-09-7, 69 NRC at 260-61.
- B The Commission has stressed that the standards governing contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any of the admissibility criteria in section 2.309(f)(1) warrants rejection of a contention. *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006).
- C It is well established that an environmental report need only discuss reasonably foreseeable environmental impacts of a proposed action. *Private Fuel Storage, LLC*. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002).
- D A petitioner may not, by design or neglect, fail to include critical admissibility-related information in its initial pleading, and then attempt to remedy that failure by including the information in a reply to which the respondent has no right of response. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) (the NRC's procedural rules do not allow "using reply briefs to provide, for the first time, the necessary threshold support for contentions," as that "would effectively bypass and eviscerate [its] rules governing timely filing, contention amendment, and submission of late-filed contentions"); *Nuclear Management Co.* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) (petitioner may not remediate deficient contention "by introducing in the reply documents that were available to it during the time frame for initially filing contentions").
- LBP-12-8 EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR (ASLBP No. 12-916-04-LR-BD01); LICENSE RENEWAL; April 4, 2012; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for Hearing)
- A In this proceeding under 10 C.F.R. Part 54 regarding the application of Exelon Generation Co., LLC, to renew the operating licenses for Limerick Generating Station, Units 1 and 2, the Licensing Board concludes that petitioner Natural Resources Defense Council (NRDC) has established standing and has proffered at one contention that is admissible in part pursuant to 10 C.F.R. § 2.309(f)(1). In accordance with 10 C.F.R. § 2.309(a), we therefore grant the request for public hearing and admit NRDC as a party to this proceeding.
- B It is well established that the NRC applies "contemporaneous judicial concepts of standing." *See, e.g., Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (quotation omitted). In other words, "a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).
- C The Commission has found that geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet these traditional standing requirements in certain types of proceedings, including operating license renewal proceedings. *See Calvert Cliffs 3*, CLI-09-20, 70 NRC at 915 n.15 (citing with approval *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001) (applying proximity presumption in reactor operating license renewal proceeding)). This is because a license renewal allows operation of a reactor over an additional period of time during which the reactor could be subject to the same equipment failures and personnel errors as during operations over the original period of the license. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 385 n.1 (1998).
- D When the petitioner is an organization rather than an individual (as is the case here), it must demonstrate organizational or representational standing. "An organization may base its standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members.

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To derive standing from a member, the organization must demonstrate that the individual member has standing to participate, and has authorized the organization to represent his or her interests.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995) (citations omitted).

- E To intervene in a proceeding, a petitioner must not only demonstrate that it has standing, but it must also put forward at least one admissible contention. Section 2.309(f)(1) of 10 C.F.R. requires that each proffered contention must meet all of the following requirements: (i) provide a specific statement of the issue of law or fact to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (vi) show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(i)-(vi).
- F NRC regulations in 10 C.F.R. § 51.53 require a license renewal application to include an Environmental Report (ER) to assist the NRC Staff in preparing its EIS. *See* 10 C.F.R. § 51.53(c)(1). The ER must address both the impacts of the proposed renewal and alternatives to those impacts. *See id.* § 51.53(c)(2). Applicants are further subject to the requirements of 10 C.F.R. § 51.53(c)(3), which lists the issues that an applicant must address in the ER, as well as those that it need not address.
- G A license renewal applicant’s ER is further required to consider any “new and significant” information that might alter previous environmental conclusions. 10 C.F.R. § 51.53(c)(3)(iv). NEPA requires the agency to reevaluate any prior analysis if it is presented any new and significant information which would cast doubt on a previous environmental analysis. *Marsh v. Oregon Natural Resources Council, Inc.*, 490 U.S. 360, 374 (1989).
- H Part 51 of 10 C.F.R. divides the environmental requirements for license renewal into Category 1 and Category 2 issues. *See* 10 C.F.R. Part 51, Subpart A, App. B, tbl. B-1. Category 1 issues are those resolved generically by the Generic Environmental Impact Statement (GEIS) and need not be addressed as part of license renewal. Category 2 issues require plant-specific review. *See* 61 Fed. Reg. at 28,467; *see also* 10 C.F.R. Part 51, Subpart A, App. B, tbl. B-1 n.2. For each license renewal application, Part 51 requires that the NRC Staff prepare a plant-specific supplement to the GEIS that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts. *See* 10 C.F.R. §§ 51.95(c), 51.71(d).
- I NEPA requires the NRC to take a “hard look” at alternatives, including Severe Accident Mitigation Alternatives (SAMAs), and to provide a rational basis for rejecting alternatives that are cost-effective. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *accord Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 737 (3d Cir. 1989).
- J NRC regulations clearly specify that the SAMA analysis is a Category 2 issue. Table B-1 of 10 C.F.R. Part 51 “summarizes the Commission’s findings on the scope and magnitude of environmental impacts of renewing the operating license for a nuclear power plant.” 10 C.F.R. Part 51, Subpart A, App. B. Acknowledging that the risks posed by severe accidents are small for all plants, Table B-1 declares that “severe accidents” are a Category 2 issue, and provides that SAMAs “must be considered for all plants that have not considered such alternatives,” repeating the admonition in 10 C.F.R. § 51.53(c)(3)(ii)(L). *Id.* Part 51, Subpart A, App. B, tbl. B-1 (Postulated Accidents).
- K We reject the proposition that 10 C.F.R. § 51.53(c)(3)(ii)(L) converts the Category 2 (site-specific) issue of SAMAs into a Category 1 issue. If the Commission intended SAMAs to be a Category 1 issue for Limerick and other plants that had previously considered SAMAs or SAMDAs, it would have said so explicitly. It is, of course, within the Commission’s authority to declare an issue to be Category 1 for all plants or a subset of plants. However, this Board is unaware of any provision in our governing regulations that would transform an issue listed as a Category 2 issue into a Category 1 issue absent an *explicit* statement from the Commission.
- L Determining whether information regarding SAMAs is “new” and “significant” does not involve the same analysis as performing an entirely new SAMA analysis, as the Applicant suggests. Insofar as this contention challenges the ER’s lack of consideration of new and significant information regarding potentially new, previously unanalyzed SAMAs, it is admissible.
- M This Board finds that the intent of the Commission in promulgating 10 C.F.R. § 51.53(c)(3)(ii)(L) is clear — to exempt applicants from being required to submit SAMA analyses in the license renewal proceedings for Limerick, Watts Bar, and Comanche Peak.

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- LBP-12-9 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; May 2, 2012; MEMORANDUM AND ORDER (Granting, in Part, Joint Intervenor’s Motion to Admit Amended Contention NEPA 2.1)
- A The “good cause” factor of 10 C.F.R. § 2.309(c)(1) is the “most important” and is entitled to receive the most weight. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 261 (2009); see *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982) (describing good cause). Where a petitioner fails to show good cause, “petitioner’s demonstration on the other factors must be particularly strong.” *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73 (1992) (internal quotations omitted). A petition that attempts to proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected. See *Oyster Creek*, CLI-09-7, 69 NRC at 260-61.
- B Failure to comply with any of the 10 C.F.R. § 2.309(f)(1) admissibility criteria is grounds for rejection of a contention. *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006).
- C The regulations in 10 C.F.R. Part 51 implement the NRC’s obligations arising from section 102(2) of NEPA, 42 U.S.C. § 4332(2). See 10 C.F.R. § 51.10(a). Pursuant to Part 51 (*id.* § 51.50(c)), every COL application must be accompanied by an ER, the purpose of which is to aid the Commission in its preparation of an Environmental Impact Statement (EIS). See *id.* § 51.14(a). The EIS must “disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action.” *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 106-07 (1983).
- D Regarding the level of detail in an ER, the governing regulations require it to discuss environmental impacts “in proportion to their significance” (10 C.F.R. § 51.45(b)(1)), and it “should contain sufficient data to aid the Commission in its development of an independent analysis.” *Id.* § 51.45(c). NEPA documents need consider only those environmental impacts that are “reasonably foreseeable” (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002)), not those that are “remote and speculative possibilities.” *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978) (quoting *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837-38 (D.C. Cir. 1972)); see also *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005) (“NEPA . . . does not call for certainty or precision, but an *estimate* of anticipated (not unduly speculative) impacts.” (emphasis in original)).
- E Where the NRC Staff has deemed certain data to be material for ensuring the accuracy and reliability of an environmental report (ER), an applicant — to promote consistency in the ER and to ensure its accuracy and reliability — might elect to include similar related data in the ER. Alternatively, the NRC Staff might require an applicant to include these data, or the Staff might acquire these data independently for its own analysis in the EIS. Cf. *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348-50 (1998) (describing NRC Staff’s responsibilities, parallel to the adjudicatory process, to seek additional information from an applicant after docketing of pending license application).
- F Although aspects of a newly proffered environmental contention may be time-barred from resolution through administrative adjudication, NEPA nevertheless obligates the NRC Staff to undertake a full and independent evaluation of the environmental impacts of a license applicant’s proposed action. See 10 C.F.R. § 51.41; see also *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC at 448 (describing the NRC’s NEPA responsibilities of conducting a “rigorous” and “objective” review).
- G The ER must, *inter alia*, discuss reasonably foreseeable environmental impacts of the proposed action in proportion to their significance, as well as adverse environmental effects that cannot be avoided if the proposed plan is implemented. See 10 C.F.R. § 51.45(b)(1)-(2); *Private Fuel Storage*, CLI-02-25, 56 NRC at 348-49.
- LBP-12-10 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 12-917-05-LR-BD01); LICENSE RENEWAL; May 24, 2012; MEMORANDUM AND ORDER (Denying Petition for Intervention and Request to Reopen the Proceeding and Admit New Contention)
- A This proceeding concerns the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. for renewal of the operating license for its Pilgrim Nuclear Power Station, located

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in Plymouth, Massachusetts. After the Board disposed of the final outstanding contention and terminated the proceeding, Intervenor Pilgrim Watch, along with the Jones River Watershed Association, filed a motion to reopen the proceeding and admit a new contention concerning impacts on marine species. In this order, a majority of the Licensing Board denies the motion.

- B The reopening standard is intended to impose a deliberately heavy burden on parties seeking to supplement the evidentiary record at the 11th hour, after the record has closed.
- C The requirement that a motion to reopen be accompanied by supporting affidavits that specifically address the criteria of 10 C.F.R. § 2.326(a) is interpreted strictly.
- D Under the Endangered Species Act, an agency is to “review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat,” 50 C.F.R. § 402.12(a), but formal consultation is only required if the acting agency makes a determination that its action may have such an effect, and “the determination of possible effects is ultimately the [acting] agency’s responsibility,” *Water Keeper Alliance v. U.S. Department of Defense*, 271 F.3d 21, 25 (1st Cir. 2001).
- E In the event that the Fish and Wildlife Service or the National Marine Fisheries Service disagrees with a finding by the NRC that an action is “not likely to adversely affect” or will have “no effect” on listed species or critical habitat, the question of whether or not the NRC Staff undertakes formal consultation depends upon the NRC’s own regulations and its interpretation of its duty under the ESA to “insure that any action . . . is not likely to jeopardize” listed species or habitat. 16 U.S.C. § 1536(a)(2).
- F The Magnuson-Stevens Fishery Conservation and Management Act imposes a direct obligation on the NRC to consult with the National Marine Fisheries Service if the NRC determines that approval of the requested license renewal “may adversely affect any essential fish habitat.”
- G The board is not empowered to rehabilitate the failure of the submitted affidavits to address the reopening requirements and explain why each has been met.
- H The NRC satisfies its consultation obligations under the ESA when it submits to the National Marine Fisheries Service (NMFS) a biological assessment concluding that the licensing action will have “no effect” on listed species or critical habitat, regardless of whether the NMFS concurs with the NRC’s conclusions.
- LBP-12-11 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 12-920-07-LR-BD01); LICENSE RENEWAL; June 18, 2012; MEMORANDUM AND ORDER (Denying Petition for Intervention and Request to Reopen Proceeding and Admit New Contention)
- A In this previously terminated proceeding on the application for renewal of the Pilgrim Nuclear Power Station’s operating license, the licensing board denies as untimely a motion to reopen the proceeding and admit a new contention concerning the Licensee’s impacts on the roseate tern, a federally listed endangered species.
- B In order for a motion to reopen to be granted and new contention admitted after termination of a proceeding, the motion must meet all of the requirements of 10 C.F.R. § 2.326 for reopening a closed record, and the new contention must have been submitted in a timely fashion and demonstrate admissibility as required at 10 C.F.R. § 2.309.
- C Under the ESA, a federal agency must consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any species listed as threatened or endangered, or to destroy or adversely modify critical habitat. The agency must request information whether any listed or proposed species may be present in the area of the action, and if the Services advise that any such species may be present, the agency must prepare a biological assessment to identify any species that is likely to be affected by the action.
- D The contention at issue was filed several years after issuance of both the draft and final EIS in this case, and petitioners’ claimed new information was either not materially different from information that was previously available, or otherwise not really new, with the contention filed a year or more after the availability of the most recent information cited by petitioners. Under these circumstances the contention is found to be untimely.
- E Section 2.326(a)(1) of 10 C.F.R. allows a motion to reopen to be granted, even if untimely, when the motion presents an “exceptionally grave issue,” which the Commission has defined as one which raises “a sufficiently grave threat to public safety.” Although noncompliance with the ESA is a serious matter, which may warrant further attention by the NRC Staff, the board concludes that any possibility of adverse

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effects on the roseate tern was not shown to involve any “grave threat to public safety” so as to warrant reopening the adjudicatory proceeding.

- F Concluding that the motion to reopen does not meet all the requirements of 10 C.F.R. § 2.326 and that the contention fails to meet the timeliness requirements of 10 C.F.R. § 2.309, the licensing board denies the petition to intervene and motion.
- LBP-12-12 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; June 21, 2012; MEMORANDUM AND ORDER (Ruling on Motion for Leave to Late-File Amended and New Contentions and Motion to Admit New Contentions)
- A This 10 C.F.R. Part 52 proceeding concerns the application of Detroit Edison Company (DTE) to construct and to operate a new boiling water reactor on its existing Fermi nuclear facility site near Newport City in Monroe County, Michigan. The proposed reactor is designated Unit 3 and would employ the GE-Hitachi Economic Simplified Boiling Water Reactor (ESBWR) design. The Licensing Board granted the Intervenor’s motion for leave to file ten new or amended contentions but denied the contentions as inadmissible.
- B A delay caused by the schedule of counsel in other matters can support a finding of good cause. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-00-19, 52 NRC 85, 92 (2000).
- C Because three contentions are already set for hearing in this proceeding, the admission of further contentions would not substantially delay the proceeding. And, because two of the previously admitted contentions allege NEPA violations, the new NEPA contentions put forward by the Intervenor would not unreasonably broaden the issues.
- D As a general rule, Intervenor must file their NEPA contentions based on the ER. Thus, a contention submitted for the first time after the DEIS is issued will be deemed untimely. But there are exceptions to this rule. A petitioner “may amend [NEPA] contentions or file new [NEPA] contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.” 10 C.F.R. § 2.309(f)(2). Alternatively, the Intervenor may file new or amended contentions in response to the DEIS if they can satisfy the test of section 2.309(f)(2)(i)-(iii). Thus, a new or amended contention may be filed based upon the DEIS if it is based upon new and materially different information, whether contained in the DEIS itself or some other source, and if it is filed in a timely manner once the new information becomes available (or any delay is excused pursuant to section 2.309(c)(1)).
- E Although NRC regulations provide that petitioners may file amended contentions “if there are data or conclusions in the [DEIS] . . . that differ significantly from the data or conclusions in the applicant’s documents,” 10 C.F.R. § 2.309(f)(2), this does not mean that the publication of the DEIS simply provides an opportunity to renew previously filed (and rejected) contentions. Rather, the petitioner must demonstrate that the DEIS actually contains new data or conclusions.
- F Intervenor claim that, because the permitting processes of the Army Corps of Engineers and the state Department of Environmental Quality were not completed before the DEIS was issued for public comment, Intervenor have been deprived of their right to comment publicly on mitigation plans at the DEIS stage. Intervenor fail to cite any legal authority, however, supporting their theory that the permitting processes of other agencies must be completed before the DEIS may be issued for public comment. Although the NRC must respond to the significant views of other agencies, particularly if they are critical of the NRC’s analysis, that duty applies at the FEIS stage, after the DEIS has been circulated to interested federal and state agencies for their review and comment in accordance with the NRC’s regulations.
- G Contentions that concern duties of the NRC Staff and not an applicant, such as consultation with other federal agencies, could not be raised at the ER stage, and therefore we will not reject such a contention as untimely when filed after the release of the DEIS.
- H There is no requirement in the Endangered Species Act (ESA), or in the NRC regulations enumerating the required contents of a DEIS, that the NRC complete the required ESA consultation before publication of the DEIS.
- I Intervenor’s challenge concerning the DEIS’s alleged failure to discuss the Great Lakes Compact’s process for regional review of its application for a consumptive water use permit is inadmissible because it does not raise a genuine dispute with the DEIS. The Compact Agreement binds and imposes certain obligations on its member states, not on other governmental agencies or on utility companies. Where Fermi 3 is concerned, if the Michigan Department of Environmental Quality decides to grant Applicant a

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water withdrawal permit, it is Michigan that must seek approval from the Compact, not Applicant or the NRC.

- J A licensing board is precluded from admitting a contention alleging that the project may not be consistent with the requirements of another federal, state, or local agency. That issue must be resolved by the other agency, not the NRC.
- K The Board may construe an admitted contention contesting the ER as a challenge to the subsequently issued DEIS or FEIS without the necessity for Intervenor to file a new or amended contention. This concept has been referred to as the “migration tenet.” The migration tenet helps to expedite hearings by obviating the need to file and litigate the same contention up to three times — once against the ER, once against the DEIS, and one final time against the FEIS. This tenet, however, applies only so long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention. If it is not, an intervenor may need to amend the admitted contention, or file a new contention altogether.
- L Although NEPA requires that the environmental impact statement discuss the impacts of the proposed action and any alternatives to that action (including options for mitigating impacts), the statute does not require that any specific mitigation strategies must be adopted.
- M The General Design Criteria require that “[t]he reactor core and associated coolant systems shall be designed so that in the power operating range the net effect of the prompt inherent nuclear feedback characteristics tends to compensate for a rapid increase in reactivity.” In other words, the General Design Criteria require that the reactor exhibit a negative void coefficient in the power operating range. The Design Control Document for the ESBWR shows that throughout core life the ESBWR exhibits a negative void coefficient. Thus, there was no need for the DEIS to discuss accidents encompassing the potential of “Positive Void Coefficient” because the design does not exhibit such a characteristic.
- N In order to avoid an unlawful segmentation of the project, the FEIS must evaluate the environmental impact not only of the construction and operation of the project itself but of all connected actions. The NRC Staff argues that the construction of a transmission line is defined as a “preconstruction activity,” and that the NRC lacks regulatory authority over construction of the transmission corridor, which will be built by an entity other than the Applicant. But even if the transmission corridor is a preconstruction activity and outside the NRC’s regulatory jurisdiction, the construction and maintenance of the transmission corridor likely qualifies as a connected action under governing NRC and Council on Environmental Quality (CEQ) regulations, and therefore must be analyzed in the FEIS.
- O By raising the public health consequences of all radiological releases from Fermi 3, Intervenor seek to suggest that any release, even those within limits set by NRC regulations, must be prohibited. To the extent that Intervenor challenge all radiological releases from nuclear power plants, the contention presents an impermissible challenge to the NRC’s regulations. *See* 10 C.F.R. § 2.335(a).
- LBP-12-13 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR (ASLBP No. 10-900-01-LR-BD01); LICENSE RENEWAL; June 27, 2012; MEMORANDUM AND ORDER (Denying Motion to Admit New Contentions Challenging the Environmental Report)
- A The Board denies a motion filed by the San Luis Obispo Mothers for Peace seeking to admit two new environmental contentions because PG&E is under no legal duty to update its originally compliant 2009 Environmental Report (ER) based on events that occurred in 2012 and, absent any such duty, the contentions fail to allege any legal omission or deficiency in the ER and the 2012 events are not “material” under 10 C.F.R. § 2.309(f)(2).
- B Neither NEPA nor 10 C.F.R. Part 51 requires an applicant to update an originally compliant Environmental Report to reflect new information derived from subsequent events. LBP-11-32, 74 NRC 654, 668 (2011), *referral of issue declined*, CLI-12-13, 75 NRC 681 (2012).
- C If an Environmental Report is compliant as of its date of issuance, then subsequent events and information are not material to the compliance status of the ER.
- D Absent any duty under Part 51 requiring an applicant to supplement its Environmental Report to address subsequent events or information, subsequent events and information do not create a “genuine dispute” as to the compliance status of the ER.
- E Although the trigger point for timely submission of new or amended contentions is when new information becomes available, and our rules require the filing of contentions in a timely manner after such new information becomes available, the core element of an admissible contention is that it must allege that

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there is some legal omission or deficiency in the Environmental Report. If the new information does not give rise to an alleged omission or deficiency (because there is no duty for the Environmental Report to address the new information), then the new information is not material and cannot form the basis of an admissible contention.

LBP-12-14 ALL OPERATING BOILING WATER REACTOR LICENSEES WITH MARK I AND MARK II CONTAINMENTS; ORDER MODIFYING LICENSES WITH REGARD TO RELIABLE HARDENED CONTAINMENT VENTS (EFFECTIVE IMMEDIATELY), Docket No. EA-12-050 (ASLBP No. 12-918-01-EA-BD01); ALL POWER REACTOR LICENSEES AND HOLDERS OF CONSTRUCTION PERMITS IN ACTIVE OR DEFERRED STATUS; ORDER MODIFYING LICENSES WITH REGARD TO RELIABLE SPENT FUEL POOL INSTRUMENTATION (EFFECTIVE IMMEDIATELY), Docket No. EA-12-051 (ASLBP No. 12-918-01-EA-BD01); ENFORCEMENT; July 10, 2012; MEMORANDUM AND ORDER (Denying Petitions for Hearing)

A In this proceeding regarding challenges to two enforcement orders, each of which implements lessons learned from the Fukushima Dai-ichi accident, ruling on petitions to intervene and requests for hearing on claims that the enforcement orders are inadequate to ensure adequate safety, the Licensing Board denies the petitions as outside the scope of the proceeding.

B Section 189a of the Atomic Energy Act of 1954 confers upon the Commission authority to define the scope of its proceedings, which, in enforcement proceedings, the Commission takes to permit challenges solely on whether an order should be sustained. Challenges seeking the imposition of additional license modifications are beyond the scope of such proceedings. *Bellotti v. NRC*, 725 F.2d 1380, 1381 (D.C. Cir. 1983), *aff g*, *sub nom.*, *Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982); *see also* *Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 53 (2010); *Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404 (2004); *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 58 (2004).

LBP-12-15 UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR (ASLBP No. 12-919-06-LR-BD01); LICENSE RENEWAL; July 17, 2012; MEMORANDUM AND ORDER (Ruling on Standing and Hearing Petition Contention Admissibility)

A In this 10 C.F.R. Part 54 proceeding regarding the application of Union Electric Company d/b/a Ameren Missouri (Ameren) for the renewal of its 10 C.F.R. Part 50 operating license for the Callaway Plant, Unit 1, that would authorize Ameren to operate that facility in Callaway County, Missouri, for an additional 20 years, the Licensing Board concludes that petitioner Missouri Coalition for the Environment (MCE), while having provided sufficient support to establish its representational standing “as of right” to intervene in the proceeding, failed to demonstrate that any of its three National Environmental Policy Act (NEPA)/environmental-related contentions alleging deficiencies in the Ameren environmental report (ER) was admissible so as to warrant granting MCE’s hearing petition.

B For an individual or organization to be deemed a “person whose interest may be affected by the proceeding” under Atomic Energy Act (AEA) § 189a, 42 U.S.C. § 2239(a)(1)(A), so as to have standing “as of right” such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must include a statement of (1) the petitioner’s name, address, and telephone contact information; (2) the nature of the petitioner’s right under the AEA to be made a party; (3) the nature of the petitioner’s interest in the proceeding, whether property, financial, or otherwise; and (4) the possible effect of any decision or order that might be issued in the proceeding on the petitioner’s interest. *See* 10 C.F.R. § 2.309(d)(1)(i)-(iv). In assessing this information in a section 189a adjudicatory proceeding to determine whether the petitioner has established its standing, the Commission generally applies contemporaneous judicial standing concepts, inquiring whether the participant has established that (1) it has suffered or will suffer a distinct and palpable injury that constitutes injury-in-fact within the zones of interest arguably protected by the governing statutes (e.g., the AEA, NEPA, 42 U.S.C. § 4321 et seq.); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See* *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

C An entity may seek to demonstrate its standing to intervene on behalf of its members, i.e., representational standing, but that entity must then show it has an individual member who can fulfill all the necessary standing elements and who has authorized the entity to represent his or her interests. *See* *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).

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- D In assessing a petition submitted in a 10 C.F.R. Part 54 power reactor license renewal proceeding to determine whether these standing elements are met, which a licensing board must do even if there are no objections to a petitioner's standing, the board may apply the proximity presumption. Under this presupposition, for an entity seeking representational standing, the standing elements associated with causation are deemed fulfilled if a member of the entity that is seeking representational standing resides or has significant contacts in an area within a 50-mile radius of the facility in question.
- E Section 2.309(f)(1) of the Commission's rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding." *Id.* § 2.309(f)(1)(iii), (iv). Failure to comply with any of these requirements is grounds for dismissing a contention. *See South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 & n.33 (2010).
- F All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and directive referring the proceeding to the Licensing Board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-36 (2011).
- G To be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application. *See* 10 C.F.R. § 2.309(f)(1)(iv); *see Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 388-89 (2012). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the public health and safety or the environment. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 75-76 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996); *see also Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003).
- H It is the petitioner's obligation to present the factual allegations and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006). While a board may appropriately view a petitioner's supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). Neither speculation nor conclusory assertions, even by an expert, alleging that a matter fails to satisfy the AEA or NEPA will suffice to allow the admission of a proffered contention. *See Diablo Canyon*, CLI-11-11, 74 NRC at 452 n.139; *Amer. Centrifuge Plant*, CLI-06-10, 63 NRC at 472; *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor the petitioner, nor may the board supply information that is lacking. *See Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 (2009); *Palo Verde*, CLI-91-12, 34 NRC at 155. Likewise, simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05.
- I All properly formulated contentions must focus on the license application in question, challenging

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either specific portions of, or alleged omissions from, the application (including the safety analysis report/technical report and the ER) so as to establish there is a genuine dispute with the application on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed. See *N. Trend Expansion Project*, CLI-09-12, 69 NRC at 557; *Amer. Centrifuge Plant*, CLI-06-10, 63 NRC at 462-63; see also *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 371 (2012); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 342-44 (2012), petition for review filed sub nom. *Beyond Nuclear v. NRC*, No. 12-1561 (1st Cir. May 7, 2012). Similarly, a petitioner that fails to provide sufficient factual or expert support for the claims in its contention in contravention of section 2.309(f)(1)(v) also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi). See *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 404, 405 (2012); see also *Comanche Peak*, CLI-12-7, 75 NRC at 390 & n.43.

- J If at the time a hearing petition is filed, the exact nature of the measures that will be proposed by an applicant under an agency enforcement order are simply too uncertain to permit a determination whether one or more of them will require a NEPA analysis of their environmental impact implications as part of a license renewal proceeding, an appropriate challenge and a board determination will need to abide at least the applicant's proposal regarding the particular measures it intends to implement to comply with the requirements of the enforcement order.
- K Contention that NRC Staff enforcement order and information request are "approvals" under section 51.45(d), which has implication that any agency prerequisite with which a license renewal applicant must comply to operate a reactor facility during an extended term constitutes an "approval" under section 51.45(d), would entail an unreasonably strained definition of "approval." An applicant must comply with any number of NRC regulations to continue operating a reactor facility, but those regulations cannot be considered "approvals" such that an applicant would be required to describe its compliance with each provision in its ER. This is clearly not the intent of section 51.45(d). Moreover, the plain meaning of the word "approval," which requires an affirmative action on the part of an approver, clearly establishes that requiring compliance is different from granting an approval. See *Webster's Third New International Dictionary* 106 (Philip B. Gove ed. in chief, unabridged, 1976) (defining "approval" as "the act of approving" and "certification as to acceptability").
- L With regard to a Staff information request, if that information directive simply requires that licensees provide certain information to the agency and explains that the NRC will evaluate the information provided by licensees to determine whether further regulatory actions are required, but does not state that the information is required for the NRC to grant (or deny) a permit, license, approval, or other entitlement, the Staff's information request is not an "approval" under section 51.45(d).
- M A Staff enforcement order is essentially a directive to a licensee to achieve compliance with the order's requirements by a certain date. That an enforcement order has the unique feature of allowing a licensee to propose its own strategies for coming into compliance, rather than mandating a certain set of plant alterations, does not change the fundamental character of the order and transform it into an "approval." Such an enforcement order, which will be treated by the licensing board as it would any other enforcement order, does not establish an "approval" process under section 51.45(d). A licensee, therefore, is not required to list that order, or the licensee's compliance with the order's terms, in the ER supporting its application for renewal of its reactor operating license.
- N Even if compliance with an information request and/or an enforcement order were deemed to be a prerequisite for license renewal, an applicant arguably would have already satisfied its duty under section 51.45(d) in an instance when its ER notes that one of the "Federal permits, licenses, approvals [or] other entitlements" that it must receive is a license renewal from the NRC. By noting that it must receive a license renewal from the NRC, the applicant necessarily implies that it must satisfy all of the requirements established by the NRC to receive that renewal. Section 51.45(d) surely does not require that an applicant explain every aspect of the process it must pursue in the course of obtaining a federal permit, license, or approval. See *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-12, 75 NRC 742, 764-65 (2012). Accordingly, the applicant would not have to list either of these items as a required permit, license, or approval given that the applicant already has listed its NRC license renewal generally as a federal permit, license, or approval.
- O In implementing NEPA § 102, 42 U.S.C. § 4332(2)(C)(i)-(iii), section 51.53(c)(2) of the Commis-

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sion's regulations requires that an ER submitted by a license renewal applicant address the environmental impacts of the proposed action and compare those impacts to the impacts of alternative actions. But the Commission has held repeatedly that an applicant need only consider those alternatives that are reasonable. See, e.g., *Seabrook*, CLI-12-5, 75 NRC at 341.

P The Commission has held that the Staff's environmental impact statement (EIS) "need only discuss those alternatives that . . . 'will bring about the ends' of the proposed action," *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991)), a principle equally applicable to an ER, see *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 263, aff'd, CLI-09-22, 70 NRC 932 (2009).

Q In its reactor license renewal rulings on wind-related NEPA alternatives contentions, the Commission was very clear that petitioners must demonstrate that wind generation can provide sufficient baseload power to replace the nuclear plant at issue by showing that such wind power is both technically feasible and commercially viable in the near future. See *Davis-Besse*, CLI-12-8, 75 NRC at 402; *Seabrook*, CLI-12-5, 75 NRC at 342.

R The showing needed under the Commission's *Seabrook* and *Davis-Besse* cases relates to the discussion necessary to support a NEPA alternatives contention in a 10 C.F.R. Part 54 reactor license renewal proceeding, which involves the replacement of an existing electrical generation source with an alternative source that likely has yet to be constructed, rather than in a Part 52 combined license proceeding, in which the proposed construction of an entirely new generation source seemingly would involve a different, and likely broader, set of considerations.

S Per the Commission's *Seabrook* decision, see CLI-12-5, 75 NRC at 342, 343, the use of the terms "in the relatively near term" and "in the near future" describe the period within which an otherwise technically feasible generation alternative would become commercially viable. These terms clearly denote temporal proximity to the present rather than measuring possible feasibility nearer to the extended term of the subject reactor, at least absent a showing that the technology "while not commercially viable at the time of the application, is under development for large-scale use and is 'likely to' be available during the period of extended operation," *id.* at 342 & n.245.

LBP-12-16 ENTERGY NUCLEAR GENERATION COMPANY and ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (ASLBP No. 12-921-08-LR-BD01); LICENSE RENEWAL; July 20, 2012; MEMORANDUM AND ORDER (Denying Petition for Intervention and Request to Reopen Proceeding and Admit New Contention)

A In this previously terminated proceeding on the application for renewal of the Pilgrim Nuclear Power Station's operating license, the licensing board denies as untimely a motion to reopen the proceeding and admit a new contention alleging that the licensee lacks certain required environmental permits and approvals from state and federal agencies.

B In order for a motion to reopen to be granted and new contention admitted after termination of a proceeding, the motion must meet all of the requirements of 10 C.F.R. § 2.326 for reopening a closed record, and the new contention must have been submitted in a timely fashion and demonstrate admissibility as required at 10 C.F.R. § 2.309.

C Petitioners' claim that the NRC Staff and the applicant should be estopped from arguing that petitioners' motion is untimely, based on the NRC's alleged failure to ensure the applicant's compliance with state and federal law, fails because petitioners do not show the necessary elements of an estoppel against the government that: (1) there was a "definite" representation to the party claiming estoppel; (2) the party relied on the government's conduct in such a manner as to change his position for the worse; (3) the party's reliance was reasonable; and (4) the government engaged in affirmative misconduct.

D Petitioners allege that the applicant lacks permits and approvals that are within the domain of other state or federal agencies. The board does not have jurisdiction to determine whether other government entities have properly followed their regulations or procedures, or the authority to compel other such agencies to provide the petitioners with relief.

E Section 2.326(a)(1) allows a motion to reopen to be granted, even if untimely, when the motion presents an "exceptionally grave issue," which the Commission has defined as one which raises "a sufficiently grave threat to public safety." Because Petitioners fail to show that any alleged failure to obtain required permits and approvals, or any discharge or other alleged harm, poses any grave threat to

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the safety of the public, the board concludes that there is no showing of an exceptionally grave issue so as to warrant reopening the adjudicatory proceeding.

- F Concluding that the motion to reopen does not meet all the requirements of 10 C.F.R. § 2.326 and that the contention fails to meet the timeliness requirements of 10 C.F.R. § 2.309, the licensing board denies the petition to intervene and motion.
- LBP-12-17 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); COMBINED LICENSE; August 30, 2012; PARTIAL INITIAL DECISION (Ruling on Contention 10C)
- A This proceeding concerns the application of Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC, under 10 C.F.R. Part 52 for a combined license (COL) to construct and operate a new nuclear unit, using the U.S. Evolutionary Power Reactor certified design, at its site in Lusby, Calvert County, Maryland. The licensing board conducted an evidentiary hearing on the merits of Contention 10C, which challenges the adequacy of the wind and solar power contribution estimates contained in the Final Environmental Impact Statement's (FEIS's) alternative based on a combination of energy sources. The licensing board finds that the FEIS, as supplemented by the evidence and testimony introduced at the evidentiary hearing, satisfies the requirements of the National Environmental Policy Act (NEPA) and 10 C.F.R. Part 51.
- B In general, an applicant in a licensing proceeding bears the burden of proving by a preponderance of the evidence that it is entitled to the applied-for license. *See* 10 C.F.R. § 2.325. Nonetheless, for contentions based on NEPA, such as the one at issue here, the burden shifts to the Staff, because the NRC, not the applicant, bears the ultimate burden of establishing compliance with NEPA. *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983).
- C An EIS shall include "a detailed statement by the responsible official on . . . alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii); *see Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 104 (1998). When considering alternatives, agencies must: "(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." 40 C.F.R. § 1502.14. NRC regulations state that the alternatives analysis is the "heart of the environmental impact statement." 10 C.F.R. Part 51, Appendix A, § 5. The Council on Environmental Quality (CEQ) and the federal courts agree. 40 C.F.R. § 1502.14. "The existence of a reasonable but unexamined alternative renders an EIS inadequate." *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998).
- D The Commission has explained that "[b]oards frequently hold hearings on contentions challenging the Staff's final environmental review documents. In such cases, "[t]he adjudicatory record and Board decision (and . . . any Commission appellate decisions) become, in effect, part of the FEIS." *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 208-09 (2011) (citing *Claiborne*, CLI-98-3, 47 NRC at 89, and *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985)). Thus, the Staff's FEIS, in conjunction with the adjudicatory record, become the relevant record of decision for the environmental portion of this proceeding. *See, e.g., Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 526 (2008), *petition for review denied on other grounds, San Luis Obispo Mothers for Peace v. NRC*, 635 F.3d 1109 (9th Cir. 2011). Federal courts of appeal have approved this process in which an EIS is effectively amended through the adjudicatory process. *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 93-94 (1st Cir. 1978); *Citizens for Safe Power, Inc. v. NRC*, 524 F.2d 1291, 1294 n.5 (D.C. Cir. 1975); *Ecology Action v. AEC*, 492 F.2d 998, 1001-02 (2d Cir. 1974).
- E "Where an issue arises over the scope of an admitted contention, NRC opinions have long referred back to the bases set forth in support of the contention." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002). Information offered in evidence, even if not specifically stated in the original contention and bases may be relevant if it falls within the "envelope," "reach," or "focus" of the contention when read with the original bases offered for it. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-12, 59 NRC 388, 391 (2004). Thus, as long as the facts relied on by Joint Intervenors fall within the "envelope" of the contention,

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they are properly before the Board. A petitioner is not required to set forth all its evidence or to prove its contentions at the admissibility stage. *Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). The Commission has instructed licensing boards that they may not stretch “the scope of admitted contentions beyond their reasonably inferred bounds,” but this statement also implies that we may consider issues that, although not expressly stated, can reasonably be inferred from the arguments presented.

- F In considering alternatives under NEPA, an agency should take into account the needs and goals of the parties involved in the application. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 146 (2004). “However, agencies are not permitted ‘to define the objectives [of a proposed action] so narrowly as to preclude a reasonable consideration of alternatives.’” *Wyoming v. U.S. Department of Agriculture*, 661 F.3d 1209, 1244 (10th Cir. 2011) (quoting *Citizens’ Committee to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1030 (10th Cir. 2002)). Although the agency’s alternatives analysis should reflect the applicant’s goals, the underlying goal should not be purposefully narrowed to predetermine the outcome. *City of Grapevine v. Department of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir. 1994). Blindly adopting the applicant’s statement of the purpose of the action is a “losing position” because it does not allow for the full consideration of alternatives required by NEPA. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997). NEPA requires an agency to “‘exercise a degree of skepticism in dealing with the self-serving statements from the prime beneficiary of the project’” and to look at the general goal of the project, rather than only those alternatives preferred by the applicant. *Id.* (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 209 (D.C. Cir. 1991) (Buckley, J., dissenting)).
- LBP-12-18 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); COMBINED LICENSE; August 30, 2012; ORDER (Ruling on Joint Intervenors’ Proposed New Contention 11)
- A This proceeding concerns the application of Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC, under 10 C.F.R. Part 52 for a combined license (COL) to construct and operate a new nuclear unit, using the U.S. Evolutionary Power Reactor certified design, at its site in Lusby, Calvert County, Maryland. Joint Intervenors filed a motion to admit proposed Contention 11, which alleges that the Final Environmental Impact Statement violates the National Environmental Policy Act (NEPA) because it fails to address the environmental and safety implications of the findings and recommendations of the Nuclear Regulatory Commission’s Fukushima Task Force. The Licensing Board concludes that the new contention was timely filed, but that under controlling Commission precedent it is not admissible.
- B Under section 2.309(f)(2), new contentions filed after the initial filing may only be admitted “upon a showing that . . . (i) [t]he information upon which the . . . new contention is based was not previously available; (ii) [t]he information upon which the . . . new contention is based is materially different than information previously available; and (iii) [t]he . . . new contention has been submitted in a timely fashion based on the availability of the subsequent information.” 10 C.F.R. § 2.309(f)(2).
- C The impact of the proposed action on public safety is an issue that must be considered under NEPA, as well as the Atomic Energy Act. *City of Las Vegas v. Federal Aviation Administration*, 570 F.3d 1109, 1115 (9th Cir. 2009) (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772, 775 (1983)).
- D The Commission has held that “reference to [generic agency] recommendations alone, without facts or expert opinion that explain their significance for the unique characteristics of the sites or reactors that are the subject of [a] petition[], does not provide sufficient support for [a] common contention.” *See Luminant Generation Co. LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 390 (2012).
- E When a petitioner “d[oes] not relate [its] contention to any unique characteristics of the particular site at issue,” a licensing board may properly find that the contention was not adequately supported by alleged facts or expert opinions and did not raise issues material to the NRC’s reviews of the pending license application. *Comanche Peak*, CLI-12-7, 75 NRC at 388, 389, 390.
- LBP-12-19 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-

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874-02-COL-BD01); COMBINED LICENSE; August 30, 2012; ORDER (Granting Summary Disposition of Contention 1)

- A This proceeding concerns the application of Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC, under 10 C.F.R. Part 52 for a combined license (COL) to construct and operate a new nuclear unit, using the U.S. Evolutionary Power Reactor certified design, at its site in Lusby, Calvert County, Maryland. The licensing board grants summary disposition in favor of Joint Intervenors as to Contention 1 and finds Applicants ineligible to obtain a license because they are owned by a United States (U.S.) corporation that is 100% owned by a foreign corporation, failing to meet the requirements of section 103(d) of the Atomic Energy Act (AEA) and 10 C.F.R. § 50.38.
- B Under 10 C.F.R. § 2.710(d)(2), a moving party is entitled to summary disposition “if the filings in the proceeding, . . . together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.” Generally, when ruling on motions for summary disposition, the Commission applies standards analogous to the standards used by the federal courts when ruling on motions for summary judgment under the comparable Rule 56 of the Federal Rules of Civil Procedure. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).
- C Section 103(d) of the AEA, prohibits the NRC from issuing a reactor license to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” 42 U.S.C. § 2133(d). This proscription is reiterated in 10 C.F.R. § 50.38 of the NRC regulations, “Ineligibility of certain applicants,” which states that: “[a]ny person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.”
- D According to the NRC’s Standard Review Plan on Foreign Ownership, Control, or Domination (SRP), an entity is considered to be under foreign ownership, control, or domination (FOCD) “whenever a foreign interest has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.” 64 Fed. Reg. at 52,358. The SRP cautions that there is generally no specific ownership percentage above which the NRC Staff would conclusively determine that an applicant is *per se* controlled by foreign interests. *Id.* Instead, foreign control “must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares.” *Id.*
- E Although, in general, the SRP on foreign ownership, control, or domination avoids designating a foreign ownership percentage that would make an applicant *per se* controlled by foreign interests, it nonetheless repeatedly states that a completely (i.e., 100%) foreign-owned applicant would be ineligible to receive a license. The SRP provides that “[w]here an applicant that is seeking to acquire a 100 percent interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign corporation, the applicant will not be eligible for a license.” 64 Fed. Reg. at 52,358.
- F The AEA clearly prohibits the NRC from issuing a reactor license to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” 42 U.S.C. § 2133(d). The fact that Congress connected the three prohibitions with the conjunction “or” rather than “and” shows that a license may not be granted if any of the three prohibitions is violated. The same proscription is reiterated in 10 C.F.R. § 50.38.
- G The prohibition of foreign ownership in 10 C.F.R. § 50.38 would be rendered superfluous if 100% foreign ownership is acceptable. Therefore, section 103(d) of the AEA and 10 C.F.R. § 50.38 must be interpreted, at a minimum, as making a 100% foreign-owned applicant ineligible to receive a license.
- H Under 10 C.F.R. § 50.38 and 10 C.F.R. § 52.75, a foreign-owned, -controlled, or -dominated entity is ineligible to apply for, let alone obtain, a COL.
- LBP-12-20 EXELON NUCLEAR TEXAS HOLDINGS, LLC (Victoria County Station Site), Docket No. 52-042 (ASLBP No. 11-908-01-ESP-BD01); EARLY SITE PERMIT; September 5, 2012; ORDER (Granting Unopposed Motion to Withdraw Application Without Prejudice and Terminating the Proceeding)
- A In this Order, the Board granted Exelon Nuclear Texas Holdings, LLC’s motion to withdraw its pending early site permit application without prejudice or imposition of any additional terms. Intervenor, Texans for a Sound Energy Policy, and the NRC Staff did not oppose the motion.
- B Withdrawal of an application after a notice of hearing is permitted on such terms as the presiding officer may prescribe.

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- C When a motion to withdraw an application is unopposed and the withdrawal causes no apparent harm to the public or any party, it is appropriate to grant the motion without prejudice or imposition of additional terms.
- LBP-12-21 GE-HITACHI GLOBAL LASER ENRICHMENT LLC (GLE Commercial Facility), Docket No. 70-7016-ML (ASLBP No. 10-901-03-ML-BD01); MATERIALS LICENSE; September 19, 2012; INITIAL DECISION
- A In this Initial Decision, the Atomic Safety and Licensing Board (the Board) determines that the NRC Staff conducted an adequate review of GE-Hitachi Global Laser Enrichment, LLC's (GLE's) application for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 8% ²³⁵U by a laser-based enrichment process. The Board was directed to conduct a mandatory hearing pursuant to section 193b(1) of the Atomic Energy Act, which was conducted in several stages and allowed the Board to probe issues of concern throughout the proceeding. The Board concluded that the application and record contained sufficient information to support issuance of GLE's requested license and that the Staff's review of the application was adequate to support its independent safety and environmental findings. The Board also independently considered the final balance among conflicting environmental costs and benefits and found the proposed action preferable. Thus, the Board authorizes the Directors of the Office of Nuclear Materials Safety and Safeguards and of the Office of Federal and State Materials and Environmental Management Programs to license the GLE facility when each makes all required findings not within the scope of the Board's decision.
- B Section 193b(1) of the Atomic Energy Act states that the Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility.
- C Licensing boards conducting mandatory hearings on uncontested issues must take an independent hard look at NRC Staff safety and environmental findings without replicating the NRC Staff's work.
- D Licensing boards conducting mandatory hearings should conduct a sufficiency review of uncontested issues, not a *de novo* review.
- E Licensing boards conducting mandatory hearings should not second-guess the underlying technical or factual findings by the NRC Staff.
- F While safety issues are reviewed under the adequacy and sufficiency standard, licensing boards conducting mandatory hearings must independently consider the final balance among the conflicting costs and benefits when reviewing National Environmental Policy Act (NEPA) issues.
- G The level of detail required for a licensing decision does not require a final facility design or an absolutely complete identification of all items relied on for safety and accident sequences, but instead sufficient information must be provided to understand the process and functions of items relied on for safety and to afford reasonable assurance that the integrated safety analysis is complete.
- H Nuclear proliferation and terrorism are addressed in very specific ways by the NRC. The Atomic Energy Act grants the NRC broad regulatory authority to address issues of defense, security, unauthorized disclosure of protected information, diversion of nuclear materials, and materials control as part of its delegation of licensing authority. Although the Act does not grant express nonproliferation authority, key NRC regulations, such as 10 C.F.R. Parts 73, 74, and 95, clearly have nonproliferation, security, and terrorism objectives.
- I NEPA requires a reasonably close causal relationship between an environmental effect and the alleged cause. The Commission has determined there is no such relationship between NRC licensing actions and terrorism.
- J In the NEPA context, the Commission has determined that nuclear nonproliferation issues are far removed from the NRC's decision to license a uranium enrichment facility.
- K The Waste Confidence Rule facially does not apply to uranium enrichment facilities.
- L The Atomic Energy Act does not prescribe a specific structure for mandatory hearings, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case.
- M Licensing boards should concentrate on a relatively thorough examination of selected issues of concern, rather than undertake a comparatively shallow analysis of all possible issues.
- N Formal rules of evidence rarely have a useful role in licensing board proceedings. NRC regulations state that strict rules of evidence do not apply to written submissions.

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- O In licensing board cases, written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in the most common types of hearings, the licensing boards themselves — not the parties — orally examine the witnesses. Therefore, rulings excluding evidence have little effect in eliminating delay, waste of time, or the needless presentation of cumulative evidence in the record.
- P If a licensing board deems prefiled evidence to be of little or no value, it simply need not ask about it at the evidentiary hearing and is free to accord such evidence little or no weight.
- Q A licensing board may exclude witness from the hearing room during the testimony of other witnesses testifying on the same topic.
- LBP-12-22 CALVERT CLIFFS 3 NUCLEAR PROJECT, LLC, and UNISTAR NUCLEAR OPERATING SERVICES, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016-COL (ASLBP No. 09-874-02-COL-BD01); COMBINED LICENSE; November 1, 2012; ORDER (Terminating the Adjudicatory Proceeding)
- LBP-12-23 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; November 9, 2012; MEMORANDUM AND ORDER (Granting Motion for Summary Disposition of Contention 6; Denying Motions for Summary Disposition of Contentions 8 and 15; Denying Motion to Admit Contention 25; and Resolving Remaining Issues Regarding Contentions 20 and 21)
- A In this 10 C.F.R. Part 52 proceeding regarding the application of DTE to construct and operate a GE-Hitachi Economic Simplified Boiling Water Reactor, designated Unit 3, on its existing Fermi nuclear facility site in Monroe County, Michigan, the Board grants summary disposition of Contention 6, denies summary disposition of Contentions 8 and 15, and denies the Motion to Admit Contention 25. The Board also declines to admit those parts of previously submitted Contentions 20 and 21 that the Board did not previously reject.
- B If intervenors raise issues that are not within the scope of an admitted contention and have not sought to amend the contention to include those issues, the Board will not consider the issues because they are outside the scope of the admitted contention.
- C The scope of an admitted contention depends in large part on the bases set forth in the “brief explanation of the basis for the contention” required by 10 C.F.R. § 2.309(f)(1)(ii). As long as the facts now relied on by intervenors in opposition to the summary disposition motion fall within the scope of that explanation, they are properly before the Board. In addition, while a party may not raise new arguments that are outside the scope of its contention, it may “legitimately amplify” arguments presented in support of the contention in order to fairly respond to arguments raised by the opposing party.
- D If an agency commits to mitigation measures in its Environmental Impact Statement (EIS), then it should take steps to ensure that mitigation commitments are implemented, monitor the effectiveness of such mitigation commitments, and be able to remedy failed mitigation. *See* U.S. Council on Environmental Quality, Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, 76 Fed. Reg. 3843, 3847 (Jan. 21, 2011).
- E If mitigation is used to support a finding of no significant impact (FONSI), it should either have been included in the original proposal or required by statute or regulation.
- F Federal agencies may rely on mitigation that will be imposed by other agencies; however, this does not relieve the federal agency conducting the NEPA review of the burden to explain the statutory or regulatory requirements it is relying on and its reasons for concluding that the application of those requirements will actually result in the mitigation and monitoring it assumes will occur.
- G The Board may construe an admitted contention contesting the Environmental Report (ER) as a challenge to a subsequently issued DEIS or FEIS without the necessity for intervenors to file a new or amended contention. This concept has been referred to as the “migration tenet.” The tenet applies when the information contained in a subsequently released document is sufficiently similar to the information contained in the original document upon which the original contention was filed. *See Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 26 (2011).
- H An adequate quality assurance (QA) “program must provide for control over activities affecting the quality of ‘structures, systems, and components, to an extent consistent with their importance to safety.’ The program must also include provisions requiring that the applicant regularly review its status and adequacy. The regulations further mandate that the program establish measures to assure that conditions

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‘adverse to quality’ are promptly identified and corrected.” *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 492-93 (1985) (internal citation omitted).

I Once intervenors show that safety-related design information in the Final Safety Analysis Report (FSAR) is infected by a pattern of QA violations, the burden then shifts to the Applicant to reestablish confidence in the safety-related aspects of the design.

J If the Staff uses the process and documentation required for the preparation of an EIS/ROD to comply with National Historic Preservation Act (NHPA) § 106, as it is permitted to do, then intervenors must identify some requirement applicable to that process and documentation with which the Staff arguably failed to comply.

K The NHPA and its implementing regulations require only that agencies consider the impacts of an undertaking on historic preservation and measures to mitigate those impacts in their decisionmaking. It does not require that the agency implement any mitigation measures, let alone that those measures meet a certain standard of protection for historic properties.

LBP-12-24 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), Docket No. 72-10-ISFSI-2 (ASLBP No. 12-922-01-ISFSI-MLR-BD01); MATERIALS LICENSE RENEWAL; December 20, 2012; MEMORANDUM AND ORDER (Ruling on Request for Hearing and Petition to Intervene)

A This proceeding concerns the application of Northern States Power Company for renewal of the operating license for its 10 C.F.R. Part 72 license to operate an Independent Spent Fuel Storage Installation at the Prairie Island Nuclear Generating Plant in Red Wing, Minnesota. The Prairie Island Indian Community (PIIC) petitioned to intervene and raised seven contentions. The Board granted PIIC’s petition, admitted three of the contentions, and held one additional contention in abeyance.

B Although no party contests the petitioner’s standing, the Board has an independent obligation to determine whether this threshold criterion has been met. 10 C.F.R. § 2.309(d)(3).

C NRC regulations require a petitioner to establish standing by demonstrating (1) the nature of its right under the Atomic Energy Act to be made a party to the proceeding, (2) the nature and extent of its interest in the proceeding, and (3) the possible effect of any decision in the proceeding on the petitioner’s interest. 10 C.F.R. § 2.309(d)(1). Additionally, the Commission has instructed that, in assessing a petitioner’s standing, the Board should look to contemporary judicial concepts of standing and determine whether (1) a petitioner is threatened with a concrete injury, (2) the injury is fairly traceable to the licensing action, and (3) the injury is capable of being redressed by a favorable decision. *See, e.g., EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 621 (2011).

D In materials licensing actions such as this one, a petitioner is entitled to a presumption of standing if the petitioner resides in the “zone of reasonably foreseeable harm from the source of radioactivity,” and if “the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences.” *U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 364-65 (2004). There is no predefined distance marking the area of potential offsite consequences on which to establish standing — instead this must be “judged on a case-by-case basis.” *Id.* at 365.

E In light of the vacatur of the Waste Confidence Decision and Temporary Storage Rule in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), NRC’s rules require that the environmental report consider the reasonably foreseeable impacts of permanent storage of spent fuel. Contentions concerning the failure of the ER to do so must be held in abeyance pursuant to the Commission’s direction in *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012).

F A license applicant is required to address cumulative impacts in its environmental report. Section 51.45 directs an applicant to discuss in its ER “[t]he impact of the proposed action on the environment.” A regulation of the Council on Environmental Quality, 40 C.F.R. § 1508.25, which is incorporated into NRC regulations, *see* 10 C.F.R. § 51.14(b), makes clear that the scope of the term “impact” includes cumulative impacts. NUREG-1748, the NRC Staff’s nonbinding environmental review guidance document for materials license applicants, instructs applicants to “[d]iscuss any past, present, or reasonably foreseeable future actions which could result in cumulative impacts when combined with the proposed action.”

G Incorporation by reference in an application of a large volume of material is insufficient to defeat a contention of omission absent a clear notice of the specific information incorporated. As the Commission has made clear in scrutinizing the information brought before a licensing board in support of a contention, incorporation by reference of information should not force one “to sift through it in search of asserted

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factual support” that is not otherwise specified. *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 332 (2012).

- H The federal trust responsibility rests solely with the federal government and cannot be discharged by an applicant. Furthermore, nothing in 10 C.F.R. § 51.45, which governs the contents of environmental reports, requires an applicant to discuss the federal government’s trust responsibility.
- I NRC regulations require that applications for renewal of an ISFSI license contain “[a] description of the AMP [aging management plan] for management of issues associated with aging that could adversely affect structures, systems, and components important to safety.” 10 C.F.R. § 72.42(a)(2). Where the current licensing basis defines a given system as not important to safety, the time to challenge that classification was when it was originated, during initial licensing of the ISFSI, and not at the license renewal stage.
- J Challenges to the current licensing basis of a facility are outside the scope of license renewal proceedings, and contentions that pose a challenge to Commission regulations are inadmissible in licensing proceedings, absent a waiver.
- LBP-12-25 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-LA, 50-362-LA (ASLBP No. 12-923-01-LA-BD01); OPERATING LICENSE AMENDMENT; December 21, 2012 MEMORANDUM AND ORDER (Denial of Petition to Intervene and Request for Hearing)
- A The Board denies the petition to intervene and request for hearing regarding a license amendment request because petitioner has failed to proffer an admissible contention as required by 10 C.F.R. § 2.309(a). In these circumstances, the Board need not decide timeliness and standing.
- B The Commission’s decision in *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349 (2001), compels the rejection of the contention challenging the “relocation” of various technical specifications (dealing with surveillance frequencies) from the license to certain licensee-controlled documents.
- C While the effect of “relocation” of technical specifications from the license to the licensee-controlled documents is to delete these as “technical specifications” under 10 C.F.R. § 50.36, to authorize the licensee to unilaterally make future changes in the surveillance frequencies, and to deprive the public of the opportunity to scrutinize or challenge such future changes, *Millstone* holds that this alone does not give rise to an admissible contention. The Petitioner must also explain with specificity, particular safety or legal reasons why moving a specific requirement from the license to a licensee-controlled document would be of safety significance, i.e., why it is material under 10 C.F.R. § 2.309(f)(1)(iv).
- D The scope of the hearing opportunity is limited to challenging the proposed license amendments or any health, safety, or environmental issues fairly raised by them. Contentions that attack provisions of the current license that are not being changed and that are not fairly related to the license amendment request are outside the scope and inadmissible under 10 C.F.R. § 2.309(f)(1)(iii).
- LBP-12-26 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR (ASLBP No. 11-907-01-LR-BD01); LICENSE RENEWAL; December 28, 2012; MEMORANDUM AND ORDER (Ruling on Motion for Summary Disposition of Contention 4)
- A The applicant’s motion for summary disposition of Contention 4 is granted because there exists no genuine dispute of material fact concerning Contention 4, and the applicant is entitled to judgment as a matter of law.
- B The standard governing motions for summary disposition establishes a two-part test: first, the Board must determine if any material facts remain genuinely in dispute; and second, if no such disputes remain, the Board must determine if the movant’s legal position is correct.
- C The proponent of the motion for summary disposition bears the burden of establishing that no facts remain in dispute, even if the motion is unopposed.
- D Summary disposition is an appropriate vehicle to resolve a purely legal dispute.
- E To challenge an application, a petitioner must point with support to an asserted deficiency that renders the Severe Accident Mitigation Alternatives (SAMA) analysis unreasonable under the National Environmental Policy Act.
- F Practically speaking, a SAMA analysis requires a baseline Probabilistic Risk Assessment (PRA) for each plant and a set of plant or operational changes (i.e., mitigation alternatives) that could reduce the frequency or consequences (or both) of a severe accident sequence or set of sequences. The cost of implementing the mitigation alternative is then compared to the “monetized” value of the benefit received in terms of risk averted.

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- G While NEPA requires that the NRC take a “hard look” at SAMA analyses, we have found no legal basis for the suggestion that this “hard look” includes some sort of independent validation of the computer codes used to generate source terms within SAMA analyses.
- H The Commission’s NEPA jurisprudence explicitly provides that an analysis of mitigation alternatives within an ER or an EIS need *not* present a worst-case analysis.
- I There is no requirement that applicants use NUREG-1465 source terms in their SAMA analysis.
- J Differences between source terms calculated from MAAP4 or calculated in NUREG-1465 are simply not relevant to whether the applicant’s SAMA analysis was conducted in a reasonable manner.
- K Intervenor’s have not put forward a credible argument that use of the MAAP code “render[s] the SAMA analysis altogether unreasonable under NEPA,” as required by the Commission.
- LBP-12-27 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR (ASLBP No. 11-907-01-LR-BD01); LICENSE RENEWAL; December 28, 2012; MEMORANDUM AND ORDER (Denying Motions to Admit, to Amend, and to Supplement Proposed Contention 5)
- A Section 2.309(f)(1) of 10 C.F.R. provides the general requirements for admissibility for all contentions. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner’s position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. In addition, the petitioner must demonstrate that the issue raised in the contention is both “within the scope of the proceeding” and “material to the findings the NRC must make to support the action that is involved in the proceeding.”
- B The strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing.
- C If a contention is submitted after the initial filing period for receipt of petitions to intervene, Intervenor’s must satisfy section 2.309(f)(2). To file an admissible contention under section 2.309(f)(2), with leave of the Board, Intervenor’s must show that: “(i) The information upon which the amended or new contention is based was not previously available; (ii) The information upon which the amended or new contention is based is materially different than information previously available; and (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.”
- D A contention that does not meet the timeliness requirements of 10 C.F.R. § 2.309(f)(2)(i)-(iii) might be admissible as a nontimely contention under 10 C.F.R. § 2.309(c). Section 2.309(c) sets out an eight-factor balancing test to determine whether the nontimely contention should be admitted. Of the eight factors, the first factor — good cause for the failure to file on time — is afforded the most weight. The burden is on the Intervenor to demonstrate that a balancing of the factors weighs in favor of granting the petition.
- E NRC regulations make clear that a motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant’s efforts to resolve the issue(s) have been unsuccessful.
- F Intervenor’s second Motion to Amend highlights the differences between the February Root Cause Report and the Shield Building AMP. There is no showing as to the significance of any of the “differences” highlighted. Intervenor’s challenge to the AMP must consist of more than allegations that the AMP is deficient. Intervenor’s must point to specific ways the AMP is inadequate or wrong.
- G Asking questions and seeking additional information is an essential part of the NRC’s licensing process, and it is clear that such questioning does not automatically give rise to an admissible contention.
- H Challenges to current licensing issues and safety culture are beyond the scope of this relicensing proceeding.
- I Intervenor’s need not prove their case at the contention admissibility stage. However, a petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate.

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- J Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant the contention is moot.
- K The Commission has made abundantly clear that contentions based on pure speculation are not admissible.
- LBP-13-1 EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR (ASLBP No. 12-916-04-LR-BD01); LICENSE RENEWAL; February 6, 2013; ORDER (Denying Petition for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L) and Referring This Decision to the Commission)
- A In this proceeding under 10 C.F.R. Part 54 regarding the application of Exelon Generation Co., LLC, to renew the operating licenses for Limerick Generating Station, Units 1 and 2, the Licensing Board denied petitioner Natural Resources Defense Council's (NRDC's) petition for waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L), but referred the ruling to the Commission pursuant to 10 C.F.R. § 2.323(f)(1), as it related to a novel issue of law.
- B Generally, NRC regulations may not be challenged in any NRC adjudicatory proceeding. However, a petitioner that believes a regulation should not be applied in a particular proceeding may seek a waiver of that regulation pursuant to 10 C.F.R. § 2.335(b). Section 2.335(b) states: "The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted."
- C The Commission has elaborated on this standard in its case law, establishing a more arduous four-part test for waiver petitions. The Commission stated in its *Millstone* decision that for a waiver to be granted, a petitioner must demonstrate the following: "(i) the rule's strict application would not serve the purposes for which it was adopted; (ii) the movant has alleged special circumstances that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived; (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and (iv) a waiver of the regulation is necessary to reach a significant safety problem." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005). The Commission made clear that "all four factors must be met" for a waiver to be granted.
- D The role of the Board when a request for a waiver is filed is limited to determining whether the petitioner has made a prima facie showing that it has satisfied 10 C.F.R. § 2.335(b). If not, the Board "may not further consider the matter." *Id.* § 2.335(c). However, where the petitioner has successfully made such a prima facie showing, the Board "shall, before ruling on the petition, certify the matter directly to the Commission," and the Commission shall determine whether to grant or deny the waiver request. *Id.* § 2.335(d).
- E It is clear to us that the *Millstone* test establishes an appreciably higher burden for would-be waiver seekers than does 10 C.F.R. § 2.335(b). Indeed, on its face, section 2.335(b) appears to only require a petitioner to satisfy the first two prongs of the *Millstone* test. In other words, section 2.335(b) does not require petitioners to demonstrate that their complaint is "unique" to the facility in question or that their complaint reflects a "significant safety issue."
- F To determine whether a petitioner has demonstrated that application of a regulation "would not serve the purposes for which [it] was adopted," a board must first determine the purpose of rule or regulation for which waiver is sought. 10 C.F.R. § 2.335(b).
- G The language of 10 C.F.R. § 51.53(c)(3)(ii)(L) makes its purpose quite clear. It states, "If the staff has not previously considered severe accident mitigation alternatives for the applicant's plant . . . , a consideration of alternatives to mitigate severe accidents must be provided." The clear implication of this language is that, once the Staff has considered severe accident mitigation alternatives for the applicant's plant, no further consideration of alternatives to mitigate severe accidents is needed. Indeed, subsection (L) evidences a Commission determination that, in effect, one SAMA analysis is enough. Once an applicant has performed a SAMA analysis, even if it was performed almost 25 years ago, the applicant does not need to perform another, regardless of whether new SAMA candidates have been discovered in the interim.
- H This plain-meaning reading of 10 C.F.R. § 51.53(c)(3)(ii)(L) is bolstered by looking to the Statement of Considerations accompanying the Commission's final rule adopting subsection (L). The Commission stated, "NRC staff considerations of severe accident mitigation alternatives have already been completed and included in an EIS or supplemental EIS for Limerick, Comanche Peak, and Watts Bar. Therefore, severe accident mitigation alternatives need not be reconsidered for these plants for license renewal." It is

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noteworthy that the Commission did not say that those severe accident mitigation alternatives considered in the previous analysis need not be reconsidered. Rather, the Commission made a general statement that mitigation alternatives, as a class of items, need not be reconsidered at license renewal. As such, we find that the purpose of subsection (L) is to exempt those plants that have already performed SAMA analyses from considering severe accident mitigation alternatives at license renewal.

I If the purpose of 10 C.F.R. § 51.53(c)(3)(ii)(L) is simply to grant to a set of plants an exemption from the otherwise applicable requirement to consider severe accident mitigation alternatives at license renewal, then that purpose will always be met if no further analysis is required or submitted by the applicant. Accordingly, it is unclear how any petitioner could ever demonstrate that the purpose of subsection (L) is frustrated by the application of subsection (L). Even if a petitioner could demonstrate that there exists a group of cost-effective SAMA candidates that would greatly reduce the impacts of severe accidents and that have not been considered in the previous analysis, that petitioner could not successfully seek a waiver of subsection (L), because the purpose of subsection (L) — to grant the plant an exemption from considering any SAMA candidates at license renewal — is not frustrated. Given its clear purpose, subsection (L) becomes, in effect, unwaivable.

J When it enacted 10 C.F.R. § 51.53(c)(3)(ii)(L) the Commission understood that technology would change, and that new SAMA candidates could emerge over time. However, the possibility that new SAMA candidates may become available cannot be the basis for a successful waiver petition, because the Commission knew that SAMA technology would change, but was confident that processes, other than the SAMA analysis process, would adequately address any such developments.

LBP-13-2 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-CAL, 50-362-CAL (ASLBP No. 13-924-01-CAL-BD01); CONFIRMATORY ACTION LETTER; February 8, 2013; ORDER (Denying SCE's Motion for Sanctions Against Friends of the Earth for Violating the Protective Order, but Imposing an Enhanced Document-Review Requirement)

A The Board denies a motion seeking sanctions against Petitioner for violating the governing Protective Order and Non-Disclosure Agreement, but imposes a document-review requirement upon Petitioner in light of its misconduct and to enhance future compliance with the proceeding's Protective Order.

B The regulatory authority empowering a Licensing Board to impose sanctions is found in 10 C.F.R. §§ 2.314(c) and 2.319.

C In determining whether to impose a sanction, and in determining what sanction is appropriate, a Licensing Board must consider the totality of circumstances in accordance with the following multifactor sanction test announced by the Commission: "In selecting a sanction, boards should consider [1] the relative importance of the unmet obligation, [2] its potential for harm to other parties or the orderly conduct of the proceeding, [3] whether its occurrence is an isolated incident or a part of a pattern of behavior, [4] the importance of the safety or environmental concerns raised by the party, and [5] all of the circumstances." *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981).

D "Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance." *Id.*

E Although Petitioner's inadvertent publication of protective information was a serious offense that exposed the movant to potential economic harm and undermined the integrity of this adjudicative proceeding, the significance of Petitioner's misconduct is alleviated to some degree by the immediate corrective action taken by Petitioner.

F The harm factor of the sanction test has two components, requiring the Licensing Board to consider the potential harm to the other parties and the potential harm to the orderly conduct of the proceeding.

G When considering whether a disclosure of proprietary information was an isolated incident or part of a pattern of behavior, the Licensing Board may consider, *inter alia*, the circumstances underlying the disclosure, the corrective action taken, and Petitioner's representation that no disclosure will occur in the future.

H An important health and safety issue referred to a Licensing Board by the Commission satisfies the importance factor of the multifactor sanction test.

LBP-13-3 CHARLISSA C. SMITH (Denial of Senior Reactor Operator License), Docket No. 55-23694-SP (ASLBP No. 13-925-01-SP-BD01); SPECIAL PROCEEDING; February 19, 2013; DECISION (Granting Demand for Hearing)

A An applicant for a Senior Reactor Operator (SRO) license filed a demand for hearing pursuant to 10 C.F.R. § 2.103(b)(2) after she was denied a license. The Board grants the applicant's demand for hearing.

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- B Section 2.103(b)(2) of 10 C.F.R. grants SRO license applicants who have been denied a license “[t]he right . . . to demand a hearing within twenty (20) days from the date of the [denial notice].” By contrast, the requirement of 10 C.F.R. § 2.309(f)(1) to file contentions, and thus the requirement to satisfy the contention admissibility requirements, applies only to “hearing requests” and “petitions to intervene.”
- C A person authorized to make a “demand” is generally understood to have the right to the matter that is the subject of the demand. One authorized to make a “request,” by contrast, is merely given permission to ask for something, not to demand it.
- D The usual rule of regulatory interpretation is that “different language is intended to mean different things.” *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54, 72 (1994) (citing *United States v. Stauffer Chemical Co.*, 684 F.2d 1174, 1186 (6th Cir. 1982), *aff’d*, 464 U.S. 165 (1984)). The application of this precept may be suspended if the purpose or regulatory history behind the language shows that no difference was intended.
- E A hearing “demand” under 10 C.F.R. § 2.103(b)(2) is not the same as a “hearing request” under 10 C.F.R. § 2.309(f)(1). Therefore, a hearing demand under 10 C.F.R. § 2.103(b)(2) need not meet the admissibility standards of section 2.309(f)(1).
- F “[E]quivalent words have equivalent meaning when repeated in the same statute.” *Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998) (citing *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994)).
- G The rules of interpretation applicable to statutes are equally germane in determining a regulation’s meaning. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-95-17, 42 NRC 137, 143 (1995), *rev’d on other grounds*, CLI-96-13, 44 NRC 315 (1996).
- H An applicant denied an SRO license has the right to demand a hearing, rather than being required to negotiate the contention admissibility requirements and a possible appeal.
- I An applicant for an SRO license is entitled to take an NRC-issued denial letter at face value, including its instructions and references to applicable regulations.
- J The NRC Staff cannot saddle an applicant with the consequences of its having improvidently furnished her a denial letter that contained apparent boilerplate that was incomplete and perforce misleading. This does not accord with concepts of fundamental fairness.
- K Section 2.103(b) of 10 C.F.R. requires the appropriate office director to “inform” the SRO applicant of the right to demand a hearing. If the applicant indeed must comply with section 2.309(f)(1), but the office director failed to comply with his responsibility to “inform” the applicant of such a requirement, then the agency cannot take advantage of the applicant’s ignorance of information the agency itself was obligated to provide.
- L The Commission justifiably expects that all applicable provisions of the Rules of Practice will be observed in adjudicatory submissions. It is reasonable to assume, however, that it also expects the Staff to turn square corners with those with whom it deals, including applicants for SRO licenses.
- LBP-13-4 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; March 26, 2013; PARTIAL INITIAL DECISION (Ruling on Contention 4A)
- A In this Partial Initial Decision concerning an application submitted by Progress Energy Florida, Inc. (PEF) for combined licenses (COLs) to construct and operate two AP1000 nuclear reactors in Levy County, Florida, the Board concludes that the NRC’s analysis, in its Final Environmental Impact Statement (FEIS), of issues relating to dewatering associated with construction and operation of the proposed plants was adequate and satisfied the National Environmental Policy Act (NEPA) and 10 C.F.R. Part 51.
- B Section 102 of NEPA “directs that, to the fullest extent possible . . . all agencies of the Federal Government shall . . . include in every . . . major Federal action significantly affecting the quality of the human environment, a detailed statement by the responsible official on . . . (i) the environmental impact of the proposed action.” The issuance of a COL is such a “major federal action.”
- C Before NRC decides whether to issue a license to construct and operate a nuclear power plant, NEPA requires that the agency develop and “carefully consider[] detailed information concerning significant environmental impacts of the proposed action.”
- D NEPA is intended to ensure that “important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”
- E The FEIS must review and consider all significant environmental impacts, whether direct, indirect, cumulative, onsite, or offsite, that are a reasonably foreseeable consequence of the proposed action.

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- F The legal adequacy of an FEIS is assessed under the “rule of reason.” The Commission has stated, “NEPA ‘should be construed in the light of reason if it is not to demand virtually infinite study and resources.’” The Commission added that an EIS is not “intended to be a research document” and does not require the NRC to use the absolutely “best scientific methodology” available. The Commission stated “while there ‘will always be more data that could be gathered [agencies] must have some discretion to draw the line and move forward with decisionmaking.’”
- G We acknowledge that NRC could have gathered additional data, and could have used different methodologies in conducting the FEIS. But the appropriate inquiry under NEPA is not whether there are alternative models that NRC could have used, or whether the analysis could have been refined, or improved by gathering additional data, but is whether the NRC’s chosen methodology is reasonable.
- H NEPA requires that NRC exercise its independent judgment in identifying and assessing the significant and reasonably foreseeable impacts of a proposed licensing action. The duty to exercise independent judgment does not, however, mean that NRC must reinvent every wheel or duplicate professional environmental studies and data that have already been performed or gathered by competent state or local agencies.
- I The FEIS shows that NRC gathered, assessed, and grappled with a very large amount of environmental information and that the agency satisfied its legal obligation under NEPA to exercise its independent judgment in the identification, assessment, and quantification of the reasonably foreseeable environmental impacts of the proposed LNP.
- J NEPA requires each EIS to include a detailed discussion of mitigation, i.e., measures that might mitigate the adverse environmental consequences of the proposed action.
- K NEPA does not require that “a complete mitigation plan be actually formulated and adopted” before the agency makes its decision. All that is required is that “mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.”
- L As a general rule, NEPA does not mandate that the identified mitigation measures be implemented. This follows logically from the basic precept that NEPA does not mandate particular results.
- M The fact that, as a general rule, NEPA does not require the implementation of mitigation measures to avert adverse environmental impacts, does not mean that NEPA or NRC are neutral on the subject of environmental protection, or that NRC is powerless to act. NRC regulations, such as 10 C.F.R. § 50.36(b) and 10 C.F.R. § 51.107(a) (3), clearly authorize the agency to impose environmental conditions in a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant. Environmental protection is a central part of NRC’s core mission and is in its mission statement.
- N NRC may rely on competent and professionally developed data and studies performed by the applicant or by appropriate federal, state, and local governmental entities, provided that NRC exercises its own independent judgment with regard to the ultimate conclusions about the environmental impacts of the project.
- O Absent information to the contrary, NRC may properly assume that an applicant or licensee will comply with concrete and enforceable conditions and requirements imposed by statutes, regulations, licenses, or permits issued by competent federal, state, or local governmental entities.
- P As a general rule, NEPA does not require that mitigation be implemented. But if, as here, an FEIS relies on monitoring and mitigation as a necessary basis for concluding that the environmental impacts of issuing a license will be SMALL, then the NRC must have reasonable assurance that the monitoring and mitigation will actually be implemented and successful.
- Q Reasonable assurance that monitoring and mitigation measures will be successful does not always require that these measures be incorporated as a condition in the NRC license. Here, given that legally binding monitoring and mitigation measures have been imposed via a thorough certificate of compliance issued by the appropriate state and local agencies, this Board has reasonable assurance that these measures will be implemented and that these agencies will actively monitor and enforce appropriate compliance with these environmental monitoring and mitigation measures.
- LBP-13-5 CHARLISSA C. SMITH (Denial of Senior Reactor Operator License), Docket No. 55-23694-SP (ASLBP No. 13-925-01-SP-BD01); SPECIAL PROCEEDING; April 24, 2013; MEMORANDUM AND ORDER (Granting Motion to Compel Disclosure)
- A An applicant for a Senior Reactor Operator (SRO) license filed a demand for hearing pursuant to 10 C.F.R. § 2.103(b)(2) after she was denied a license. The Board granted the applicant’s demand for hearing.

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LBP-13-3, 77 NRC 82 (2013). Subsequently, the applicant moved to compel the NRC Staff to produce documents that had been withheld under a claim of deliberative process privilege. The Board granted the motion to compel.

- B NRC regulations mandate that, in a Subpart L proceeding, the Staff disclose or provide documents that support the Staff's review of the application or proposed action, together with "[a] list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made." 10 C.F.R. § 2.336(b)(3), (5). Among the categories of privileged documents, and the one at issue here, are "[i]nteragency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission." 10 C.F.R. § 2.390(a)(5). This is similar to Exemption 5 under the Freedom of Information Act (FOIA). The Board may therefore employ case law interpreting FOIA Exemption 5 when determining whether the deliberative process privilege applies in this NRC proceeding.
- C Under FOIA, an agency may avoid disclosing documents only if it proves that the documents fall within one of the nine exemptions. Otherwise, the documents are presumed to be available for public inspection. FOIA's purpose is to encourage disclosure, and, to that end, its exemptions are to be interpreted narrowly. The government has the burden of proving that a requested document falls within one of FOIA's exemptions.
- D The FOIA exemption for inter- or intra-agency materials incorporates the deliberative process privilege, which protects documents that are prepared to assist an agency, board, or official to arrive at a decision.
- E To qualify for the deliberative process privilege, "a document must be both (1) 'predecisional' or 'antecedent to the adoption of agency policy' and (2) 'deliberative,' meaning 'it must actually be related to the process by which policies are formulated.'" *National Wildlife Federation v. U.S. Forest Service*, 861 F.2d 1114, 1117 (9th Cir. 1988) (quoting *Jordan v. U.S. Department of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc)).
- F The privilege must be asserted by an individual who holds a sufficiently senior position such that he or she has control over the requested information and possesses a balanced perspective that enables him or her to discern the nature of the material at issue.
- G The party invoking the deliberative process privilege bears the burden of explaining with particularity how and why disclosure of the documents' substance would harm an identified deliberative function.
- H "[C]onclusory assertions of privilege will not suffice to carry the Government's burden of proof in defending FOIA cases." *Coastal States Gas Corp. v. U.S. Department of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980). Thus, "vague, general and conclusory statements — all purporting to apply to many documents but not connected to any particular document — fail to meet the requirement that defendant supply the court with precise and certain reasons for maintaining the confidentiality of the requested documents." *Pacific Gas and Electric Co. v. United States*, 70 Fed. Cl. 128, 140 (2006) (quoting *Walsky Construction Co. v. United States*, 20 Cl. Ct. 317, 320 (1990) (internal quotation marks omitted)).
- I An agency waives the deliberative process privilege for a document when it discloses the same document or one containing equivalent text.
- J Privilege logs that contain only cursory statements are inadequate to permit a court to decide whether the privilege was properly claimed.
- K A claim of deliberative process privilege, even when properly established, is not absolute. Thus, "[s]trong competing interests must be weighed against the government's interest in nondisclosure. Foremost is the interest of the litigants, and ultimately of society, in accurate judicial fact finding." *In re Franklin National Bank Securities Litigation*, 478 F. Supp. 577, 582 (E.D.N.Y. 1979).
- L The factors the Board should consider in balancing the need for disclosure against the agency's interest in confidentiality include: (i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the seriousness of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable.
- LBP-13-6 CROW BUTTE RESOURCES, INC. (Marsland Expansion Area), Docket No. 40-8943-MLA-2 (ASLBP No. 13-926-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; May 10, 2013; MEMORANDUM AND ORDER (Ruling on Intervention Petitions)
- A In this proceeding concerning the application of Crow Butte Resources, Inc. (CBR), for an amendment to the 10 C.F.R. Part 40 source materials license for its existing in situ uranium recovery (ISR) facility near

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Crawford, Nebraska, that would authorize CBR to operate a satellite ISR facility, the Marsland Expansion Area (MEA) site, the Licensing Board concludes that while a group of individuals and organizations denominated as the Consolidated Petitioners have failed to demonstrate their standing to intervene in this proceeding, petitioner Oglala Sioux Tribe has both established its standing and proffered two admissible environmental contentions so as to be afforded party status in this proceeding.

- B For an individual or organization to be deemed a “person whose interest may be affected by the proceeding” under section 189a of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. § 2239(a)(1)(A), so as to have standing “as of right” such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must include a statement of (1) the petitioner’s name, address, and telephone contact information; (2) the nature of the petitioner’s right under the AEA to be made a party; (3) the nature of the petitioner’s interest in the proceeding, whether property, financial, or otherwise; and (4) the possible effect of any decision or order that might be issued in the proceeding on the petitioner’s interest. *See* 10 C.F.R. § 2.309(d)(1)(i)-(iv). In assessing this information to determine whether a petitioner has established standing, the Commission generally applies contemporaneous judicial standing concepts to section 189a adjudicatory proceedings, inquiring whether the participant has established that (1) it has suffered or faces the genuine threat that it will suffer a distinct and palpable injury that constitutes injury in fact within the zones of interest arguably protected by the governing statutes (e.g., the AEA, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq.); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See, e.g., Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996) (citing cases).
- C An organization that asserts it has standing to intervene in its own right, i.e., organizational standing, must establish a discrete institutional injury to the organization’s interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding. *See, e.g., International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001) (citing cases). Alternatively, an entity may seek to demonstrate its standing to intervene on behalf of its members, i.e., representational standing, by showing it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests. *See, e.g., Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000) (citing cases).
- D In assessing whether a petition meets these standing elements, which a presiding officer must do even if there are no objections to a petitioner’s standing, the board must apply a number of important benchmarks. Initially, “[t]he petitioner bears the burden to provide facts sufficient to establish standing.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010). Generally speaking, this burden is met “if the petitioner provides plausible factual allegations that satisfy each element of standing.” *U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), LBP-10-4, 71 NRC 216, 229 (2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)), *aff’d*, CLI-10-20, 72 NRC 185 (2010). Moreover, in assessing whether a petitioner has demonstrated its standing, a licensing board is to “construe the petition in favor of the petitioner.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). At the same time, however, if a petitioner’s factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether the standing element at issue has been satisfied. *See Schofield Barracks*, LBP-10-4, 71 NRC at 230 & n.14 (citing *Bell Bend*, CLI-10-7, 71 NRC at 139; *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)).
- E In a materials licensing action, in ascertaining whether a hearing requestor has demonstrated an “injury in fact” so as to have standing, often the initial focus is on whether the activity for which licensed authorization is sought may have any radiological impacts upon the petitioner. At the same time, however, it is not imperative that the potential harm involve physical or bodily injury caused by a radioactive source; nonradiological impacts can be a basis for standing as well. *See, e.g., Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-12-12, 75 NRC 603, 612-13 & n.49 (2012) (upholding standing based on dust impacts from ISR facility trucks using dirt road in front of petitioner’s home).
- F In instances when a radiological health or safety impact is asserted to provide the basis for a petitioner’s injury in fact, in lieu of the usual injury and causation showings, a petitioner can attempt

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to establish its standing based on the “proximity plus” protocol by showing “(1) that the proposed licensing action involves a ‘significant source’ of radiation, which has (2) an ‘obvious potential for offsite consequences.’” *Schofield Barracks*, CLI-10-20, 72 NRC at 189 (footnote omitted) (quoting *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)). If before a licensing board a petitioner has made no effort to establish that any “proximity plus” presumption should be applicable in determining standing relative to the licensing action they are challenging, the board must look to the traditional standing precepts of injury and causation, as well as redressibility, to determine whether the petitioner has made a sufficient factual and legal demonstration regarding its standing to intervene. *See Schofield Barracks*, CLI-10-20, 72 NRC at 189; *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005).

G In a materials licensing case in which an important factor in determining whether there is a cognizable injury for standing purposes is the actual distance the petitioner or its property is from the source of a radiological or other alleged health or safety impairment, the use of an imprecise and otherwise unexplained reference to the term “proximity” to describe where the property the petitioner leases to others is situated relative to the applicant’s proposed facility is not particularly helpful to a presiding officer in making an informed standing decision.

H Previous agency case law has acknowledged that in instances when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, *see* 10 C.F.R. § 2.309(d)(2), by reason of such an entity’s interest in protecting individuals and territory that fall within its sovereign guardianship, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual or nongovernmental organization, whether via a proximity presumption or otherwise. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 169-70 (2011); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 912-14 (2008); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-31 (1999); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33 (1998) (holding that, as sovereign body, a Native American tribe maintains a strong interest in its members’ welfare such that its organizational purpose is germane to the interests it seeks to represent in the proceeding).

I A Native American tribe’s statutorily recognized interest in the tribal cultural resources that may still be extant on its recognized aboriginal lands seemingly would provide a cognizable interest for the purpose of establishing its standing. *See Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 337-39 (2009) [hereinafter *Crow Butte Renewal*].

J Assuming that the tribal interest in cultural resources on established aboriginal lands is sufficient to provide the requisite injury in fact, it cannot be the case that simply because a cultural resources survey conducted at the behest of an applicant finds no artifacts or possible tribal sites, the tribe is deprived of standing to challenge the adequacy of that survey. For standing purposes, the focus is on the nature of the tribal interest in the cultural resources that might still exist on a federally recognized tribe’s aboriginal lands, not the adequacy of the applicant’s survey.

K Longstanding agency precedent makes clear that there is no “contention-based” requirement mandating that a petitioner establish a link between the injury in fact asserted to justify its standing and the particular issues the petitioner wants to litigate in challenging an application. Rather, to have standing, existing case law indicates that a petitioner need only show that a cognizable injury is associated with a proposed licensing action and that granting the relief sought, e.g., denial of the application, will address that injury. *See Crow Butte Renewal*, CLI-09-9, 69 NRC at 339-41; *Yankee Nuclear*, CLI-96-1, 43 NRC at 6.

L Standing in each agency proceeding depends on the factual circumstances associated with that case. *See PPL Bell Bend LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 & n.27 (2010) (citing *Crow Butte Renewal*, CLI-09-9, 69 NRC at 343).

M Any interest an individual member of a Native American tribe might have in tribal cultural resources does not have same parameters as that of the tribe relative to a proposed site and any artifacts it might contain. Instead, for standing purposes an individual tribal member would need to demonstrate that the site holds some particular importance personally. For example, the individual might demonstrate that some particular activity on the property or specific location on the site, such as a place of worship or burial

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ground, has cultural or religious significance for that tribal member as an individual. *See Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 288-89 (2008) (petitioner asserts standing based on use of ISR expansion area to gather eagle feathers for ceremonial and religious uses), *aff'd in part and rev'd in part*, CLI-09-12, 69 NRC 535 (2009) [hereinafter *Crow Butte N. Trend*].

N Organizational standing is footed in the capacity of an organization to show, consistent with the Supreme Court's decision in *Sierra Club v. Morton*, 405 U.S. 727 (1972), a discrete injury to its organizational interests. *See Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 389 (2010).

O A purported interest in preventing abusive mining clearly is a generalized interest that will not support organizational standing. *See Dewey-Burdock*, LBP-10-16, 72 NRC at 389 (ruling organizational interest in protecting "the natural resources of the Black Hills of South Dakota with a focus on groundwater contamination from uranium mining" insufficient to establish organizational standing (quoting Consolidated Request for Hearing and Petition for Leave to Intervene, *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-9075-MLA (Mar. 8, 2010) at 27)).

P Section 2.309(f)(1) of the Commission's rules of practice specifies the requirements that must be met for a contention to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding." *Id.* § 2.309(f)(1)(iii), (iv). Failure to comply with any of these requirements is grounds for dismissing a contention. *See FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 395-96 (2012).

Q An adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process. *See Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974). Similarly, a contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible. *See* 10 C.F.R. § 2.335; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974). This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-6, 16 NRC 1649, 1656 (1982); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991). By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.

R All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and directive referring the proceeding to the licensing board. *See* 10 C.F.R. § 2.309(f)(1)(iii); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that falls outside the specified scope of the proceeding must be rejected. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435 (2011).

S It is the petitioner's obligation to present the factual allegations and/or expert opinion necessary to support its contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006). While a board may appropriately view a petitioner's supporting information

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in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). Neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support for its contentions, it is not within a board's power to make assumptions or draw inferences that favor the petitioner, nor may the board supply information that is lacking. *See Crow Butte N. Trend*, CLI-09-12, 69 NRC at 553; *Palo Verde*, CLI-91-12, 34 NRC at 155. Likewise, simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204-05.

- T All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the safety analysis report/technical report and the environmental report) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed. *See Crow Butte N. Trend*, CLI-09-12, 69 NRC at 557; *Am. Centrifuge Plant*, CLI-06-10, 63 NRC at 462-63.
- U Carrying out the National Historic Preservation Act § 106 consultation requirement, as implemented as part of the agency's NEPA review process, is a responsibility that accrues to the Staff rather than the applicant. As a consequence, according to the Commission, a contention seeking to contest how the consultation mandate is (or is not) being carried out is one that can be raised in the first instance only after the Staff's draft environmental impact statement (EIS), which presumably provides some discussion regarding that matter, has been issued. *See Crow Butte N. Trend*, CLI-09-12, 69 NRC at 564-66; *Crow Butte Renewal*, CLI-09-9, 69 NRC at 348-51.
- V Claim that second tribal cultural resources survey corrected any deficiencies in applicant's original survey has the hallmarks of an attempt to obtain a board "merits" determination regarding the contention, something the Commission has indicated is inappropriate at the contention admissibility stage. *See Diablo Canyon*, CLI-11-11, 74 NRC at 443 ("for the purposes of contention admissibility, we do not consider the merits of [a petitioner's] arguments").
- W The Commission has made clear that section 2.309(f)(1)(v) "does not call upon the intervenor to make its case at this stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention." Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989).
- X The Staff's NUREG standard review plan is merely a guidance document and thus is not legally binding. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 & n.37 (2001) (citing cases). NUREG provisions nonetheless are informative to the degree they support the commonsense approach that technical analyses and conclusions should be presented in a scientifically defensible manner. This is an obvious and reasonable threshold when documenting technical arguments associated with a complex scientific evaluation. In addition, guidance documents, while not binding, "describe an approach to compliance with [NRC] rules that is acceptable to the NRC," and so can be informative for that reason. *AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), CLI-11-4, 74 NRC 1, 8 n.35 (2011).
- Y The purpose for the requirement in section 2.309(f)(1)(vi) that petitioners reference specific sections of an application appears to be twofold: (1) to demonstrate to the presiding officer that the petitioner's dispute with the applicant is indeed genuine and thereby assist the presiding officer in determining the scope of a potential evidentiary hearing; and (2) to put the applicant on notice regarding what portions of the application it needs to defend. *Cf. International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 NRC 137, 142 n.7 (1998) ("A simple reference to a large number of documents is not enough to put the parties on notice as to the basis for intervention; rather, a petitioner must clearly identify and summarize the facts being relied on [in] the specific portions of the documents cited.").
- Z Requiring that a petitioner point to specific portions of the application allows (1) the board to determine what issues it must probe at an evidentiary hearing; (2) the applicant to determine what areas

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of its application it must defend; and (3) the Staff to determine what issues it may need to consider and address more carefully in its EIS or safety evaluation report. However, a petitioner can, in certain limited circumstances, put the other participants and the board on adequate notice of what sections of the application are being challenged even when the petitioner does not explicitly cite those sections in its petition.

- AA The recognized precept that a board may not consider the merits of a contention at the admissibility stage of the proceeding does not excuse a petitioner from providing a sound basis for its contention in its petition or in an expert affidavit or other supporting information that specifically corroborates the contested issues framed by the contention. *See Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 244 (2011).
- BB Given the current structure of the agency's adjudicatory process, petitioner's claim that NEPA-related challenges to a proposed licensing action should not be filed until the agency's NEPA analysis is completed clearly is not litigable in this proceeding. *See Dewey-Burdock*, LBP-10-16, 72 NRC at 435-38. This contention is a challenge to the agency's rules, specifically 10 C.F.R. § 2.309(f)(2), that, in the absence of a section 2.335 waiver request, a board cannot consider.
- CC Any NEPA-based challenge to the efficacy of, or the Staff's reliance on, a state water usage permitting process relative to the Staff's environmental review, must await the Staff's initial environmental review document. *Dewey-Burdock*, LBP-10-16, 72 NRC at 438-40; *see Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-13-4, 77 NRC 107, 175 n.77 (2013).
- DD A contention challenging the adequacy/propriety of a Staff determination to prepare an environmental assessment (EA) in lieu of a supplemental EIS would need to await the issuance of the draft EA as well. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-00-19, 52 NRC 85, 93-98 (2000) (admitting post-EA submitted contention challenging Staff's determination to issue EA rather than EIS).
- LBP-13-7 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-CAL, 50-362-CAL (ASLBP No. 13-924-01-CAL-BD01); CONFIRMATORY ACTION LETTER; May 13, 2013; MEMORANDUM AND ORDER (Resolving Issues Referred by the Commission in CLI-12-20)
- A The Board resolves two issues referred by the Commission in CLI-12-20, holding that (1) the Confirmatory Action Letter (CAL) process in this case constitutes a *de facto* license amendment proceeding that is subject to a hearing opportunity under section 189a of the Atomic Energy Act, and (2) the resolution of the first issue grants Petitioner all the relief it seeks in its contention, thus mooted the contention and terminating the proceeding before the Board.
- B The NRC Enforcement Manual (rev. 7, Oct. 1, 2010) at 3-30, describes CALs as "flexible and valuable tools available to the staff to resolve licensee issues in a timely and efficient manner, *e.g.*, when an order is warranted to address a specific issue, a CAL is a suitable instrument to confirm initial, agreed upon, short-term actions covering the interval period prior to the actual issuance of the order."
- C The CAL process, as described in the NRC Enforcement Manual and as explained by the NRC Staff, involves (1) the identification of a significant concern regarding health and safety, safeguards, or the environment; (2) the NRC Staff's issuance of a specific CAL; (3) a licensee responding by taking action and/or providing information as prescribed in the CAL; and (4) when the circumstances that prompted the NRC to issue the CAL have been addressed, the closing out of the CAL.
- D The NRC Enforcement Manual describes the process for closing out a CAL as follows:
- 3.5.7 Closing Out CALs
- A. A CAL may or may not require follow-up inspection to verify completion of the specified licensee actions. Whether the staff believes that an inspection is necessary to close a CAL will be determined on a case-by-case basis and will depend on the circumstances of the case.
- B. The issuing office (*i.e.*, region, NRR, NMSS, FSME, NRO or NSIR) will issue documentation formally closing out the CAL.
- C. Correspondence closing out a CAL should be sent to the same person/address as the CAL; however, verbal notification, in advance of written correspondence, may be sufficient to permit plant restart or resumption of affected licensee activities.

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- E The CAL process can be a lengthy, complex, and evolving procedure. To determine whether that process constitutes a *de facto* license amendment proceeding, a Licensing Board must look beyond the four corners of the confirmatory action letter itself and consider the entire CAL process, including the documents generated incident to that process.
- F Licensing Boards are not empowered “to supervise or direct NRC Staff regulatory reviews.” *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004).
- G “[I]t is the *substance* of the NRC action that determines entitlement to a section 189a hearing, *not* the particular label the NRC chooses to assign to its action.” *Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 295 (1st Cir. 1995).
- H There can be no actual license amendment until (and unless) it is issued by the NRC Staff. *See* 10 C.F.R. § 50.92.
- I If the hearing provision in section 189a of the AEA is to serve its intended purpose, the parties in interest should be afforded a meaningful opportunity to request a hearing *before* the NRC Staff takes final action that could result in authorizing a licensee to operate in a manner that is beyond the ambit of its existing license. *Cf. Citizens Awareness Network, Inc.*, 59 F.3d at 294-95 (“[I]f section 189a is to serve its intended purpose, surely it contemplates that parties in interest be afforded a meaningful opportunity to request a hearing *before* the Commission *retroactively* reinvents the terms of an extant license by voiding its implicit limitations on the licensee’s conduct.”).
- J “[U]nreviewed Board rulings do not constitute precedent or binding law.” *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 343 n.3 (1998).
- K A party’s policy arguments that are advanced during the adjudicatory process before a Licensing Board cannot trump directives issued by the Commission.
- L It is imperative that the terms of a reactor operating license be clear and unambiguous, and also that a licensee scrupulously adhere to those terms, because section 101 of the AEA makes it “unlawful . . . for any person within the United States to . . . use . . . any utilization . . . facility except under and in accordance with a license issued by the Commission.” 42 U.S.C. § 2131.
- M Section 182a of the AEA addresses what must be included in a reactor operating license. It states that such licenses must include “technical specifications” that include, *inter alia*, “the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization . . . of special nuclear material . . . will provide adequate protection to the health and safety of the public.” 42 U.S.C. § 2232(a).
- N “The AEA, however, leaves it up to the Commission to determine, and prescribe by rule or regulation, what additional information should be included in technical specifications to ensure public health and safety and the common defense and security.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 351 (2001).
- O The Commission is empowered to issue an order amending any license as it deems necessary to “effectuate the provisions of [the AEA]” (42 U.S.C. § 2233) — that is, to “promote the common defense and security or to protect health or to minimize danger to life or property.” 42 U.S.C. § 2201; *see also* 42 U.S.C. § 2237.
- P The Commission “may at any time . . . before the expiration of the license, require further written statements [from the licensee] to determine whether . . . a license should be modified.” 42 U.S.C. § 2232(a).
- Q Section 189a of the AEA states that “[i]n any proceeding under [the AEA], for the . . . amending of any license . . . , the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.” 42 U.S.C. § 2239(a)(1)(A).
- R Sections 50.90 to 50.92 of 10 C.F.R. provide the applicable process when a licensee wishes to request a license amendment. Specifically, section 50.90 authorizes applications to amend existing operating licenses; section 50.91 provides for notice and comment regarding license amendment applications, as well as consultation with the state in which the facility is located; and section 50.92 provides the standard considered by the NRC when determining whether to issue an amendment.
- S Section 50.59 establishes standards for a licensee to request a license amendment before it may make “changes in the facility as described in the [updated] final safety analysis report [UFSAR], make changes in the procedures as described in the [UFSAR], and conduct tests or experiments not described in the [UFSAR].” 10 C.F.R. § 50.59(c)(1).

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- T A final safety analysis report (FSAR) is part of the application for an operating license, and it contains “a description of the facility; the design bases and limits on operation; and the safety analysis for the structures, systems, and components (SSC) and of the facility as a whole.” Changes, Tests, and Experiments: Proposed Rule, 63 Fed. Reg. 56,098, 56,099 (Oct. 21, 1998). “When a plant is licensed, the NRC states in its Safety Evaluation Report (SER) why it found each FSAR analysis acceptable.” *Id.* Licensees must periodically update their FSARs to reflect changes to the facility “so that the [updated FSAR (UFSAR)] remains a complete and accurate description and analysis of the facility.” *Id.*
- U Section 50.59 states that a licensee need not request a license amendment pursuant to section 50.90 if “(i) A change to the technical specifications incorporated in the license is not required, and (ii) The change, test, or experiment does not meet any of the criteria in paragraph (c)(2) of this section.” 10 C.F.R. § 50.59(c)(1)(i)-(ii).
- V Because changes to technical specifications require a license amendment, the Commission has instructed that technical specifications should be limited to “those plant conditions most important to safety.” *Millstone*, CLI-01-24, 54 NRC at 360 (quoting Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, 58 Fed. Reg. 39,132, 39,135 (July 22, 1993)). Thus, technical specifications “should be reserved for those reactor operation ‘conditions or limitations . . . necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health or safety.’” *Id.* at 361 (quoting Final Rule: “Technical Specifications,” 60 Fed. Reg. 36,953, 36,957 (July 19, 1995)). See also 10 C.F.R. § 50.36 (identifying criteria to be used in determining what items must be included in technical specifications).
- W The term “design bases” to which section 50.59(c)(2)(vii) and (viii) refers is defined in 10 C.F.R. § 50.2 as follows: “*Design bases* means that information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for a design. These values may be (1) restraints derived from generally accepted ‘state of the art’ practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated accident for which a structure, system, or component must meet its functional goals.”
- X Section 2.105 of 10 C.F.R. implements the hearing opportunity provision for license amendment procedures that is mandated by section 189a of the AEA, and Subpart C of 10 C.F.R. Part 2 contains the general rules governing hearing requests and subsequent hearing-related activities.
- Y Congress has commanded that licensees may not, under penalty of law, deviate from the terms of their reactor operating licenses. See 42 U.S.C. § 2131. If a licensee is unable to operate a reactor in strict accordance with its license, it must seek authorization from the NRC for a license amendment (10 C.F.R. §§ 50.59, 50.90 to 50.92), which is a process that triggers a right to request an adjudicatory hearing by persons whose interests may be affected by the proceeding. See 42 U.S.C. § 2239(a)(1)(A); 10 C.F.R. § 2.105.
- Z There have been occasions when the NRC has — without formally amending a license and without providing the public with the opportunity for a hearing as required by section 189a of the AEA — authorized activity by the licensee that was incompatible with the statutory requirement that the facility operate “in accordance with” its existing operating license. 42 U.S.C. § 2131. Such NRC action is characterized as a *de facto* license amendment.
- AA Although determining whether a CAL process constitutes a *de facto* license amendment proceeding is a highly fact-specific question, case law provides a straightforward analytic framework for assessing the relevant facts. See, e.g., *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant), CLI-96-13, 44 NRC 315, 326-27 (1996). As relevant here, this Licensing Board must consider the following connate factors: whether the licensee’s startup request, if granted, would permit it to operate (1) in a manner that deviates from a technical specification in its existing license; (2) beyond the ambit, or outside the restrictions, of its existing license; or (3) in a manner that is neither delineated nor reasonably encompassed within the prescriptive terms of its existing license.
- BB The Board’s use of 10 C.F.R. § 50.59 as a tool in deciding whether a CAL process is a *de facto* license amendment is to be distinguished from a Board entertaining a challenge to the actions taken by a licensee under section 50.59. The latter is prohibited by case law, which establishes that “[a] member of the public may challenge an action taken under 10 C.F.R. § 50.59 only by means of a petition under 10 C.F.R. § 2.206.” *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994). The former is manifestly appropriate in circumstances where the Commission has

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directed a Licensing Board to determine whether a CAL process constitutes a *de facto* license amendment proceeding.

- CC Although the term “scope of an operating license” does not have a regulatory definition, it is a useful concept in this context, because the Court of Appeals for the First Circuit has held that actions by the NRC Staff constitute a *de facto* license amendment when they authorize a licensee to “engage in [activities] beyond the ambit [i.e., scope] of [its] original license.” *CAN*, 59 F.3d at 295; *accord Perry*, CLI-96-13, 44 NRC at 327. As described by the Commission, an operating license reflects a specific facility-design basis, a safety analysis documented in an FSAR, facility-specific technical specification, and NRC regulations. *See* 63 Fed. Reg. 56,098, 56,099-100. These factors comprise the scope of an operating license as we use the term here.
- DD “Tests or experiments not described in the [UFSAR]” constitute “any activity where any structure, system, or component is utilized or controlled in a manner which is either: (i) [o]utside the reference bounds of the design bases as described in the [UFSAR] or (ii) [i]nconsistent with the analyses or descriptions in the [UFSAR].” 10 C.F.R. § 50.59(a)(6).
- EE The General Design Criteria in Appendix A of 10 C.F.R. Part 50 establish minimum requirements for the principal design criteria for water-cooled nuclear reactor plants. 10 C.F.R. Part 50, App. A — General Design Criteria for Nuclear Power Plants, Criterion 14, states: “*Reactor Coolant Pressure Boundary*. The reactor coolant pressure boundary shall be designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture.”
- FF When a current analysis described in the FSAR fails to achieve its intended purpose, it must be changed. Such a change is sufficiently significant to trigger the license amendment requirement of section 50.59(c)(2)(viii) because it is “[i]nconsistent with the analyses or descriptions in the [UFSAR].” 10 C.F.R. § 50.59(a)(6)(ii).
- GG A CAL process constitutes a *de facto* license amendment proceeding that is subject to a hearing opportunity under section 189a of the AEA, if it (1) grants a licensee’s authority to operate without the ability to comply with all technical specifications; (2) grants a licensee’s authority to operate beyond the scope of its existing license; or (3) grants a licensee’s authority to operate a test or experiment that meets the criteria in 10 C.F.R. § 50.59(c)(2)(viii).
- HH To adjudicate either (1) the admissibility of a moot contention, or (2) the standing of a petitioner who sought to adjudicate a moot contention, a Board would be issuing an advisory opinion in derogation of Commission precedent. *See U.S. Department of Energy* (High-Level Waste Repository), CLI-08-21, 68 NRC 351, 352 (2008); *accord Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station), ALAB-714, 17 NRC 86, 94 (1983).
- II “[A]bsent compelling reasons, the Commission adheres to the ‘case’ or ‘controversy’ doctrine in its adjudicatory proceedings.” *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-17, 62 NRC 77, 91 (2005) (citing *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station), CLI-93-10, 37 NRC 192, 200 n.28 (1993)). Pursuant to this doctrine, a justiciable controversy must involve parties who raise questions “presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.” *Flast v. Cohen*, 392 U.S. 83, 95 (1968). When a petitioner obtains the relief it is seeking before the admissibility of its contention is resolved, the admissibility *vel non* of the contention is no longer justiciable, because it no longer presents a live controversy involving a true clash of interests that is susceptible to meaningful adjudicative relief. *Cf. Moore v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 47, 48 (1971) (*per curiam*) (dismissing appeal for lack of live controversy where both litigants desired the same result); *David B. Kuhl* (Denial of Senior Reactor Operator License), LBP-09-14, 70 NRC 193, 195-96 (2009) (dismissing hearing request as moot where petitioner’s claim was not susceptible to meaningful adjudicative relief).
- LBP-13-8 TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR (ASLBP No. 13-927-01-LR-BD01); LICENSE RENEWAL; July 5, 2013; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for Hearing)
- A The Board places this adjudicatory proceeding in abeyance. Seven of the contentions do not meet the admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi). The remaining contention (Contention B), however, is based on a recent decision (*New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)) that vacated NRC’s regulation assessing the environmental impact of the storage and disposal of spent nuclear fuel generated by nuclear power reactors such as Sequoyah Units 1 and 2. To the extent that Contention B raises safety issues, it is denied. To the extent that Contention B raises environmental issues, it is held in

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abeyance, without being admitted or denied, pending further order from the Commission, in accordance with *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012).

- B Petitioner Blue Ridge Environmental Defense League (BREDL) established standing by submitting declarations from sixteen individuals who each stated that he or she (a) is a member of BREDL; (b) resides within 50 miles of the Sequoyah Nuclear Plant; and (c) authorizes BREDL to represent him or her in this proceeding.
- C Petitioners Bellefonte Efficiency and Sustainability Team (BEST) and Mothers Against Tennessee River Radiation (MATRR) did not establish standing because they did not submit any declarations from individuals asserting that he or she (a) is a member of BEST or MATRR; (b) resides within 50 miles of the proposed facility; and (c) authorizes the organization to represent him or her in this proceeding.
- D The fact that a petitioner is a “chapter” or a “project” of another petitioner that has established standing, does not mean that the chapter or project also has standing. If a chapter or project wants to participate in an adjudication as a separate party, then it must show its own standing, either organizational or representational.
- E Although BEST and MATRR had the opportunity to cure the defects in their showing of standing in their replies, *see South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010), they failed to do so.
- F Determining whether a contention is within the scope of the proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii), or is material to the proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iv), requires an understanding as to what legal requirement has allegedly not been met. The scope and/or materiality of a contention alleging that the application “fails to adequately address the risk of flooding” necessitates the identification of the law, regulation, or case law that has allegedly not been met, i.e., that requires the application to address the risk of flooding.
- G Contention A, which alleges that the application fails to adequately address the risk of flooding, is an allegation that TVA is not in compliance with the requirements of its current licensing basis and therefore the contention is not admissible because CLB compliance is not within the scope of a license renewal proceeding pursuant to 10 C.F.R. §§ 54.30(b), 2.309(f)(1)(iii).
- H Contention B is based on a recent decision (*New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)) that vacated NRC’s regulation assessing the environmental impact of the storage and disposal of spent nuclear fuel generated by nuclear power reactors such as Sequoyah Units 1 and 2. To the extent that Contention B raises safety issues, it is denied as being outside of the scope of this license renewal process. To the extent that Contention B raises environmental issues, it is held in abeyance, without being admitted or denied, pending further order from the Commission, in accordance with *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012).
- I To the extent that Contention C is a “safety” contention, alleging that the existence of higher cancer death rates in four counties suggests that the Sequoyah nuclear plant is not operating in accordance with its current licensing basis (CLB), the contention is not admissible because CLB compliance is not within the scope of a license renewal proceeding pursuant to 10 C.F.R. §§ 54.30(b), 2.309(f)(1)(iii).
- J To the extent that Contention C is an “environmental” contention, alleging that the existence of higher cancer death rates in four counties means that TVA’s environmental report is erroneous when it concludes that the environmental impacts (human health impacts) of radiation from the Sequoyah nuclear plant will be “small,” the contention is not admissible due to the failure to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v) to provide sufficient supporting information.
- K Contention D, which alleges that the time-limited aging analysis (TLAA) in the application is inadequate because it fails to discuss a number of safety-related incidents that allegedly occurred at the Sequoyah nuclear plant over the last 14 years is not admissible, because NRC regulates compliance with such incidents under TVA’s current licensing basis, and they are not within the scope of a license renewal proceeding pursuant to 10 C.F.R. §§ 54.30(b), 2.309(f)(1)(iii).
- L Contention E, which alleges that the license renewal application is deficient because it fails to consider the use of plutonium fuel at the Sequoyah nuclear plant is speculative and not admissible because TVA has not proposed to use plutonium fuel at these reactors. If and when TVA endeavors to use such fuel at the Sequoyah nuclear plant, TVA will need to seek a license amendment from NRC, and the petitioners will have an opportunity to challenge the proposal at that time.

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- M Contention F-1, which alleges that the license renewal application lacks an acceptable aging management plan to adequately maintain the ice condenser containment system is not admissible because the Petitioner fails to acknowledge and confront the ice condenser aging management plans that are contained in the application and to show that there is a genuine dispute with these plans, as required by 10 C.F.R. § 2.309(f)(1)(vi).
- N Contention F-2, which alleges that the license renewal application is deficient because TVA fails to prove that the containment system at the Sequoyah nuclear plant can withstand a severe accident without leaking, is not material under 10 C.F.R. § 2.309(f)(1)(iv) because there is no legal requirement that a nuclear power plant be completely leakproof during a severe accident.
- O Contention F-3 alleges that TVA has “ongoing systemic problems” such as a “longstanding breakdown in dealing with the mismanagement of its whistleblower complaints” and that these problems reflect a “lack of integrity” indicating that the “accuracy and validity of the license renewal application cannot be assured and therefore must be rejected.” While allegations regarding whistleblower retaliation and management integrity are a serious matter, they are precisely the sort of issues that NRC continuously regulates as part of the current licensing basis and which are excluded from the scope of license renewal proceedings under 10 C.F.R. § 54.30(b), *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 432 (2011), and *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 484 (2010).
- LBP-13-9 POWERTECH USA, INC. (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-9075-MLA (ASLBP No. 10-898-02-MLA-BD01); MATERIALS LICENSE AMENDMENT; July 22, 2013; MEMORANDUM AND ORDER (Ruling on Proposed Contentions Related to the Draft Supplemental Environmental Impact Statement)
- A To be admissible, like a contention that is submitted with an initial hearing request, a post-hearing petition contention, i.e., a new or amended contention, also must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1).
- B Admitted contentions challenging an applicant’s Environmental Report may, in appropriate circumstances, function as challenges to similar portions of the Staff’s Environmental Impact Statement. This “migration tenet” applies when “the information in the DEIS is sufficiently similar to the information in the ER.” *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 26 (2011). In this circumstance, a party need not file a new or amended contention; the previously admitted contention will simply be viewed as applying to the relevant portion of the DEIS.
- C The migration tenet is appropriate only so long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention.
- D If the “new” contention raises the same concern admitted at the initial stage of the proceeding, its admissibility need not be relitigated and redecided at each step of the NEPA process, namely the issuances of the DSEIS and the FSEIS.
- E There are two primary types of contentions — contentions of omission and contentions of adequacy. “A contention of omission is one that alleges an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 n.53 (2011). Based on its language, a contention can be characterized as a contention of omission, a contention of adequacy, or both.
- F An admitted contention of omission may be rendered moot by subsequent license-related documents filed by the NRC Staff that address the alleged omission.
- G Until the DSEIS is issued, the intervenors have no way to know in what form or manner, if any, the NRC Staff will use information from an RAI response. As a consequence, the intervenors can only file their contentions when the information appears in or is omitted from the DSEIS. It would be patently unreasonable to require an intervenor, or a potential intervenor, to divine what use the information collected by the NRC Staff will or will not serve in the DSEIS.
- H Intervenors and potential intervenors have a period of time to file new or amended contentions in response to a DSEIS. They are not required to file their contentions on information or studies that are published in the period between the date for initial contentions and the date the DSEIS is published.
- I Intervenors cannot be expected to raise a claim each time a document is created relating to a proceeding, especially if that document is a mere part of a larger, arguably incomplete, process. The Board

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does not expect intervenors to raise a concern regarding each portion of the process, but instead notes that intervenors need not file a contention until all relevant parts of a process are completed.

- J The NRC Staff need not recirculate a supplemental NEPA document every time new information becomes available. Recirculation is required only when the information presents a “seriously different picture of the environmental impacts.” *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999).
- LBP-13-10 STRATA ENERGY, INC. (Ross In Situ Recovery Uranium Project), Docket No. 40-9091-MLA (ASLBP No. 12-915-01-MLA-BD01), MATERIALS LICENSE AMENDMENT; July 26, 2013; MEMORANDUM AND ORDER (Ruling on Motion to Resubmit Contentions and to Admit a New Contention)
- A In this 10 C.F.R. Part 40 proceeding regarding the application of Strata Energy, Inc., for a license to possess and use the nuclear source material that would be generated by its operation of an in situ uranium recovery (ISR) facility on the Ross ISR Uranium Project site, the Licensing Board grants the request of Joint Intervenors Natural Resources Defense Council and the Powder River Basin Resource Council to “resubmit” (i.e., migrate) three of four previously admitted National Environmental Policy Act (NEPA)/environmental-related contentions so as to frame them as challenges to the NRC Staff’s draft supplemental environmental impact statement (DSEIS) regarding the proposed Ross ISR facility and denies Joint Intervenors’ motion to admit a new environmental contention.
- B Under 10 C.F.R. § 2.309(c)(1), after the section 2.309(b) deadline has passed for submitting an initial hearing petition with one or more accompanying contentions, a petitioner/intervenor that wishes either to (1) amend an already submitted or admitted contention; or (2) gain the admission of a new contention must file a motion for leave to file such a new or amended contention.
- C Under section 2.309(c)(1), the timing of the submission of a new/amended contention comes into play to the extent that consideration of whether a new/amended contention can be admitted/adopted is dependent on whether, regardless of the issue statement’s substantive sufficiency, a presiding officer can conclude that the petitioner/intervenor has demonstrated “good cause” for its post-initial hearing petition deadline filing, based on the following three factors: “(i) The information upon which the filing is based was not previously available; (ii) The information upon which the filing is based is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.” 10 C.F.R. § 2.309(c)(1)(i)-(iii).
- D While the first two “good cause” factors relate to the nature of the information that is being employed as the basis for the new/amended contention, the third concerns the timeliness of the submission of that information in support of a request to admit the new/amended contention. This factor involves the question whether the new/amended contention and the associated information that is the basis for the contention, even if newly available and materially different from any information that was previously available, nonetheless were seasonably submitted. And, in contrast to section 2.309(b)’s provisions relating to an initial hearing petition, *see* 10 C.F.R. § 2.309(b) (defining the timeliness of an initial hearing petition in different situations as being filed between 20 and 60 days after certain specified events), section 2.309(c)(1)(iii) does not stipulate what is considered “timely.” As it turns out, the degree to which the new/amended contention and its otherwise newly available and materially different supporting information will be considered timely submitted is, as in this case, generally defined by the presiding officer as a specific period following the “triggering event” that makes the not previously available/materially different information available so as to be the basis for the new/amended contention.
- E As is made clear in the discussion in the statement of considerations supporting the September 2012 10 C.F.R. Part 2 rule change, *see* Final Rule: “Amendments to Adjudicatory Process Rules and Related Requirements,” 77 Fed. Reg. 46,562, 46,571-72 (Aug. 3, 2012), the time for submitting a new/amended contention motion based on information that would be newly available, materially different, and otherwise timely submitted given the information’s availability can be extended if the extension request is based on “good cause,” as that term is defined in 10 C.F.R. § 2.307, or the presiding officer approves the parties’ stipulation of a different filing time.
- F As is the case with a contention submitted in support of an initial hearing petition, under section 2.309(c)(4) a new or amended contention generally must meet the six admissibility factors specified in section 2.309(f)(1), which in relevant part require that for each contention the submitter “(i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ; (ii) Provide a brief explanation of the basis for the contention; (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding; (iv) Demonstrate that the issue raised in the contention is material to the finding the

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NRC must make to support the action that is involved in the proceeding; (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing . . . ; (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact" 10 C.F.R. § 2.309(f)(1)(i)-(vi).

- G Although a motion addressing the section 2.309(c)(1) and (f)(1) factors generally must be submitted to permit the admission of a new/amended contention, there is a recognized exception for licensing proceedings in the case of NEPA-related contentions. Such contentions initially are based on the environmental report (ER) submitted by the applicant to fulfill its NEPA-related responsibilities under 10 C.F.R. Part 51 to provide the Staff with information and analysis that will inform the Staff's NEPA review. See 10 C.F.R. § 2.309(f)(2). And if the Staff in preparing its NEPA impact statement does indeed adopt the ER-associated information/analysis that was challenged as inadequate, or, alternatively, maintains the same omission that was alleged to be in the ER, it has been acknowledged that the issues those ER-based admitted contentions raise can essentially transmute into challenges to the Staff's NEPA statement. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 172 n.3 (2001); see also *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 84 (1998).
- H It has been recognized that the issues framed in contentions challenging an application generally encompass two categories, i.e., those that allege an informational or analytical omission from the application and those that allege that the information/analysis in the application is inadequate (as opposed to missing). See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002) ("There is, in short, a difference between contentions that merely allege an 'omission' of information and those that challenge substantively and specifically how particular information has been discussed in a license application."); see also *Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 47-48 (2013) (providing general discussion about contentions of omission and contentions of adequacy).
- I Consistent with the general principle that, because the primary responsibility to address and comply with Atomic Energy Act safety-related requirements resides with a license applicant, so that the application, not the Staff's application review, is the focus of any safety-related contentions, see *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 396 (1995); *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121-22 (1995), issuance of the Staff's safety evaluation report (SER) generally would not trigger the migration tenet. Rather, if anything in the Staff's SER is considered as impacting an admitted license application-based safety contention or creating a new safety concern, as a general rule that matter would need to be raised, relative to an admitted safety contention, in the context of the merits disposition of the already admitted safety contention or, in the case of a new issue (and presuming such a Staff safety review-triggered contention is admissible), as a wholly new safety contention.
- J Somewhat ironically, the migration tenet reflects a situation that, strictly speaking, is in juxtaposition to what is contemplated as necessary under the "not previously available" and "materially different" provisos of section 2.309(c)(1)(i)-(ii) governing new/amended contention admission. This is because the invocation of this tenet has the effect of automatically "amending" the contention to substitute the Staff's environmental review impact statement information/analysis (relative to a contention of adequacy) or lack of information/analysis (relative to a contention of omission) as the foundational support for the contention without filing a new/amended contention motion addressing either the section 2.309(c)(1) or (f)(1) factors.
- K The migration tenet is applicable only if the information in the Staff's post-ER NEPA statement is "sufficiently similar to the information in the ER," i.e., essentially in pari materia with the ER information/analysis, or lack of information/analysis, that is the focus of the contention. See *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 63-64 (2008); see also *Dewey-Burdock*, LBP-13-9, 78 NRC at 46-47; *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 470-71 (2012); *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 26 (2011).
- L The "migration tenet" serves a useful administrative efficiency purpose in that it dispenses with the need for (1) the applicant/Staff to file a dismissal/dispositive motion, with the accompanying party filings and Board decision, so as to have the admitted contention declared moot; and (2) the intervenor to file a new/amended contention, with the accompanying briefing and Board decision, so as to have the wording

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of the previously admitted contention changed to reflect that the issue statement's focus is now the Staff's environmental document rather than the applicant's ER.

M The critique of the impact of a Staff environmental document on an already-admitted ER-based environmental contention usually goes to whether (1) a contention of omission can migrate or has been cured, to the degree that purported missing information/analysis has been provided so that a summary disposition/dismissal motion may be appropriate for the admitted contention and a new contention is necessary to challenge the fresh information/analysis; or (2) a contention of adequacy can migrate or, because of information/analysis changes, can be sustained as a new/amended contention. Nonetheless, it also is possible that the Staff's environmental document might contain no information/analysis on a matter that was addressed in the ER and was the subject of an admitted contention of adequacy challenging the ER information/analysis. In such an instance, an intervenor challenge to the adequacy of an ER's information/analysis seemingly would, for all practical purposes, envelop a challenge based on the total lack of such information/analysis (assuming the challenge was not that the information/analysis should not be in ER), thereby permitting a contention of adequacy to migrate into a contention of omission.

N Post-ER an intervenor would need to file a motion to amend an already-admitted contention or to admit a new contention if the information in the Staff's NEPA statement is sufficiently different from the information in the ER that supported the original contention's admission. *See Vogtle*, LBP-08-2, 67 NRC at 63-64. And a new/amended contention regarding portions of the Staff's post-ER NEPA statement that differ from the ER also must meet the "good cause" and contention admissibility standards of section 2.309(c)(1) and (f)(1) to be admitted. *See McGuire/Catawba*, CLI-02-28, 56 NRC at 382 ("While a contention contesting an applicant's [ER] generally may be viewed as a challenge to the NRC Staff's subsequent draft EIS, new claims must be raised in a new or amended contention."); *Vogtle*, LBP-08-2, 67 NRC at 64 (explaining that, if the portion of the ER that an admitted contention challenges is not sufficiently similar to the draft EIS, "an intervenor attempting to litigate an issue based on expressed concerns about the [draft EIS] may need to amend the admitted contention or, if the information in the [draft EIS] is sufficiently different from that in the ER that supported the contention's admission, submit a new contention").

O Nothing in the agency's rules of practice precludes an intervenor from submitting a motion that attempts to invoke the migration tenet or a board from considering that precept's application in response to such a motion.

P In appropriate circumstances, a board should endeavor to define the scope of a contention in light of the foundational support that leads to its admission, *see Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 (2009) (observing that to define scope of admitted contention properly, board should have specified which bases were admitted); *see also Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) ("The reach of a contention necessarily hinges upon its terms coupled with its stated bases."), *aff'd sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991).

Q Regarding the argument that the Staff's SER and/or one or more of an applicant's post-hearing petition licensing review submissions to the Staff, whether in response to a Staff request for additional information (RAI) or otherwise, have the consequence of rendering a resubmitted environmental contention moot or untimely under section 2.309(c)(1), expressing no view on whether it is possible for an SER to moot an environmental contention, to the degree this argument is footed in NEPA-related RALs, assertions of contention mootness or untimeliness based on such documents generally should be raised prior to the issuance of a Staff environmental document. Such a timely filed motion would be based on the SER or applicant information having become available and having mooted or otherwise enervated the admitted environmental contention as it alleges an omission/analysis deficiency relative to the ER so as to require the filing of a new/amended contention that has not been properly proffered. In the absence of such a motion filed prior to the Staff environmental document, the Staff SER or such applicant information generally would become relevant as impacting an admitted environmental contention only to the degree the SER or applicant information is actually utilized as part of a subsequent Staff environmental document. Moreover, the timeliness of a new/amended contention motion relating to that information seemingly would be determined based on the availability of the Staff's environmental document, rather than the SER or the applicant's information, as the filing "trigger" for the motion.

R If there is any question about whether the migration tenet is applicable, in the absence of a timely analysis of the section 2.309(c)(1) and (f)(1) new/amended contention precepts by the contention's sponsor,

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a board is not obligated to determine whether those new/amended contention requirements could have been met relative to the “migrated” environmental contention. *See Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 465-68 (1985). Accordingly, a contention’s sponsor may choose not to make any submission regarding an admitted ER-based environmental contention it believes properly will migrate and can simply await an applicant or Staff filing challenging the contention’s continued viability in light of the Staff’s environmental document. But if there is any question about whether an admitted contention merits a new/amended contention motion relative to the Staff’s environmental document, the best approach seemingly would be to make a filing that treats the contention as if it were new/amended or, perhaps most prudently, argues in the alternative.

S Under NEPA § 102(2)(C), 42 U.S.C. § 2332(2)(C), which requires that an agency create an environmental impact statement (EIS), “the moment at which an agency must have a final statement ready ‘is the time at which it makes a recommendation or report on a *proposal* for federal action.’” *Kleppe v. Sierra Club*, 427 U.S. 390, 405-06 (1976) (quoting *Aberdeen & Rockfish R.R. Co. v. Students Challenging Regulatory Agency Procedures*, 422 U.S. 289, 320 (1975)).

T An EIS should be issued to include other related actions only when those related actions have been formally proposed and are pending before the relevant agency. NEPA “does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions.” *Kleppe*, 427 U.S. at 410 & n.20; *see id.* at 410 (“[W]hen several proposals for . . . actions that will have cumulative or synergistic environmental impact upon a region are *pending concurrently* before an agency, their environmental consequences must be considered together.” (emphasis added)).

U “[T]o bring NEPA into play, a possible future action must at least constitute a ‘proposal’ pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus).” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002).

V Under 40 C.F.R. § 1508.25(a), the Council on Environmental Quality regulation that outlines the scope or range of actions that should be considered in an EIS, three types of actions are to be considered in looking to the scope of an EIS: connected, cumulative, and similar. To determine whether actions are “connected” such that they “should” be discussed in the same EIS, section 1508.25(a)(1) indicates that an agency is to consider whether the actions (1) “automatically trigger” other actions that may require an EIS; (2) “[c]annot or will not proceed unless other actions are taken previously or simultaneously”; or (3) “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1)(i)-(iii). “Cumulative” actions, on the other hand, are those that, “when viewed with other proposed actions[,] have cumulatively significant impacts” so that they “should” be discussed in the same EIS. *Id.* § 1508.25(a)(2). And finally “similar” actions are those that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental impacts together, such as common timing or geography,” so that the agency “may wish to analyze them together.” *Id.* § 1508.25(a)(3).

W With respect to whether potential ISR sites are “connected” proposals per section 1508.25(a)(1), the relevant criterion appears to be whether, in accord with paragraph (iii), the requisite “interdependence” exists among the various actions at issue. In making this determination, courts generally have looked to see whether the first action has “independent utility.” *Thomas v. Peterson*, 753 F.2d 754, 759 (9th Cir. 1985); *see also McGuire/Catawba*, CLI-02-14, 55 NRC at 297 (“[W]hen developing an EIS, an agency must consider the impact of other proposed projects ‘only if the projects are so interdependent that it would be unwise or irrational to complete one without the other.’” (quoting *Webb v. Gorsuch*, 699 F.2d 157, 161 (4th Cir. 1983))).

X Recognizing that a board may appropriately view a petitioner’s supporting information in a light favorable to the petitioner, *see Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 143, 155 (1991), it is also the case that neither mere speculation nor bare or conclusory assertions, even by an expert, will suffice to allow the admission of a proffered contention, *see Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).

Y An intervenor’s failure to provide anything concrete to support the central premise that the ISR facility at issue in a proceeding “may” not be economically viable without licensing/operating the other proposed ISR facilities in the vicinity is wholly inadequate to support the admission of an illegal segmentation contention.

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- Z Denoting aspects of the ISR facility licensing proposal at issue in the proceeding that will permit economic and operational efficiency if the applicant successfully carries out its apparent plan to have other nearby sites licensed is not the same as showing that the ISR facility at issue itself lacks any “independent utility” such that its licensing and operation would not go forward absent the licensing and operation of the other ISR sites.
- AA Assertions all supporting the premise that there is a strong likelihood that an applicant intends that eventually all its nearby ISR sites will be licensed and operating are not the same as showing, as would be pertinent to the question of whether the ISR facility at issue in a proceeding is a “connected” action as defined in section 1508.25(a)(1), that the ISR facility at issue lacks any independent utility in the absence of the completion of the other ISR sites.
- BB The fact that the Staff previously supported the need for a cumulative impacts analysis, *see* LBP-12-3, 75 NRC at 200, 203, which it now has provided in the DSEIS regarding the applicant’s other nearby ISR sites, at least suggests that, consistent with section 1508.25(a)(2), there are “cumulative actions” that might need full NEPA consideration in the same impact statement.
- CC While the courts have recognized that the permissive “may” language of section 1508.25(a)(3) affords an agency more discretion in making a choice about whether a single EIS is the “best way” to assess “similar” actions, *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989, 1001 (9th Cir. 2004), the geographic proximity of the ISR site at issue in this proceeding to the other nearby ISR sites and the apparent timing of the future licensing actions for these other ISR sites vis-a-vis the ISR site at issue seemingly would be relevant in determining whether they are “similar” actions under that provision so as to merit consideration in a single impact statement.
- LBP-13-11 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LA (ASLBP No. 13-928-02-LA-BD01); LICENSE AMENDMENT; August 12, 2013; MEMORANDUM AND ORDER (Denying Petition for Intervention and Request for Hearing)
- A In this Memorandum and Order, the Atomic Safety and Licensing Board (Board) determines that petitioners failed to submit an admissible contention in accordance with 10 C.F.R. § 2.309(f)(1), denies their petition to intervene for this reason, and terminates the proceeding before the Board.
- B “A member of the public may challenge an action taken under 10 C.F.R. § 50.59 only by means of a petition under 10 C.F.R. § 2.206,” which must be submitted to the Executive Director for Operations for consideration by the appropriate office director. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).
- C A challenge to an applicant’s analysis pursuant to 10 C.F.R. § 50.59 is not the proper subject of an adjudicatory hearing before a licensing board.
- LBP-13-12 EXELON GENERATION COMPANY, LLC (Braidwood Nuclear Power Station, Units 1 and 2; Byron Nuclear Power Station, Units 1 and 2), Docket Nos. 50-454-LR, 50-455-LR, 50-456-LR, 50-457-LR (ASLBP No. 13-929-02-LR-BD01); OPERATING LICENSE RENEWAL; November 19, 2013; MEMORANDUM AND ORDER (Denying Hearing Request and Petition to Intervene)
- A In this proceeding regarding the application of Exelon Generation Co., LLC to renew its operating licenses for Byron Nuclear Power Station, Units 1 and 2, and Braidwood Nuclear Power Station, Units 1 and 2, the Board denies a hearing request and petition to intervene because each of petitioner’s two contentions challenges a Commission regulation in violation of 10 C.F.R. § 2.335(a).
- B Absent a petition for a waiver, no rule or regulation of the Commission “is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding.” 10 C.F.R. § 2.335(a) (2013).
- C An applicant for renewal of a license to operate a nuclear power plant “is not required to include discussion of need for power.” 10 C.F.R. § 51.53(c)(2) (2013).
- D An application for renewal of a license to operate a nuclear power plant may be submitted as early as 20 years before expiration of the license then in effect. 10 C.F.R. § 54.17(c) (2013).
- LBP-13-13 ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR, 50-286-LR (ASLBP No. 07-858-03-LR-BD01); OPERATING LICENSE RENEWAL; November 27, 2013; PARTIAL INITIAL DECISION (Ruling on Track 1 Contentions)
- A In this proceeding arising from the License Renewal Application (LRA) of Entergy Nuclear Operations, Inc. (Entergy or Applicant) for two reactors located at the Indian Point Energy Center (IPEC), one of which expired on September 28, 2013 (IP2), and one of which will expire on December 12, 2015 (IP3), which requested authorization for the continued operation of these reactors for up to 20 years beyond these expiration dates, the Licensing Board — ruling on the merits of nine contentions — concludes

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that, with regard to the issues raised regarding the adequacy of Entergy's Aging Management Plans in contentions RK-TC-2 (flow-accelerated corrosion), NYS-5 (buried piping), and NYS-6/7 (inaccessible low- and medium-voltage cables), Entergy has demonstrated that the effects of aging will be adequately managed during the period of extended operation as required by 10 C.F.R. § 54.21(a)(3). With regard to the issues raised regarding input parameters in SAMA analysis in contentions NYS-12C (decontamination cost estimates), and NYS-16B (population estimates), and with regard to the issues raised with regard to the impact of continued operation of these reactors on surrounding property values in NYS-17B, and the consideration of the no-action alternative in NYS-37, the NRC Staff has demonstrated that the FEIS complies with NEPA and with 10 C.F.R. Part 51. With regard to CW-EC-3A, the Board found that while the NRC Staff's Environmental Justice analysis was flawed, the record as developed during the hearing cured the defect and with regard to NYS-8, because the Board found that transformers were "passive" components, they fall within the scope of 10 C.F.R. Part 54 and must undergo AMR pursuant to 10 C.F.R. § 54.21(a)(1).

- B In determining whether an applicant's LRA provides the requisite "reasonable assurance," the Board must conclude that the applicant has properly scoped the aging management review; that the existing or planned aging management programs conform to the descriptions in the license renewal application; and that the documentation used to support the application is auditable, retrievable, and in fact does support the application.
- C Sections 54.21(a)(3) and 54.29(a) of 10 C.F.R. provide the applicable legal standards for the evaluation of Indian Point's AMP for buried pipes and tanks. These regulations require that Entergy must demonstrate, to the point of providing "reasonable assurance," that the intended functions of these components will be maintained in accordance with the CLB for the PEO.
- D If an AMP is consistent with GALL, it is adequate. However, to simply claim consistency with GALL is insufficient. An applicant must present an AMP with sufficient information that the Board will be able to draw its own independent conclusion as to whether the applicant's programs are in fact consistent with GALL.
- E A commitment by a license renewal applicant to implement one of the AMPs detailed in GALL is sufficient to provide "reasonable assurance" that the effects of aging will be adequately managed so that intended functions will be maintained consistent with the CLB for the period of extended operations as required by 10 C.F.R. § 54.21(a)(3).
- F In the license renewal context, the scope of the Staff's NEPA review is substantially different from, and broader than the scope of, the Staff's review of Part 54 safety issues. The Commission's AEA review under Part 54 does not compromise or limit NEPA.
- G NEPA's "hard look requirement" does not allow sweeping generalities about possible effects and risk without a justification as to why more definitive information was not provided.
- H Under the NEPA "rule of reason," "the agency's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios."
- I As a NEPA analysis, the SAMA analysis is not based on either the best-case or the worst-case accident scenarios, but on mean accident consequence values, averaged over the many hypothetical severe accident scenarios. When a board is called upon to assess a SAMA analysis, the question is not whether more or different analysis can be done.
- J Contentions challenging a SAMA analysis must identify a deficiency that plausibly could alter the overall result of the analysis in a material way. The question of material impacts hinges upon whether a SAMA alternative may be cost-beneficial to implement. However, like other NEPA evaluations, a SAMA analysis is governed by the rule of reason and alternatives must be bounded by some notion of feasibility.
- K Performed under NEPA, a SAMA analysis evaluates the degree to which specific additional mitigation measures may reduce the probability or consequences of various accident scenarios on a site-specific basis.
- L A SAMA analysis must necessarily be site specific because the potential consequences of a severe accident will largely be the product of the location of the plant.
- M SAMA analyses, as issues of mitigation, need only be discussed in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated.
- N In the SAMA context NEPA requires the FSEIS to include an analysis containing reasonable estimates.

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- O In order to satisfy its obligations under NEPA the FSEIS need only explain any known shortcomings in available methodology, disclosure of incomplete or unavailable information and significant uncertainties, and a reasoned evaluation of whether and to what extent these or other considerations credibly could alter the SAMA analysis conclusions.
- P The proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA.
- Q To be successful, an Intervenor must point to a deficiency that renders the SAMA analysis unreasonable under NEPA.
- R Category 1 impacts are those that the Commission has determined are common across plants — they have been evaluated generically in the GEIS for license renewal. These impacts are outside the scope of individual license renewal proceedings.
- S Category 2 impacts are those that require plant-specific analysis in a supplemental EIS.
- T When taking the requisite hard look at the environmental consequences of the alternatives to the proposed licensing action, NRC regulations require the EIS to discuss the no-action alternative.
- U The Staff is instructed to analyze the potential environmental impacts associated with not renewing the license within the “no-action alternative” section of the energy-alternatives chapter in the EIS.
- V Commission regulations, however, do not require the inclusion of an analysis within the EIS regarding the need for the power generated by an existing plant in license renewal proceedings.
- W Disparate impact analysis is the NRC’s principal tool for advancing environmental justice under NEPA. The NRC’s goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities.
- X Environmental justice, as applied to the NRC, means that the agency will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities.
- Y Environmental justice was not addressed in NUREG-1437 GEIS and accordingly, EJ must be addressed in individual license renewal reviews.
- Z In the event that a Board finds that the Staff’s NEPA analysis is insufficient, it need not require that the agency staff “go back to the drawing board” and amend or supplement the EIS. Rather, the Board’s review and admitted exhibits are part of the environmental record upon which the Commission makes its ultimate balancing judgment.
- AA The adjudicatory record and Board decision (and, of course, any Commission appellate decisions) become, in effect, part of the FEIS.
- BB Accordingly, to the extent that any environmental findings by the Presiding Officer (or the Commission) differ from those in the FEIS, the FEIS is deemed modified by the decision.
- CC NEPA and Part 51 require that as part of its environmental review the Staff prepares a “Record of Decision” to accompany any Commission decision on any action for which a final EIS has been prepared.
- DD Typically, the Staff prepares the record of decision, but when, as here, a hearing is held, the Board’s initial decision constitutes the record of decision as to those issues that were litigated during the hearing and the hearing can provide the public venting that the circulation of an amended EIS would otherwise provide.
- EE But if modification of the FEIS by Staff testimony or the Board’s decision is too substantial, recirculation of the FEIS would be required. In a given instance, the Staff’s evidence may depart so markedly from the positions espoused or information reflected in the FEIS as to require formal redrafting and recirculation for comment of the environmental statement (or at least those portions which are affected by the changes) before the licensing board gives any further consideration to the subjects involved.
- LBP-14-1 SHAW AREVA MOX SERVICES, LLC (Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01) (Possession and Use License); MATERIALS LICENSE; February 27, 2014 (as redacted per Order of May 21, 2014); INITIAL DECISION (Ruling on Contentions 9, 10, and 11)
- A In this proceeding regarding the application of Shaw AREVA MOX Services, LLC (“Applicant”) for a license to possess and use strategic special nuclear material (“SSNM”) at a Mixed Oxide Fuel Fabrication Facility being constructed at the U.S. Department of Energy’s Savannah River Site, the Licensing Board concludes that Applicant has provided reasonable assurance that the challenged portions of its material control and accounting (“MC&A”) system satisfy the applicable regulatory requirements. For Contention 9, Applicant has demonstrated, as required by 10 C.F.R. § 74.55(b)(1), the ability to verify the presence and integrity of SSNM items with a 99% power of detecting item losses of 5 formula

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kilograms within specified time periods. For Contention 10, Applicant has demonstrated, as required by 10 C.F.R. § 74.57(b), the ability to resolve MC&A alarms within approved time periods. For Contention 11, Applicant has demonstrated, as required by 10 C.F.R. § 74.57(e), the ability to rapidly assess alleged thefts.

- B The NRC may issue a license to possess and use five or more formula kilograms of SSNM, under 10 C.F.R. Part 70, only if an applicant can establish, implement, and maintain an approved MC&A system that will achieve general performance objectives. To achieve these SSNM loss-related performance objectives, the MC&A system must provide the capabilities described in sections 74.55 and 74.57, among other capabilities.
- C The NRC's MC&A regulations in 10 C.F.R. Part 74 require the tracking of SSNM items during storage and processing in order to safeguard these materials from diversion.
- D The NRC's MC&A regulations in 10 C.F.R. Part 74 are intended to "provide flexibility for licensees to select the most cost-effective ways of achieving performance objectives." Though flexible, an applicant's proposed controls must still be "adequate" to show compliance with the regulations.
- E For an applicant's MC&A system to be found adequate, a licensing board must make a case-by-case determination, guided by the Atomic Energy Act's mandate that no license to possess special nuclear material may be issued if issuance "would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public." This board finds that use of the reasonable assurance standard to determine MC&A adequacy, as suggested by the NUREG-1718 guidance, is consistent with our statutory mandate.
- F Even though performance-oriented regulations provide applicants with flexibility to determine how best to achieve stated performance objectives, the method chosen must still demonstrate reasonable assurance of compliance with the underlying regulatory standard. It is incumbent on the NRC Staff to scrutinize an applicant's chosen approach and determine whether or not it provides reasonable assurance that the regulation will be met. Mere compliance with regulatory guidance is not sufficient.
- G An applicant for an NRC license bears the ultimate burden of proof. With respect to each contention, an intervenor has the initial "burden of going forward" and must provide sufficient evidence to support the claims made. If an intervenor makes that showing, the applicant has the burden of demonstrating by a preponderance of the evidence that it has met the relevant NRC regulations and that the licensing board should reject each contention on the merits.
- H NRC regulatory guidance documents are intended merely to assist the Staff (and applicant) in understanding the underlying objective of the regulatory requirements. Guidance documents describe particular means of satisfying regulatory requirements in ways acceptable to the NRC Staff, but they do not bind applicants who remain free to choose different means.
- I NRC regulatory guidance documents are not binding upon a licensing board, so mere applicant compliance with guidance does not ensure sufficient compliance with the regulations or the grant of a license. Guidance documents are not binding law and should not be treated as such by applicants, the NRC Staff, or a licensing board.
- J Section 74.55(b) of 10 C.F.R. applies only to those licensees that are authorized to possess 5 or more formula kilograms of SSNM. Licensees must satisfy section 74.55(b)'s detection requirements for tamper-safed or sealed SSNM items in order to achieve the performance objectives set out in section 74.51(a). The regulation calls for the use of statistical sampling to achieve verification of item presence and integrity, stating that statistical sampling must result in "at least 99 percent power of detecting losses that total five formula kilograms or more." An applicant may satisfy the regulation if it can provide reasonable assurance that its proposed verification methods will meet this 99% power of detection within the stated time periods.
- K The sufficiency of an applicant's system for verification of SSNM item presence and integrity under 10 C.F.R. § 74.55(b) hinges upon the accuracy of the data used and its ability to meet the specific quantitative performance criteria set out in the regulation. Whether collected through automation or not, the data must be sufficiently accurate to enable a licensing board to find compliance with the overarching requirements of the Atomic Energy Act that there be reasonable assurance of compliance with the regulation.
- L Section 74.57(b) of 10 C.F.R. requires an applicant applying to possess 5 or more formula kilograms of SSNM to maintain alarm resolution capabilities designed to achieve the performance objectives of section 74.51(a). An applicant may propose a time period for alarm resolution, which must be approved by

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the NRC Staff. The fact that a time period has been approved by the NRC Staff does not, however, ensure that an applicant's commitment satisfies the regulation. Ultimately, the time period approved by the NRC Staff must be adequate to provide reasonable assurance that the applicant will achieve the performance objectives.

M Section 74.57(b) of 10 C.F.R. does not require that an applicant demonstrate the ability to resolve an MC&A alarm through the use of any one alarm resolution method, such as an inventory, within the approved time period.

N Section 74.57(e) of 10 C.F.R. requires an applicant applying to possess 5 or more formula kilograms of SSNM to maintain rapid theft assessment capabilities designed to achieve the performance objectives of section 74.51(a). The regulation provides an applicant with the flexibility to determine the most cost-effective means of meeting the requirement. Ultimately, an applicant's proposed approach to rapid theft assessment must provide reasonable assurance that it will achieve the performance objectives.

O Section 74.57(e) of 10 C.F.R. does not require an applicant to show the ability to rapidly assess the validity of alleged thefts in every conceivable theft scenario.

LBP-14-2 CHARLISSA C. SMITH (Denial of Senior Reactor Operator License), Docket No. 55-23694-SP (ASLBP No. 13-925-01-SP-BD01); REACTOR OPERATOR LICENSE; March 18, 2014; INITIAL DECISION

A In this Initial Decision, the Atomic Safety and Licensing Board (Board) resolves the claim of CharliSSa C. Smith that the Nuclear Regulatory Commission Staff (Staff) unlawfully denied her 2012 application for a senior reactor operator (SRO) license. The Board concludes that the Staff acted inconsistently with its own guidance and applied that guidance in an inconsistent manner when it denied Ms. Smith's application for an SRO license in 2012. The Board directs the Staff to issue an SRO license to Ms. Smith, subject to the satisfaction of any other licensing requirements not considered in this proceeding, such as health, that the Staff must also assess before issuing a license pursuant to 10 C.F.R. § 55.33. The license shall be effective as of the date it is issued and shall be subject to the usual terms and conditions. *See* 10 C.F.R. § 55.1.

B Part 55 of the Commission's regulations establishes procedures and criteria for the issuance of licenses to operators and senior operators of nuclear facilities licensed under the Atomic Energy Act of 1954 as amended or section 202 of the Energy Reorganization Act of 1974, as amended.

C Any individual who manipulates the controls of any facility licensed under Parts 50, 52, or 54 of the agency's regulations is required to have an operator's license. *See* 10 C.F.R. § 55.2.

D An SRO is "any individual licensed under [10 C.F.R. Part 55] to manipulate the controls of a facility and to direct the licensed activities of licensed operators." 10 C.F.R. § 55.4. To obtain an SRO license, the applicant must pass both a written test and an operating test and meet the other requirements specified in 10 C.F.R. Part 55. *See id.* § 55.33(a).

E Section 55.40 of 10 C.F.R. states that the Commission shall use NUREG-1021 to prepare and evaluate licensing examinations. Pursuant to 10 C.F.R. § 55.40, the Commission "shall use the criteria in NUREG-1021, 'Operator Licensing Examination Standards for Power Reactors,' in effect six months before the examination date to prepare the written examinations required by [10 C.F.R.] §§ 55.41 and 55.43 and the operating tests required by [10 C.F.R.] § 55.45." 10 C.F.R. § 55.40(a). Thus, NUREG-1021 criteria that apply to the preparation of written examinations and operating test are binding upon the Staff.

F NUREG-1021 specifies the Staff's policies, procedures, and practices for administering the initial and requalification written examinations and operating tests. It lists both goals and specific procedures for the preparation, administration, and grading of the operator license examination. NUREG-1021 states that the goal of the tests is to determine "whether the applicant's level of knowledge and understanding meet the minimum requirements to safely operate the facility for which the license is sought." NUREG-1021 further states that it is intended to "ensure the equitable and consistent administration of examinations for all applicants." Additionally, NUREG-1021 provides that the NRC's regional offices shall obtain approval from the Office of Nuclear Reactor Regulation (NRR) operator licensing program office at agency headquarters before knowingly deviating from the intent of any of the NUREG-1021 standards.

G Under the agency's regulations and NUREG-1021 standards, an applicant who was denied a license after the first examination may elect to retake the tests. In this scenario, the regulations governing the application process provide that "[a]n applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused

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from re-examination on the portions of the examination or test which the applicant has passed.” 10 C.F.R. § 55.35(b).

H The NRC regional office has the discretion to grant a waiver request “if it determines that sufficient justification is presented.” 10 C.F.R. § 55.35(b).

I NUREG-1021 includes conflict of interest provisions that address the assignment of examiners to an examination team. NUREG-1021 instructs that “[t]he regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicant’s retake operating test.” This specific prohibition is supplemented by a broader requirement, which directs that “[i]f an examiner is assigned to an examination that might appear to present a conflict of interest, the examiner shall inform his or her immediate supervisor of the potential conflict.” When informed of a potential conflict, the supervisor “must apply sound judgment to the facts of each case” and, if any doubt exists, “consult with regional management and/or the NRR operator licensing program office to resolve the issue.”

J Pursuant to Subpart L, each party and the NRC Staff are required to make initial disclosures under paragraphs (a) and (b) of section 2.336, based on the information and documentation then reasonably available to it. A party, including the NRC Staff, is not excused from making the required disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity’s disclosures, or that another entity has not yet made its disclosures. *See* 10 C.F.R. § 2.336(c). All disclosures under this section must be accompanied by a certification (in the form of a sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification. *See id.* The duty of disclosure is continuing.

K Parties must update their disclosures every month after initial disclosures on a due date selected by the presiding officer in the order admitting contentions. *See id.* § 2.336(d). Disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update. *See id.* A party, including the Staff, may be sanctioned for noncompliance with the disclosure regulations. *See id.* § 2.336(e)(1). The presiding officer may impose sanctions on a party that fails to provide any document required to be disclosed, unless the party demonstrates good cause for its failure to make the disclosure. *See id.* § 2.336(e)(2).

L The NRC Staff is under a special obligation to create and to maintain a hearing file. *See* 10 C.F.R. § 2.1203(a). The NRC Staff has a continuing duty to keep the hearing file up to date. *See id.* § 2.1203(c).

M The standard of review in this case, as in most administrative proceedings, is a preponderance of the evidence, with the applicant or proponent of an order bearing the burden of proof. *See Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 302 n.22 (1994) (citations omitted), *aff’d, Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (6th Cir. 1995). This is consistent with 10 C.F.R. § 2.325 which states “[u]nless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.” 10 C.F.R. § 2.325.

N In assessing whether an applicant satisfies the burden of establishing that the Staff’s determination of the applicant’s performance was inappropriate, unjustified, arbitrary, or an abuse of discretion, the Board should consult NUREG-1021. *See Frank J. Calabrese Jr.* (Denial of Senior Reactor Operator License), LBP-97-16, 46 NRC 66, 86 (1997).

O NUREG documents do not generally establish regulatory requirements, but NUREG-1021 states that it is intended to “help NRC examiners and facility licensees [to] better understand the . . . initial and requalification [examination processes and to] ensure the equitable and consistent administration of examinations for all applicants.”

P The Commission issued NUREG-1021 “[t]o set forth consistent standards for operator and SRO examinations at various facilities.” *Randall L. Herring* (Senior Reactor Operator License for Catawba Nuclear Station), LBP-98-30, 48 NRC 355, 357 (1998). In order to avoid a finding of arbitrary and capricious agency action, the Staff may not depart from its established policies, procedures, and practices without a reasonable explanation for the change. *See Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (“Whatever the ground for the [agency’s] departure from prior norms, . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency’s action . . .”); *Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 291 (1st Cir. 1995); *Northern California Power Agency v. Federal Energy Regulatory Commission*, 37 F.3d 1517, 1522 (D.C. Cir. 1994).

Q While public officials are afforded a presumption of regularity in the discharge of their duties (*see McIntyre-Handy v. West Telemarketing Corp.*, 97 F. Supp. 2d 718, 727 (E.D. Va. 2000)), this presumption can be shifted upon the presentation of evidence showing official actions that are irregular. If the facts

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before the Board do not appear regular, then the presumption does not attach. *See Collins v. Shinseki*, 2013 WL 6000535 at *6 (Vet. App. 2013). The presumption “does not help to sustain an action that on its face appears irregular. . . . [In fact,] the presumption operates in reverse. If it appears irregular, it is irregular, and the burden shifts to the proponent to show the contrary.” *United States v. Roses Inc.*, 706 F.2d 1563, 1567 (Fed. Cir. 1983).

R The idea behind the prejudicial error rule (also known as the harmless error rule) is that if the agency’s error did not affect the outcome, it did not prejudice the petitioner. *See Jicarilla Apache Nation v. U.S. Department of the Interior*, 613 F.3d 1112, 1121 (D.C. Cir. 2010). In general, the burden of proving prejudicial error by a federal agency rests with the party challenging the agency’s action. *See Shinseki v. Sanders*, 556 U.S. 396 (2009). However, this is “not . . . a particularly onerous requirement.” *Jicarilla Apache Nation*, 613 F.3d at 1121 (quoting *Shinseki v. Sanders*, 556 U.S. at 410). It is sufficient “that the agency’s error may have affected the outcome.” *Charlton v. Donley*, 846 F. Supp. 2d 76, 85 (D.D.C. 2012); *accord Evans v. Perry*, 944 F. Supp. 25, 29 (D.D.C. 1996).

S The NRC Staff has an obligation to lay all relevant materials before the Board to enable it to adequately dispose of the issues before it. *Consolidated Edison Co.* of New York (Indian Point, Units 1, 2, and 3), CLI-77-2, 5 NRC 13 (1977); *Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 n.18 (1983), citing *Indian Point*, CLI-77-2, 5 NRC at 15. *See generally Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-677, 15 NRC 1387 (1982); *Allied-General Nuclear Services* (Barnwell Nuclear Fuel Plant Separation Facility), ALAB-296, 2 NRC 671, 680 (1975). All parties, including the Staff, are obligated to bring any significant new information to the Board’s attention. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 197 n.39 (1983), *rev’d in part on other grounds*, CLI-85-2, 21 NRC 282 (1985), citing *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-677, 15 NRC at 1394; *Union Electric Co.* (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1210 n.11 (1983); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 152-53 n.46 (1993). An agency of the government must scrupulously observe the rules, regulations, or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1970).

LBP-14-3 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-12-COL, 52-13-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; April 10, 2014; THIRD PARTIAL INITIAL DECISION (Ruling on Contention FC-1)

A In this Order, the Atomic Safety and Licensing Board (Board) determines that the Applicant has carried its burden of demonstrating by a preponderance of the evidence that it is not subject to impermissible foreign ownership, control, or domination and that its revised combined license application does not contravene section 103d of the Atomic Energy Act (AEA) and 10 C.F.R. § 50.38.

B Section 103d of the AEA states that no license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

C In context with the other provisions of section 104d of the AEA, the foreign control limitation should be given an orientation toward safeguarding the national defense and security.

D Control or domination must be of such a degree that the will of the licensee is subjugated to the will of the foreign entity, and the foreign entity must have the power to direct the actions of the licensee. And the restriction on foreign ownership, control, or domination should be given an orientation toward safeguarding the national defense and security.

E When an applicant that is seeking to acquire a 100% interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign corporation, the applicant will not be eligible for a license.

F There is no specific threshold above which it would be conclusive that an applicant is controlled by foreign interests through ownership.

G There is no blanket prohibition on indirect foreign ownership of an applicant or licensee.

H If an applicant was in fact subject to foreign control or domination, it is reasonable to expect that there would be manifestations of this in the corporate organization and management, and, further, that there would be recognition of such circumstances by those corporate officers who must furnish the Commission with the sworn information prescribed by 10 C.F.R. § 50.33.

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- I An applicant with foreign ownership can still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant responsible for special nuclear material must be U.S. citizens.
- J If a license applicant's negation action plan can successfully wall off the foreign entity from influencing the applicant's decisionmaking regarding nuclear safety, security, and reliability concerns, then the AEA's prohibition on foreign control or domination will not stand in the way of the applicant seeking that license.
- K A negation action plan is part of an applicant's Final Safety Analysis Report and, therefore, is part of the licensing basis of the facility. An applicant, if granted its license, must comply with those commitments — regardless of the fact that they do not take the form of formal license conditions. If an applicant subsequently wished to change those commitments to any significant extent, it would need to file a license amendment request, which could then be challenged by seeking a hearing.
- L While the pertinent language of the AEA is certainly written in present tense, a Board's inquiry does not end with evaluating foreign ownership, control, or domination concerns posed only by the current corporate structure and financing. Although section 103d of the AEA states that an applicant who "is" subject to foreign ownership, control, or domination is ineligible to apply for or obtain a license, once a license is granted, the prohibition on foreign ownership, control, or domination remains. Put another way, the license an applicant seeks encompasses more than merely the present — it extends decades into the future. And that "is" the corporate structure and financing that an application describes for the entire temporal span encompassed by the license it seeks. Concomitantly, an applicant's negation action plan addresses not only how it avoids foreign ownership, control, or domination now, but how it will continue to avoid foreign ownership, control, or domination throughout the entire license period.
- M If a license applicant's NAP can successfully wall off the foreign entity from influencing the applicant's decisionmaking regarding nuclear safety, security, and reliability concerns, then the AEA's prohibition on foreign control or domination will not stand in the way of the applicant seeking that license.
- N While a Standard Review Plan lacks the legal force of duly issued regulations, the Commission has written that it is to be given special weight as a guidance document that has been approved by the Commission but is nonbinding guidance.
- LBP-14-4 EXELON GENERATION COMPANY, LLC (Dresden Nuclear Power Station, Units 2 and 3), Docket Nos. 50-237-EA, 50-249-EA (ASLBP No. 14-930-01-EA-BD01); ENFORCEMENT; April 17, 2014; MEMORANDUM AND ORDER (Denying Petition to Intervene and Request for Hearing)
- A In this Memorandum and Order, the Atomic Safety and Licensing Board (Board) determines that petitioner failed to establish standing under 10 C.F.R. § 2.309(d) and failed to proffer an admissible contention under 10 C.F.R. § 2.309(f)(1), denies its petition to intervene and request for hearing, and terminates the proceeding before the Board.
- B To intervene as a party in an adjudicatory proceeding concerning an NRC enforcement order, a petitioner must (1) establish it has standing; and (2) proffer at least one admissible contention.
- C Unlike demands for a hearing by the subject of an enforcement order, which are automatic without regard to satisfying 10 C.F.R. § 2.309, both the Commission and other licensing boards have consistently required third parties seeking intervention with respect to an enforcement order to meet the 10 C.F.R. § 2.309 criteria, and have not considered such requests to be automatic.
- D Although on its face the language of 10 C.F.R. § 2.202(a)(3) might be ambiguous, its regulatory history makes clear that the Commission did not intend to relieve third-party individuals who are not the subject of an enforcement order (but who nonetheless seek a hearing on the order) from satisfying the requirements for a petition for intervention set forth in 10 C.F.R. § 2.309.
- E Generally, a nonparty petitioner may not challenge a confirmatory order embodying a settlement if the order improves the safety situation over what it was in the absence of the order.
- F The critical inquiry in a proceeding involving any confirmatory order is whether the order somehow diminishes the licensee's health and safety conditions.
- G Settlements of NRC enforcement actions are favored. If employees do not assert a plausible adverse effect on safety or the environment, they may not initiate an NRC adjudicatory proceeding to void the decision of their company's management to settle an enforcement action.
- H Discretionary intervention may be considered only when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held.

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- I The NRC's proximity presumption to establish standing has no application in an enforcement proceeding such as this. The presumption is limited to reactor licensing proceedings and to other cases where there is an obvious potential of offsite radiological consequences.
- LBP-14-5 POWERTECH USA, INC. (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-9075-MLA (ASLBP No. 10-898-02-MLA-BD01); MATERIALS LICENSE; April 28, 2014; MEMORANDUM AND ORDER (Ruling on Proposed Contentions Related to the Final Supplemental Environmental Impact Statement)
- A To be admissible, a new or amended contention must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1).
- B A new or amended contention related to portions of the FSEIS that differ from the DSEIS must be timely filed under section 2.309(c) and must meet the contention admissibility standards of section 2.309(f)(1) to be admitted.
- C If a party submits a proposed contention after the initial filing deadline announced in the applicable *Federal Register* notice for submitting a hearing petition, it must not only meet the contention admissibility standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of section 2.309(c) or section 2.307(a).
- D If the reason a motion to admit a new or amended contention was filed after the initial deadline does not relate to the substance of the filing itself, the standard contained in 10 C.F.R. § 2.307(a) applies in determining whether the motion can be considered timely. Section 2.307(a) provides that a filing deadline "may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer." Good cause exists when 10 C.F.R. § 2.309(c)(1)(i)-(iii) is fulfilled.
- E Admitted contentions challenging NRC Staff's DSEIS may function as challenges to portions of the FSEIS when the information is sufficiently similar. If the FSEIS analysis or discussion is *in pari materia* with the DSEIS analysis or discussion, a party need not file a new or amended contention; the previously admitted contention will simply be viewed as applying to the relevant portion of the FSEIS. Parties need not file additional statements with the Board concerning contentions which migrate to the FSEIS.
- F An admitted contention remains an admitted contention until it is adjudicated by the Board or eliminated prior to the hearing by the filing of a dispositive motion. To remove an admitted contention from the proceeding, a party must file, and a Board must grant, a motion for summary disposition in conformance with 10 C.F.R. § 2.1205.
- G There are two primary types of contentions — contentions of omission and contentions of adequacy. "A contention of omission is one that alleges an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 n.53 (2011). Based on its language, a contention can be characterized as a contention of omission, a contention of adequacy, or both.
- H A contention of omission which has been admitted may be rendered moot by subsequent license-related documents filed by the NRC Staff that address the alleged omission.
- I In the case of an admitted contention that challenges the adequacy of an environmental document, the inclusion of additional information in a subsequent environmental document may or may not moot the contention.
- LBP-14-6 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), Docket No. 72-10-ISFSI-2 (ASLBP No. 12-922-01-ISFSI-MLR-BD01); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; April 30, 2014; MEMORANDUM AND ORDER (Ruling on Motion to Admit New and Amended Contentions)
- A This proceeding concerns the application of Northern States Power Company for renewal of the operating license for its 10 C.F.R. Part 72 license to operate an Independent Spent Fuel Storage Installation (ISFSI) at the Prairie Island Nuclear Generating Plant in Red Wing, Minnesota. The Prairie Island Indian Community (PIIC) moved to admit three new and amended contentions challenging the Nuclear Regulatory Commission's Draft Environmental Assessment (EA). The Board held in abeyance amended Contention 1, in whole, and amended Contention 2, in part. It also admitted amended Contention 2, in part, and a renewed and amended Contention 3, in part.
- B In light of the vacatur of the Waste Confidence Decision and Temporary Storage Rule in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), NRC's rules require that the EA must consider the impact of

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long-term storage at the Prairie Island ISFSI. Contentions concerning the failure of the EA to do so must be held in abeyance pursuant to the Commission's direction in *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012).

C Under regulations promulgated by the Council on Environmental Quality (CEQ), "cumulative impact" is defined as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7.

D The failure to include all connected actions within the scope of the proposed action is generally referred to as "segmentation." "'Segmentation' or 'piecemealing' occurs when an action is divided into component parts, each involving action with less significant environmental effects. *Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988). "Segmentation is to be avoided in order to 'insure that interrelated projects[,] the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions.'" *Id.*

E If actions are "reasonably foreseeable future actions" within the meaning of 40 C.F.R. § 1508.7, the CEQ regulations require that they be included in a cumulative impact analysis. *See Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1079 (9th Cir. 2002).

F The NRC has acknowledged that a cumulative impact analysis is required for actions covered by CEQ regulation 40 C.F.R. § 1508.7 — that is, reasonably foreseeable future actions — without suggesting that the test for connected actions in CEQ regulation 40 C.F.R. § 1508.25 must also be satisfied. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 102 n.60 (2010); *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 NRC 417, 422 & n.23 (2006).

G Under 40 C.F.R. §§ 1508.25, separate actions are "connected" if they cannot or will not proceed unless other actions are taken previously or simultaneously, as well as when they are interdependent parts of a larger action and depend on the larger action for their justification. *See* 40 C.F.R. § 1508.25(a)(1)(ii).

H The Commission has ruled that only those NRC-regulated facilities located within the Ninth Circuit's jurisdictional boundaries are required to conduct environmental analyses of possible terrorist acts. *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 476-77 (2010).

I The federal government bears a trust responsibility to the Tribe, and the NRC, as a federal agency, owes a fiduciary duty to the Tribe and its members. *See, e.g., Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

J A motion to strike may be granted where a pleading or other submission contains information that is irrelevant. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-20, 62 NRC 187, 228 (2005) (citing Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 514 (2001)).

LBP-14-7 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; May 23, 2014; PARTIAL INITIAL DECISION (Ruling on Contentions 8 and 15)

A This proceeding involves challenges to the combined license application of the DTE Electric Company ("Applicant") to operate a new reactor, designated Unit 3, on its existing Fermi nuclear facility site near Newport City in Monroe County, Michigan. The Licensing Board rules in favor of the NRC Staff on Contention 8, which challenges the adequacy of the assessment of impacts on the eastern fox snake contained within the Final Environmental Impact Statement ("FEIS"), and in favor of the Applicant on Contention 15, which challenges the adequacy of the quality assurance ("QA") program developed and implemented by the Applicant.

B While an applicant in a licensing decision bears the burden of proving by a preponderance of the evidence that it is entitled to the applied-for license, the NRC Staff bears the burden of establishing compliance with the National Environmental Policy Act ("NEPA") when an environmental contention alleges noncompliance. Because the Staff typically relies on an applicant's Environmental Report in preparing the FEIS, an applicant is free to support positions set forth in the FEIS that are under challenge.

C Under NEPA, the NRC is required to take a hard look at the environmental impacts of a proposed action. The hard look requirement, however, is tempered by a rule of reason that requires agencies to address only impacts that are reasonably foreseeable — not those that are remote and speculative.

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- D One important part of an agency's hard look at the environmental consequences of a proposed federal action is the duty to discuss measures to mitigate potential environmental harm. NEPA does not require a fully developed, enforceable, or funded plan to mitigate all environmental harm. But mitigation must be discussed in sufficient detail to ensure that the environmental consequences have been fully evaluated.
- E Consistent with CEQ guidance, a federal agency may rely upon the ameliorative effects of mitigation in evaluating the environmental impacts of an activity in an EIS only if reliance is justified by (1) the proposed mitigation being more than a mere possibility because it is imposed by statute or regulation or sufficiently integrated into the initial proposal such that it is impossible to define the proposal without mitigation, and (2) there being some assurance, either through supporting evidence or accountability measures, that the mitigation will adequately protect against the negative environmental impacts of the activity.
- F Neither the Atomic Energy Act nor the NRC's regulations require an applicant to show that its quality assurance program is perfect as a precondition to the issuance of a license. Rather, an applicant must provide reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety.
- G Regulatory interpretation, like the interpretation of a statute, begins with the language and structure of the provisions, and the entirety of each provision must be given effect. Where the meaning of a regulation is clear, the regulatory language is conclusive and the Board may not disregard the letter of the regulation, but must enforce the regulation as written.
- H Appendix B's use of the past tense when referring to "quality assurance applied to the design" shows that safety-related design activities must have been performed under an acceptable QA program even if those activities were performed prior to the date on which the application was filed with the NRC.
- I The Appendix B requirements apply to the design of the safety-related functions of the structures, systems, and components that prevent or mitigate the consequences of postulated accidents. The regulation draws no distinction between safety-related design activities performed before the application is submitted and those performed later. For licensing purposes, all safety-related design activities must be performed under a QA program that satisfies the requirements of Appendix B.
- J Section 52.79(a)(25) of 10 C.F.R. establishes the requirements for an applicant's Final Safety Analysis Report, including a requirement that safety-related design activities must have been performed under an acceptable QA program prior to the date on which the application is filed. The regulation also confirms that the QA program must meet the requirements of Appendix B.
- K Appendix B allows an applicant to "delegate to others . . . the work of establishing and executing the quality assurance program, or any part thereof, but [requires that the applicant] shall retain responsibility for the quality assurance program." Appendix B does not define what is meant by "retain responsibility." The Board will, therefore, consider all relevant facts and circumstances to determine whether the applicant has exercised sufficient supervision, oversight, and contractual control of a contractor's QA program during the preapplication period.
- LBP-14-8 VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3), Docket No. 52-017-COL (ASLBP No. 08-863-01-COL); COMBINED LICENSE; June 13, 2014; MEMORANDUM AND ORDER (Denying BREDL's Motion to Reopen and Admit Contention 14)
- A In this previously terminated proceeding regarding the combined license application of Virginia Electric and Power Company, d/b/a Dominion Virginia Power, to operate a new unit at its existing North Anna Power Station, the Licensing Board denies the Blue Ridge Environmental Defense League's ("Petitioner") motion to reopen the proceeding and admit a new contention ("Contention 14") related to the August 23, 2011 earthquake in Mineral, Virginia. The Board declines to admit Contention 14 because Petitioner fails to satisfy the 10 C.F.R. § 2.309(f)(1) standard for admission of a new contention. The accompanying request to reopen the proceeding to admit the new contention is therefore moot.
- B The 10 C.F.R. § 2.326 standard for reopening a previously terminated proceeding sets a high bar for a petitioner, requiring that a motion be supported by affidavit, be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely if the new evidence had been available.
- C Mere mention by a petitioner that it will rely on an expert's analysis to support its motion to reopen, without offering any details of that analysis, does not satisfy the 10 C.F.R. § 2.326(b) requirement that a

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motion to reopen be “accompanied by affidavits that set forth the factual and/or technical bases for the movant’s claim.”

D In addition to satisfying the 10 C.F.R. § 2.326 reopening standard, the petitioner must also show that the proposed new contention meets the standard for new or amended contentions in 10 C.F.R. § 2.309(c) and the underlying admissibility standards of 10 C.F.R. § 2.309(f)(1). Failure to satisfy any of these standards will lead to denial of the motion to reopen.

E Failure to comply with any of the 10 C.F.R. § 2.309(f)(1) requirements renders a contention inadmissible. Should a petitioner’s proffered contention fail to satisfy the underlying admissibility requirements, an accompanying motion to reopen a terminated proceeding under 10 C.F.R. § 2.326 becomes moot.

F An applicant’s mere request of a regulatory exemption, absent any showing that the request is improper or unsupported, does not give rise to a litigable issue sufficient to satisfy 10 C.F.R. § 2.309(f)(1)(i)’s requirement that a petitioner “[p]rovide a specific statement of the issue of law or fact to be raised or controverted.”

G Resolution of all contentions pending before a Licensing Board gives rise to an immediate right of appeal under 10 C.F.R. § 2.341.

LBP-14-9 DETROIT EDISON COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; July 7, 2014; MEMORANDUM (Determining That Issues Related to Intervenors’ Proposed Contention 23 Merit *Sua Sponte* Review Pursuant to 10 C.F.R. § 2.340(b) and Requesting Commission Approval)

A This proceeding involves the combined license application of the DTE Electric Company (“Applicant”) to operate a new reactor, designated Unit 3, on its existing Fermi nuclear facility site near Newport City in Monroe County, Michigan. The Licensing Board determines that the following two related issues merit *sua sponte* review, and requests Commission approval, under 10 C.F.R. § 2.340(b), to undertake such review: (1) whether the building of offsite transmission lines intended solely to serve the new Fermi Unit 3 qualifies as a connected action under the National Environmental Policy Act (“NEPA”) and, therefore, requires the Staff to consider its environmental impacts as a direct effect of the construction of Fermi Unit 3; and (2) whether the Staff’s consideration of environmental impacts related to the transmission corridor, performed as a cumulative impact review, satisfied NEPA’s hard look requirement.

B The NRC’s 2007 limited work authorization (“LWA”) rule revised 10 C.F.R. § 50.10 to narrow the scope of activities requiring permission from the NRC in the form of an LWA by eliminating the concept of “commencement of construction” formerly described in section 50.10(c) and the authorization formerly described in section 50.10(e)(1). “Instead, under the final LWA rule, NRC authorization would only be required before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security for which regulatory oversight is necessary and/or most effective in ensuring reasonable assurance of adequate protection to public health and safety or common defense and security.” Final Rule: “Limited Work Authorizations for Nuclear Power Plants,” 72 Fed. Reg. 57,416, 57,426 (Oct. 9, 2007). Under the 2007 LWA rule, the building of transmission lines to serve a nuclear power plant is no longer classified as a construction activity and no longer requires authorization from the NRC. The agency’s NEPA regulations (10 C.F.R. Part 51) also exclude the building of transmission lines from the definition of “construction.”

C The NRC Staff must comply with NEPA regardless of whether an intervenor has filed a timely contention challenging NEPA compliance.

D Under 10 C.F.R. § 2.340(b), a licensing board may request Commission approval to consider the merits of a serious environmental issue that has not been put into controversy, even when it was excluded from the proceeding for procedural reasons. The regulation does not define what constitutes a serious environmental issue, leaving that determination to the presiding officer subject to the Commission’s approval.

E “The centerpiece of environmental regulation in the United States, NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives.” *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 703 (10th Cir. 2009) (citing 42 U.S.C. § 4331(b)). When an agency proposes a major federal action significantly affecting the quality of the human environment, NEPA requires the preparation of an environmental impact statement (“EIS”) concerning the proposed action. The requirement to prepare an EIS is a procedural mechanism designed to assure that agencies give proper

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consideration to the environmental consequences of their actions. However, NEPA does not require agencies to elevate environmental concerns over other appropriate considerations.

F The scope of an EIS is defined as “the range of actions, alternatives, and impacts to be considered in an environmental impact statement.” 40 C.F.R. § 1508.25. “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” *Id.* § 1502.4(a). The proposed action that is the subject of the EIS must, therefore, include all connected actions.

G The NRC has adopted the Council on Environmental Quality (“CEQ”) regulation (40 C.F.R. § 1508.25(a)(1)) defining connected actions as, in part, those separate actions that “[c]annot or will not proceed unless other actions are taken previously or simultaneously,” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” In general, NEPA case law defines “connected actions” as those that lack “independent utility.” Projects lack independent utility when it would be irrational, or at least unwise, to build one without the other.

H The failure to include all connected actions within the scope of the proposed action is generally referred to as “segmentation.” “‘Segmentation’ or ‘piecemealing’ occurs when an action is divided into component parts, each involving action with less significant environmental effects.” *Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988) (citing *City of West Chicago v. NRC*, 701 F.2d 632, 650 (7th Cir. 1983)). “Segmentation is to be avoided in order to ‘insure that interrelated projects[,] the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions.’” *Id.* (quoting *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987)).

I The NRC’s evaluation of a proposed action’s environmental effects “must address all reasonably foreseeable environmental impacts . . . even if the probability of such an occurrence is low.” *Blue Ridge Environmental Defense League v. NRC*, 716 F.3d 183, 188 (D.C. Cir. 2013) (citing 40 C.F.R. § 1502.22(b)). NEPA requirements, however, are subject to a rule of reason, and an EIS need not address “remote and highly speculative consequences.” *Deukmejian v. NRC*, 751 F.2d 1287, 1300 (D.C. Cir. 1984) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)). The impacts that must be considered include both direct impacts, “which are caused by the action and occur at the same time and place,” and indirect impacts, “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8.

J When information relevant to a reasonably foreseeable environmental effect is incomplete or unavailable, 40 C.F.R. § 1502.22 requires an agency to obtain the unavailable information and include it in the EIS so long as the costs are not exorbitant. If the cost of obtaining the information is exorbitant, the agency must still include in the EIS a statement that the information is unavailable, the relevance of the unavailable information, a summary of existing credible scientific evidence, and the agency’s evaluation of the impacts that might be caused.

K An EIS must include a detailed statement of reasonable alternatives to the proposed action. The alternatives analysis is the “heart of the environmental impact statement.” “The existence of reasonable but unexamined alternatives renders an EIS inadequate.” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998). The NRC’s NEPA regulation governing preparation of a Draft EIS directs that it “include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects” 10 C.F.R. § 51.71(d).

L Activities excluded from the scope of the proposed action may still be relevant to the NRC’s NEPA analysis to the extent they affect the environmental baseline for the evaluation of cumulative impacts. Under CEQ regulations (40 C.F.R. § 1508.7), “cumulative impact” is defined as the “impact on the environment that results from the incremental impact of the [proposed] action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”

M Under 10 C.F.R. § 51.101(a), when an EIS is prepared under 10 C.F.R. § 51.20, “[n]o action concerning the proposal may be taken by the Commission which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives” until a record of decision has been issued. Also, “[a]ny action concerning the proposal taken by an applicant which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license.” For separate activities, on the other hand, there is no obligation on the Commission to avoid regulatory action before the record of decision is issued that would allow the activity to proceed, regardless

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of its environmental impact or its effect on the range of alternatives. And the applicant may proceed with (or allow its contractor to proceed with) an activity outside the scope of the proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives even though the NEPA review is ongoing or has not even begun.

N In order for construction of the transmission corridor to constitute a connected action under 40 C.F.R. § 1508.25, three requirements must be met. First, the transmission corridor must be a proposed action rather than one that is merely conceivable. Second, the transmission corridor must lack independent utility; that is, its sole purpose must be serving Fermi Unit 3. Third, for an action such as the transmission corridor that will not be constructed by or expressly permitted by the federal agency preparing the EIS, there must be sufficient federal control and responsibility that the action qualifies as a federal action.

O Under 40 C.F.R. § 1508.23, the fact that the NRC Staff declares the transmission lines to be a proposed action is significant because “[a] proposal may exist in fact as well as by agency declaration that one exists.”

P An action with potential impacts subsequent to the initial federal action may not constitute a proposed action if it is insufficiently certain.

Q Whether a project qualifies as a “proposal” is somewhat intertwined with the “independent utility” question. Section 1508.23 of 40 C.F.R. states that a “[p]roposal exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal.” Where the granting of a license makes the building of offsite transmission lines inevitable, an evaluation of their direct environmental impacts will only be meaningful if engaged in before the license issuance.

R The requirement to prepare an EIS applies to “major Federal actions,” not to private or state actions. Thus, only those activities that have sufficient federal involvement to qualify as federal actions need be included in the scope of the proposed action evaluated in an EIS. But this does not necessarily mean that the action in question must be taken or expressly authorized by a federal agency. “[T]here are two alternative bases for finding that a non-federal project constitutes a ‘major Federal action’ such that NEPA requirements apply: (1) when the non-federal project restricts or limits the statutorily prescribed federal decision-makers’ choice of reasonable alternatives; or (2) when the federal decision-makers have authority to exercise sufficient control or responsibility over the non-federal project so as to influence the outcome of the project. If either test is satisfied, the non-federal project must be considered a major federal action. Both tests require a situation-specific and fact-intensive analysis.” *Southwest Williamson County Community Ass’n, Inc. v. Slater*, 243 F.3d 270, 281 (6th Cir. 2001).

S The NRC may, consistent with the AEA and NEPA, impose environmental restrictions on transmission lines built to serve nuclear power plants should it choose to do so. The NRC’s regulations, including 10 C.F.R. §§ 50.36(b) and 51.107(a)(3), authorize the agency to impose environmental conditions in a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant.

T An agency’s narrowed construction of its statutory authority, as distinct from an express prohibition by Congress, may not be used to limit the agency’s obligations under NEPA. “NEPA’s legislative history reflects Congress’s concern that agencies might attempt to avoid any compliance with NEPA by narrowly construing other statutory directives to create a conflict with NEPA. Section 102(2) of NEPA therefore requires government agencies to comply ‘to the fullest extent possible.’” *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1213 (9th Cir. 2008) (quoting *Forelaws on Board v. Johnson*, 743 F.2d 677, 683 (9th Cir. 1985)). The Supreme Court has explained that this statutory directive was “neither accidental nor hyperbolic.” *Flint Ridge Development Co. v. Scenic Rivers Ass’n of Oklahoma*, 426 U.S. 776, 787 (1976). Thus, courts have held that NEPA obligations supplement existing statutory authority and “must be complied with to the fullest extent, unless there is a clear conflict of statutory authority.” *Calvert Cliffs Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1115 (D.C. Cir. 1971). In short, absent clear conflict an agency cannot interpret its way out of its NEPA responsibilities.

U Multiple projects are often deemed connected actions despite being undertaken by separate entities. In fact, projects undertaken by separate entities may still be considered connected actions even in the

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absence of formal agreement between the parties. After all, “NEPA mandates a case-by-case balancing judgment on the part of federal agencies,” not the private parties seeking federal action.

V While NEPA does not require “an agency preparing an EIS to respond to EPA concerns, [an agency’s] failure even to address them in the EIS at the very least brings into question the sufficiency of the agency’s analysis.” *Hammond v. Norton*, 370 F. Supp. 2d 226, 251 (D.D.C. 2005).

W The NRC Staff is responsible for defining the scope of the proposed action that is to be the subject of an EIS, and is instructed by 10 C.F.R. § 51.29(a)(1) to use 40 C.F.R. § 1502.4 for that purpose, which directs that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” Section 51.45(c) of 10 C.F.R. does not alter that obligation or the obligation to include within the scope of the proposed action all connected actions as defined in 40 C.F.R. § 1508.25.

X Courts regularly rely upon the preamble to an agency rule when interpreting that rule. Similarly, the Commission often refers to the NRC’s Statement of Considerations as an aid in interpreting the agency’s regulations. But the preamble, unlike the rule itself, does not have the force of law and, while it may be used to interpret any ambiguous text, it may not be used to expand the reach of the regulations.

Y When an activity is excluded from the scope of a proposed action, the effect is to allow construction to begin — or even be completed — before the agency has completed its NEPA review. But NEPA’s purpose “is to influence the decision making process ‘by focusing the [federal] agency’s attention on the environmental consequences of a proposed project,’ so as to ‘ensure . . . that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.’” *Colorado Wild, Inc. v. U.S. Forest Service*, 523 F. Supp. 2d 1213, 1219 (D. Colo. 2007) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). “[W]hen a decision to which NEPA obligations attach is made without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent has been suffered.” *Id.* (emphasis omitted) (quoting *Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1989) (Breyer, J.)). Thus, the NEPA analysis of the proposed action must be completed before, not after, construction begins.

Z An impact statement cannot fulfill its role of providing “a springboard for public comment” if it defers indefinitely and delegates to other agencies the duty to inform the public of the environmental impacts of the proposed action and potential measures to mitigate those impacts.

AA Section 1502.22 of 40 C.F.R. requires an agency to acquire information that is lacking if it is “essential to a reasoned choice” and “costs of obtaining it are not exorbitant.” If the costs are exorbitant, the regulation still requires the agency to state that the information is unavailable, explain the relevance of the unavailable information, summarize existing credible scientific evidence, and evaluate potential impacts. The regulation “clearly contemplates original research if necessary.” *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1249 (9th Cir. 1984). A determination of minimal environmental impact would make little sense when an agency lacks essential information and has not sought to compile it through independent research. To rule otherwise “would turn NEPA on its head, making ignorance into a powerful factor in favor of immediate action where the agency lacks sufficient data.” *Sierra Club v. Norton*, 207 F. Supp. 2d 1310, 1334-35 (S.D. Ala. 2002).

BB Merely referencing an actual or anticipated certification by another agency fails to satisfy NEPA requirements. “Certification by another agency that its own environmental standards are satisfied involves an entirely different kind of judgment [from that required by NEPA]. Such agencies, without overall responsibility for the particular federal action in question, attend only to one aspect of the problem: the magnitude of certain environmental costs. They simply determine whether those costs exceed an allowable amount. Their certification does not mean that they found no environmental damage whatever. In fact, there may be significant environmental damage (e.g., water pollution), but not quite enough to violate applicable (e.g., water quality) standards. Certifying agencies do not attempt to weigh that damage against the opposing benefits. Thus the balancing analysis remains to be done. It may be that the environmental costs, though passing prescribed standards, are nonetheless great enough to outweigh the particular economic and technical benefits involved in the planned action. The only agency in a position to make such a judgment is the agency with overall responsibility for the proposed federal action — the agency to which NEPA is specifically directed.” *Calvert Cliffs*, 449 F.2d at 1123.

CC Courts have held that an EIS must include “a serious and thorough evaluation of environmental mitigation options.” *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170, 178 (5th Cir. 2000).

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“Mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Id.* at 176-77 (quoting *Robertson*, 490 U.S. at 352).

DD The rule against segmentation seeks to avoid the problems that arise “when the environmental impacts of projects are evaluated in a piecemeal fashion and, as a result, the comprehensive environmental impacts of the entire Federal action are never considered or are only considered after the agency has committed itself to continuation of the project.” 72 Fed. Reg. at 57,427-28.

EE “Licensing boards have independent responsibilities in the realm of the enforcement of the NEPA command; *i.e.*, their role is not confined to the arbitration of those environmental controversies as may happen to have been placed before them by the litigants in the particular case.” *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-380, 5 NRC 572, 575 (1977). Though this responsibility has changed — now requiring Commission approval before a board may exercise its responsibility — the authority still exists, as the Commission has made clear.

FF *Sua sponte* authority cannot reasonably be limited to only a situation which involves a significant environmental impact of a type not considered previously and could destabilize an environmental resource or involves severe adverse environmental impacts. A serious environmental issue also exists when a Final EIS only cursorily deals with important environmental issues and concludes that impacts will be small based largely on unavailable and incomplete information and predicted future certifications from other agencies. A serious issue is also presented when the Staff’s NEPA analysis significantly understates the scope of the proposed federal action, particularly when it does so on a basis that conflicts with the law of the federal judicial circuit where the new facility will be located.

GG When an FEIS is deficient in significant respects, a contested hearing may enable a Licensing Board to cure those deficiencies and thus bring the agency into compliance with NEPA and 10 C.F.R. Part 51. “Boards frequently hold hearings on contentions challenging the Staff’s final environmental review documents In such cases, “[t]he adjudicatory record and Board decision (and . . . any Commission appellate decisions) become, in effect, part of the FEIS.” *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 208-09 (2011) (citing *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998) and *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985)). Thus, the Staff’s FEIS, along with the adjudicatory record, becomes the relevant record of decision for the environmental portion of the proceeding. Federal courts of appeal have approved of this process in which an EIS is effectively amended through the adjudicatory process.

LBP-14-10 AEROTEST OPERATIONS, INC. (Aerotest Radiography and Research Reactor), Docket No. 50-228-LT (ASLBP No. 14-931-01-LT-BD01); LICENSE TRANSFER; September 5, 2014; CERTIFICATION OF RECORD TO COMMISSION

LBP-14-11 JAMES CHAISSON, Docket No. IA-14-025-EA (ASLBP No. 14-932-02-EA-BD01); ENFORCEMENT; September 8, 2014; NOTICE OF HEARING AND INITIAL SCHEDULING ORDER

A This proceeding concerns a July 11, 2014 enforcement order issued by the Director of the U.S. Nuclear Regulatory Commission’s Office of Enforcement (Director) against Mr. James P. Chaisson. The order alleges that Mr. Chaisson failed to comply with certain provisions of a confirmatory order issued to him in 2012. Mr. Chaisson requested a hearing and filed an answer denying certain aspects of the 2014 Order. This Notice of Hearing and Initial Scheduling Order (ISO) (1) provides notice of the Licensing Board’s intent to conduct a hearing in Salt Lake City, Utah, under 10 C.F.R. Part 2, Subpart G; (2) identifies disputed issues; and (3) establishes an initial schedule for the conduct of this matter, including any discovery pursued by the parties under Subpart G.

B When the target of an enforcement action is unrepresented, the Licensing Board will carefully scrutinize any agreement or consent purporting to waive or abandon any of the individual’s substantive or procedural rights to ensure that he is fully informed. NRC counsel should be especially scrupulous in informing him of the nature and extent of the rights they might suggest he waive or abandon.

C NRC counsel owes an ethical duty of candor to the tribunal (e.g., the duty to disclose to a tribunal any relevant information and/or legal authority adverse to its position) that is especially important in cases such as this one, where the target of the government’s enforcement action is not represented by counsel.

D Section 2.310(b) of 10 C.F.R. provides that “[p]roceedings on enforcement matters must be conducted under the procedures of subpart G of this part, unless all parties agree [otherwise].”

E Under 10 C.F.R. § 2.202(a)(3), the target of the Director’s enforcement order has the right to demand and receive, not merely request, a hearing.

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- F Section 2.329(e) of 10 C.F.R. requires that an ISO set forth “the issues or matters in controversy to be determined in the proceeding. This is important because the scope and content of the adjudication, including mandatory disclosures under 10 C.F.R. §§ 2.704(a)(2) and 2.709(a)(6) and discovery under 10 C.F.R. § 2.705(b)(1), are defined by the issues and matters that are disputed by the parties.
- G In any conflict between an ISO and the general rules of 10 C.F.R. Part 2 (including the model milestones set forth in 10 C.F.R. Part 2, Appendix B), the deadlines specified in the ISO shall govern.
- H Under 10 C.F.R. § 2.709, the target of a Director’s enforcement action may pursue discovery, in addition to mandatory disclosures, against the Director in the form of written questions (interrogatories), or oral questions under oath posed to a member of the Director’s staff at a prehearing meeting (deposition). Likewise, counsel for the Director may take the deposition of the target of an enforcement action or any other person, under 10 C.F.R. § 2.706(a), file written interrogatories, under 10 C.F.R. § 2.705(b), or require the target of an enforcement action to provide a copy of any designated relevant document that is within his possession, custody, or control, under 10 C.F.R. § 2.707(a). Neither party is required to pursue such discovery.
- LBP-14-12 UNION ELECTRIC COMPANY (Callaway Plant, Unit 1), Docket No. 50-483-LR (ASLBP No. 12-919-06-LR-BD01); OPERATING LICENSE RENEWAL; September 8, 2014; MEMORANDUM AND ORDER (Dismissing Contention and Terminating Proceeding)
- A In this 10 C.F.R. Part 54 proceeding regarding the application of Union Electric Company d/b/a Ameren Missouri (Ameren) for the renewal of its 10 C.F.R. Part 50 operating license for the Callaway Plant, Unit 1, that would authorize Ameren to operate that facility in Callaway County, Missouri, for an additional 20 years, in accord with the Commission’s direction in *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79 (2014), the Licensing Board (1) dismisses the sole pending contention of petitioner Missouri Coalition for the Environment (MCE) claiming that Ameren’s environmental report fails to comply with the National Environmental Policy Act by not including a discussion of the environmental impacts of spent fuel pool (SFP) leakage, SFP fires, and the lack of a spent fuel repository, as required by the decision of the United States Court of Appeals for the District of Columbia Circuit in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012); and (2) terminates this proceeding.
- LBP-14-13 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL (ASLBP No. 09-893-01-OL-BD01); OPERATING LICENSE; September 9, 2014; MEMORANDUM AND ORDER (Denying Motion to File New Contention and Terminating Proceeding)
- LBP-14-14 NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4), Docket Nos. 52-12-COL, 52-13-COL (ASLBP No. 09-885-08-COL-BD01); COMBINED LICENSE; September 19, 2014; MEMORANDUM AND ORDER (Dismissing Contention and Terminating Proceeding)
- A In this proceeding, applicant Nuclear Innovation North America (NINA) seeks combined licenses (COLs) under 10 C.F.R. Part 52 for the construction and operation of two new nuclear reactor units — proposed South Texas Project (STP) Units 3 and 4. On July 9, 2012, Intervenor, the Sustainable Energy and Economic Development Coalition, the South Texas Association for Responsible Energy, and Public Citizen, sought admission of a contention concerning continued storage of spent nuclear fuel. In accordance with the Commission’s direction in CLI-12-16, this contention was held in abeyance pending further direction from the Commission. This Order now finds that Intervenor’s contention is inadmissible and dismisses it from the proceeding, in accord with the Commission’s direction in CLI-14-8. There being no other admitted or pending contentions in this proceeding, the case is terminated.
- LBP-14-15 EXELON GENERATION COMPANY, LLC (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-LR, 50-353-LR (ASLBP No. 12-916-04-LR-BD01); OPERATING LICENSE RENEWAL; October 7, 2014; MEMORANDUM AND ORDER (Denying Motion to File New Contention and Terminating Adjudicatory Proceeding)
- A Applicant Exelon Generation Company, LLC seeks 20-year extensions of the 2024 and 2029 expiration dates for the 10 C.F.R. Part 50 operating licenses for Limerick Generating Station, Units 1 and 2. On July 9, 2012, the Natural Resources Defense Council (NRDC) moved for admission of a contention claiming that Exelon’s environmental report fails to comply with the National Environmental Policy Act by not discussing the environmental impacts of spent fuel storage and disposal given the lack of a spent fuel repository, as required by the decision of the United States Court of Appeals for the District of Columbia Circuit in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012). The Board held this contention in abeyance pending further direction from the Commission. Now, following the Commission’s issuance in

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Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71 (2014), this Order finds that NRDC's contention is inadmissible and dismisses it from the proceeding. Because there is no other admitted or pending contention in this proceeding, the case is terminated.

LBP-14-16 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), Docket No. 72-10-ISFSI-2 (ASLBP No. 12-922-01-ISFSI-MLR-BD01); INDEPENDENT SPENT FUEL STORAGE INSTALLATION; December 23, 2014; ORDER (Denying Motion to File a New Contention Concerning the Continued Storage of Spent Nuclear Fuel)

A Clearly, the Commission's Continued Storage Rule and GEIS preclude any discussion of the environmental impacts of storage of spent nuclear fuel in individual licensing proceedings: NUREG-2157 provides the determinations of the environmental impacts of continued storage to be used in site-specific environmental reviews. No additional analysis of the impacts of continued storage is required.

B The Commission has repeatedly expressed its preference that generic issues regarding the management of high-level waste be addressed through rulemaking and not through individual adjudications. The Commission maintains that storage and disposal of high-level waste are a national problem of essentially the same degree of complexity and uncertainty for every renewal application and it would not be useful to have a repetitive reconsideration of the matter.

C It is apparent that the purpose of 10 C.F.R. § 51.23, as updated by 79 Fed. Reg. 56,240, is to restrict repetitive litigation at the Licensing Board level on the continued storage and disposal of spent nuclear fuel.

D Subsequent to *Seabrook*, the Commission's *Millstone* decision set forth a four-part test for granting a waiver under 10 C.F.R. § 2.335(b): "(i) the rule's strict application 'would not serve the purposes for which [it] was adopted'; (ii) the movant has alleged 'special circumstances' that were 'not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived'; (iii) those circumstances are 'unique' to the facility rather than 'common to a large class of facilities'; and (iv) a waiver of the regulation is necessary to reach a 'significant safety [or environmental] problem.'" *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005).

E Although the waiver issue in *Millstone* involved a significant safety concern, subsequent case law makes clear *Millstone* applies equally to significant environmental concerns.

F There has been some discussion as to whether the *Millstone* factors entail more than 10 C.F.R. § 2.335(b)'s sole requirement for "special circumstances." The Commission's view, however, is that all four of the *Millstone* requirements derive from the language and purpose of section 2.335(b), and that all must be met in order for a waiver to be granted.

G A petition for a waiver must be accompanied by an affidavit stating *with particularity* the special circumstances alleged to justify the waiver or exception requested.

H Apart from the Prairie Island Indian Community's (PIIC's) own communications with the NRC, the agency also considered trust responsibility comments raised by other tribes with regards to the Continued Storage Rule. In particular, a comment lodged by the Santa Ynez Band of Chumash Indians was addressed directly in the Continued Storage GEIS.

I The Commission's recently issued Proposed Tribal Policy Statement, 79 Fed. Reg. 71,136, 71,140 (Dec. 1, 2014), states that it owes a trust responsibility to Indian Tribes: "As an independent agency of the Federal government, the NRC shares the unique trust relationship with, and responsibility to, Indian Tribes." In its Draft Tribal Protocol Manual, the NRC Staff also asserts that the NRC owes a trust responsibility to Indian Tribes.

J While it is possible to demonstrate that a trust responsibility concern is unique to a particular facility, PIIC merely asserts that its adjacency to the Prairie Island independent spent fuel storage installation by itself presents a legitimately unique fact situation. PIIC, however, does not explain why its adjacency to the facility creates a fundamentally different situation from those facing other tribes, which were addressed by the NRC in the Continued Storage GEIS.

LBP-15-1 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR (ASLBP No. 11-907-01-LR-BD01); OPERATING LICENSE RENEWAL; January 15, 2015; MEMORANDUM AND ORDER (Denying Intervenor's Motion to Admit Contention No. 7)

A The requirements for demonstrating "good cause" under 10 C.F.R. § 2.309(c)(1)(i)-(iii) are the same as the requirements for filing late contentions previously available under 10 C.F.R. § 2.309(f)(2)(i)-(iii).

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Therefore, despite the change in the rules, in general, contentions proposed after the filing deadline, which would have been allowable under the previous 10 C.F.R. § 2.309(f)(2) requirements, will also be allowable under the current 10 C.F.R. § 2.309(c)(1) requirements.

- B If a petitioner cannot meet the requirements for filing a contention under the new 10 C.F.R. § 2.309(c)(1), he or she can still take advantage of an extension request under 10 C.F.R. § 2.307 “if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline.”
- C Under *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235 (2009), in general, if the applicant’s enhanced monitoring program is inadequate, then an unenhanced monitoring program would have been a *fortiori* inadequate, and petitioners would have had a regulatory obligation to challenge it earlier. However, *Oyster Creek* cannot be read so broadly as to exclude contentions that are founded upon genuinely new safety concerns.
- D *Oyster Creek* instead stands for the more limited proposition that enhancements to a license renewal application (LRA) or environmental impact statement (EIS), not made in the presence of a newly discovered safety or environmental concern, generally cannot be grounds for a new contention. However, if a newly discovered safety or environmental concern presents itself, a petitioner can file a new contention alleging that the LRA or EIS does not adequately address the new concern. Furthermore, preemptive amendment of an LRA or EIS in response to the new discovery does not insulate the LRA or EIS from public oversight.
- E The crux of the “genuine dispute” prong under 10 C.F.R. § 2.309(f)(1)(vi) is the requirement for specificity: a contention must have more than general allegations. Rather, it must explain “what” specific deficiencies exist and “why” they materially impact the LRA or EIS. Stated another way, in addition to stating *what* they disagree with, petitioners must also explain, with specific support, *why* the disagreed-upon issue will have a material impact.
- F Requests for more testing, more methods of testing, and more information, all of which are sought without explaining why the current program is inadequate, are insufficient to create a genuine dispute with the application.
- G “[T]he Commission expects that in almost all instances a petitioner must go beyond merely quoting an RAI [NRC Staff request for more information] to justify admission of a contention into the proceeding. . . . This means they must develop a fact-based argument that actually and specifically challenges the application.” *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 341 (1999).
- H In explaining why there is a genuine material dispute, the contention must give the Board a reason to believe that the alleged deficiency will lead to a material safety or environmental outcome, based on factual or expert support. Because of the need to provide specific support for a contention in order to raise a genuine dispute, the genuine dispute admissibility requirement is sometimes discussed together with the requirement for petitioners to provide alleged factual or expert support for their allegations under 10 C.F.R. § 2.309(f)(1)(v).
- I To meet the section 2.309(f)(1)(v) requirement for providing factual and expert support, petitioners must “proffer at least some minimal factual and legal foundation in support of their contentions.” Neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention.
- J Where a petitioner neglects to provide the requisite support for its contentions, it is not within the board’s power to make assumptions or draw inferences that favor the petitioner, nor may the board supply information that is lacking. Likewise, simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information’s significance, is inadequate to support the admission of the contention.
- K On the other hand, “[a]t the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion.” *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 442 n.81 (2011) (quoting Final Rule: “Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process,” 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989).
- L The Commission has clearly stated that “[g]eneralized ‘economic cost’ arguments, unsupported by asserted facts or expert opinion, are insufficient to show a genuine dispute with the application.” *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 334 n.199 (2012).

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- M The Commission stated that the right to appeal under 10 C.F.R. § 2.311 “attaches only when the Board has fully ruled on the initial intervention petition — that is, when it has admitted or rejected all proposed contentions.” *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 36 (2014).
- LBP-15-2 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943 (ASLBP No. 08-867-02-OLA-BD01); MATERIALS LICENSE AMENDMENT; January 21, 2015; MEMORANDUM AND ORDER (Denying Applications for Stay of Source Materials License SUA-1534)
- A Notification of the issuance of a renewed Source Materials License under 10 C.F.R. § 2.1202(a) triggers the 5-day filing deadline to file an application for the stay of the effectiveness of the license under 10 C.F.R. § 2.1213.
- B Boards must balance four separate interests in determining whether to grant or to deny an application for a stay: (1) Whether the requestor will be irreparably injured unless a stay is granted; (2) Whether the requestor has made a strong showing that it is likely to prevail on the merits; (3) Whether the granting of a stay would harm other participants; and (4) Where the public interest lies.
- C The Commission, but not the Licensing Board, has the power to address a protracted delay in the proceeding and to direct, if so inclined, appropriate remedial measures. *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-12-4, 75 NRC 154, 158 (2012).
- D The extreme delay in the completion of the Staff’s environmental review, and thus the equal delay in hearing the Intervenor’s claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act. It is reasonable to conclude that Congress assumed that individuals establishing a right to be heard in opposition to a license application would be heard with reasonable expedition. A delay exceeding 7 years hardly so qualifies.
- E The licensing boards are not empowered to superintend, to any extent, the conduct of Staff technical reviews. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 67 (2004).
- LBP-15-3 STRATA ENERGY, INC. (Ross In Situ Recovery Uranium Project), Docket No. 40-9091-MLA (ASLBP No. 12-915-01-MLA-BD01); MATERIALS LICENSE; January 23, 2015; INITIAL DECISION (Ruling on Joint Intervenor’s Environmental Contentions 1-3)
- A In this proceeding regarding the application of Strata Energy, Inc. (SEI), for a combined license to possess and use source and Atomic Energy Act (AEA) § 11e(2) byproduct materials pursuant to 10 C.F.R. Part 40 so as to authorize SEI to construct and operate a facility for the in situ recovery (ISR) of uranium at the Ross ISR Uranium Project (Ross Project) site in Crook County, Wyoming, in an Initial Decision the Licensing Board rules in favor of the Nuclear Regulatory Commission (NRC) Staff and SEI on the merits of Joint Intervenor’s three admitted environmental contentions challenging the Staff’s final supplemental environmental impact statement (FSEIS) analysis regarding proper characterization of baseline groundwater quality, the impacts of failing to restore groundwater to primary or secondary limits, and groundwater migration containment.
- B The nonstatic nature of a website, as illustrated by a party’s acknowledgment that its witness could modify the information input utilized to generate the website information, precluded the Board, in the absence of a stand-alone compact disc/digital video disc (CD/DVD) that would allow the Board or the parties to run a “locked down” version of the website application, from allowing the website and the information it could generate from being considered as evidence. *See* Licensing Board Memorandum and Order (Responding to Motion for Clarification) (Sept. 19, 2014) at 1-5 (unpublished).
- C The Council on Environmental Quality (CEQ) has implemented regulations that provide guidance on agency compliance with the National Environmental Policy Act (NEPA), *see* 40 C.F.R. Part 1500, that, while not binding on the NRC when the agency has not expressly adopted them, are entitled to considerable deference. *See Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725, 743 (3d Cir. 1989).
- D NEPA requires federal agencies to take a “hard look” at the environmental impacts of a proposed action, as well as reasonable alternatives to that action. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998). This “hard look” is intended to “foster both informed agency decision-making and informed public participation” so as to ensure that the agency does not act upon “incomplete information, only to regret its decision after it is too late to correct.” *Id.* at 88 (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)). This “hard look” is, however, subject to a “rule of reason” in that consideration of environmental impacts need not address “all

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theoretical possibilities,” but rather only those that have some “reasonable possibility” of occurring. *Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836 (1973).

E With regard to such reasonably foreseeable impacts, “NEPA . . . does not call for certainty or precision, but an *estimate* of anticipated (not unduly speculative) impacts.” *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005). As a consequence, agencies are given broad discretion “to keep their inquiries within appropriate and manageable boundaries.” *Claiborne*, CLI-98-3, 47 NRC at 103. Therefore, in preparing an environmental impact statement (EIS), which “is not intended to be ‘a research document,’” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208 (2010) (quoting *Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 13 (1st Cir. 2008)), NEPA does not call upon the Staff to make an “‘examination of every conceivable aspect of federally licensed projects,’” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 349 (2002) (quoting *Claiborne*, CLI-98-3, 47 NRC at 102-03). Nor is there a “NEPA requirement to use the best scientific methodology, and NEPA [‘]” should be construed in the light of reason if it is not to demand “[‘] virtually infinite study and resources.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010) (quoting *Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988) (quoting *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972))) (footnotes omitted).

F “[I]n the context of an NRC adjudicatory proceeding, even if an EIS prepared by the Staff is found to be inadequate in certain respects, the Board’s findings, as well as the adjudicatory record, ‘become, in effect, part of the [final EIS].’ Thus, the Board’s ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to the Staff’s [final EIS].” *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 632 (2009) (quoting *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 53 (2001), and citing *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 404 (2005), *aff’d*, CLI-06-22, 64 NRC 37 (2006), *petition for review denied sub nom. Nuclear Information & Resource Service v. NRC*, 509 F.3d 562 (D.C. Cir. 2007)), *petition for review denied*, CLI-10-5, 71 NRC 90 (2010).

G As the proponent of the agency action at issue, an applicant generally has the burden of proof in a licensing proceeding. *See* 10 C.F.R. § 2.325. The statutory obligation of complying with NEPA, however, rests with the NRC. *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983). Consequently, when NEPA contentions are involved, the burden shifts to the Staff. *See Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 34 (2010); *see also Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-17, 65 NRC 392, 395 (2007) (stating “NRC hearings on NEPA issues focus entirely on the adequacy of the Staff’s work”). Nonetheless, because “the Staff, as a practical matter, relies heavily upon the Applicant’s ER in preparing the EIS, should the Applicant become a proponent of a particular challenged position set forth in the EIS, the Applicant, as such a proponent, also has the burden on that matter.” *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 339 (1996) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 489 n.8 (1978)), *rev’d on other grounds*, CLI-97-15, 46 NRC 294 (1997). And relative to factual matters, to carry that burden, the Staff and/or the applicant must establish that its position is supported by a preponderance of the evidence. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577 & n.22 (citing cases), *rev. declined*, CLI-84-14, 20 NRC 285 (1984).

H In light of the Commission’s *Hydro Resources* decision, *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 6 (2006), and the language of 10 C.F.R. Part 40, Appendix A, Criterion 7A, there is no legal basis for concluding that the Appendix A, Criterion 7 prelicensing monitoring program for the purpose of establishing existing characterization values for certain site groundwater constituents must be coextensive with the Criterion 7A preoperational monitoring, license condition-based program intended to provide the information needed for setting Appendix A, Criterion 5B groundwater protection standards and upper control limits (UCLs). At the same time, nothing in Appendix A, Criteria 5B, 7, or 7A precludes an inquiry, based on a well-pled contention, into whether the particular measures used in an applicant’s prelicensing program were adequate to provide the necessary information to characterize properly the environmental impacts of employing an ISR mining process in the aquifers below a proposed site.

I Under the NEPA directive to provide a detailed statement of reasonable alternatives to a proposed

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action, *see* 42 U.S.C. § 4332(2)(C)(iii), an alternatives discussion need not include “every possible alternative, but every reasonable alternative.” *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991) (quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985) (emphasis added)). Further, reasonable alternatives do not include alternatives that are “impractical[;] . . . that present unique problems; or that cause extraordinary costs.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454, 479 (2003) (citing *Airport Neighbors Alliance v. United States*, 90 F.3d 426, 432 (10th Cir. 1996); *Communities, Inc. v. Busey*, 956 F.2d 619, 627 (6th Cir. 1992)). Nor is there a need to consider alternatives that are technologically unproven. *See Kelley v. Selin*, 42 F.3d 1501, 1521 (6th Cir. 1995); *Morton*, 458 F.2d at 837 (approving exclusion from alternatives discussion of alternative energy sources that “will be dependent on [future] environmental safeguards and [technological] developments”); *Busey*, 956 F.2d at 627 (upholding rejection of alternatives that “presented severe engineering requirements” or were “imprudent for reasons including their high cost, safety hazards, [and] operational difficulties”).

J Three standards are accepted by the Commission as the bases for approval of an ISR operator’s groundwater restoration. The first returns the constituent to background levels. *See* 10 C.F.R. Part 40, App. A, Criterion 5B(5)(a). The second is restoration of constituent levels to the drinking water limits enumerated in Appendix A, Table 5C. *Id.* Criterion 5B(5)(b). The third is restoration to an alternate concentration limit (ACL), which is permitted only when restoration to a primary or the secondary Table 5C standard is not “practically achievable.” *Id.* Criteria 5B(5)(c), 5B(6).

K To have an ACL approved, a licensee must demonstrate that the hazardous constituent value is “as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded.” 10 C.F.R. Part 40, App. A, Criterion 5B(6).

L In the absence of some showing of substantial prior misdeeds, an applicant/licensee will be presumed to follow the agency’s regulatory requirements, including the directives in its license. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001) (stating that “the NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises”) (citing *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000) (declaring the intervenor “also fails to offer documentary support for its argument that [the licensee] is likely to violate our safety regulations. Absent such support, this agency has declined to assume that licensees will contravene our regulations.”)).

M A licensing board likewise is to assume that, in undertaking its role to assess whether an applicant/licensee adequately carries out a licensing directive, the Staff will be fair and judge the matter of an applicant/licensee’s compliance on the merits. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-89-4, 29 NRC 62, 73 (1989) (citing *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926)), *aff’d on other grounds*, ALAB-918, 29 NRC 473 (1989), *remanded on other grounds sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *appeal dismissed as moot*, ALAB-946, 33 NRC 245 (1991).

N The following technical issues are discussed: Aquifer Sampling (Drilling Methods, Monitoring Well-Screening Intervals, Statistical Validity); Groundwater Fluid Migration (Excursion Detection, Historical Boreholes, Natural Attenuation, Preliminary Pump Test); Uranium ACL Bounding Analysis.

LBP-15-4 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LA (ASLBP No. 15-934-01-LA-BD01); OPERATING LICENSE AMENDMENT; January 28, 2015; MEMORANDUM AND ORDER (Ruling on Request for Hearing and Petition to Intervene)

A Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., filed a license amendment request for Vermont Yankee Nuclear Power Station seeking to reduce levels in Vermont Yankee’s on-shift staffing and Emergency Response Organization staffing to reflect a permanently shutdown and defueled reactor condition. In its request, Entergy indicated that Vermont Yankee’s Emergency Response Data System (“ERDS”) would not be operational after the reactor is permanently shut down and defueled. The Vermont Department of Public Service, on behalf of the State of Vermont, challenged the license amendment request, contending that Entergy’s failure to maintain the ERDS would reduce public safety and hamper Vermont’s emergency response. This order concludes that Vermont’s contention is an inadmissible collateral challenge to 10 C.F.R. Part 50, Appendix E, § VI.2, which exempts

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nuclear power facilities that are “shut down permanently” from the requirement of providing an ERDS link.

- B A state government has standing to challenge a license amendment request for a utilization facility when the facility is located within the boundaries of the state. 10 C.F.R. § 2.309(h)(2).
- C A petitioner demonstrates good cause for a 2-day delay in e-filing when the petition was submitted to the NRC by e-mail before the deadline lapsed, the delay does not prejudice the other parties, and it is clear that the delay was purely a matter of technical trouble in obtaining digital credentials with the E-Filing system, not an attempt to gain extra time to prepare a pleading or otherwise to flout the NRC’s procedural requirements.
- D Failure to comply with the NRC’s e-filing requirements without good cause or without obtaining an exemption from the requirements under 10 C.F.R. § 2.302(g) can result in rejection of a pleading. In particular, when a filing deadline is approaching, notwithstanding that an attorney is engaged in good-faith settlement discussions, prudence should compel the attorney to take all necessary actions to ensure the deadline will be met in the event that settlement discussions are unsuccessful. *See Justice v. Town of Cicero, Illinois*, 682 F.3d 662, 665 (7th Cir. 2012).
- E Appendix E, section VI.2 of 10 C.F.R. Part 50 exempts all nuclear power reactors that have permanently ceased operations and defueled from the requirement of providing an ERDS link.
- F It is well established that the title of a regulation can aid in construing regulatory text. *See Immigration and Naturalization Service v. National Center for Immigrants’ Rights, Inc.*, 502 U.S. 183, 189-90 (1991).
- G Under 10 C.F.R. § 50.72, only operating nuclear power reactors are required to activate an ERDS link during an emergency, which convincingly supports the conclusion that the ERDS link need not be maintained by a licensee after its reactor is permanently shut down and defueled.
- H A petitioner’s contention that an ERDS link or another ERDS-like system is required after a reactor has permanently shut down and defueled is an impermissible collateral attack on a regulation in derogation of 10 C.F.R. § 2.335(a) because it seeks to impose a requirement more stringent than the applicable regulation, 10 C.F.R. Part 50, Appendix E, § VI.
- I A petitioner in an adjudicatory proceeding cannot use one regulation to challenge another without first obtaining a waiver by showing “special circumstances.” 10 C.F.R. § 2.335(b).
- J A licensee cannot change its emergency plan to discontinue ERDS without first showing that the change will not reduce the effectiveness of the site emergency plan. 10 C.F.R. § 50.54(q)(3).
- K A deficient contention cannot be cured by arguments presented for the first time in a petitioner’s reply brief. *See USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 476 (2006); *Louisiana Energy Services, L.P. (National Enrichment Facility)*, CLI-04-25, 60 NRC 223, 224-25 (2004).
- LBP-15-5 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 2), Docket No. 50-341-LR (ASLBP No. 14-933-01-LR-BD01); OPERATING LICENSE RENEWAL; February 6, 2015; MEMORANDUM AND ORDER (Ruling on Petitions to Intervene and Requests for a Hearing)
- A DTE Electric Company seeks to renew for 20 years its license for the Fermi Nuclear Power Plant, Unit 2 (Fermi 2). Two sets of petitioners — Don’t Waste Michigan, Citizens Environment Alliance of Southwestern Ontario, and Beyond Nuclear (Joint Petitioners) and Citizens’ Resistance at Fermi 2 (CRAFT) — challenge the application and request a hearing. This Order concludes that Joint Petitioners and CRAFT have standing and have each proffered at least one admissible contention. The Board grants their hearing requests with respect to three contentions. The Joint Petitioners’ admissible contention concerns DTE’s failure to include in its Severe Accident Mitigation Alternatives (SAMA) analysis the impact that a severe accident at Fermi 2 would have on the operation of the proposed nearby Fermi 3. CRAFT’s admissible contentions allege negative impacts on tribal hunting and fishing near Fermi 2 and assert that Canadians living within 50 miles of the site were excluded from the SAMA analysis.
- B An organization may demonstrate standing to challenge a reactor license renewal application by providing declarations from members who reside within 50 miles of the reactor site.
- C Section 51.71(d) requires the Draft Environmental Impact Statement to discuss important qualitative factors. Although this section applies to the Draft Environmental Impact Statement, it is instructive in evaluating the adequacy of the applicant’s Environmental Report.
- D Under 10 C.F.R. § 51.71(d), a SAMA analysis, like other parts of the NRC’s NEPA document, should take into account important qualitative considerations or factors that cannot be quantified. But a contention challenging a deficiency in the SAMA analysis is not admissible unless petitioners can show

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that the deficiency, if corrected, would plausibly tip the cost-benefit balance in favor of implementing one or more mitigation alternatives.

E The Environmental Review need not contain environmental analysis of the “Category 1” issues identified in Appendix B to Subpart A of 10 C.F.R. Part 51. Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. § 2.335, because they involve environmental effects that have been addressed generically for all reactors.

F The SAMA analysis does not need to consider spent fuel accidents because these accidents are a Category 1 issue.

G Contentions challenging the lack of site-specific environmental analysis of the storage and disposal of spent nuclear fuel are moot because the Commission has adopted a Continued Storage Rule and a generic environmental impact statement analyzing the impacts of the storage and disposal of spent nuclear fuel. *See* 10 C.F.R. § 51.23.

H Contentions challenging the lack of site-specific safety analysis of the storage and disposal of spent nuclear fuel are not admissible before a Licensing Board Panel because the Commission has exercised its authority to consolidate and review the pending safety-related issues.

I The Commission has resolved by regulation the adequacy of certified plant designs. Although a party may petition the Commission for permission to challenge a particular design, that party must make a showing of “special circumstances.”

J Petitioners cannot use the license renewal proceedings to challenge the adequacy of an earlier SAMA analysis for a different reactor.

K The NRC Staff, not the applicant, has the duty under section 51.28(a)(5) to notify affected tribes of the license renewal application.

L Publication in the *Federal Register* is legally sufficient notice to all affected people of the NRC’s scoping process and the opportunity to challenge the license renewal application.

M Under the NRC’s NEPA regulations, impacts to subsistence consumption must be evaluated as part of the site-specific Environmental Justice analysis.

N Although a reply brief must not be used to raise entirely new arguments, a board may consider information in a reply that legitimately amplifies an issue presented in the original petition.

O Pleadings submitted by *pro se* petitioners are afforded greater leniency than petitions drafted with the assistance of counsel.

P A party may not rely on wholesale incorporation by reference of another party’s arguments because arguments must be contained within the pleadings.

Q Compliance with NRC’s ongoing enforcement programs is part of the current licensing basis, and thus not within the scope of a license renewal proceeding.

R To challenge the adequacy of the SAMA analysis, petitioners must point to a specific error or deficiency in the analysis and provide support to show that fixing the error or deficiency would change the outcome of the cost-benefit analysis.

S Reasonable assurance of safety for aging management plans requires a case-by-case determination of safety instead of a fixed level of assurance.

T Petitioners have the “burden of going forward” at the initial stage of the proceeding, which requires the petitioner to support contentions with factual allegations or expert testimony.

U In calculating the costs of a severe accident, the SAMA analysis must include all populations within 50 miles of the licensed power reactor, regardless of international borders.

V A challenge to the adequacy of the emergency plan itself is not within the scope of a license renewal proceeding.

W Claims of past and current mismanagement — such as those involving operational history, quality assurance, quality control, management competence, and human factors — are outside the scope of the license renewal proceeding.

X The SAMA analysis does not need to consider public health because it is a Category 1 issue.

Y Contentions based on alleged “new and significant information” must provide a reasoned basis for how the new information might plausibly change the analysis in the environmental report.

Z Contentions challenging the adequacy of another agency’s regulations are not admissible.

AA The generic environmental impact statement for spent fuel pools covers both normal operations and potential accidents, so neither issue requires site-specific analysis.

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- LBP-15-6 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR (ASLBP No. 10-900-01-LR-BD01); OPERATING LICENSE RENEWAL; February 11, 2015; MEMORANDUM AND ORDER (Denying Petition to Intervene and Petition for Waiver)
- A In this proceeding regarding an application by Pacific Gas & Electric Company to renew its operating licenses for two nuclear power reactors at the Diablo Canyon Nuclear Power Plant located near San Luis Obispo, California, the Board denies a hearing request and petition to intervene because each of Petitioner's proffered contentions either raises issues that are outside the scope of a license renewal proceeding or fails to satisfy one or more requirements of 10 C.F.R. § 2.309(f)(1).
- B The scope of a license renewal safety review is narrow. It is limited to "plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001) (citing 10 C.F.R. §§ 54.21(a), (c), 54.4).
- C A license renewal proceeding does "not include a new, broad-scoped inquiry into compliance that is separate from and parallel to [our] ongoing compliance oversight activity." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435 (2011) (quoting 56 Fed. Reg. 64,943, 64,952 (Dec. 13, 1991)).
- D Pursuant to 10 C.F.R. § 2.335(a), except as provided in 10 C.F.R. § 2.335(b)-(d), "no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part." 10 C.F.R. § 2.335(a).
- LBP-15-7 TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2), Docket Nos. 50-327-LR, 50-328-LR (ASLBP No. 13-927-01-LR-BD01); OPERATING LICENSE RENEWAL; March 3, 2015; ORDER (Terminating Proceeding)
- A In this proceeding, applicant Tennessee Valley Authority seeks renewed licenses to operate two nuclear power reactors in Hamilton County, Tennessee. On September 29, 2014, prior to this Board's dismissal of a then-pending environmental waste confidence contention, the Blue Ridge Environmental Defense League (BREDL) moved for admission of a new safety-related waste confidence contention. On February 26, 2015, the Commission declined to admit the new contention. There being no other pending contentions or outstanding issues, the contested adjudicatory hearing before this Board is terminated.
- LBP-15-8 PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2), Docket Nos. 52-029-COL, 52-030-COL (ASLBP No. 09-879-04-COL-BD01); COMBINED LICENSE; March 3, 2015; ORDER (Terminating Proceeding)
- A In this proceeding, applicant Progress Energy Florida, Inc. seeks combined licenses to construct and operate two nuclear power reactors in Levy County, Florida. On September 29, 2014, prior to this Board's dismissal of a then-pending environmental waste confidence contention, the Nuclear Information and Resource Service and the Ecology Party of Florida moved for admission of a new safety-related waste confidence contention. On February 26, 2015, the Commission declined to admit the new contention. There being no other pending contentions or outstanding issues, the contested adjudicatory hearing before this Board is terminated.
- LBP-15-9 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346-LR (ASLBP No. 11-907-01-LR-BD01); OPERATING LICENSE RENEWAL; March 10, 2015; ORDER (Terminating Proceeding)
- LBP-15-10 SHIELDALLOY METALLURGICAL CORPORATION (Decommissioning of the Newfield, New Jersey Facility), Docket No. 40-7102-MLA (ASLBP No. 07-852-01-MLA-BD01); MATERIALS LICENSE AMENDMENT; March 12, 2015; ORDER (Terminating Proceeding by Reason of Loss of Jurisdiction over the Subject Matter)
- LBP-15-11 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943 (ASLBP No. 08-867-02-OLA-BD01); MATERIALS LICENSE AMENDMENT; March 16, 2015; MEMORANDUM AND ORDER (Ruling on Proposed Contentions Related to the Environmental Assessment)
- A To be admissible, a new or amended contention must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1).
- B A new or amended contention must be timely filed under 10 C.F.R. § 2.309(c).

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- C If a party submits a proposed contention after the initial filing deadline announced in the applicable *Federal Register* notice for submitting a hearing petition, it must not only meet the contention admissibility standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of section 2.309(c) or section 2.307(a).
- D Timely filing of an Intervenor's challenge to the adequacy of the NRC Staff's National Environmental Policy Act (NEPA) review process is generally triggered by the release of a NEPA document.
- E Timely filing of an Intervenor's challenge to the information or analysis in an applicant's license application is triggered on the date of public disclosure of that information or analysis. Intervenor is not allowed to postpone filing a contention challenging this information or analysis until the NRC Staff issues some document "that collects, summarizes, and places into context the facts supporting that contention." *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010).
- F In certain circumstances, admitted contentions challenging an applicant's Environmental Report (ER) may function as challenges to similar portions of the Staff's NEPA document. When applicable, a party need not file a new or amended contention; the previously admitted contention will simply be viewed as applying to the relevant portion of the EA. *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 470-71 (2012). This is appropriate, however, only where the Environmental Assessment (EA) analysis or discussion at issue is essentially *in pari materia* with the applicant's analysis or discussion that is the focus of the contention. *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 63-64 (2008).
- LBP-15-12 DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL (ASLBP No. 09-880-05-COL-BD01); COMBINED LICENSE; March 20, 2015; ORDER (Terminating Licensing Board Adjudicatory Proceeding)
- A Applicant DTE Electric Company seeks a combined license (COL) for a proposed Economic Simplified Boiling Water Reactor designated as Fermi Nuclear Power Plant, Unit 3 (Fermi 3). The Board issued a Partial Initial Decision ruling against the Intervenor on their two admitted contentions on May 23, 2014, but left the proceeding open because of pending matters related to the continued storage of spent fuel and the Board's request for *sua sponte* authority to review an otherwise inadmissible contention regarding the environmental impacts of Fermi 3's proposed transmission lines. On September 29, 2014, Beyond Nuclear and other intervenors moved for admission of a new contention claiming that NRC's Draft Environmental Impact Statement fails to comply with the National Environmental Policy Act by not discussing the safety of spent fuel storage at Fermi 3 given the lack of a high-level waste repository. The Commission chose to review that motion along with other similar motions, and on February 26, 2015, the Commission denied the motions to admit continued waste storage safety contentions. The Commission has also denied the Board's request for *sua sponte* authorization to review the environmental impacts of Fermi 3's proposed transmission lines. Because there is no other admitted or pending contention in this proceeding, the case is terminated.
- LBP-15-13 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250-LA, 50-251-LA (ASLBP No. 15-935-02-LA-BD01); OPERATING LICENSE AMENDMENT; March 23, 2015; MEMORANDUM AND ORDER (Granting CASE's Petition to Intervene)
- A This proceeding involves a challenge by Citizens Allied for Safe Energy, Inc. (CASE) to license amendments issued to the Florida Power & Light Company's (FPL) Turkey Point Nuclear Generating Units 3 and 4. The Licensing Board rules that CASE has standing to intervene and has submitted one admissible contention challenging the adequacy of the environmental assessment's discussion of the impact of increased temperature in Turkey Point's cooling canal system on saltwater intrusion arising from (1) migration out of the cooling canals; and (2) the withdrawal of freshwater from surrounding aquifers to mitigate conditions within the cooling canals.
- B A petitioner's reply, under 10 C.F.R. § 2.309(i)(2), cannot raise for the first time new arguments in support of its contentions. Rather, the right to reply is intended to provide an opportunity to cure potential defects in standing or to legitimately amplify arguments made in the petition in response to answers filed by the applicant and the NRC Staff.
- C A petitioner bears the burden of establishing standing to intervene in an NRC licensing proceeding, but licensing boards should evaluate a petitioner's standing construing the petition in favor of the petitioner.

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- D To determine whether a petitioner satisfies the standing requirements of 10 C.F.R. § 2.309(d)(1), the Commission has traditionally applied contemporaneous judicial concepts of standing, requiring a showing of concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.
- E In certain situations involving obvious potential for offsite consequences — including reactor licensing, license renewal, and at least some license amendment proceedings — the Commission has routinely granted standing to petitioners who live within a certain distance of the facility at issue under the “proximity presumption,” effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability.
- F When an organization seeks to intervene on behalf of its members, it may establish standing by showing that (1) one or more of its members would individually meet the standing requirements; (2) the member has authorized the organization to represent its interest; and (3) the interest represented is germane to the organization’s purpose.
- G Standing law does not require that a possible remedy make a claimant whole by completely resolving an alleged injury. Rather, the United States Supreme Court has made clear that a remedy that makes even a small contribution to resolving a larger, more complex injury can still support a standing claim.
- H A petitioner must not only establish its standing to intervene, but must also submit at least one admissible contention. An admissible contention must be timely, under 10 C.F.R. § 2.309(b)(3)(i), and satisfy the requirements of 10 C.F.R. § 2.309(f)(1). Failure to comply with any of the 10 C.F.R. § 2.309(f)(1) requirements renders a contention inadmissible.
- I Pleadings submitted by *pro se* petitioners are afforded greater leniency than petitions drafted with the assistance of counsel.
- J Licensing boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding.
- K When drafting an environmental assessment (EA), the NRC cannot simply import the analysis from a previously completed EA while disregarding intervening events. To hold otherwise would render meaningless NEPA’s 40 C.F.R. § 1502.9(c)(1)(ii) requirement for supplementation of environmental review documents.
- L The granting of a license amendment cannot be considered final agency action until the agency’s internal adjudicatory process has run its course. Section 2.340(a)(2)(ii) of 10 C.F.R. specifically provides that, when an adjudicatory proceeding has been initiated with respect to a license amendment issued with a no significant hazards determination, “[o]nce the presiding officer’s initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision.”
- M The NRC Staff’s “no significant hazards determination” may not be challenged before the Commission or a licensing board.
- N The Atomic Energy Act does not guarantee the right to request a prelicense amendment hearing. Delaying a hearing until after a license amendment has been issued does not, therefore, deprive a petitioner of its opportunity to request a hearing.
- LBP-15-14 TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2), Docket No. 50-391-OL (ASLBP No. 09-893-01-OL-BD01); OPERATING LICENSE; April 22, 2015; MEMORANDUM AND ORDER (Denying Motion to Reopen)
- LBP-15-15 CROW BUTTE RESOURCES, INC. (In Situ Leach Facility, Crawford, Nebraska), Docket No. 40-8943 (ASLBP No. 08-867-02-OLA-BD01); MATERIALS LICENSE AMENDMENT; April 28, 2015; MEMORANDUM AND ORDER (Denying Motion to Admit Additional Contentions Based on EPA Proposed Rules)
- A An EPA notice of proposed rulemaking has been issued to address the shift toward in situ leach recovery as the dominant form of uranium recovery in the United States. 80 Fed. Reg. at 4156. When final, these rules will be implemented by the NRC.
- B Proposed rules are not binding upon administrative agencies and are not ripe for review by this Board. *American Petroleum Institute v. Environmental Protection Agency*, 683 F.3d 382, 387 (D.C. Cir. 2012). However, studies or data disclosed in the notice of proposed rulemaking preamble, if timely utilized, may form the basis for an admissible contention.
- C To be admissible, a new or amended contention must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1).

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- D Pursuant to 10 C.F.R. § 2.309(c), if a party submits a proposed contention after the initial filing deadline for submitting a hearing request, it “will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause.”
- LBP-15-16 POWERTECH USA, INC. (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-9075-MLA (ASLBP No. 10-898-02-MLA-BD01); MATERIALS LICENSE; April 30, 2015; PARTIAL INITIAL DECISION
- A The AEA and the Uranium Mill Tailings Radiation Control Act of 1978 authorize the NRC to issue licenses for the possession and use of source material and byproduct material. Section 11e(2) byproduct material is regulated by the NRC under 10 C.F.R. Part 40. These statutes require the NRC to license facilities that meet NRC regulatory requirements developed to protect public health and safety from radiological hazards. To operate, ISL uranium recovery facilities must meet NRC regulatory requirements and obtain a source materials license.
- B NEPA requires that federal agencies prepare a detailed environmental impact statement for proposed actions “significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The adverse environmental effects that must be assessed under NEPA include “aesthetic, historic, cultural, economic, social, or health” effects. 40 C.F.R. § 1508.8(b).
- C While reviewing any adverse effects, federal agencies must take a hard look at the environmental impacts of a proposed action. See *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998). This hard look must emerge from engagement in informed and reasoned decisionmaking, as the agency “obtains opinions from its own experts, obtains opinions from experts outside the agency, gives careful scientific scrutiny and responds to all legitimate concerns that are raised.” *Hughes River Watershed Conservancy v. Johnson*, 165 F.3d 283, 288 (4th Cir. 1999) (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378-85 (1989)).
- D In an NRC adjudicatory proceeding, the Board’s findings, as well as the adjudicatory record, “become, in effect, part of the [final EIS].” *Claiborne*, CLI-98-3, 47 NRC at 89.
- E The statutory obligation of complying with NEPA rests with the NRC. See, e.g., *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983). When NEPA contentions are involved, the burden of proof lies with the NRC Staff, but because “the Staff, as a practical matter, relies heavily upon the Applicant’s [Environmental Report] in preparing the EIS, should the Applicant become a proponent of a particular challenged position set forth in the EIS, the Applicant, as such a proponent, also has the burden on that matter.” *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 339 (1996) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 489 n.8 (1978)), *rev’d on other grounds*, CLI-97-15, 46 NRC 294 (1997).
- F Under NEPA regulations, defining the scope of effects of a project requires engagement with the governments of affected tribes through an “early and open process,” aimed at identifying concerns, potential impacts, relevant effects of past actions, and possible alternative actions. 40 C.F.R. § 1501.7. The Commission’s regulations in 10 C.F.R. § 51.71(b) require the NRC Staff to include in the FSEIS “an analysis of significant problems and objections raised by . . . any affected Indian tribes, and by other interested persons.”
- G Under the National Historic Preservation Act, a federal agency must make a reasonable and good faith effort to identify historic properties, determine whether identified properties are eligible for listing on the National Register based on the criteria in 36 C.F.R. § 60.4, assess the effects of the undertaking on any eligible historic properties found, determine whether the effect will be adverse, and avoid or mitigate any adverse effects. 36 C.F.R. §§ 800.4(b), (c); 800.5(c); 800.8(c); 800.9(b), (c).
- H Although the NHPA and NEPA resemble each other in certain respects, compliance with the NHPA “does not relieve a federal agency of the duty of complying with the [environmental] impact statement requirement ‘to the fullest extent possible.’” *Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851, 859 (9th Cir. 1982) (quoting 42 U.S.C. § 4332). It does not follow that a review that satisfies the NHPA necessarily satisfies NEPA requirements to take a hard look at cultural resources affected by a project.
- I The NHPA requires federal agencies, prior to approving any “undertaking,” to “take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.” 16 U.S.C. § 470f.
- J The NHPA requires federal agencies to “consult with any Indian tribe . . . that attaches religious and cultural significance” to a site. 16 U.S.C. § 470a(d)(6)(B). Consultation must provide the tribe “a reasonable

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opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii)(A). The NHPA further requires that consultation with Indian tribes "recognize the government-to-government relationship between the Federal Government and Indian tribes." *Id.*

K Adequate NRC face-to-face meaningful government-to-government consultation requirements are not satisfied by large group meetings, with members of many diverse tribes, all with varying degrees of attachment to the project area. Tribal Protocol Manual, NUREG-2173, at 10. Quantity of correspondence does not necessarily equate with meaningful or reasonable consultation, and "doesn't in itself show the NHPA-required consultation occurred." *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Department of Interior*, 755 F. Supp. 2d 1104, 1118 (S.D. Cal. 2010).

L A Programmatic Agreement may be used to implement the section 106 process in situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking, such as where an applicant proposes a phased approach to developing its project. 36 C.F.R. §§ 800.13, 800.14(b)(1). In such cases, the Programmatic Agreement establishes a phased process for consultation, review, and compliance with the NHPA.

M A Board can require the immediate suspension of an issued materials license. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 238 (2008) ("If the Board determines after full adjudication that the license amendment should not have been granted, it may be revoked (or conditioned).").

N Criterion 7 of 10 C.F.R. Part 40, Appendix A requires an applicant to establish "a preoperational monitoring program [that] must be conducted to provide complete baseline data on a milling site and its environs." These criteria were developed for conventional uranium milling facilities, but have been applied, in at least limited fashion, to ISL facilities. *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 8-9 (1999).

O Background water quality data are used to establish existing hazardous constituent concentrations in an aquifer, which can then be used to set 10 C.F.R. Part 40, Appendix A, Criterion 5B(5) post-operational concentration limits. Both NUREG-1569 and Regulatory Guide 4.14 also discuss environmental monitoring.

P The language of Appendix A regarding the relationship between Criteria 5 and 7 is ambiguous and the terms "baseline" and "background" are not explicitly defined. But in *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 6 (2006), the Commission affirmed that given the sequential development of ISL wellfields, waiting until after licensing (although before mining operations begin) to establish definitively the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology.

Q Geologic confinement of an ore zone is required for an ISL license. This decision discusses issues surrounding the continuous thickness of the Fuson Shale, leakage shown by pumping tests, rapid groundwater flow, faults, fractures, and joints, breccia pipes, boreholes, the ability to contain fluid migration, artesian flow, and groundwater quantity impacts.

R Mitigation under NEPA is defined as (a) avoiding an impact by not taking an action, (b) minimizing an impact by limiting the degree or magnitude of an action, (c) rectifying the impact of an action by repairing, rehabilitating, or restoring the impacted area, (d) reducing or eliminating the impact over time by preservation and maintenance operations, or (e) compensating for the impact or replacing or substituting resources or environments. 40 C.F.R. § 1508.20.

S The NRC Staff is required to confirm whether applicant/licensee mitigation measures are effective by establishing a monitoring program. 76 Fed. Reg. at 3849 (citing 40 C.F.R. § 1505.2(c)).

T Actions are connected to the proposed project when they "(i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1)(i)-(iii). When drafting an EIS, an agency's scope of review must include analysis of any connected or cumulative actions to the central proposed action. 40 C.F.R. § 1508.25; 10 C.F.R. § 51.14(b).

U Cumulative impacts are impacts resulting "from the incremental impact of the [proposed] action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. All aspects of the

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FSEIS, including the connected and cumulative actions discussions, must have been subjected to a hard look by the NRC Staff.

- V To be admissible, a new or amended contention must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1).
- W A new or amended contention must be timely filed under 10 C.F.R. § 2.309(c).
- LBP-15-17 ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LA (ASLBP No. 15-936-03-LA-BD01); OPERATING LICENSE AMENDMENT; May 8, 2015; MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for a Hearing)
- A In certain circumstances, the Commission has adopted a proximity presumption that allows a petitioner living, having frequent contacts, or having a significant property interest within 50 miles of a nuclear power reactor to establish standing without the need to make an individualized showing of injury, causation, and redressability. *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). The Commission has explained that the proximity presumption applies when there are “clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences.” *Id.* Therefore, for the presumption to apply in license amendment proceedings, the proposed amendment must have clear implications for the offsite environment or otherwise create an increased potential for offsite consequences.
- B A change in the safety-related requirements intended to ensure the integrity of the reactor pressure vessel “obviously bears on the health and safety of those members of the public who reside in the plant’s vicinity.” *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95-96 (1993). Thus, a license amendment related to RPV embrittlement presents an obvious potential for offsite public health and safety consequences.
- C To demonstrate “frequent contacts” within the 50-mile site radius under the proximity presumption, the petitioner (or its member, if the petitioner is an organization claiming representational standing) must show that her contacts are “substantial” and “regular,” and must describe them with specificity. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 140 (2010). Although a member of the petitioning organization states she may spend time by the Palisades site, these statements are too vague to demonstrate a substantial or regular presence within 50 miles of Palisades.
- D As the Commission noted, “[t]he Atomic Energy Act authorizes the Commission ‘to accord protection from radiological injury to both health and *property* interests.’ Thus, a genuine property interest . . . is sufficient to accord [the petitioner] standing, given that the home is located” within close proximity to the facility. *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 314 (2005) (quoting *Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48 (1994) (citing 42 U.S.C. §§ 2133(b), 2201(b))) (footnote omitted). The petitioning organization’s member maintains that an accident at Palisades could render her 5 acres of land “permanently uninhabitable.” The Board thus finds that she has demonstrated a sufficient property interest to warrant standing based on proximity.
- E The NRC regulations define the Commission’s scope of review of a license amendment application broadly: “In determining whether an amendment to a license, construction permit, or early site permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate.” 10 C.F.R. § 50.92(a). The “considerations” the Commission should review include those defined in 10 C.F.R. § 50.40, titled “Common standards.”
- F When the Commission has opted to address a safety or environmental concern through regulation, it has uniformly prohibited litigation of that same issue in a site-specific adjudicatory proceeding: “Contentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings.” *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79 n.27 (2014) (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999)).
- G Petitioners apparently want the Board to preclude Entergy from relying on 10 C.F.R. § 50.61a to avoid meeting the requirements of 10 C.F.R. § 50.61, but that is what section 50.61a allows. The evident purpose of the Alternate Pressurized Thermal Shock Rule’s “Alternate Fracture Toughness Requirements” is to provide an alternative to satisfying the more demanding requirements of section 50.61. Therefore, Petitioners are in substance asking that the Board prohibit what section 50.61a allows. Under 10 C.F.R. § 2.335, the Board may not consider such a contention except under specific conditions not present here.

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- H The Commission noted when it promulgated 10 C.F.R. § 50.61a that this rule “provides reasonable assurance” of public health and safety, thereby endorsing the 50.61a embrittlement model approach and precluding requests to create requirements more restrictive than the rule. Final Rule: “Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events,” 75 Fed. Reg. 13, 22 (Jan. 4, 2010). “When a Commission regulation permits the use of a particular analysis, a contention asserting that a different analysis or technique should be utilized is inadmissible because it indirectly attacks the Commission’s regulations.” *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 255 (2009) (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-83-76, 18 NRC 1266, 1273 (1983)), *aff’d on other grounds*, CLI-09-22, 70 NRC 932, 933 (2009).
- I The purpose of the consistency check — the only portion of the Alternate Pressurized Thermal Shock Rule that may require use of sister plant data — is to validate the basic operation of the embrittlement model with surveillance data. The consistency check seeks to compare, for a specific material type, the model’s projected embrittlement with the actual embrittlement values at the same fluence provided by material samples. 10 C.F.R. § 50.61a(f)(6)(i)(B); 75 Fed. Reg. at 16.
- J Section 50.61a defines surveillance data broadly, to include “any data that demonstrates the embrittlement trends for the beltline materials.” 10 C.F.R. § 50.61a(a)(10). If a capsule had in fact been tested, the resulting data could constitute surveillance data relevant to evaluating embrittlement trends.
- K The Alternate Pressurized Thermal Shock Rule clearly states that surveillance data must be used in the consistency check when it is (A) “a heat-specific match for one or more of the materials for which RT_{MAX-X} is being calculated,” and (B) “three or more different neutron fluences exist for a specific material.” 10 C.F.R. § 50.61a(f)(6)(i)(A), (B). Thus, the use of a material sample in the consistency check is not dependent on its location inside an RPV, or which RPV it comes from. If the Board were to limit the material samples that may be used in the consistency check to those from a particular location from a particular RPV, we would be adding a new requirement to 10 C.F.R. § 50.61a(f)(6)(i), which is prohibited by 10 C.F.R. § 2.335.
- L Under section 50.61a(f)(6)(i), when the fluence of a material sample is known it must be used in the consistency check if it is of the appropriate chemical composition. The regulation’s consistency check does not rely on information that is unique to a particular RPV, but instead on the chemical properties and fluence of the material samples. *See* 10 C.F.R. § 50.61a, equations 5-7. From the standpoint of the consistency check, a material sample of the same fluence and material type is no different whether obtained from the Palisades RPV or a sister plant RPV.
- M A “no significant hazards consideration” determination is a procedural decision barred from litigation by 10 C.F.R. § 50.58(b)(6) and licensing board precedent. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 560-61 (2004).
- LBP-15-18 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LA-2 (ASLBP No. 15-937-02-LA-BD01); OPERATING LICENSE AMENDMENT; May 18, 2015; MEMORANDUM AND ORDER (Denying Hearing Request)
- A Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., request a license amendment to reduce emergency planning requirements at Vermont Yankee Nuclear Power Station to reflect the plant’s permanently defueled status. Because the current levels of emergency planning are required by regulation, Entergy cannot make these changes without first receiving certain regulatory exemptions. On February 9, 2015, the State of Vermont, through the Vermont Department of Public Service, moved for admission of two contentions arguing that the license amendment was not ready for review until the exemptions were granted and the requested changes would hamper the state’s ability to protect its residents during an emergency. This order concludes that Vermont’s first contention is moot since the Commission granted the exemptions on March 2, 2015. The second contention is inadmissible because it challenges the adequacy of the exemption request; the correctness of Commission-approved regulatory exemptions is not subject to review in a hearing before a Licensing Board.
- B A state government has standing to challenge a nuclear power reactor’s license amendment request when the facility is located within the boundaries of the state. 10 C.F.R. § 2.309(h)(2).
- C A Licensing Board assumes the correctness of the Commission’s decision to grant regulatory exemptions. The Board’s role is therefore limited to determining whether the petitioner has proffered an admissible contention based on the NRC’s regulations as exempted.

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- LBP-15-19 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; June 10, 2015; MEMORANDUM AND ORDER (Denying the City of Miami's Petition to Intervene, but Granting Its Request to Participate as an Interested Local Governmental Body)
- A In this proceeding, applicant Florida Power & Light Company seeks combined licenses to construct and operate two new nuclear power reactors in Homestead, Florida. The City of Miami, Florida, petitioned to intervene, proffering three contentions challenging the adequacy of the NRC Staff's Draft Environmental Impact Statement (DEIS), or, in the alternative, seeking to participate in the proceeding as an interested local governmental body. In this Memorandum and Order, the Licensing Board denies Miami's petition to intervene because, although it established standing, Miami failed to proffer an admissible contention. The Board, however, grants Miami's request to participate as an interested local governmental body.
- B To determine whether a petitioner satisfies the standing requirements of 10 C.F.R. § 2.309(d)(1), the Commission traditionally applies contemporaneous judicial concepts of standing.
- C When a governmental body within close proximity of a proposed nuclear reactor unit seeks to intervene in a combined license proceeding, the Commission grants standing under the "proximity presumption," effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability.
- D Pursuant to 10 C.F.R. § 2.309(f)(2), contentions arising under the National Environmental Policy Act (NEPA) must initially be filed based on an applicant's environmental report.
- E If a petitioner seeks leave to intervene after the initial deadline for the filing of contentions, it must demonstrate good cause for its belated filing under 10 C.F.R. § 2.309(c)(1).
- F The Commission has emphasized that the contention admissibility standards in 10 C.F.R. § 2.309(f)(1) are "strict by design" and that failure to comply with any of the requirements renders a contention inadmissible.
- G It is well established that NEPA itself does not mandate particular results, but simply prescribes the necessary process that agencies must follow in evaluating environmental impacts. So long as an agency's DEIS takes a "hard look" at the environmental impacts arising from the licensing action, nothing in NEPA requires the analysis to preclude any particular environmental impact.
- H The Commission has said that although a licensing board may appropriately view petitioners' support for its contention in a light that is favorable to the petitioner, it cannot do so by ignoring the 10 C.F.R. § 2.309(f)(1)(v) requirement that all petitioners provide a statement of fact or expert opinion upon which they intend to rely.
- LBP-15-20 ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LA-2 (ASLBP No. 15-939-04-LA-BD01); OPERATING LICENSE AMENDMENT; June 18, 2015; MEMORANDUM AND ORDER (Granting Petition to Intervene and Request for a Hearing)
- A Entergy Nuclear Operations, Inc. seeks a license amendment concerning the fracture toughness of the reactor pressure vessel at Palisades Nuclear Power Plant. The amendment relies on an "equivalent margins analysis" to show that three plate and weld materials will continue to provide adequate margins of safety after dropping below the regulatory screening criterion. On March 9, 2015, Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future — Shoreline Chapter, and the Nuclear Energy Information Service requested a hearing and argued that the analysis is inadequate because it does not include recent test data from capsules inside the reactor vessel and does not analyze the potential for "microcracking," a phenomenon recently detected at two Belgian reactors. Concluding that these issues form an admissible contention, the Board grants the petitioners' hearing request.
- B Under the Commission's proximity presumption, a person living, having frequent contacts, or having a significant property interest within 50 miles of a nuclear power reactor has standing when a license amendment involves an obvious risk of offsite radiological releases.
- C The Board's review of a license amendment includes challenges concerning whether the applicant has complied with all applicable regulations and whether the issuance of the amendment will be inimical to the health and safety of the public.
- D Appendix H sets the minimum frequency for testing capsules inside the reactor vessel for neutron embrittlement and fracture toughness.
- E Appendix G grants licensees the option of demonstrating that levels of fracture toughness below the regulatory screening criterion will provide margins of safety against fracture equivalent to those required

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by the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code, Section XI, Appendix G.

- F The Staff's decision to approve a withdrawal schedule in accordance with Appendix H of 10 C.F.R. Part 50 does not preclude modification of the schedule, much less allow the existing schedule to be a defense to compliance with other regulations.
- G Regulatory Guide 1.161 provides guidance on how to conduct a successful equivalent margins analysis in several areas not covered by regulation, such as analyzing different fracture event sequences, calculating transients (e.g., pressure along the vessel wall and other physical changes in the vessel), and selecting appropriate material properties as inputs for the models.
- H A challenge to the sufficiency of the methodologies described in Staff regulatory guidance is not prohibited by 10 C.F.R. § 2.335(a).
- I The requirement of 10 C.F.R. § 2.309(f)(1)(ii), that the petition include a "brief explanation of the basis" for the contention, merely requires an explanation of the rationale or theory of the contention, not evidence or supporting factual information.
- J Under 10 C.F.R. § 2.309(f)(1)(iv), there must be some significant link between the claimed deficiency and the agency's ultimate determination whether the applicant will adequately protect the health and safety of the public and the environment.
- K With respect to the requirement for petitioners to provide sufficient factual support to demonstrate a genuine dispute, they are required to make "a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." *Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994) (citing Final Rule: "Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989)).
- L At the contention admissibility stage, petitioners are not required to prove their case on the merits or even to provide expert or factual support as strong as that necessary to withstand a summary disposition motion.
- M Although the admissibility criteria are strict by design, the Commission has also repeatedly warned against turning them into a "fortress to deny intervention." *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 414 n.49 (2007).
- N The Board does not consider evidentiary objections made for the first time after briefing has been completed because to do so would unfairly deprive the petitioners of the opportunity to file the response expressly provided in the NRC's procedural rules.
- O The requirement to dispute specific portions of the application is satisfied when a commonsense reading of the petition makes abundantly clear which sections of the application the petitioners are challenging, even though the petitioners do not specifically cite particular sections.
- LBP-15-21 JAMES CHAISSON, Docket No. IA-14-025-EA (ASLBP No. 14-932-02-EA-BD01); ENFORCEMENT ACTION; July 2, 2015; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding)
- A In this proceeding regarding a challenge by hearing requestor James Chaisson to a July 2014 NRC Staff enforcement order that, among other things, would have imposed significant restrictions on Mr. Chaisson's ability to engage in NRC-licensed radiographic activities, pursuant to 10 C.F.R. § 2.338(i) the Licensing Board grants a joint motion by the parties to approve their June 2015 revised settlement agreement and terminate the proceeding.
- B NRC regulations, specifically section 2.338 of Title 10 of the *Code of Federal Regulations*, encourage "[t]he fair and reasonable settlement of issues proposed for litigation" in NRC adjudicatory proceedings, with the strictures that govern such settlements set forth in the balance of section 2.338. Thus, subsection (g) outlines the form for such settlements: "A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives." 10 C.F.R. § 2.338(g).
- C In addition, subsection (h) of section 2.338 states that a proposed settlement agreement must contain the following items: "(1) An admission of all jurisdictional facts; (2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise contest the validity of the consent order; (3) A statement that the order has the same force and effect as an

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order made after full hearing; and (4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.” *Id.* § 2.338(h).

D Finally, subsection (i) of section 2.338 describes the settlement agreement approval process: “Following issuance of a notice of hearing, a settlement must be approved by the presiding officer . . . to be binding in the proceeding. The presiding officer . . . may order the adjudication of the issues that the presiding officer . . . finds is required in the public interest. In an enforcement proceeding under subpart B of this part, the presiding officer shall accord due weight to the position of the NRC staff when reviewing the settlement. If approved, the terms of the settlement . . . must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission’s review in accordance with § 2.341.” *Id.* § 2.338(i).

E Regarding section 2.338(i)’s direction that in an enforcement proceeding “due weight” must be given to the Staff’s position, the Commission’s decision in the *Sequoyah Fuels Corp.* proceeding indicates that while the Staff’s position “is not itself dispositive of whether an enforcement agreement should be approved,” the regulatory instruction to accord that position “due weight” nonetheless is “dispositive proof of the importance of the Staff’s views.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997).

F The Commission has noted that “[i]n any pending proceeding [in which presiding officer approval of a settlement agreement is required], the presiding officer’s approval of settlement is a matter that must give due consideration to the public interest.” *Id.* (quoting *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)) (footnote omitted). The Commission then went on to explain that this “public interest” inquiry requires the presiding officer to consider: “(1) whether, in view of the agency’s original order and the risks and benefits of further litigation, the settlement result appears unreasonable; (2) whether the terms of the settlement appear incapable of effective implementation and enforcement; (3) whether the settlement jeopardizes the public health and safety; and (4) whether the settlement approval process deprives interested parties of meaningful participation.” *Id.* at 209 (footnote omitted).

G Regarding the first of the *Sequoyah Fuels Corp.* “public interest” criteria, i.e., the risks and benefits of further litigation for both parties, as is pertinent in this instance, in assessing this factor, *id.*, the Commission focused on “(1) the likelihood (or uncertainty) of success at trial, (2) the range of possible recovery . . . , and (3) the complexity, length, and expense of continued litigation.”

H Absent some future directive from the Commission, a licensing board ruling approving a settlement agreement and terminating a proceeding also terminates the board’s jurisdiction over the parties’ agreement. Nonetheless, if in the future, after seeking a reasonable accommodation with the Staff, the hearing requestor has a concern about how some aspect of a settlement agreement is being implemented or enforced, that concern can be brought to the attention of the Commission, which retains supervisory authority over the parties’ agreement. See *Eastern Testing & Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996) (citing *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 517 (1980)).

I A “with prejudice” termination designation in an enforcement proceeding means that the Staff would effectively be barred from filing any new enforcement claim against the subject of the challenged enforcement order based on the subject matter that was the focus of that order. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 50 (1999) (with prejudice termination bars “the relitigation of similar issues”).

J As is the case with the federal courts, a licensing board’s authority under section 2.338(i) is to approve or reject a settlement agreement, and so a board cannot amend the agreement without the consent of the parties. See *Eastern Testing*, LBP-96-11, 43 NRC at 282 n.1 (citing cases).

LBP-15-22 NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LR (ASLBP No. 10-906-02-LR-BD01); OPERATING LICENSE RENEWAL; August 5, 2015; MEMORANDUM AND ORDER (Dismissing Contention 4D and Terminating the Proceeding)

A Friends of the Coast and the New England Coalition; NextEra Energy Seabrook, LLC; and the NRC Staff moved the Board to accept a settlement agreement in this license renewal proceeding for Seabrook Station, Unit 1. On August 8, 2013, pursuant to 10 C.F.R. § 2.338(i), this Board approved the settlement, under which the parties agreed that additional analysis in the Final Supplemental Environmental Impact Statement (FSEIS) would be sufficient to address the only contention remaining in this proceeding. On July 29, 2015, the NRC Staff complied with the Board’s order to submit a letter identifying that relevant

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analysis following issuance of the FSEIS. Accordingly, this order dismisses the sole remaining contention per the parties' agreement and terminates the proceeding.

LBP-15-23 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 6 and 7), Docket Nos. 52-040-COL, 52-041-COL (ASLBP No. 10-903-02-COL-BD01); COMBINED LICENSE; August 21, 2015; MEMORANDUM AND ORDER (Denying Joint Intervenors' Motion to Admit New Contention)

A In this combined license (COL) proceeding, the Intervenors move for leave to file a new contention challenging the adequacy of the discussion of mitigation measures in the NRC Staff's Draft Environmental Impact Statement (DEIS). The Board denies the motion, concluding that the proffered contention is not admissible because (1) contrary to the Intervenors' assertion, the DEIS need not include the Army Corps of Engineers' Clean Water Act § 404 permit analysis in order to satisfy the procedural requirements of the National Environmental Policy Act (NEPA); and (2) the Intervenors fail to identify any specific deficiency in the DEIS's discussion of proposed mitigation measures.

B An intervenor who moves to file a new contention must demonstrate good cause for proffering the contention after the initial deadline for the filing of contentions. *See* 10 C.F.R. § 2.309(c)(1). In addition to being timely, the proposed new contention must satisfy the six-factor contention admissibility standard in 10 C.F.R. § 2.309(f)(1).

C An agency cannot relinquish its NEPA responsibility to evaluate environmental impacts by relying on expected compliance with another agency's environmental standards. *Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1122-23 (D.C. Cir. 1971).

D Because NEPA and the Clean Water Act are different statutes using different standards to achieve different goals, NEPA cannot reasonably be interpreted to require that the NRC delay issuance of a DEIS until the Army Corps of Engineers (Corps) completes its substantive review under the Clean Water Act. *See City of Carmel-by-the-Sea v. U.S. Department of Transportation*, 123 F.3d 1142, 1152 (9th Cir. 1997). Accordingly, a contention based solely on the assertion that a DEIS is deficient unless it includes the Corps' 404 Permit Review is not admissible for failing to raise a material issue pursuant to 10 C.F.R. § 2.309(f)(1)(iv).

E Although NEPA requires "that an EIS contain a detailed discussion of possible mitigation measures," it "does not mandate particular results" and, accordingly, does not "demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act." *Robertson v. Methow Valley*, 490 U.S. 332, 350-51, 353 (1989).

F An intervenor's challenge to the adequacy of the NRC Staff's review of mitigation measures fails to raise a genuine dispute with a DEIS pursuant to 10 C.F.R. § 2.309(f)(1)(vi) when an intervenor fails to (1) allege a deficiency in the analytic methodology for assessing mitigation; (2) identify a deficiency in the discussion of proposed mitigation measures; or (3) articulate how the DEIS's analysis of mitigation proposals lacked an adequate assessment of effectiveness.

LBP-15-24 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LA-3 (ASLBP No. 15-940-03-LA-BD01); OPERATING LICENSE AMENDMENT; August 31, 2015; MEMORANDUM AND ORDER (Granting Petition to Intervene and Hearing Request)

A Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. ("Entergy") seek a license amendment request ("LAR") to replace certain site-specific license conditions on the decommissioning trust fund for Vermont Yankee Nuclear Power Station with the regulatory requirements of 10 C.F.R. § 50.75(h). On April 20, 2015, the State of Vermont, represented by the Vermont Department of Public Service, proffered four contentions challenging this LAR. Among other arguments, Vermont asserts that the license condition requiring a 30-day notice for withdrawals from the decommissioning trust fund remains necessary in light of Entergy's alleged plans to spend the fund on impermissible expenses and also argues that the LAR is incomplete because it does not discuss a related exemption request that would allow Entergy to use the decommissioning trust fund for spent fuel management. Vermont moved to file a new contention on July 6 based on the NRC Staff's decision to grant Entergy's exemption request. In this Memorandum and Order, the Board concludes that two of Vermont's five contentions are admissible because the State has proffered sufficient support to show that Entergy's expenses contravene the regulations and has also raised a valid legal contention challenging the failure of the LAR to discuss directly relevant exemptions that would only go into effect if the LAR were approved. The Board therefore grants Vermont's hearing request.

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- B** A state government has automatic standing to challenge a nuclear power reactor's license amendment request when the facility is located within the boundaries of the state.
- C** Under 10 C.F.R. § 50.75(h)(1)(iv), the decommissioning trust fund can be used only for decommissioning expenses, defined in 10 C.F.R. § 50.2 as activities to remove a facility from service safely and reduce residual radioactivity at the site.
- D** The decommissioning trust fund cannot be used for spent fuel expenses under NRC regulations because spent fuel management is not a decommissioning activity.
- E** Because applicants must provide information that is complete and accurate in all material respects, a claim that a LAR contains incomplete and incorrect statements is within the scope of a license amendment proceeding.
- F** The claim that a LAR would conflict with applicable NRC regulations if granted is not an impermissible challenge to the regulations themselves.
- G** Although the merits of an exemption request are outside the scope of a license amendment proceeding, a Board may appropriately consider citations to documents that an applicant filed with the NRC, such as an exemption request, as factual support for a contention.
- H** Exemption-related issues are within the scope of a license amendment proceeding when the exemptions are directly dependent on a LAR and will go into effect only if the LAR is approved.
- I** The NRC Staff's ongoing enforcement of regulations and license conditions does not trigger hearing rights, but petitioners may challenge the correctness of a statement in the LAR related to compliance if that challenge is supported by sufficient documentary evidence.
- J** Allegations that an applicant will violate state law are not within the scope of a license amendment proceeding.
- K** A contention raises a material issue if there is some significant link between the claimed deficiency and the agency's ultimate determination whether granting the LAR will adequately protect the health and safety of the public and the environment.
- L** There is no time restriction on when a licensee can seek to amend license conditions relating to its decommissioning trust fund that existed before promulgation of 10 C.F.R. § 50.75(h), but those amendments must bring the license into compliance with 10 C.F.R. § 50.75(h).
- M** The merits of an NRC Staff decision to grant an exemption request are outside the scope of a license amendment proceeding.
- N** Under 10 C.F.R. § 51.53(d), an applicant need not submit an environmental report until the final stage of decommissioning as part of its license termination plan.
- O** The purpose of the timeliness rules is not to trap petitioners into a no-win situation where a contention is called premature if filed in the original petition and untimely if petitioners wait for a potential event to actually transpire.
- P** A contention that a LAR is incorrect and incomplete is squarely within the scope of a license amendment proceeding under 10 C.F.R. § 2.309(f)(1)(iii) because the regulations are clear that the applicant must fully describe the changes desired in the LAR and that the LAR must be complete and accurate in all material respects.
- Q** When there is no factual dispute between the parties on a matter, a Board may decide the legal issues on the basis of briefs and oral argument.
- LBP-15-25** DTE ELECTRIC COMPANY (Fermi Nuclear Power Plant, Unit 2), Docket No. 50-341 (ASLBP No. 14-933-01-LR-BD01); OPERATING LICENSE RENEWAL; September 11, 2015; ORDER (Terminating Proceeding)
- LBP-15-26** ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point, Unit 2), Docket No. 50-247-LA (ASLBP No. 15-942-06-LA-BD01); OPERATING LICENSE AMENDMENT; September 25, 2015; MEMORANDUM AND ORDER (Denying New York's Petition to Intervene)
- A** Entergy Nuclear Operations, Inc. filed a license amendment request to reduce the frequency of the reactor containment Integrated Leak Rate Test (ILRT) conducted at Indian Point Nuclear Generating Station, Unit 2 from once every 10 years to once every 15 years permanently. The State of New York petitioned to intervene, contending that (1) the requested amendment poses a significant health and safety hazard to the public; and (2) Entergy and the NRC Staff failed to perform allegedly required environmental reviews of the amendment request. The Board concludes that New York fails to proffer an admissible contention and denies its petition.

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- B Appendix J requires that licensees conduct periodic containment leakage tests to provide assurance that (1) leakage from the containment, including components that penetrate the containment, does not exceed the allowable leakage rates specified in the technical specifications; and (2) the containment will perform its design function following an accident up to and including the plant design-basis accident. *See* 10 C.F.R. Part 50, App. J, Option B, § I.
- C The containment leakage tests required by Appendix J consist of (1) Type A tests, or ILRTs, that measure the containment's total leakage rate; (2) Type B pneumatic tests that detect and measure local leakage rates across pressure-retaining, leakage-limiting boundaries (other than valves); and (3) Type C pneumatic tests that measure containment isolation valve leakage rates. *See* 10 C.F.R. Part 50, App. J, Option B, §§ III.A and III.B.
- D Of the containment leakage tests, Type B and C tests assure that containment penetrations are essentially leak tight, while Type A tests measure the containment system's overall leakage rate, thereby enabling a licensee to verify the leakage integrity of the containment liner.
- E The acceptance criteria for Type A tests embodied in the technical specification leakage limits are established to ensure that, in the event of a design-basis accident, the dose received by a member of the general public will not exceed the limits in 10 C.F.R. Part 100. *See* 10 C.F.R. Part 50, App. J, Option B, § II.
- F The "no significant hazards consideration" determination is a determination that, if reached by the NRC, permits it to make an authorized license amendment effective immediately pursuant to 10 C.F.R. § 50.58(b)(5), rather than awaiting the outcome of an adjudicatory challenge. As explained by the Commission, it "is a procedural device to determine when, not whether, petitioners' right to a hearing under the Atomic Energy Act will occur." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 6 n.3 (1986); *see also* 10 C.F.R. § 50.91 (discussing process for making the no significant hazards consideration determination).
- G Before a Licensing Board may grant a timely filed petition to intervene, it must conclude that the petitioner has (1) established standing; and (2) proffered at least one admissible contention. *See* 10 C.F.R. § 2.309(a).
- H Where a State seeks to participate as a party in a proceeding pertaining to a "utilization facility . . . located within [its boundaries] . . . no further demonstration of standing is required." 10 C.F.R. § 2.309(h)(2).
- I To be admissible, a contention must satisfy the six-factor admissibility test in 10 C.F.R. § 2.309(f)(1). The Commission has stressed that the contention admissibility standard is "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).
- J No "historical event" criterion exists within the "performance criteria" specified in Appendix J, Option B concerning the frequency for performing containment ILRTs. *See* 10 C.F.R. Part 50, App. J, Option B, §§ II and III.
- K A petitioner's attempt to graft a "historical event" criterion onto the "performance criteria" specified in Appendix J, Option B is an impermissible challenge to Commission regulations pursuant to 10 C.F.R. § 2.335(a), which, *inter alia*, bars contentions that seek to impose a requirement beyond those imposed by a Commission regulation. *See, e.g., NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315 & n.88 (2012).
- L Pursuant to 10 C.F.R. § 50.58(b)(6), apart from discretionary review by the Commission, the NRC Staff's no significant hazards consideration determination under section 50.92(c) — whose sole effect is to permit the Staff to make an authorized license amendment immediately effective despite the pendency of an adjudication — may not be contested. Issues regarding when an authorized license amendment should become effective are irrelevant to a proceeding that involves a challenge to the merits of a license amendment request. Hence, the adequacy of the no significant hazards consideration determination, in addition to being immune from challenge pursuant to section 50.58(b)(6), is not material to, or within the scope of, the proceeding.
- M Simply referencing a study without explaining the information's significance relative to the alleged defect does not establish a contention's materiality as is required by 10 C.F.R. § 2.309(f)(1)(iv), nor does it establish a genuine dispute of fact as is required by 10 C.F.R. § 2.309(f)(1)(vi).
- N Section 51.22 identifies categories of actions that are exempt from NEPA review because the NRC has made a generic finding that the "actions do[] not individually or cumulatively have a significant effect

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on the human environment.” 10 C.F.R. § 51.22(a). Section 51.22(c)(9), in turn, establishes a categorical exemption for the issuance of a reactor license amendment that changes a requirement, provided that: “(i) The amendment or exemption involves no significant hazards consideration; (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and (iii) There is no significant increase in individual or cumulative occupational radiation exposure.” *Id.* § 51.22(c)(9).

- O The Staff’s no significant hazards consideration determination in section 51.22(c)(9)(i) may not be contested pursuant to 10 C.F.R. § 51.58(b)(6).
- P A petitioner with supporting facts may seek review of a section 51.22(c)(9) determination by at least two methods: (1) challenging either of the findings made under section 51.22(c)(9)(ii) or (iii); and (2) if the requirements of section 51.22(c)(9) are satisfied, by showing the existence of “special circumstances” pursuant to 10 C.F.R. § 51.22(b) that would justify excepting a proposed license amendment from the categorical exclusion of section 51.22(c).
- Q It is well established in NRC proceedings that a reply brief cannot introduce new issues or expand the scope of arguments advanced in the original petition; rather, a reply brief must focus on the actual or logical arguments presented in the original petition or raised in answers to it.
- LBP-15-27 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323 (ASLBP No. 15-941-05-LA-BD01); OPERATING LICENSE AMENDMENT; September 28, 2015; MEMORANDUM AND ORDER (Denying Petition to Intervene and Request for Hearing)
- A Petitioner alleges a *de facto* license amendment involving the operating licenses held by Pacific Gas and Electric Company for Diablo Canyon Nuclear Power Plant, Units 1 and 2. Because the NRC has neither granted PG&E greater authority than that provided by its existing licenses nor otherwise altered the terms of those licenses, the Board concludes Petitioner is not entitled to an opportunity to request a hearing pursuant to the Atomic Energy Act (AEA) § 189a.
- B AEA § 189a hearing rights may be triggered when the substance of an NRC action, while not formally labeled as a license amendment, in effect accomplishes the same thing. A *de facto* license amendment would exist, and hearing rights would be triggered, if the NRC were to grant a licensee “greater operating authority” or otherwise alter “the terms of the license” or permit the licensee to go beyond its existing license authority. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328 (1996).
- C A *de facto* license amendment proceeding is not initiated merely because a licensee takes an action that requires some type of NRC approval, or because a licensee makes a change to its facility that is allowed under 10 C.F.R. § 50.59 without prior NRC approval.
- D Speculative changes to a plant’s licensing basis that may or may not occur do not constitute a proper ground on which to seek an adjudicatory hearing.
- E Actions taken by a licensee under the authority of section 50.59 do not give rise to hearing rights under the AEA, but rather are monitored by the NRC Staff’s inspections and oversight, which may be challenged only by a petition for enforcement pursuant to 10 C.F.R. § 2.206.
- F Staff oversight activities that ensure compliance with existing requirements do not constitute *de facto* license amendments. NRC inspection reports, even inspection reports documenting violations, are not *de facto* license amendments.
- LBP-15-28 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LA-3 (ASLBP No. 15-940-03-LA-BD01); OPERATING LICENSE AMENDMENT; October 15, 2015; ORDER (Granting Motion to Withdraw LAR, Denying Motion for Leave to File Reply, and Terminating Proceeding)
- A Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (“Entergy”), seek to withdraw the license amendment request (“LAR”) that formed the basis of this contested license amendment proceeding, which concerned disbursements and notifications for the decommissioning trust fund for Vermont Yankee Nuclear Power Station. The Board grants Entergy’s motion to withdraw the LAR without prejudice on the conditions that (1) Entergy must provide written notice to Vermont of any new LAR relating to the decommissioning trust fund at the time such application is submitted to the NRC and (2) Entergy must specify in its 30-day notice to the NRC if any proposed disbursement includes one of the six line items or legal expenses to which Vermont objected in its admitted contention.

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- B Once a Board has issued a Notice of Hearing, voluntary withdrawal of the LAR is subject to the Board's approval and under the terms prescribed by the presiding officer. These terms are set on a case-by-case basis, with any conditions on the withdrawal tailored to address the particular circumstances of that proceeding.
- C An applicant's unconditional withdrawal is generally appropriate if it would cause no prejudice to either the intervenors' or the public's interest.
- D A dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the LAR. The possibility of future litigation is not sufficient legal harm to justify a dismissal with prejudice.
- E Where a withdrawal concerns a legal dispute that is not resolved by the withdrawal itself, a Board may take steps to ensure that the nonmoving party is not deprived of a chance to litigate that potentially meritorious issue in the future.
- F Under NRC regulations, a moving party has no right to reply and may be granted such permission only in compelling circumstances.
- G A party has not demonstrated compelling circumstances justifying a reply where that party could reasonably have anticipated the arguments to which it seeks leave to reply.
- LBP-15-29 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275-LR, 50-323-LR (ASLBP No. 10-900-01-LR-BD01); OPERATING LICENSE RENEWAL; October 21, 2015; MEMORANDUM AND ORDER (Denying Motion to File Amended Contention, Granting Summary Disposition, and Terminating Proceeding)
- A Applicant moves for summary disposition regarding the sole remaining contention, a contention of omission, concerning its license renewal application to operate two reactors at the Diablo Canyon Nuclear Power Plant in San Luis Obispo, California, for an additional 20 years. Because the alleged omission has been cured, the Board (1) grants the motion for summary disposition; (2) rejects a motion to amend a proffered but inadmissible contention; and (3) terminates the case.
- B It is not enough to suggest a preferred method for performing a SAMA analysis. An intervenor must come forward with a plausible demonstration that the existing analysis is unreasonable and that any alleged deficiency would materially change conclusions regarding the cost-effectiveness of particular SAMAs.
- C The purpose of scheduling orders is to ensure proper case management, with the objective of expediting the disposition of the proceeding; establishing early and continuing control so that the proceeding will not be protracted because of lack of management; and discouraging wasteful prehearing activities.
- D Unless a schedule is so onerous or unfair that it deprives a party of procedural due process, "scheduling is a matter of Licensing Board discretion." *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-841, 24 NRC 64, 95 (1986). A Licensing Board may modify or waive the provisions of its scheduling orders as it deems appropriate in the interest of sound case management.
- LBP-15-30 NORTHERN STATES POWER COMPANY (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), Docket No. 72-10-ISFSI-2 (ASLBP No. 12-922-01-ISFSI-MLR-BD01); MATERIALS LICENSE RENEWAL; November 4, 2015; ORDER (Approving Settlement, Eliminating Disclosures, and Terminating Proceeding)
- A NRC regulations permit licensing boards broad powers necessary to "conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order." Under this authority and the provisions of 10 C.F.R. § 2.338, boards are empowered to approve settlements proposed by the parties.
- B In the Board's estimation, it is not necessary for a notice of hearing to be issued before the Board can approve this settlement. The Commission's regulations, viewed in context, contemplate presiding officer approval of proposed settlements in proceedings with admitted contentions.
- C Before 2004, the settlement provision for Subpart L proceedings was found in 10 C.F.R. § 2.1241, and stated explicitly that "[a] settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding." While this provision was replaced by the more general one governing settlements found in 10 C.F.R. § 2.338, the Commission explicitly noted that this change was made to consolidate regulatory text and provide guidance on the use of alternative dispute resolution; it was not adopted to effect any material alteration in the process for accepting settlements.
- D That the Commission still requires presiding officer approval for settlements in contested proceedings with admitted contentions is evidenced from other provisions of section 2.338.

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- E Of the three provisions that were combined in the 2004 rulemaking, only 10 C.F.R. § 2.203 (2003), which was itself limited to enforcement proceedings, referred to a notice of hearing as part of the settlement procedure. It is the Board's estimation that the regulatory language in no way limits the Board's responsibility to approve settlements to instances only where a notice of hearing, a procedural document, has previously been issued.
- F Licensing boards are to approve settlements when they are fair and reasonable and comport with the public interest. The parties appear in agreement that Northern States' revisions to its license and Aging Management Program satisfy the Prairie Island Indian Community's concerns, and the Prairie Island Indian Community has consented in its Settlement Agreement to the dismissal of Contention 6. The Board finds dismissal of this contention, in accordance with the terms of the parties' Settlement Agreement, to be in the public interest and consistent with the Commission's policy to encourage fair and reasonable settlement and resolution of issues proposed for litigation.
- LBP-15-31 ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255-LA-2 (ASLBP No. 15-939-04-LA-BD01); OPERATING LICENSE AMENDMENT; November 13, 2015; ORDER (Terminating Proceeding)

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- DD-11-1 ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); REQUEST FOR ACTION; January 27, 2011; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By letter dated April 19, 2010, Congressman Paul W. Hodes, U.S. House of Representatives, filed a Petition pursuant to Title 10 of the *Code of Federal Regulations* (10 C.F.R.), section 2.206, with the Nuclear Regulatory Commission (NRC). The Petition requested that the NRC not allow the Vermont Yankee Nuclear Power Station to restart after its scheduled refueling outage until all environmental remediation work and relevant reports on leaking tritium at the plant have been completed. Specifically, the Petition requested that Vermont Yankee be prevented from resuming power production until the following efforts have been completed to the Commission's satisfaction: (1) the tritiated groundwater remediation process; (2) the soil remediation process scheduled to take place during the refueling outage, to remove soil containing not only tritium, but also radioactive isotopes of cesium, manganese, zinc, and cobalt; (3) the ongoing root cause analysis being performed by Entergy; and (4) the Commission's review of the documents presented by Entergy as a result of the Commission's Demand for Information, which was imposed on the Licensee on March 1, 2010.
- B This Petition was assigned to the NRC's Office of Nuclear Reactor Regulation (NRR) for review. NRR's Petition Review Board's recommendation was to accept the Petition for review, but not to prohibit restart of Vermont Yankee as there was reasonable assurance that the health and safety of the public was being protected and there were no immediate safety concerns.
- C The final Director's Decision (DD) was issued on January 27, 2011. The final DD stated that the NRC did not see cause to prohibit the restart of Vermont Yankee. The final DD also stated that the activities requested by the Petitioner have been completed with the exception of preventing the restart of Vermont Yankee. Therefore, NRR staff concluded that the Petition has been granted in part and denied in part.
- DD-11-2 FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1), Docket No. 50-346 (License No. NPF-3); REQUEST FOR ACTION; February 15, 2011; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petition requested that the NRC issue a Show Cause Order, or comparable enforcement action, preventing the DBNPS from restarting following the shutdown in February 2010, until adequate protection standards were met. As the basis for the April 5, 2010, request, the Petitioner states that FirstEnergy Nuclear Operating Company (the Licensee for DBNPS) has violated federal regulations and the explicit conditions of its operating license by operating for longer than 6 hours with pressure boundary leakage.
- B The final Director's Decision was issued on February 15, 2011. The Petitioner raised issues related to the DBNPS adequate protection standard regarding zero pressure boundary leakage and operation of the reactor at DBNPS. NRC Region III Inspection Report 05000346/2010-008(DRS) issued October 22, 2010 (ADAMS Accession No. ML102930380), focused on these concerns. The NRC Special Inspection Team was chartered to assess the circumstances surrounding the identification of the flaws in the RVCH CRDM nozzle penetrations at DBNPS.
- C The NRC has found the Licensee response to the identified conditions to be reasonable and technically sound. The NRC has reviewed in detail the CRDM nozzle cracking, as well as the circumstances surrounding the causes of this cracking and previous opportunities for identification and intervention. The NRC's inspection determined that the public health and safety have not been, nor are likely to be, adversely affected. The inspection determined that the Licensee conformed to the subject NRC regulatory

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requirements pertinent in this circumstance and applicable to assessing the cause and effect of the CRDM nozzle cracking conditions.

D Accordingly, NRC denied the Petitioner's requests as stated above.

DD-11-3 ENTERGY NUCLEAR VERMONT YANKEE, LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); REQUEST FOR ACTION; March 11, 2011; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Petitioners requested that the Nuclear Regulatory Commission (NRC) take enforcement actions against Entergy Nuclear Operations, Inc., the operator of Vermont Yankee, as result of a tritium leak. Mr. Mulligan requested in his petition that: (1) the radioactive leak into the environment of VY be immediately stopped, VY be immediately shut down, and all leaking paths be isolated; and (2) VY disclose its preliminary "root cause analysis," and the NRC release its preliminary investigative report on that analysis before plant startup. Mr. Shadis on behalf of New England Coalition (NEC) requested in his petition that the NRC: (1) require VY to go into cold shutdown and depressurize all systems in order to slow or stop the leak; (2) act promptly to stop or mitigate the leak(s); (3) require VY to reestablish its licensing basis by physically tracing records and reporting physical details of all plant systems that would be within scope as "Buried Pipes and Tanks," in NUREG-1801, "Generic Aging Lessons Learned (GALL) Report," and under the requirements of 10 C.F.R. § 50.54, "Conditions of licenses"; (4) investigate and determine why Entergy has been allowed to operate VY since 2002 without a working knowledge of all plant systems and why the NRC's Reactor Oversight Process (ROP) and review process for license renewal amendment did not detect this dereliction; (5) take notice of VY's many maintenance and management failures (from 2000 to 2010) and the ROP's failure to detect them early and undertake a full diagnostic evaluation team inspection using NRC Inspection Procedure 95003, "Supplemental Inspection for Repetitive Degraded Cornerstones, Multiple Degraded Cornerstones, Multiple Yellow Inputs or One Red Input"; and (6) require VY to apply for an amendment to its license renewal application that would address both aging analysis and aging management of all buried piping carrying or with the potential to carry radionuclides and/or the potential to interact with any safety or safety-related system. Mr. Saporito requested in his petition that the NRC: (1) order a cold shutdown mode of operation for VY because of leaking radioactive tritium; and (2) issue a confirmatory order modifying the NRC-issued license for VY so that the Licensee must bring the nuclear reactor to a cold shutdown mode of operation until the Licensee can provide definitive reasonable assurance to the NRC, under affirmation, that the reactor will be operated in full compliance with the regulations in 10 C.F.R. Part 50, "Domestic Licensing of Production and Utilization Facilities," and Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 C.F.R. Part 50, Criterion 60, "Control of Releases of Radioactive Materials to the Environment," and Criterion 64, "Monitoring Radioactivity Releases," and other NRC regulations and authority.

B The final Director's Decision on this petition was issued on March 11, 2011. On January 7, 2010, Entergy reported to the NRC that water samples taken from groundwater monitoring well GZ-3 onsite at VY showed tritium levels above background. GZ-3 is about 70 feet from the Connecticut River. Tritium was initially measured at levels up to about 17,000 pCi/L in monitoring well GZ-3, which is not used for drinking water. Samples at other monitoring wells have also shown some tritium. The highest reading from any monitoring well has been about 2.5 million pCi/L, from monitoring well GZ-10. Entergy immediately started an investigation to identify the source of the tritium, and later installed additional monitoring wells to help locate the source. Upon notification on January 7, 2010, of the detection of tritium in the monitoring well, the NRC Staff initiated actions to review and assess the condition, by reviewing all available sampling data, hydrologic information, and analyses; conducting an onsite inspection and assessment of Entergy's plans and process for investigating the condition; and making an independent determination of public health and safety consequence based on available information. NRC inspectors provided close regulatory oversight of Entergy's investigation in order to independently assure conformance with applicable NRC regulatory requirements, assess Licensee performance, and evaluate the condition with respect to NRC's radiological release limits. On February 27, 2010, following excavation and leak testing of the Advanced Off Gas (AOG) system pipe tunnel, Entergy reported that it had identified leakage into the surrounding soil, and therefore to the groundwater, from an unsealed joint in the concrete tunnel wall. The AOG pipe tunnel is located about 15 feet underground. Also, piping inside the tunnel had previously been found to be leaking, and the drain inside the tunnel had been found to be clogged. Soil samples in the vicinity showed traces of radioactive isotopes. Entergy reported that the leakage to the environment had been stopped by isolating piping and containing the water leaking from the AOG pipe tunnel. However, on May 28,

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2010, Entergy reported a second leak from AOG piping into the soil. Entergy quickly isolated this leak and has sealed off that piping to prevent further leaks in that area. The contaminated soil was removed from the excavated area and is being stored in containers onsite for eventual disposal in accordance with NRC regulatory requirements. As part of its oversight effort, NRC Staff conducted an evaluation in accordance with NRC Manual Chapter 0309, "Reactive Inspection Decision Basis for Reactors," from January 25 to April 10, 2010, to determine if the occurrence with the AOG piping constituted a significant operational event (i.e., a radiological, safeguards, or other safety-related operational condition) that posed an actual or potential hazard to public health and safety, property, or the environment. The evaluation reviewed the condition against the specified deterministic criteria that are based on regulatory safety limits, and determined that none of the criteria were met. Notwithstanding that determination, the NRC Staff continued its review, oversight, and assessment of the condition, including an independent evaluation of any potential public health and safety consequences. The Staff's activities included: (1) Several onsite inspections and reviews to assess radiological and hydrological data to establish reasonable assurance that members of the public were not, nor were they expected to be, exposed to radiation in excess of the dose limits for individual members of the public specified in 10 C.F.R. § 20.1301 (i.e., 100 millirem in a year) or the As Low As Is Reasonably Achievable (ALARA) dose objectives specified in 10 C.F.R. Part 50, Appendix I; (2) Engagement of hydrological scientists from NRC's Office of Nuclear Reactor Regulation, Office of Regulatory Research, and the U.S. Geological Survey to independently assess the Licensee's hydrological and geological data and conclusions on groundwater flow characteristics of the area; (3) Inspection in accordance with NRC Temporary Instruction TI-2515/173, "Review of the Implementation of the Industry Ground Water Protection Voluntary Initiative," to determine the Licensee's implementation of the specifications in the industry's groundwater initiative document NEI-07-07, "Industry Ground Water Protection Initiative — Final Guidance Document" (ADAMS Accession No. ML072610036); (4) Confirmation of the basis, calculation methodology, and results obtained by the Licensee to estimate a contaminated groundwater effluent release and off-site dose consequence to members of the public; (5) Analysis of selected groundwater and environmental samples to aid in determining the adequacy of the Licensee's analytical methods; (6) Approval for additional NRC inspection resources above the baseline inspection program to fully evaluate and provide continuing regulatory oversight of the Licensee's investigation and remediation activities; (7) Documentation of the inspection scope and conclusions in publicly available NRC Inspection Reports. As a result of these activities, the NRC established reasonable assurance, in a timely manner, that this groundwater condition would not result in any dose consequence that would jeopardize public health and safety. To date, information and data continue to support that the dose consequence attributable to the groundwater condition at VY remains well below the "As Low As Reasonably Achievable" (ALARA) dose objectives specified in 10 C.F.R. Part 50, Appendix I; and that the NRC regulatory criteria of 10 C.F.R. § 20.1301, "Dose limits for individual members of the public," was never approached.

C The NRC Staff did not identify any violations and the public health and safety remain reasonably assured. Thus, no enforcement action against VY is warranted. The NRC Staff concludes that the Petitioners' concerns have been addressed and resolved such that no further action is needed in response to the petitions.

DD-11-4 FIRSTENERGY NUCLEAR OPERATING COMPANY (Three Mile Island Nuclear Station, Unit 2), Docket No. 50-320 (License No. DPR-73); REQUEST FOR ACTION; June 2, 2011; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Petitioner requested that the NRC take enforcement action in the form of a Demand for Information from FirstEnergy Nuclear Operating Company (FENOC) relating to inadequate financial assurances provided by the Licensee for Three Mile Island Unit-2's (TMI-2's) nuclear decommissioning fund prior to the consummation of FENOC's proposed merger with Allegheny Energy. As the basis for this request, the Petitioner states that the current radiological decommissioning cost estimate is \$831.5 million and the current amount in the decommissioning trust fund is \$484.5 million, as of December 31, 2008. Further, the Petitioner asserts that FirstEnergy does not provide adequate financial assurance for decommissioning funding of TMI-2: (1) FirstEnergy's annual report fails to account for the special status of TMI-2, (2) the current level of the decommissioning trust fund demonstrates underfunding, and (3) that the underfunding would increase once decommissioning rate recovery payments from Metropolitan Edison and Pennsylvania Electric were terminated on December 31, 2010, pursuant to Pennsylvania Public Utility Commission orders.

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- B The final Director's Decision (DD) on this petition was signed on June 3, 2011. The petition was denied and the Staff addressed the Petitioner's comments as follows:
- (1) As stated in the petition, the Petitioner evaluated the 2008 Decommissioning Funding Status Report, which was the most current information at the time. However, in order to determine the current state of the Licensee's decommissioning funding assurance, the Staff critically reviewed and evaluated the site-specific 2009 Decommissioning Funding Status Report for TMI-2, which was submitted by GPU Nuclear (the Licensee) on March 29, 2010. The Licensee submitted additional information on November 9, 2010, and February 10, 2011, as part of the 2.206 process. The Staff reviewed the Licensee's submittals and determined that GPU Nuclear provided the information required by NRC regulations in 10 C.F.R. § 50.75. The Staff found that the Licensee's decommissioning trust fund demonstrates adequate decommissioning funding assurance, and that no modification of the Licensee's schedule for the accumulation of decommissioning funds is necessary at this time.
- (2) The merger between FirstEnergy and Allegheny Energy is outside the regulatory authority of the NRC; specifically, under NRC regulations the NRC does not have authority to analyze the impact of the merger. NRC evaluates mergers when nuclear interests are involved; no evidence has been provided by the Petitioner of any nuclear interests that were under the control of Allegheny Energy. Moreover, the Licensee's Decommissioning Funding Status Report meets the requirements of 10 C.F.R. § 50.75, and the Staff's review was conducted in accordance with NRC guidance documents, NUREG-1307, Rev. 14, and LIC-205, Rev. 4.
- The Staff concludes that the Petitioner's comments reflect dissatisfaction with the regulatory requirements of 10 C.F.R. § 50.75. Changes to this regulation are outside the scope of the 2.206 petition process.
- DD-11-5 U.S. ARMY INSTALLATION MANAGEMENT COMMAND, Docket No. 40-09083; REQUEST FOR ACTION; October 29, 2011; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petitioner requested that the Nuclear Regulatory Commission (NRC) investigate whether, counter to applicable law and regulations, the United States Army (the Army) possessed or released into the environment depleted uranium (DU) from spent spotting rounds after the expiration of NRC License SUB-459 and, were the NRC to determine that such a violation had occurred, to assess against the Army the maximum penalty permitted by law. The Petitioner requested that any assessed monetary penalties be applied to the environmental remediation of DU contamination at the Schofield Barracks and Pohakuloa Training Area installations in Hawaii.
- B The final Director's decision on this petition was issued on October 29, 2011. That decision addressed the three items requested by the Petitioner. The activities requested by the Petitioner were granted in part and denied in part.
- C With respect to the first item, the NRC Staff initiated an investigation into the apparent violation of the NRC's regulations in 10 C.F.R. § 40.3 and took enforcement action against the Army.
- D With respect to the second and third items, consistent with the NRC Enforcement Policy, the NRC chose not to impose any civil penalty against the Army for the noticed violation because: (1) the Army installations in Hawaii have not been previously the subject of escalated enforcement action; (2) the Army identified and notified the NRC of the presence of radioactive material; and, finally, (3) the Army implemented corrective actions in response to the discovery of the presence of the DU. Further, if the NRC were to have chosen to impose a civil penalty, the law does not provide for the application of that assessed civil penalty to the environmental remediation of DU contamination as requested by the Petitioner because fines assessed for violations of NRC requirements are sent to the U.S. Treasury. Therefore, these portions of the Petition were denied.
- DD-11-6 ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); REQUEST FOR ACTION; September 9, 2011; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petitioner requested that the Nuclear Regulatory Commission (NRC) take enforcement actions against Entergy Nuclear Operations, Inc., the operator of Vermont Yankee, as result of inoperability of main steam safety relief valves (SRVs). Mr. Thomas Saporito requested in his petition that the NRC: (1) issue a confirmatory order requiring the Licensee to immediately bring the reactor in question to a cold shutdown mode of operation; (2) issue a civil penalty against the Licensee; (3) remove the Licensee's employees responsible for this matter from NRC-licensed activities for a period of no less than 5 years; and (4) perform an immediate NRC investigation and inspection of the VY nuclear facility to ensure that

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all nuclear safety-related systems are properly operational in accordance with the Licensee's Technical Specifications (TS) and NRC license.

- B The final Director's Decision on this petition was issued on September 9, 2011. The petition cited problems related to inoperability of main steam SRVs due to leakage through the shaft to piston thread seals. Due to the redundancy in Automatic Depressurization System (ADS) design, the availability of the high-pressure core injection system, and the availability of a safety-class backup nitrogen supply, the ability to depressurize the reactor was maintained, and there was no potential adverse impact to public health and safety. Therefore, no reports were required pursuant to 10 C.F.R. § 50.72. On December 22, 2010, under the LER timely reporting requirements of 10 C.F.R. § 50.73(a)(2)(i)(B), Entergy submitted LER 05000271/2010-002-00&01: Inoperability of Main Steam Safety Relief Valves Due to Degraded Thread Seals within 60 days after the discovery of the event that was determined to be reportable, on October 25, 2010. The NRC resident inspectors reviewed LER 05000271/2010-002-00&01 and documented their inspection results in the NRC Integrated Inspection Report 05000271/2011002 dated April 29, 2011 (ADAMS Accession No. ML111190386), which also included the LER closeout review and two licensee-identified violations related to the discovery of the SRV issue.
- C The NRC has decided to deny Petitioner's request to bring VY to a cold shutdown mode of operation and to perform an immediate NRC investigation and inspection of VY, but has granted the petition, in part, concerning the inoperability of main steam SRVs. The NRC Integrated Inspection Report 05000271/2011002 dated April 29, 2011, documented an LER closeout review and two licensee-identified violations related to the discovery of the SRV issue. Petitioner's concern regarding the inoperability of SRVs at VY has been adequately resolved such that no further action is needed.
- DD-11-7 ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); ENTERGY OPERATIONS, INC. (River Bend Station, Unit 1), Docket No. 50-458 (License No. NPF-47); REQUEST FOR ACTION; November 8, 2011; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By electronic mail dated August 22, 2009, and supplemented on December 22 and 28, 2009, Mr. Sherwood Martinelli, the Petitioner, submitted a 10 C.F.R. § 2.206 petition related to projected shortfalls in decommissioning trust funds for nuclear power plants operated by Entergy. The Petitioner requested that the NRC take enforcement actions by suspending the operating license of any Entergy plant with a projected shortfall in decommissioning trust funds, ensure that any shortfalls be rectified within 60 days, order the release of all Entergy financial documents relating to decommissioning funding levels, and a number of other actions including the imposition of daily fines and the immediate suspension of all Entergy licensing actions before the Commission.
- B Under 10 C.F.R. § 50.75(f)(1) and (2), the NRC requires power reactor licensees to report decommissioning funding assurance information to the agency at least once every 2 years. As a result, all nuclear power plant owners were required to submit their decommissioning funding assurance information to the NRC based on financial data as of December 31, 2008. Due to the economic downturn of late 2008, a number of licensees reported projected shortfalls. This included five reactor sites operated by Entergy. The NRC Staff performed an independent analysis of each of these reports, and required Entergy to provide a written plan of action to indicate how they will meet their minimum funding assurance level. Based on a case-by-case review of each response, the Staff concluded that all Entergy facilities have provided reasonable assurance that sufficient funding for radiological decommissioning of their respective facilities will be available at the time of permanent termination of operation.
- C In DD-11-7, the Office of Nuclear Reactor Regulation denied the Petitioner's request to suspend the operating licenses of the Entergy facilities that had projected shortfalls in their decommissioning trust funds. The NRC also denied the Petitioner's request that the NRC take additional actions including ordering immediate actions by Entergy to redress the projected shortfalls, imposing daily fines until the Licensee deposits adequate funds to make the decommissioning funds fully whole, and suspend all Entergy licensing actions before the Commission. The NRC granted the Petitioner's request that the agency make available to the Petitioner all data and information presented by Entergy and used by the NRC Staff to decide whether facilities owned and licensed by Entergy have adequate decommissioning funds as required by the regulations. All information supplied by Entergy and used by the Staff is publicly available in ADAMS. In addition, the Staff responded to the Petitioner's FOIA request (FOIA 2010-0090) that asked for the same information.
- DD-12-1 VIRGINIA ELECTRIC AND POWER COMPANY (North Anna Power Station, Units 1 and 2);

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Docket Nos. 50-338, 50-339 (License Nos. NPF-4, NPF-7); REQUEST FOR ACTION; April 26, 2012; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By letter dated September 8, 2011, and supplements, Thomas Saporito (the Petitioner) filed a 10 C.F.R. 2.206 petition. The Petitioner requested that the NRC take the following actions: (1) take escalated enforcement action against Virginia Electric and Power Company (the Licensee) and suspend, or revoke, the operating licenses for North Anna Power Station, Units 1 and 2 (North Anna 1 and 2), (2) issue a notice of violation against the Licensee with a proposed civil penalty in the amount of 1 million dollars, and (3) issue an order to the Licensee requiring the Licensee to keep North Anna 1 and 2, in a "cold shutdown" mode of operation until such time as a series of actions described in the petition are completed.

B The final Director's Decision (DD) on this petition was issued on April 26, 2012. The final DD addresses the Petitioner's requested actions as follows: (1) With respect to the first two requests, the evaluations of two NRC inspection teams as documented in inspection reports dated October 31, 2011, and November 30, 2011, did not find any violation of NRC regulations that would merit such enforcement actions. (2) With respect to the Petitioner's third request, the NRC Staff concluded that it has partially granted that request in that the NRC issued CAL No. 2-2011-001, dated September 30, 2011, which documented that North Anna 1 and 2 could not be restarted unless and until the Licensee had demonstrated to the NRC Staff's satisfaction that "no functional damage has occurred to those features necessary for continued operation without undue risk to the health and safety of the public," consistent with the requirements of 10 C.F.R. Part 100, Appendix A, § V(a)(2).

C Issues in the petition, identified and discussed in the Director's Decision as concerns 1, 2, 3, 5, 6, 7, and 8, were discussed and substantially addressed, either in the inspection reports issued October 31, 2011, and November 30, 2011, or in the NRC technical evaluation dated November 11, 2011. The activities by the NRC Staff were completed before restart to ensure that, before resuming operations, the Licensee had demonstrated no functional damage had occurred to those features at North Anna 1 and 2, necessary for continued operation without undue risk to the health and safety of the public. In that respect, these concerns described in the petition as requiring completion before the restart of North Anna 1 and 2 were addressed before restart, consistent with the third request for enforcement action described in the petition. Issues in the petition, identified and discussed in the Director's Decision as concerns 4 and 9, were evaluated by the NRC Staff before restart of North Anna 1 and 2, but disposition of these concerns by the NRC Staff differs from the course of action requested in the petition. In that respect, these aspects of the petition were denied.

DD-12-2 VIRGINIA ELECTRIC AND POWER COMPANY (North Anna Power Station, Units 1 and 2), Docket Nos. 50-338, 50-339 (License Nos. NPF-4, NPF-7); REQUEST FOR ACTION; October 19, 2012; PARTIAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By letter dated October 20, 2011, and supplements, Paul Gunter et al. (the Petitioners) filed a 10 C.F.R. § 2.206 petition. The Petitioners requested that the NRC suspend the operating licenses of North Anna Power Station, Units 1 and 2, until the completion of a set of activities described in the petition are completed.

B A final Partial Director's Decision (DD) on this petition was issued on October 19, 2012. The final Partial DD addresses the Petitioners' requested action as follows: With respect to the Petitioners' request, the NRC Staff concluded that it has partially granted that request in that the NRC issued CAL No. 2-2011-001 dated September 30, 2011, which documented that North Anna 1 and 2 could not be restarted unless and until the Licensee had demonstrated to the NRC Staff's satisfaction that "no functional damage has occurred to those features necessary for continued operation without undue risk to the health and safety of the public," consistent with the requirements of 10 C.F.R. Part 100, Appendix A, § V(a)(2).

C Issues in the petition, identified and discussed in the Partial Director's Decision as Concerns 1, 2, 3, 4, and 5, were discussed and substantially addressed, either in the inspection reports issued October 31, 2011, and November 30, 2011, or in the NRC technical evaluation dated November 11, 2011. The activities by the NRC Staff were completed before restart to ensure that, before resuming operations, the Licensee had demonstrated no functional damage had occurred to those features at North Anna 1 and 2 necessary for continued operation without undue risk to the health and safety of the public. In that respect, these concerns described in the petition as requiring completion before the restart of North Anna 1 and 2 were addressed before restart, consistent with the request for enforcement action described in the petition.

D The issue in the petition, identified and discussed in the Partial Director's Decision as Concern 6, was evaluated by the NRC Staff before restart of North Anna 1 and 2, but disposition of this concern by

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the NRC Staff differs from the course of action requested in the petition. In that respect, this aspect of the petition was denied.

- E Six of the issues in the petition, identified and discussed in the Partial Director's Decision as Concerns 7, 8, 9, 10, 11, and 12, were accepted for review by the NRC Staff and were initially identified as concerns that may take longer than the target time frame for reaching a decision on a petition based on the fact that these concerns were undergoing NRC review as part of the agency's response to the Fukushima event in Japan. After reviewing the NRC's progress in responding to the Fukushima event since acceptance of the petition for review, the NRC Staff has determined that Concerns 10 and 12 have been addressed by NRC activities which responded to the Fukushima event. Concerns 7, 8, 9, and 11 are still identified as concerns that will take longer than the target time frame for reaching a decision. The NRC Staff commits to providing periodic status updates to the Petitioners on the resolution of these concerns. Concerns 7, 8, 9, and 11 were not fully addressed in the Partial DD. Therefore, this DD was partial.
- DD-12-3 ENTERGY NUCLEAR OPERATIONS, INC., ENTERGY NUCLEAR INDIAN POINT 2, LLC, and ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point, Units 1, 2, and 3), Docket Nos. 50-003, 50-247, 50-286 (License Nos. DPR-5, DPR-26, DPR-64); REQUEST FOR ACTION; October 24, 2012; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By e-mail dated March 28, 2011, the Attorney General of the State of New York submitted a 10 C.F.R. § 2.206 petition. The Petitioner asked the NRC to take immediate action and issue an Order requiring the following actions regarding Indian Point Nuclear Generating Units No. 1, 2, and 3:
- Identify any violations at Indian Point of paragraphs F and G of section III of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," to 10 C.F.R. § Part 50, "Domestic Licensing of Production and Utilization Facilities," that have existed as of the date of the petition (March 28, 2011).
 - Compel Entergy Nuclear Operations, Inc. (Entergy), and its affiliates to comply on or before September 20, 2011, with the requirements of paragraphs F and G for all fire zones at Indian Point Units 2 and 3, and any Indian Point Unit 1 fire zone or system, structure, or component that Indian Point Units 2 and 3 rely upon.
 - Convene an evidentiary hearing before the Commission to adjudicate the violations at Indian Point by Entergy and its affiliates of paragraphs F and G of 10 C.F.R. Part 50, § III of Appendix R.
- B A final Director's Decision was issued on October 24, 2012.
- C With respect to the Petitioner's request, the NRC Staff concluded that there were no violations of the Commission's fire protection regulations on March 28, 2011. However, through subsequent inspections, NRC inspectors identified violations and the Licensee agreed to take appropriate actions to be in full compliance by spring 2014. Therefore, the NRC granted the Petitioner's request to identify violations of fire protection regulations and to take appropriate enforcement actions.
- D The NRC Staff denied the Petitioner's request to compel full compliance with all fire protection requirements by September 20, 2011. However, subsequent violations were identified and the Licensee has provided its plans and schedules for resolution. Therefore, the NRC granted the Petitioner's request that the Licensee be brought into full compliance with the Commission's fire protection regulations. This is planned to be accomplished by spring 2014.
- E The NRC Staff denied the Petitioner's request for an evidentiary hearing before the Commission.
- DD-13-1 ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR INDIAN POINT 2, LLC (Indian Point, Unit 2), Docket No. 50-247 (License No. DPR-26); REQUEST FOR ACTION; June 7, 2013; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By electronic transmission dated April 16, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12108A052), Dr. C. Jordan Weaver of the Natural Resources Defense Council, Inc. (NRDC), the Petitioner, submitted a petition under Title 10 of the *Code of Federal Regulations* (10 C.F.R.), section 2.206, "Requests for Action Under This Subpart," to Mr. R. W. Borchardt, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC or Commission). The Petitioner requested that the NRC take enforcement action by ordering Entergy Nuclear Operations, Inc. (Entergy), the licensee for Indian Point Nuclear Generating Unit No. 2 (Indian Point 2), to remove the passive autocatalytic recombiners (PARs) from the Indian Point 2 containment. The Petitioner subsequently supplemented the petition by requesting that the PARs be replaced with electrically powered thermal hydrogen recombiners.

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- B In the petition, the Petitioner requested that the NRC order the licensee to remove the PARs from the Indian Point 2 containment because the PAR system could have unintended ignitions in the event of a severe reactor accident, which, in turn, could cause a hydrogen detonation (i.e., a combustion wave traveling at a supersonic speed, relative to the unburned gas). The Petitioner stated that experimental data demonstrate that Indian Point 2's two PAR units could have at least one unintended ignition on their catalytic surfaces after a severe reactor accident.
- C In this Director's Decision, the Deputy Director of the Office of Nuclear Reactor Regulation denied the Petitioner's request. The NRC Staff has reviewed the petition and does not agree that the presence of PARs represents a sufficient risk to warrant their removal by order. Following a severe reactor accident, multiple ignition sources, besides PARs, would be present in containment to initiate combustion at lower flammability limits, which would be expected to keep hydrogen concentrations below detonable levels. Furthermore, the NRC Staff believes that the presence of PARs could prove beneficial in the event of an extended station blackout.
- DD-13-2 ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station), Docket No. 50-293 (License No. DPR-35); REQUEST FOR ACTION; September 26, 2013; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By letter dated July 19, 2010, as supplemented by letter dated August 6, 2010, Pilgrim Watch (the Petitioner) filed a 10 C.F.R. § 2.206 petition. The Petitioner requested that the NRC take the following actions: (1) issue a Demand for Information (DFI) requiring Entergy Nuclear Operations, Inc. (Entergy or the Licensee) to demonstrate that all non-environmentally qualified inaccessible cables at Pilgrim Nuclear Power Station (Pilgrim) are capable of performing their required function; (2) certify that the location, age, and repair history of all cables (accessible and inaccessible) have been identified; (3) ensure that the Licensee monitors all cables before continued operation to demonstrate that the cables can perform their design functions; (4) ensure that the Licensee incorporates in its monitoring program, at a minimum, recommendations from certain aging management guidelines and NRC generic guidance; (5) verify, during the license renewal period, Entergy's implementation through routine baseline inspections; and (6) commit to a timely upgrade of the regulatory guidance for maintaining cable qualification and the verification that the cables can perform their design functions.
- B The final Director's Decision (DD) on this petition was issued on September 26, 2013. The final DD responds to the Petitioner's requested actions as follows: (1) denied the Petitioner's request to issue a DFI and to take certain non-enforcement actions (items 2-4) to demonstrate that accessible and inaccessible cables can perform their design functions, (5) considered the requested action as addressed by the completion of NRC's baseline inspection of license renewal activities in which the NRC determined that the Licensee's commitment associated with the non-EQ inaccessible cables program was adequately implemented and inspected with no findings of significance identified, and (6) considered the requested action as addressed by the issuance of NRC Regulatory Guide 1.218.
- C Regarding the Petitioner's request to issue a DFI and to take certain non-enforcement actions to demonstrate that accessible cables can perform their design functions, the NRC Staff concluded that the Licensee's programs for cable condition monitoring and managing aging effects of inaccessible power cables have been adequately implemented, to the extent that there is reasonable assurance that cables subject to moisture will be adequately managed during the period of extended operation. The NRC did not identify any violations of regulatory requirements during its review. Accordingly, NRC denied the Petitioner's requests as stated above.
- DD-13-3 DUKE ENERGY PROGRESS, INC. (Brunswick Steam Electric Plant, Units 1 and 2), Docket Nos. 50-325, 50-324 (License Nos. DPR-71, DPR-62); REQUEST FOR ACTION; December 30, 2013; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By letter dated July 10, 2012, Mr. David Lochbaum, on behalf of the Union of Concerned Scientists; the North Carolina Waste Awareness & Reduction Network; and the Nuclear Information and Resource Service (the Petitioners) filed a petition (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12193A123) under Title 10 of the *Code of Federal Regulations* (10 C.F.R.), Part 2, section 2.206, "Requests for action under this subpart." The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC, or the Commission) take enforcement action in the form of an order either modifying the Brunswick Steam Electric Plant operating licenses or requiring the licensee to submit amendment requests for these licenses. Specifically, the Petitioners requested that the order result in specified revisions of these technical specifications (TSS) for Brunswick Units 1 and 2:

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(1) Revise TS 2.1, "Safety Limits (SL)," to include a requirement like the one in TS 2.1.1.3 that the water level shall be greater than the top of active irradiated fuel in the spent fuel pool (SFP).

(2) Revise footnote (b) for TS Table 3.3.6.2-1, "Secondary Containment Isolation Instrumentation," to require the Reactor Building Exhaust Radiation-High function to be applicable whenever irradiated fuel is stored in the SFP.

(3) Revise footnote (a) for TS Table 3.3.7.1-1, "Control Room Emergency Ventilation (CREV) System Instrumentation," to require the Control Building Air Intake Radiation-High function to be applicable whenever irradiated fuel is stored in the SFP.

(4)-(8) Revise the APPLICABILITY for these TSs to include whenever irradiated fuel is stored in the SFP:

- TS 3.6.4.1, "Secondary Containment,"
- TS 3.6.4.2, "Secondary Containment Isolation Dampers,"
- TS 3.6.4.3, "Standby Gas Treatment System,"
- TS 3.7.3, "Control Room Emergency Ventilation (CREV) System,"
- TS 3.7.4, "Control Room Air Conditioning (AC) System."

(9)-(12) Revise the APPLICABILITY for the following TSs to be whenever irradiated fuel is stored in the SFP instead of only when irradiated fuel assemblies are being moved in the SFP or secondary containment:

- TS 3.7.7, "Spent Fuel Storage Pool Water Level,"
- TS 3.8.2, "AC [alternating current] Sources — Shutdown,"
- TS 3.8.5, "DC [direct current] Sources — Shutdown,"
- TS 3.8.8, "Distribution Systems — Shutdown."

(13) Revise TS 3.9.7, "Residual Heat Removal (RHR) — High Water Level," and TS 3.9.8, "Residual Heat Removal (RHR) — Low Water Level," or add a new limiting condition for operation (LCO) to require one RHR subsystem to be operable whenever the entire reactor core is offloaded into the SFP.

B In Director's Decision DD-13-3, dated December 30, 2013, the Deputy Director of the Office of Nuclear Reactor Regulation denied the Petitioner's request. The NRC Staff evaluated the Petitioners' requests against the requirements and guidance for modifying the operating license. The Staff's conclusions are summarized below:

Requested Action 1 — Addition of an SFP Level Safety Limit: The NRC Staff found the proposed safety limit is not appropriate and would be redundant to TSs already in place.

Requested Actions 2 through 12 — Modify the applicability of each LCO to apply whenever irradiated fuel is stored in the SFP rather than during movement of irradiated fuel: The NRC Staff determined that the systems and functions described in the Petitioners' Requested Actions 2 through 12 would not need to have conditions or limitations established in the TSs when all irradiated fuel is seated in the SFP storage racks or in the reactor vessel.

Requested Action 13 — The Petitioners requested that the NRC revise TS 3.9.7, "Residual Heat Removal (RHR)-High Water Level," and/or TS 3.9.8, "Residual Heat Removal (RHR)-Low Water Level," or add a new LCO to require one RHR subsystem to be operable whenever the entire reactor core is offloaded into the SFP: The NRC Staff found out that the requested Action 13 does not satisfy the TS policy and the requested action is denied.

DD-14-1 FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-335, 50-389 (License Nos. DPR-67, NPF-16); (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250, 50-251 (License Nos. DPR-31, DPR-41); REQUEST FOR ACTION; January 14, 2014; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A On April 23, 2012, Mr. Thomas King (the Petitioner) e-mailed (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13295A021) the U.S. Nuclear Regulatory Commission (NRC, or the Commission). The Petitioner requested that the NRC take enforcement action against the St. Lucie Plant, Units 1 and 2, and the Turkey Point Nuclear Generating Plant, Units 3 and 4 (St. Lucie and Turkey Point plants). Florida Power & Light Company is the Licensee for these plants. The NRC Staff treated the request for enforcement action as a petition according to Title 10 of the *Code of Federal Regulations* (10 C.F.R.), section 2.206, "Requests for Action Under This Subpart."

B The Petitioner requested that the NRC take immediate enforcement action in the form of shutting down or prohibiting the restart of the St. Lucie and Turkey Point plants until a criminal investigation of

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the AMES Group, LLC (AMES, a contractor that performed work for the Licensee at the St. Lucie and Turkey Point plants) is complete and everything has been verified safe. As the basis for the request, the Petitioner stated the Licensee was in violation of its policies and procedures on contractor trustworthiness and that work on safety-related equipment may have been done by unqualified contractor employees. The Petitioner specifically requested that the NRC prevent the St. Lucie and Turkey Point plants from starting up until the Licensee's contractor is cleared, all documents and work performed on safety-related equipment at both plants is independently verified, and all critical work and motor-operated valve testing is redone.

- C In this Director's Decision, the Director of the Office of Nuclear Reactor Regulation denied the Petitioner's request. The NRC did not substantiate the Petitioner's concern that AMES had sought to misrepresent the capabilities of its technicians to NRC-licensed facilities. As discussed in the letter to the Licensee dated May 23, 2013 (ADAMS Accession No. ML13205A243), based on the evidence obtained, the NRC did not substantiate that the contractor willfully submitted falsified training and qualification documents for any AMES employee for consideration by the Licensee. Therefore, the NRC found no basis for expanding its current level of regulatory oversight or otherwise taking enforcement action against the Licensee based on the Petitioner's concerns.
- DD-14-2 ALL OPERATING REACTOR LICENSEES; REQUEST FOR ACTION; May 6, 2014 (Revised June 17, 2014); REVISED DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A On July 27, 2011, Mr. Geoff Fettus, Senior Project Attorney for the Natural Resources Defense Council (NRDC), submitted a petition under Title 10, "Energy," of the *Code of Federal Regulations* (10 C.F.R.) section 2.206, "Requests for Action Under This Subpart," to Annette Vietti-Cook, Secretary of the U.S. Nuclear Regulatory Commission (NRC) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11216A085). Mr. Fettus submitted the petition on behalf of the NRDC (the Petitioner). The petition was submitted in the form of twelve letters, which the NRC treated as one petition.
- B The Petitioner requested that the NRC order licensees to comply with twelve specific recommendations in the NRC Near-Term Task Force (NTTF) Report, "Recommendations for Enhancing Reactor Safety in the 21st Century," issued July 12, 2011 (ADAMS Accession No. ML111861807). The Petitioner cited the NTTF Report as the rationale for and basis of the petition.
- C In Director's Decision DD-14-2, issued May 6, 2014, the Deputy Director of the Office of Nuclear Reactor Regulation determined that the Petitioner's requests were addressed through the issuance of orders, 10 C.F.R. 50.54(f) letters, rulemaking, and the Emergency Response Data System initiative.
- D Subsequently, the NRC found two revisions necessary, and on June 17, 2014, issued a revised Director's Decision DD-14-2 (ADAMS Accession No. ML14148A152). The NRC's response to the Petitioner's Request 7 is corrected to reference the *final* regulatory basis issued on October 1, 2013 (ADAMS Accession No. ML13101A344) instead of the draft regulatory basis as originally stated. The NRC's response to the part of Request 8 stating that licensees should be required to "maintain ERDS [Emergency Response Data System] capability throughout the accident" is corrected to state that the request will be addressed by an advance notice of proposed rulemaking (ANPR).
- DD-14-3 DUKE ENERGY FLORIDA, INC. (Crystal River Nuclear Generating Plant, Unit 3), Docket No. 50-302 (License No. DPR-72); REQUEST FOR ACTION; May 6, 2014; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) engage enforcement action to prevent Crystal River, Unit 3 (CR-3) from restarting with regard to potential violations of NRC regulations for containment integrity. Specifically, the petition requested the following actions: (1) Physically remove the outer 25 centimeters (10 inches) of concrete surrounding the CR-3 containment building from the top of the containment building to the bottom of the containment building and encompassing 360 degrees around the entire containment building; (2) Test samples of the concrete removed from the CR-3 containment building for composition and compare the test results to a sample of concrete from a similarly designed facility like the Florida Power and Light Company, Turkey Point Nuclear Plant; (3) Keep the CR-3 in cold shutdown mode until such time as the licensee can demonstrate full compliance with its NRC operating license for CR-3 within the safety margins delineated in the Licensee's final safety analysis report (FSAR) and within the CR-3 site-specific technical specifications; and (4) Provide the public with an opportunity to intervene at a public hearing before the NRC Atomic Safety and Licensing Board to challenge any certification made by the Licensee to the NRC that it has

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reestablished full compliance with 10 C.F.R. Part 50, "Domestic Licensing of Production and Utilization Facilities," and the safety margins delineated in its FSAR and technical specifications.

- B The final Director's Decision on this petition was issued on May 6, 2014. The final Director's Decision determined that the Petitioner obtained the requested actions without the NRC initiating an enforcement action. Since the submission of the petitions and supplement, CR-3 certified the permanent cessation of power operations and permanent removal of fuel from the reactor vessel. As such, the Petitioner's request for the NRC to issue an order for CR-3 to remain in a shutdown mode is moot because the Licensee decided to retire the plant.

DD-14-4 SCIENCE APPLICATIONS INTERNATIONAL CORPORATION (SAIC) and CSMI, LLC, Docket No. 030-38594 (License No. 20-35022-01); REQUEST FOR ACTION; May 27, 2014; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A By letter dated August 10, 2013, George E. Walther-Meade from Science Applications International Corporation (SAIC or the Petitioner) filed a petition (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13226A020) pursuant to Title 10 of the *Code of Federal Regulations* (10 C.F.R.) § 2.206, "Requests for Action Under This Subpart". The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) take immediate enforcement action by issuing an order to revoke CSMI, LLC (CSMI) License Number 20-35022-01. As the basis for the request, the Petitioner stated that CSMI (the Licensee) had committed a willful violation involving falsification of information. Such violations are of particular concern to the NRC because the NRC's regulatory program is based on licensees acting with integrity and communicating with candor.

- B In Director's Decision DD-14-4, dated May 27, 2014, the Deputy Director of the Office of Federal and State Materials and Environmental Management Programs denied the Petitioner's request. The NRC Staff evaluated the information provided by the Petitioner, obtained during the PRB public meeting, information gathered during an onsite inspection at CSMI, and comments received on the proposed Director's Decision. Based on its review, the NRC Staff did not substantiate the Petitioner's concern that CSMI committed a willful violation involving falsification of information. Additionally, the Staff did not identify any safety basis for revoking or suspending CSMI License Number 20-35022-01. However, the NRC addressed certain issues raised by the Petitioner in its comments on the Proposed Director's Decision in a separate letter (ADAMS Accession No. ML14128A268) and process. As noted in that letter, as a result of its review of the additional information provided by the Petitioner, the Staff corrected CSMI's license to authorize only the provision of routine maintenance services.

DD-14-5 EXELON GENERATION COMPANY, LLC (Braidwood Nuclear Power Station, Units 1 and 2; Byron Nuclear Power Station, Units 1 and 2), Docket Nos. STN 50-456, STN 50-457, STN 50-454, STN 50-455 (License Nos. NPF-72, NPF-77, NPF-37, NPF-66); REQUEST FOR ACTION; December 22, 2014; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A By e-mail to Mr. R. W. Borchardt, dated April 20, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML 12130A318), Mr. Barry Quigley (the Petitioner) filed a petition under Title 10, "Energy," of the *Code of Federal Regulations* (10 C.F.R.) § 2.206, "Requests for Action Under This Subpart." The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) immediately shut down Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, until all turbine building (TB) high-energy line break (HELB) concerns were identified and those important to safety were corrected. The Petitioner raised several concerns related to potential consequences of TB HELBs to support his request for immediate shutdown of the Braidwood and Byron plants.

- B In this Director's Decision, the Director of the Office of Nuclear Reactor Regulation (the Director) denied the Petitioner's request to immediately shut down the Braidwood and Byron Station units. The Director partially granted the petition in that the Petitioner's concern related to the licensing basis requirements for HELB was addressed during the review of the license amendment request for the Braidwood and Byron Stations' measurement uncertainty recapture (MUR) uprate. The results of that review are documented in the safety evaluation that was issued with the MUR uprate amendment on February 7, 2014 (ADAMS Accession No. ML13281A000).

- C With regard to the three other concerns raised in the petition, the NRC Staff concluded that there were reasonable expectations of equipment operability for emergency diesel generator operability, high temperature in the engineered safety feature switchgear rooms, and structural limits on the block wall between the engineered safety feature switchgear rooms.

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- DD-15-1 ALL GENERAL ELECTRIC MARK I BOILING-WATER REACTOR OPERATING LICENSEES; REQUEST FOR ACTION; January 15, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A On April 13, 2011, Mr. Paul Gunter, along with Mr. Kevin Kamps, of Beyond Nuclear (the Petitioner) requested that the NRC order the immediate suspension of the operating licenses of all General Electric (GE) boiling-water reactors (BWRs) that use the Mark I primary containment system. The Petitioner cited the Fukushima Dai-ichi accident in Japan as the rationale for and basis of the petition.
- B On January 15, 2015, the NRC evaluated and provided final resolutions to each of the Petitioner's requests.
- DD-15-2 ENTERGY NUCLEAR OPERATIONS, INC. (James A. FitzPatrick Nuclear Power Plant), Docket No. 50-333 (License No. DPR-059); REQUEST FOR ACTION; October 17, 2014; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By electronic mail dated July 25, 2013, as supplemented on November 13, 2013, Mr. David Lochbaum filed a petition under section 2.206, "Request for Action Under This Subpart," of Title 10 of the *Code of Federal Regulations*. Mr. Lochbaum filed the petition on behalf of Alliance for a Green Economy, Beyond Nuclear, Citizens Awareness Network, and the Union of Concerned Scientists (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13217A061).
- B The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take an enforcement action by imposing a regulatory requirement that all the condenser tubes be replaced at the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) prior to the reactor restarting from its fall 2014 refueling outage.
- C As a basis for their petition, the Petitioners asserted that FitzPatrick is experiencing abnormally high occurrences of condenser tube failures. To repair the leaks, Entergy Nuclear Operations Inc. routinely reduces power, makes the repairs needed, and returns to full power. The Petitioners assert that these power excursions constitute a risk to public health and safety. Operating experience indicates that condenser tube leaks have contaminated the reactor coolant water with impurities from the condenser cooling water and have caused extensive damage to nuclear power plant components.
- D In this Director's Decision, the Director of the Office of Nuclear Reactor Regulation (NRR) determined that the licensee's evaluation of condenser tube failures was thorough, but its corrective actions were not effective in reducing the unplanned power changes. The Director of NRR also determined that the NRC's evaluations of the Petitioners' concerns, including consideration of tube leaks, unplanned power changes, and potential primary coolant contamination, did not constitute any violations that were more than minor. Thus, the violations did not warrant the requested enforcement action. The NRC will continue its normal regulatory oversight of FitzPatrick to ensure its safe operation. Consequently, the Petitioners' request for the enforcement action was denied. Incidentally, the replacement of all condenser tubes was completed by the Licensee in the fall 2014 refueling outage.
- DD-15-3 ENTERGY NUCLEAR OPERATIONS, INC. (Palisades Nuclear Plant), Docket No. 50-255 (License No. DPR-20); REQUEST FOR ACTION; April 6, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- DD-15-4 OMAHA PUBLIC POWER DISTRICT (Fort Calhoun Station, Unit 1), Docket No. 50-285 (Renewed License No. DPR-40); REQUEST FOR ACTION; June 3, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- DD-15-5 OMAHA PUBLIC POWER DISTRICT (Fort Calhoun Station, Unit 1), Docket No. 50-285 (Renewed License No. DPR-40); NEBRASKA PUBLIC POWER DISTRICT (Cooper Nuclear Station), Docket No. 50-298 (Renewed License No. DPR-46); REQUEST FOR ACTION; June 3, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- DD-15-6 ALL OPERATING REACTOR LICENSEES; REQUEST FOR ACTION; June 17, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- DD-15-7 SOUTHERN CALIFORNIA EDISON COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361, 50-362 (License Nos. NPF-10, NPF-15); REQUEST FOR ACTION; October 2, 2015; REVISED DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A On June 18, 2012, the Petitioner filed a petition for intervention and hearing on behalf of Friends of the Earth, requesting the Nuclear Regulatory Commission (NRC) to order Southern California Edison (SCE) to submit a license amendment application for the design and installation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, replacement steam generators (SGs). As the basis for the petition request, the Petitioner stated that the Licensee violated Title 10 of the *Code of Federal*

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Regulations (10 C.F.R.), section 50.59, "Changes, tests, and experiments," when it replaced its SGs in 2010 and 2011 without first obtaining NRC approval of the design changes through a license amendment. In its November 8, 2012 Memorandum and Order, CLI-12-20, 76 NRC 437 (2012), on this matter, the Commission referred the portion of the petition that concerns the asserted 10 C.F.R. § 50.59 violation to the NRC's Office of the Executive Director for Operations for consideration under 10 C.F.R. § 2.206, "Request for action under this subpart." The Petitioner supplemented the petition by letters dated November 16, 2012, and February 6, 2013.

B The NRC Staff determined that the Petitioner requested the NRC to order SCE to submit a license amendment application for the design and installation of the SONGS, Units 2 and 3, replacement SGs. The Petitioner also requested an additional enforcement action that the NRC suspend SCE's licenses until they are amended.

C On July 28, 2015, the NRC issued a final director's decision (DD). The decision stated that, because the request for the NRC to order the Licensee to submit a license amendment application for the design and installation of the replacement SGs and to suspend SCE's licenses until they are amended is moot, the Director of the Office of Nuclear Reactor Regulation (NRR) would not be instituting the proceeding Petitioner requested, either in whole, or in part.

D Subsequently, the NRC identified portions of the DD that required clarification regarding the scope of the petition and the decision. Accordingly, on October 2, 2015, the DD was revised to clarify that the scope of the petition referred to the NRC Staff in CLI-12-20 includes the underlying question of whether the Licensee violated 10 C.F.R. § 50.59 when it replaced the SGs at SONGS, Units 2 and 3, without first obtaining a license amendment. The decision also addresses the Staff's resolution of this underlying question and the conclusion is updated to reflect the resolution of this underlying question. The revised DD also clarifies additional Staff activities associated with the SONGS SG event followup that support the Staff's conclusion regarding whether the Licensee violated 10 C.F.R. § 50.59 by replacing the SGs without a license amendment.

E Notwithstanding the clarifications in the revised DD, the Director of NRR will not be instituting the requested proceeding.

DD-15-8 ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR FITZPATRICK, LLC (James A. FitzPatrick Nuclear Power Plant), Docket No. 50-333 (License No. DPR-59); ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR GENERATION COMPANY (Pilgrim Nuclear Power Station), Docket No. 50-293 (License No. DPR-35); ENTERGY NUCLEAR OPERATIONS, INC., and ENTERGY NUCLEAR VERMONT YANKEE, LLC (Vermont Yankee Nuclear Power Station), Docket No. 50-271 (License No. DPR-28); REQUEST FOR ACTION; August 27, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By electronic transmission dated March 18, 2013, Mr. Timothy Judson, President of Citizens Awareness Network, filed a 10 C.F.R. § 2.206 petition, on behalf of the Alliance for a Green Economy, Citizens Awareness Network, Pilgrim Watch, and Vermont Citizens Action Network (hereafter, referred to as "the Petitioners"). The petition was supplemented on April 23, May 7, June 28, July 22, October 16, November 13, November 27, and December 2, 2013; October 20, 2014; and January 27, 2015. The Petitioners requested that the NRC take the following actions: (1) suspend operations at James A. FitzPatrick Nuclear Power Plant (FitzPatrick) and Vermont Yankee Nuclear Power Station (Vermont Yankee); (2) investigate whether Entergy Nuclear Operations, Inc. (ENO, the Licensee) possesses sufficient funds to cease operations and decommission FitzPatrick and Vermont Yankee, per 10 C.F.R. § 50.75, "Reporting and Recordkeeping for Decommissioning Planning;" and (3) investigate ENO's current financial qualifications per 10 C.F.R. § 50.33(f)(5) to determine whether the Licensee remains qualified to continue operating Pilgrim Nuclear Power Station (Pilgrim).

B The final Director's Decision (DD) on this petition was issued on August 27, 2015. The final DD responds to the Petitioners' requested actions as follows: (1) denied the Petitioners' request to shut down FitzPatrick because the NRC Staff has determined ENO is operating FitzPatrick and Vermont Yankee in a safe manner (ENO permanently ceased power operations at VY in December 2014); (2) determined that no further investigation into ENO's financial status is necessary to ensure public health, safety, and the environment because the NRC Staff has independently determined that both FitzPatrick and Vermont Yankee have sufficient funding available for decommissioning, and (3) granted the Petitioners' request to examine whether ENO is financially qualified to operate Pilgrim. The NRC Staff reviewed information submitted by ENO related to its financial qualifications and found that the Licensee's current

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financial condition is adequate and allows for the continued safe operation at Pilgrim. The NRC Staff also determined that ENO remains financially qualified to hold the operating authority under the Pilgrim license.

DD-15-9 VIRGINIA ELECTRIC AND POWER COMPANY (North Anna Power Station, Units 1 and 2), Docket Nos. 50-338, 50-339 (License Nos. NPF-4, NPF-7); REQUEST FOR ACTION; October 30, 2015; REVISED DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A By letter dated October 20, 2011, Paul Gunter, Kevin Kamps, Thomas Saporito, Paxus Calta, Alex Jack, Scott Price, and John Cruickshank (Petitioners) filed a petition under Title 10 of the *Code of Federal Regulations* (10 C.F.R.), section 2.206, "Requests for Action Under This Subpart." The NRC Staff reviewed the petition and the Petitioners' supplemental correspondences on November 2, 2011, and December 15, 2011. The Petitioners requested in the petition that the NRC suspend the operating licenses for the North Anna Power Station, Units 1 and 2 (North Anna 1 and 2), until the completion of a set of activities described in the petition. On March 16, 2012, the NRC Staff acknowledged receiving the petition and stated that, under 10 C.F.R. § 2.206, out of the sixteen concerns presented, twelve concerns were accepted for review, and that the NRC intended to use the results of the Fukushima review to inform its final decision on whether to implement the requested actions.

B The NRC Staff issued the partial director's decision (DD) on October 19, 2012. As detailed in the partial DD, the NRC's Office of Nuclear Reactor Regulation (NRR) decided to partially grant the Petitioners' request. As also detailed in the partial DD, eight of the accepted twelve concerns were closed. The remaining four concerns accepted for review were identified as those that may take longer than the target time frame for reaching a decision on a petition based on the fact that they were undergoing NRC review as part of the agency's response to the Fukushima event in Japan.

C On August 21, 2015, the NRC issued a final DD stating that the NRC had evaluated the Petitioner's remaining four concerns, including comments received on the April 17, 2015 proposed DD. Based upon the progress in responding to the Fukushima event since acceptance of the petition for review, the NRC Staff determined that these four remaining concerns have been adequately addressed. Therefore, the NRC decided to close the remaining four concerns.

D Subsequently, the NRC identified portions of the final DD on the Petitioners' concern regarding long-term storage of spent fuel in the spent fuel pool at North Anna 1 and 2 and at the North Anna ISFSI that required clarification. Accordingly, the DD's response to that concern (Concern 8) has been revised to clarify the NRC's resolution of the concern. In addition, the responses to the other three concerns addressed in the DD (Concerns 7, 9, and 11) have been updated to reflect developments that have occurred since the August 21, 2015 issuance of the Director's Decision.

E None of the above-described revisions or updates change the conclusion in the Director's Decision issued on August 21, 2015, that enforcement action is not warranted. Therefore, notwithstanding the clarifications in the revised DD, the Director of NRR will not be instituting the requested enforcement proceeding.

DD-15-10 FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4), Docket Nos. 50-250, 50-251 (License Nos. DPR-31, DPR-41); REQUEST FOR ACTION; September 23, 2015; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A On July 18, 2014, as supplemented by e-mail and the transcripts from a teleconference on September 3, 2014 (Agencywide Documents Access and Management System (ADAMS) package Accession No. ML14202A521), Mr. Thomas Saporito (the Petitioner) of Saprodani Associates filed a petition under Title 10 of the *Code of Federal Regulations* (10 C.F.R.), section 2.206, "Requests for Action Under This Subpart." The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) take enforcement action against Florida Power & Light Company (FPL, the Licensee) related to the Turkey Point Nuclear Generating Plant, Units 3 and 4 (Turkey Point).

B The Petitioner requested that the NRC suspend or revoke the licenses for Turkey Point, issue a violation with a civil penalty of \$1 million, and issue a confirmatory order that the plant stays in a cold shutdown mode until the Licensee completes an independent assessment (via a contractor) to assess, fully understand, and correct the root cause of the rise in ultimate heat sink (UHS) temperature; a comprehensive evaluation of all nuclear safety-related equipment and components that may have been affected; and an independent evaluation of all nuclear safety-related equipment and components that may have been affected. As the basis for his request, the Petitioner stated that operation at an UHS temperature in excess of 100 degrees Fahrenheit would result in a loss of control of the reactors and an accident at the plant.

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- C By letter dated January 30, 2015 (ADAMS Accession No. ML14349A597), the NRC accepted a portion of the petition for review in the 10 C.F.R. § 2.206 process and explained why the NRC did not accept the remaining portions of the petition for review under the 10 C.F.R. § 2.206 process. The portion of the petition that the NRC accepted for review under the 10 C.F.R. § 2.206 process was the Petitioner's request that the NRC take enforcement action until the Licensee completes an independent root-cause assessment for the rise in UHS temperature. The letter also states that the NRC Staff would determine the resolution of the petition after the NRC regional staff completes its inspection of the Licensee's root-cause assessment and associated corrective actions.
- D In Director's Decision DD-15-10, the Director of the Office of Nuclear Reactor Regulation denied the Petitioner's request. The NRC did not identify any inspection findings related to its review of the Licensee's root-cause assessment for the UHS temperature. Therefore, the NRC did not have a basis for expanding its current level of regulatory oversight or for taking the Petitioner's requested enforcement actions against the Licensee. The NRC did not find that the continued operation of the plants would adversely affect the health and safety of the public. Therefore, the NRC denied the Petitioner's requested enforcement actions against the Licensee.
- DD-15-11 BOILING-WATER REACTOR OPERATING POWER REACTORS WITH MARK I AND MARK II CONTAINMENT DESIGNS; REQUEST FOR ACTION; November 2, 2015; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The U.S. Nuclear Regulatory Commission (NRC) Staff has reviewed the petition dated July 29, 2011, filed under section 2.206, "Requests for action under this subpart," of Title 10 of the *Code of Federal Regulations* (10 C.F.R.), by the Union of Concerned Scientists. The petition requested that the NRC issue a demand for information (DFI) to a number of boiling-water reactor (BWR) licensees with Mark I and Mark II containment designs regarding compliance of the facility design for spent fuel pool (SFP) heat removal with General Design Criterion (GDC) 44, "Cooling Water," of Appendix A to 10 C.F.R. Part 50 and section 50.49, "Equipment Qualification," of 10 C.F.R. Part 50. The NRC Staff does not believe that its response to this issue needs to involve issuance of a DFI.
- B The NRC Staff considers GDC 61, "Fuel Storage and Handling and Radioactivity Control," applicable to the SFP heat removal function rather than GDC 44. Criterion 61 requires, in part, that the fuel storage system be designed to prevent significant reduction in coolant inventory under accident conditions and requires a residual heat removal capability having reliability and testability that reflects the importance to safety of decay heat and other residual heat removal. This criterion is appropriate for the SFP heat removal function because the SFP contains a very large inventory of coolant that mitigates the effect of any temporary loss of the SFP heat removal function, which provides time to take corrective action, and the heat that the cooling system is intended to remove from the SFP only rarely approaches the design heat removal rate even with maximum SFP heat load.
- C The NRC Staff has determined that the heat removal design of all SFPs provides adequate assurance of public health and safety. During the operating license review and subsequent operating license amendment reviews involving SFP cooling, the Staff accepted the SFP cooling system designs at all subject facilities because, in part, these designs provide a reliable decay heat removal capability that reflects the importance to safety of decay heat removal, which is consistent with the criteria in GDC 61.
- D Because the design criterion applicable to SFP cooling specifies reliability of the decay heat removal function consistent with its importance to safety, the Staff determined that the probability of damage to the SFP forced cooling system, the redundancy of components, and the time available for recovery of the cooling function are appropriate considerations in assessing the consequences of design-basis events. With those considerations, the NRC Staff found that the existing designs of the SFP forced cooling systems adequately protect against a sustained loss of the cooling function. Consequently, electrical equipment important to safety is not required to be qualified for the environmental effects of sustained SFP boiling under 10 C.F.R. § 50.49, because that state has not been included within the design bases of the subject facilities.
- E After the earthquake and tsunami at the Fukushima Dai-ichi Nuclear Power Plant in March 2011, the NRC Staff issued Order EA-12-049, on March 12, 2012 (ADAMS Accession No. ML12056A045), which imposed additional requirements to ensure that strategies to maintain or restore core cooling, containment, and SFP cooling are available for a range of external initiating events. Guidance for implementation of these capabilities includes measures to manage the environmental effects created by an SFP at saturation

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conditions. While this NRC order required licensees to have enhanced mitigation strategies for beyond-design-basis external events, it is reasonable to assume that these mitigation capabilities would also be available for plant operators to use following design-basis events.

- F The NRC denies the petition because the NRC Staff has reasonable assurance that the design and operation of SFP cooling systems for BWRs with Mark I and Mark II containment designs satisfy the current design and licensing basis. The NRC Staff has found that existing structures, systems, or components related to the storage of irradiated fuel provide adequate protection for public health and safety. Information supporting this conclusion is readily available in the licensees' safety analysis reports. However, this petition was considered in the development of the implementing guidance for strategies addressing beyond-design-basis events, and the guidance includes measures to manage environmental conditions that could result from SFPs at saturation conditions.

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CASES

- A & E Coal Co. v. Adams*, 694 F.3d 798, 802 (6th Cir. 2012)
preamble of a rule, unlike the rule itself, does not have the force of law and may not be used to expand the reach of the regulations; LBP-14-9, 80 NRC 52 n.161 (2014)
- Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967)
in determining whether an issue is ripe for judicial decision, a court must evaluate fitness of the issues for judicial decision and hardship to the parties of withholding court consideration; LBP-12-19, 76 NRC 199 (2012)
ripeness is a justiciability doctrine designed to prevent Article III courts from premature judicial review of abstract controversies and to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties; LBP-12-19, 76 NRC 198 (2012)
- Aberdeen & Rockfish R.R. Co. v. Students Challenging Regulatory Agency Procedures*, 422 U.S. 289, 320 (1975)
under NEPA § 102(2)(C), which requires that an agency create an environmental impact statement, the moment at which an agency must have a final statement ready is the time at which it makes a recommendation or report on a proposal for federal action; LBP-13-10, 78 NRC 145 (2013)
- Abourezk v. Reagan*, 785 F.2d 1043, 1053 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987)
NRC is bound by the unambiguous language of its own regulations; LBP-11-22, 74 NRC 276 (2011)
- Adikes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970)
no defense to an insufficient showing by summary disposition proponent is required; LBP-12-4, 75 NRC 219 (2012)
summary judgment movant has the burden to show that he is entitled to judgment under established principles, and if he does not discharge that burden then he is not entitled to judgment; LBP-12-4, 75 NRC 219 (2012)
that a summary disposition opponent declines to oppose the motion does not mean that movant is entitled to a favorable judgment; LBP-12-4, 75 NRC 219 (2012)
- Advanced Medical Systems, Inc.* (1020 London Road, Cleveland, Ohio), LBP-98-32, 48 NRC 374, 377-78 (1998)
proceedings have been consolidated for the renewal of a materials license and to contest NRC Staff's denial of that renewal in order to, among other things, litigate a common issue only once; CLI-14-5, 79 NRC 262 n.39 (2014)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 281-82 (1990)
a materials license suspension proceeding is not an adversary adjudication for purposes of the Equal Access to Justice Act because the Atomic Energy Act of 1954, as amended, does not require such a hearing to be on the record pursuant to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 355 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 284 (1990)
in cases involving license suspension or revocation, where the Atomic Energy Commission's staff is cast in an accusatory role, the precautions prescribed by the Administrative Procedure Act should be carefully observed; LBP-11-8, 73 NRC 357 n.31 (2011)

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- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 289 (1990)
the Administrative Conference of the United States 1981 and 1985 Model Rules rejected language that would have extended the Equal Access to Justice Act's applicability to proceedings in which an agency observes formal Administrative Procedure Act § 554 procedures as a matter of discretion; LBP-11-8, 73 NRC 356 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 289-91 (1990)
an agency's discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether the Equal Access to Justice Act applies to a particular proceeding; LBP-11-8, 73 NRC 360 (2011)
the Equal Access to Justice Act does not apply when an agency merely voluntarily chooses to abide by formal Administrative Procedure Act § 554 procedures, despite lacking a statutory mandate to do so; LBP-11-8, 73 NRC 356 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 291 (1990)
attorneys' fees may be awarded in adversary adjudications that are governed by Administrative Procedure Act § 554, but they may not be awarded in adversary adjudications that Congress did not subject to that section; LBP-11-8, 73 NRC 356 (2011)
because the Equal Access to Justice Act operates as a waiver of sovereign immunity it must be narrowly construed to avoid creating a waiver of sovereign immunity that Congress did not intend; LBP-11-8, 73 NRC 357 (2011)
despite the fact that, although not required by statute, the Commission conducts materials license suspension cases as formal, on-the-record hearings like those described by Administrative Procedure Act § 554, the Equal Access to Justice Act does not apply to such proceedings and may not serve as the basis for an award of attorney's fees; LBP-11-8, 73 NRC 356-57 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), ALAB-929, 31 NRC 271, 291 n.14 (1990)
Equal Access to Justice Act applies only when an adjudication is required by statute, not when required by the Constitution, to be conducted on the record; LBP-11-8, 73 NRC 362 (2011)
inasmuch as litigants against the government manifestly have no constitutional right to be compensated out of public funds for their attorneys' fees, it cannot be doubted that Congress has the power to limit the reach of the Equal Access to Justice Act; LBP-11-8, 73 NRC 357, 361 (2011)
there is nothing in the legislative history of the Equal Access to Justice Act or the pertinent case law to suggest a congressional intent to extend the EAJA to cases in which due process, rather than a statute, requires an Administrative Procedure Act § 554 hearing; LBP-11-8, 73 NRC 357 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 182 (1993)
licensee challenged NRC Staff's use of immediately effective orders after fulfilling the underlying requirements of those orders; CLI-13-9, 78 NRC 557 n.23 (2013)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 185 (1993)
exception to the mootness doctrine occurs if the challenged action is too short in duration to be litigated and there is a reasonable expectation that the same litigants will be subjected to the same action again; CLI-13-9, 78 NRC 558 n.26 (2013)
exception to the mootness doctrine occurs when a case is capable of repetition, yet evading review; CLI-13-10, 78 NRC 568 n.35 (2013)
general proposition that an appeal is not moot if there is a possibility of similar acts recurring in the future applies to instances where the same litigants likely will be subject to similar future action; CLI-13-9, 78 NRC 557 (2013)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 187 (1993)
exception to the mootness doctrine is recognized when the same litigants are likely to be subject to similar future action; CLI-13-10, 78 NRC 568 (2013)

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- to show that the case is not moot, movant must show a reasonable expectation that it will be subjected to the same action again; CLI-13-9, 78 NRC 557 n.23 (2013)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, OH 44041), CLI-93-22, 38 NRC 98, 102 (1993)
- any doubt as to the existence of a genuine issue of material fact is resolved against the summary disposition movant; LBP-11-4, 73 NRC 100 (2011)
- because the initial burden rests on the summary disposition movant, a licensing board must examine the record in the light most favorable to the nonmoving party and all justifiable inferences must be drawn in favor of the nonmoving party; LBP-11-14, 73 NRC 595 (2011); LBP-12-19, 76 NRC 190 (2012); LBP-12-23, 76 NRC 450-51 (2012)
- if a summary disposition proponent fails to make the requisite showing, the board must deny the motion even if the opposing party chooses not to respond or its response is inadequate; LBP-11-4, 73 NRC 99 (2011); LBP-11-14, 73 NRC 595 (2011); LBP-12-19, 76 NRC 190 (2012); LBP-12-23, 76 NRC 450 (2012)
- if movant makes a proper showing for summary disposition, and if the opposing party does not show that a genuine issue of material fact exists, the board may summarily dispose of all arguments on the basis of the pleadings; LBP-11-4, 73 NRC 100 n.19 (2011); LBP-11-7, 73 NRC 263 (2011); LBP-12-19, 76 NRC 191 (2012)
- NRC standards for ruling on summary disposition motions are analogous to the standards for granting summary judgment motions under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-7, 73 NRC 263 (2011); LBP-11-31, 74 NRC 648 (2011)
- summary disposition movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law; LBP-12-23, 76 NRC 450, 466 (2012)
- summary disposition opponent need not demonstrate that it would prevail on the issues at hand, but it must at least show that there is a genuine dispute of material fact to be tried; LBP-12-19, 76 NRC 191 (2012)
- summary judgment should be granted only where the truth is clear; LBP-11-14, 73 NRC 595 (2011)
- summary judgment, which is appropriate upon proper showings of the lack of a genuine, triable issue of material fact, is an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action; LBP-11-4, 73 NRC 99 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993)
- if summary disposition movant meets its burden, opponent must set forth specific facts showing that there is a genuine issue and may not rely on mere allegations or denials; LBP-12-19, 76 NRC 190 (2012)
- NRC applies summary disposition standards analogous to the standards used by the federal courts when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-14, 73 NRC 595 (2011); LBP-12-19, 76 NRC 190 (2012); LBP-12-23, 76 NRC 450 (2012)
- summary disposition movant bears the initial burden of showing the absence of a genuine issue as to any material fact and that it is entitled to judgment as a matter of law; LBP-12-19, 76 NRC 190 (2012)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 297 (1994)
- appellants must clearly identify the errors in the decision below and ensure that their brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for their claims; CLI-11-8, 74 NRC 220 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 301 (1994)
- immediately effective enforcement orders must be based on preliminary investigation or other emerging information that is reasonably reliable and indicates the need for immediate action; LBP-11-8, 73 NRC 369-70 (2011)
- standard that must be met before NRC Staff can issue an immediately effective enforcement order is one of adequate evidence, which is akin to the test for probable cause; LBP-11-8, 73 NRC 9 (2011)

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- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 302 n.22 (1994), *aff'd*, *Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (6th Cir. 1995)
NRC administrative proceedings have applied a “preponderance of the evidence” standard in reaching the ultimate conclusions after hearing in resolving a proceeding; LBP-14-2, 79 NRC 149 n.78 (2014)
NRC has never adopted a “clear and convincing” standard as the evidentiary yardstick in its enforcement proceedings, nor is it required to do so under the Atomic Energy Act or the Administrative Procedure Act; LBP-14-2, 79 NRC 149 n.78 (2014)
“preponderance of the evidence” standard is the one generally applied in proceedings under the Administrative Procedure Act; LBP-14-2, 79 NRC 149 n.78 (2014)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 306 n.31 (1994)
even if a witness’s testimony was entirely hearsay, evidence of that kind is generally admissible in administrative proceedings; LBP-11-14, 73 NRC 600 n.59 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 306-07 (1994)
in upholding summary disposition in a proceeding to enforce a suspension order, the Commission ruled that the hearsay nature of a witness’s statement did not preclude the licensing board from considering it, at least in the absence of evidence questioning its reliability; LBP-11-14, 73 NRC 600 n.59 (2011)
- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 312-13 (1994), *aff'd*, 61 F.3d 903 (6th Cir. 1995)
in any enforcement action, especially one that has been settled to NRC’s satisfaction without creating a formal record, NRC’s choice of sanctions is quintessentially a matter of the Commission’s sound discretion; LBP-14-4, 79 NRC 335, 336 (2014)
- Advanced Nuclear Fuels Corp.* (Import of South African Enriched Uranium Hexafluoride), CLI-87-9, 26 NRC 109 (1987)
a discretionary hearing on an import/export license application was allowed where the Commission was concerned with legal interpretations of the Anti-Apartheid Act, and the hearing involved written submissions on this issue; CLI-11-3, 73 NRC 625 n.62 (2011)
- Aerotest Operations, Inc.* (Aerotest Radiography and Research Reactor), CLI-14-5, 79 NRC 254 (2014)
nonlicensee with a purely economic interest has an automatic right to demand a hearing under section 2.202(a)(3) without showing standing or proffering an admissible contention; LBP-14-4, 79 NRC 342 (2014)
- Afshar v. U.S. Department of State*, 702 F.2d 1125, 1133 (D.C. Cir. 1983)
when an agency waives the deliberative process privilege for a document when it discloses the same document or one containing equivalent text, the question necessarily arises whether the NRC Staff has waived any deliberative process privilege that might otherwise apply; LBP-13-5, 77 NRC 244 (2013)
- Airport Neighbors Alliance v. United States*, 90 F.3d 426, 432 (10th Cir. 1996)
reasonable alternatives under NEPA do not include alternatives that are impractical, present unique problems, or cause extraordinary costs; LBP-15-3, 81 NRC 104 (2015)
- Akiak Native Community v. U.S. Postal Service*, 213 F.3d 1140, 1147 (9th Cir. 2000)
NEPA does not require that environmental assessments include a discussion of mitigation strategies; LBP-15-11, 81 NRC 431 (2015)
- Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795, 797 (1981)
stay movant has the burden of persuasion on the four factors of 10 C.F.R. 2.1213(d); LBP-15-2, 81 NRC 53 (2015)
- Alabama Power Co. v. Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979)
limited grounds for creation of exemptions are inherent in the administrative process, and agencies may use equitable discretion to afford case-by-case treatment, taking into account circumstances peculiar to individual parties in the application of a general rule or even in appropriate cases to grant dispensation from the rule’s operation; CLI-13-1, 77 NRC 9 n.33 (2013)

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- Alamance Industries, Inc. v. Filene's*, 291 F.2d 142, 146 (1st Cir. 1961)
purpose of rule to dismiss proceedings on conditions is primarily to prevent voluntary dismissals that unfairly affect the other side, and to permit the imposition of curative conditions; LBP-15-28, 82 NRC 242 n.67 (2015)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 401-04, *reconsideration denied*, CLI-04-38, 60 NRC 652 (2004)
measures intended to strengthen an enforcement order issued under 10 C.F.R. 2.202 are not within the limited scope of enforcement proceedings; CLI-13-2, 77 NRC 43 (2013)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 403 (2004)
challenge to enforcement order was denied because petitioner sought to strengthen the order; LBP-14-4, 79 NRC 358 n.37 (2014)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 404 (2004), *rev'g* LBP-04-16, 60 NRC 99 (2004)
if the remedy sought by petitioner is that the board should mandate that the enforcement order be strengthened, then petitioner lacks judicial standing because, given the limited scope of the proceeding, the board has no power to grant such relief; LBP-14-4, 79 NRC 358 (2014)
only issue in an NRC enforcement proceeding is whether the order should be sustained, and boards are not to consider whether such orders need strengthening; LBP-12-14, 76 NRC 6 (2012); LBP-14-4, 79 NRC 358 (2014)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 405, *reconsideration denied*, CLI-04-38, 60 NRC 652 (2004)
for an enforcement order, the threshold question, related to both standing and admissibility of contentions, is whether the hearing request is within the scope of the proceeding as outlined in the order; LBP-14-4, 79 NRC 358 (2014)
in seeking rescission of an enforcement order, although petitioner said he was not seeking a harsher penalty, that is precisely what he wanted; CLI-13-2, 77 NRC 47 n.39 (2013)
request to impose either different or additional enforcement measures is in contravention of NRC doctrine in enforcement actions; LBP-14-4, 79 NRC 359 n.38 (2014)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 406 (2004)
concern that involves safety will not support standing in an enforcement proceeding if petitioner seeks merely a better settlement, i.e., one that promises greater improvements to safety than the settlement that was actually negotiated; LBP-14-4, 79 NRC 329 (2014)
no one can challenge an enforcement order as long as the order, in any way, improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 359 (2014)
nonparty petitioners may not challenge a confirmatory order embodying a settlement if the order improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 321 (2014)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 406 n.28, *reconsideration denied*, CLI-04-38, 60 NRC 652 (2004)
it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders; LBP-14-4, 79 NRC 321, 329 (2014)
NRC's notice of opportunity for hearing on a confirmatory order provides the public a safety valve because conceivably the order might remove a restriction upon a licensee or otherwise have the effect of worsening the safety situation; LBP-14-4, 79 NRC 321 (2014)
standing to challenge a confirmatory order exists only when a petitioner credibly alleges that a settlement somehow actually reduces safety; LBP-14-4, 79 NRC 329 (2014)
third-party petitioners would have standing where the terms of a confirmatory order, as written, would harm the petitioner; CLI-13-2, 77 NRC 46 (2013)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 407 (2004)
NRC's choice of sanctions is a matter of the Commission's sound discretion; LBP-14-4, 79 NRC 336 (2014)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 408, *reconsideration denied*, CLI-04-38, 60 NRC 652 (2004)
petitioner is not adversely affected by a confirmatory order that improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 359 (2014)

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- settlements may become illusory if licensees consent to confirmatory orders and are nonetheless subjected to formal proceedings, possibly leading to different or more severe enforcement actions; LBP-14-4, 79 NRC 333 (2014)
- that the corrective measures outlined in a confirmatory order do not improve petitioner's personal situation does not provide grounds to rescind the confirmatory order; CLI-13-2, 77 NRC 46 n.29 (2013)
- too freely allowing third parties to contest enforcement settlements at hearings would undercut NRC's policy favoring enforcement settlements; LBP-14-4, 79 NRC 333 (2014)
- where an enforcement order imposes measures to enhance safety, no hearing will be granted to litigate additional measures the petitioner would like to see imposed; CLI-13-2, 77 NRC 45 (2013)
- Alaska Department of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 408-09 (2004)
- holding that "petitioner does not have standing is dispositive of this case and the board need not decide this issue" is dicta; LBP-14-4, 79 NRC 368 (2014)
- to allow third parties to contest enforcement settlements at hearings would undercut NRC policy favoring enforcement settlements; LBP-14-4, 79 NRC 367 (2014)
- Alaska Department of Transportation and Public Facilities*, LBP-04-16, 60 NRC 99, *rev'd on other grounds*, CLI-04-26, 60 NRC 399 (2004)
- section 2.309 criteria are applied when evaluating a third-party request for hearing on a confirmatory order; LBP-14-4, 79 NRC 327 n.40 (2014)
- Alaska Survival v. Surface Transportation Board*, 705 F.3d 1073, 1089 (9th Cir. 2013)
- when an agency otherwise complies with NEPA's requirement of a reasonably thorough mitigation analysis, there is no error in the agency's reliance on the Clean Water Act section 404's substantive requirements as mitigation measures even though the section 404 permit review is not yet complete; LBP-15-23, 82 NRC 63 (2015)
- Alaska v. Andrus*, 580 F.2d 465, 473-74 (D.C. Cir. 1978)
- one cost that must be weighed by decisionmakers is the cost of uncertainty; LBP-15-3, 81 NRC 119-20 (2015)
- Alaska v. Andrus*, 580 F.2d 465, 474 (D.C. Cir.), *vacated in part as moot sub nom. Western Oil & Gas Ass'n v. Alaska*, 439 U.S. 922 (1978)
- alternatives analysis is the heart of the environmental impact statement; LBP-14-9, 80 NRC 43 (2014)
- Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir.), *vacated in part as moot sub nom. Western Oil & Gas Association v. Alaska*, 439 U.S. 922 (1978)
- EPA's determination that an environmental impact statement is unsatisfactory gives rise to a heightened obligation on the lead agency's part to explain clearly and in detail its reasons for proceeding; LBP-14-9, 80 NRC 51 n.152 (2014)
- Alaska v. United States*, 16 Cl. Ct. 5, 11 (1988)
- claims of deliberative process privilege, even when properly established, are not absolute; LBP-13-5, 77 NRC 248 (2013)
- deliberative process privilege is qualified, requiring the court to balance the interests of the parties for and against disclosures; LBP-13-5, 77 NRC 248 (2013)
- deliberative process privilege may be defeated by a showing of evidentiary need by a plaintiff that outweighs the harm that disclosure of such information may cause to the defendant; LBP-13-5, 77 NRC 248 (2013)
- Alfred J. Morabito* (Senior Operator License for Beaver Valley Power Station, Unit 1), LBP-88-16, 27 NRC 583 (1988)
- senior reactor operator licenses shall be effective as of the date issued and shall be subject to the usual terms and conditions; LBP-14-2, 79 NRC 139 (2014)
- All Indian Pueblo Council v. United States*, 975 F.2d 1437, 1444 (10th Cir. 1992)
- agency need not analyze environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or impractical or ineffective; LBP-13-9, 78 NRC 88 n.353 (2013)
- All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Effective Immediately)*, CLI-13-2, 77 NRC 39, 44 n.20 (2013)
- section 2.311 does not provide for the filing of replies; CLI-14-3, 79 NRC 34 (2014)

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- All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Effective Immediately)*, LBP-12-14, 76 NRC 1, 8 n.36 (2012)
record before the board falls far short of rebutting the presumption that 10 C.F.R. 2.206 is a meaningful avenue for seeking administrative relief; CLI-12-20, 76 NRC 439-30 n.11 (2012)
- All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Effective Immediately)*, LBP-12-14, 76 NRC 1, 12 (2012)
meaningfulness of section 2.206 petitions is discussed; LBP-12-24, 76 NRC 539 (2012)
- Alliance to Protect Nantucket Sound, Inc. v. U.S. Department of the Army*, 398 F.3d 1235, 1240 (1st Cir. 2005)
NEPA does not require circulation of a draft environmental assessment in all cases; CLI-15-17, 82 NRC 41 n.53 (2015)
- Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separation Facility)*, ALAB-296, 2 NRC 671, 680 (1975)
NRC Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 243 (2014)
if modification of the final environmental impact statement by NRC Staff testimony or the board's decision is too substantial, recirculation of the FEIS would be required; LBP-13-13, 78 NRC 525 (2013)
- Alvarez v. Smith*, 558 U.S. 87, 92 (2009)
Constitution permits the Supreme Court to decide legal questions only in the context of actual cases or controversies; CLI-13-9, 78 NRC 557 n.22 (2013)
future cases are appropriately decided in the context of a concrete dispute, with self-interested parties vigorously advocating opposing positions; CLI-13-9, 78 NRC 557-58 (2013)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111 (2006)
challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 385-86 n.17 (2012)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111, 117-18 (2006)
review of a license renewal application does not reopen issues relating to a plant's current licensing basis; LBP-12-24, 76 NRC 538 n.5 (2012)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111, 118 (2006)
contention admissibility test in 10 C.F.R. 2.309(f)(1) is strict by design; LBP-11-6, 73 NRC 170-71 (2010); LBP-14-4, 79 NRC 374 n.70 (2014)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111, 119 (2006)
license applicant may take an appeal under section 2.311(d)(1) if it contends that, after considering all pending contentions, the board has erroneously granted a hearing to petitioner; CLI-14-3, 79 NRC 36 n.31 (2014)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111, 121 (2006)
boards are appropriate arbiters of fact-specific questions of contention admissibility, and the Commission will not second-guess their evaluation of factual support, absent an error of law or abuse of discretion; CLI-12-5, 75 NRC 326-27 (2012)
on appeal, Commission defers to board's rulings on contention admissibility absent an error of law or abuse of discretion; CLI-11-8, 74 NRC 220 (2011); CLI-11-11, 74 NRC 431 (2011); CLI-15-22, 82 NRC 315 (2016); CLI-15-23, 82 NRC 324-25 (2015)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111, 123 n.71 (2006)
petitioners have an affirmative obligation to request confidential and proprietary information that has not been made publicly available, in order to support a proposed contention; LBP-11-9, 73 NRC 416 (2011)
- AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111, 125 (2006)
under 10 C.F.R. 2.311, appeal of a ruling on contentions is allowed only if the order wholly denies an intervention petition or a party other than the petitioner alleges that a petition for leave to

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- intervene or a request for hearing should have been wholly denied; CLI-12-7, 75 NRC 385 n.16 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
- applicants should rely on the generic environmental impact statement for terrorism-related issues in a license renewal application; CLI-11-11, 74 NRC 455 (2011)
- the Commission has determined that there is no relationship between NRC licensing actions and terrorism; LBP-12-21, 76 NRC 241 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
- within the geographic boundary of the Ninth Circuit, NRC may not exclude NEPA terrorism contentions categorically; CLI-11-11, 74 NRC 456 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
- NEPA does not require NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-11-11, 74 NRC 456 (2011)
- NEPA imposes no legal duty on NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; LBP-11-2, 73 NRC 64 (2011); LBP-11-13, 73 NRC 571 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 130 n.28 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
- NRC's security program addresses not only current operations, but also extends into the license renewal term; CLI-11-11, 74 NRC 458 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 131 (2007)
- NRC has analyzed terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release expected from internally initiated events; LBP-11-2, 73 NRC 64 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 131-32 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
- as an alternative ground for excluding a NEPA terrorism contention, NRC Staff's determination in the generic environmental impact statement that the environmental impacts of a terrorist attack were bounded by those impacts resulting from internally initiated events is sufficient to address the environmental impacts of terrorism; CLI-11-11, 74 NRC 456 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 132-33 & n.38 (2007), *aff'd*, *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009)
- new claims cannot be raised for the first time on appeal; CLI-12-1, 75 NRC 59 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 133-34 (2007)
- concerns that apply generically to all spent fuel pools at all reactors are more appropriately addressed via rulemaking or other appropriate generic activity; CLI-12-6, 75 NRC 365 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399 (2008)
- section 2.342(e) standards are applied to motion to stay issuance of a license; CLI-14-6, 79 NRC 449 n.30 (2014)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399-400 (2008)
- petitioner's request that the Commission defer a decision on the license renewal applications pending disposition of its forthcoming rulemaking and other potential events is premature and is therefore denied; CLI-14-6, 79 NRC 450 n.32 (2014)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008)
- even if a party moving for a stay fails to show irreparable injury, a board may still grant a stay if movant has made an overwhelming showing or a demonstration of virtual certainty that it will prevail on the merits; LBP-15-2, 81 NRC 54, 58 (2015)
- without a showing of irreparable injury, petitioners seeking a stay of effectiveness must demonstrate that reversal of the licensing board is a virtual certainty; CLI-12-11, 75 NRC 529 (2012)

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- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400, 401 (2008)
if motions for stay of effectiveness demonstrate neither irreparable injury nor that reversal of the licensing board is a virtual certainty, then the remaining factors need not be considered; CLI-12-11, 75 NRC 529 n.32 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 466 (2008)
license renewal applicants must conduct aging management reviews of any structure, system, or component that performs one of these intended functions if the SSC is passive (performs its intended function(s) without moving parts or without a change in configuration or properties) or long-lived (not subject to replacement based on a qualified life or specified time period); CLI-12-5, 75 NRC 303-04 (2012)
NRC Staff's safety review pursuant to 10 C.F.R. Part 54 is principally guided by two documents, GALL and the SRP-LR; LBP-13-13, 78 NRC 290 (2013)
passive systems, structures, and components are subject to an aging management review only if they are long-lived, that is, not subject to replacement based on a qualified life or specified time period; LBP-13-13, 78 NRC 280 (2013)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 466-67 (2008)
existing regulatory programs can be expected to directly detect the effects of aging on active functions; CLI-12-5, 75 NRC 304 n.10 (2012)
if NRC concludes that an aging management program is consistent with the GALL Report, then it accepts applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance under 10 C.F.R. 54.29(a); CLI-12-5, 75 NRC 304, 315 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 468 (2008)
for each plant-specific aging management program for which there is no corresponding program in the GALL Report, the application must briefly describe licensee's operating experience in implementing that program; LBP-13-13, 78 NRC 283 (2013)
if applicant uses a method other than that identified in NUREG-1801, Generic Aging Lessons Learned Report, for managing effects of aging at its plant, then applicant should demonstrate to NRC Staff reviewers that its program includes the 10 elements cited in the GALL Report and will likewise be effective; LBP-13-13, 78 NRC 283 (2013)
license renewal applicants' use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-12-10, 75 NRC 497 n.93 (2012); LBP-13-13, 78 NRC 282-83, 386 (2013)
NRC Staff's review is intended to verify that applicant has properly scoped the aging management review, that existing or planned aging management programs conform to the descriptions in the license renewal application, and that documentation supporting the application is auditable, retrievable, and supports the application; LBP-13-13, 78 NRC 290 (2013)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476 (2008)
although NRC rules require that motions be addressed to the presiding officer when a proceeding is pending, suspension motions are best addressed to the Commission; CLI-11-5, 74 NRC 158 (2011)
Commission has inherent authority to supervise both NRC Staff's work and adjudicatory proceedings relating to license applications; CLI-14-1, 79 NRC 2 (2014)
intervention petitioners may not challenge the adequacy of the safety evaluation report, but may file contentions challenging the combined license application based on new information in the SER; LBP-11-22, 74 NRC 273 n.72 (2011)
when a matter is not strictly adjudicatory in nature or otherwise does not fit cleanly within the procedures described in NRC rules of practice, the Commission undertakes a decision as an exercise of its inherent supervisory authority over agency proceedings; CLI-13-8, 78 NRC 224 (2013)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 484 (2008)
suspension of licensing proceedings is a drastic action that is not warranted absent immediate threats to public health and safety or other compelling reason; CLI-11-1, 73 NRC 4 (2011); CLI-11-5, 74 NRC 158 (2011); CLI-12-6, 75 NRC 373 (2012); CLI-15-19, 82 NRC 158 (2015)

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- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 484 n.103 (2008)
deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 238 (2013)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 484-85 (2008)
Commission may consider the rulemaking request of a nonparty as an exercise of its inherent supervisory powers authority over agency proceedings; CLI-11-5, 74 NRC 174 n.132 (2011)
Commission has occasionally considered requests to suspend proceedings or hold them in abeyance in the exercise of its inherent supervisory powers over proceedings; CLI-11-1, 73 NRC 3 n.5 (2011)
petitions to suspend multiple license renewal proceedings in view of an Inspector General's report on the agency's license renewal process were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 486 (2008)
intervenor's speculation that further review of certain issues might change some conclusions in the final safety evaluation report does not justify restarting the hearing process; LBP-11-20, 74 NRC 76 (2011); LBP-11-23, 74 NRC 295, 321 (2011); LBP-11-35, 74 NRC 718 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668 (2008)
because petitioner seeks both to reopen the record and to submit a late contention, it must successfully satisfy two elevated standards; CLI-11-2, 73 NRC 338 (2011)
Commission practice holds that the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-12-10, 75 NRC 483 (2012); CLI-12-15, 75 NRC 709 (2012); LBP-11-20, 74 NRC 77 n.75 (2011); LBP-11-35, 74 NRC 743 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668-69 (2008)
proponents of a motion to reopen bear a heavy burden; CLI-11-8, 74 NRC 221 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 670, 674 (2008)
a mere showing that changes to the severe accident mitigation alternatives analysis results are possible or likely or probable is not enough to reopen a record; LBP-11-35, 74 NRC 729 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 672 (2008)
a "significant" issue is not shown merely by showing that a plant component performs safety functions; CLI-12-10, 75 NRC 499 n.104 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 672-73 (2008)
the ability of a totally unfunded group to provide testimony from experts is not taken into account in ruling on motions to reopen; LBP-11-20, 74 NRC 94 n.15 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 673 (2008)
denial or conditioning of a license would obviously be a materially different result; CLI-12-14, 75 NRC 702 n.66 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 673-74 (2008)
although the quality of evidence presented for reopening must be at least of a level sufficient to withstand a motion for summary disposition, more is required; CLI-12-10, 75 NRC 498 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008)
bare assertions and speculation do not supply the requisite support for a motion to reopen; CLI-11-2, 73 NRC 346 (2011)
bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding; CLI-12-15, 75 NRC 714 (2012)
bare assertions are insufficient to show an exceptionally grave issue for reopening the record; CLI-11-8, 74 NRC 226 n.48 (2011); LBP-11-23, 74 NRC 313 n.136, 321 (2011)
NRC imposes a deliberately heavy burden on petitioners seeking to reopen a record; CLI-11-2, 73 NRC 338 (2011); LBP-11-20, 74 NRC 77-78 (2011); LBP-15-14, 81 NRC 594-95 (2015)

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- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674-75 (2008)
interpretation of regulations, like interpretation of a statute, begins with the language and structure of the provisions, and the entirety of each provision must be given effect; LBP-14-7, 79 NRC 473 (2014)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 675-76 (2008)
conclusory language is not sufficient to support an appeal; CLI-11-8, 74 NRC 225 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 677 (2008)
because it relates to NRC Staff's position on the reviewability of the Board's decision, Staff's statement regarding its inclination not to revise the FSEIS is presented for the first time in Staff's answer; CLI-11-14, 74 NRC 808 (2011)
filings not otherwise authorized by NRC rules are allowed only where necessity or fairness dictate; CLI-11-14, 74 NRC 807 (2011); CLI-14-3, 79 NRC 35 (2014)
parties could reasonably anticipate the argument that petitioners' contention was moot simply based on the board's request for an explanation of the significance of the request-for-additional-information response; LBP-15-28, 82 NRC 244 n.78 (2015)
replies may not contain new information that was not raised in either the petition or answers, but arguments that respond to the petition or answers are not precluded, whether they are offered in rebuttal or in support; CLI-11-14, 74 NRC 809 n.45 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235 (2009), *petition for review denied sub nom. New Jersey Environmental Federation v. NRC*, 645 F.3d 220 (3d Cir. 2011)
attempts by petitioners to challenge aspects of an aging management plan that they could have challenged earlier were rejected; LBP-15-1, 81 NRC 31 (2015)
challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 385-86 n.17 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259 (2009)
grant of discretionary review must show that a board's ruling was a departure from, or contrary to, established law; CLI-15-7, 81 NRC 496 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259-61 (2009)
NRC rules deliberately place a heavy burden on proponents of contentions, who must challenge aspects of license applications with specificity, backed up with substantive technical support, mere conclusions or speculation being insufficient; CLI-11-5, 74 NRC 169 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009)
although a board may view petitioner's supporting information in a light favorable to the petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-11-16, 73 NRC 655 (2011); LBP-11-20, 74 NRC 78 (2011); LBP-11-29, 74 NRC 618 (2011); LBP-12-25, 76 NRC 545 (2012)
decisions on the admissibility of contentions will be affirmed where the Commission finds no error of law or abuse of discretion; CLI-12-3, 75 NRC 138 (2012); CLI-12-6, 75 NRC 361 (2012)
standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or an abuse of discretion; CLI-12-7, 75 NRC 386 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260, 275-77 (2009)
abst error of law or abuse of discretion, the Commission defers to licensing board rulings on contention admissibility; CLI-11-9, 74 NRC 237 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260, 276 (2009)
intervenors must assert a sufficiently specific challenge that demonstrates that further inquiry is warranted; CLI-11-9, 74 NRC 247 (2011)

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- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260, 278 (2009)
at the contention admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application; CLI-11-9, 74 NRC 243-44 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009)
because petitioner made no effort to demonstrate that its contention, despite its lateness, should be considered for admission pursuant to 10 C.F.R. 2.309(c)(1), it is rejected as inexcusably late; LBP-11-15, 73 NRC 637, 643 n.23 (2011)
intervenors carry the burden of showing that any late-filed contentions are admissible; LBP-15-16, 81 NRC 703 n.567 (2015)
petitions that proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected; LBP-12-7, 75 NRC 510, 512 n.13 (2012); LBP-12-9, 75 NRC 622 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 261 (2009)
good cause for failure to file on time is the most important factor of the 10 C.F.R. 2.309(c) analysis; LBP-11-6, 73 NRC 247 n.113 (2010); LBP-11-9, 73 NRC 401 (2011); LBP-11-10, 73 NRC 446 (2011); LBP-11-32, 74 NRC 662 (2011)
good cause is the most important of the late-filing factors and is entitled to the most weight; LBP-12-7, 75 NRC 510 (2012); LBP-12-9, 75 NRC 621 (2012)
petitioner, having failed in its revised petition to challenge applicant's reliance on the generic environmental impact statement, cannot raise that challenge for the first time in its reply; LBP-11-6, 73 NRC 235 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 263 (2009)
in context of a license renewal application, reasonable assurance is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-14-1, 79 NRC 52 (2014)
licensee must show with reasonable assurance that its proposed methodology for material control and accounting will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public; CLI-15-9, 81 NRC 517 (2015)
reasonable assurance is not quantified as equivalent to a 95% (or any other percent) confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-13-13, 78 NRC 282 (2013)
"reasonable assurance" standard for aging management programs does not require a 95% confidence level of compliance; LBP-11-18, 74 NRC 37 n.46 (2011)
to meet the reasonable assurance standard, applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-13-13, 78 NRC 282 (2013); LBP-14-1, 79 NRC 52 (2014)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 266 (2009)
NRC Staff's safety review for license renewal applications is guided by NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, and NUREG-1801, Generic Aging Lessons Learned Report; LBP-13-13, 78 NRC 282 (2013)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 268-70 (2009)
petitioners have the burden of going forward, which requires them to provide factual allegations or expert testimony to show a potential deficiency in applicant's aging management plan; LBP-15-5, 81 NRC 295 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 269 (2009)
moving party properly bears the burden of meeting the reopening standards and applicant retains the burden of proof on the question whether the license should be issued; CLI-15-19, 82 NRC 157 n.29 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 270-71 (2009)
current licensing basis issues cannot be challenged in license renewal proceedings; LBP-15-5, 81 NRC 291 (2015)

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- enforcement orders are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 292 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 271-72 (2009)
- NRC's expanding adjudicatory docket makes it critically important that parties comply with its pleading requirements and that boards enforce those requirements; CLI-11-2, 73 NRC 339 n.22 (2011)
- there simply would be no end to NRC licensing proceedings if petitioners could ignore timeliness requirements and add new contentions at their convenience based on information that could have formed the basis for a timely contention at the outset of the proceeding; LBP-11-20, 74 NRC 85 n.109 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 272 n.209 (2009)
- challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of a license renewal proceeding; LBP-12-24, 76 NRC 525 n.117 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 273-74 (2009) *aff'd*, *New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 230 (3d Cir. 2011)
- enhancement of a program does not constitute new information sufficient to support a new contention; LBP-11-20, 74 NRC 87 (2011)
- if applicant's enhanced monitoring program, which was the topic of a late-filed contention, was insufficient, it must have been insufficient beforehand too; CLI-12-10, 75 NRC 493 n.70 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 274 (2009), *petition for review denied sub nom. New Jersey Environmental Federation v. NRC*, 645 F.3d 220 (3d Cir. 2011)
- as a matter of law and logic, if applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program was a fortiori inadequate, and intervenor had a regulatory obligation to challenge it in its original petition to intervene; LBP-11-20, 74 NRC 87 (2011); LBP-15-1, 81 NRC 32 (2015)
- contention challenging an enhanced monitoring program adopted by applicant is inadmissible because intervenor did not challenge the original unenhanced monitoring program; LBP-11-20, 74 NRC 98 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 276 (2009)
- party may not provide support for a contention in its reply; LBP-15-5, 81 NRC 289 (2015)
- support for a contention must be provided when the contention is filed, not at some later date; LBP-15-5, 81 NRC 312, 313 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 276-77 (2009)
- severe accident mitigation alternatives analysis issues can present difficult judgment calls at the contention admissibility stage, and the Commission is reluctant as a general matter to second-guess board rulings on contention admissibility; CLI-12-5, 75 NRC 323 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 277 n.240 (2009)
- burden of setting forth a clear and coherent argument is on petitioner, and it should not be necessary to speculate about what a pleading is supposed to mean; CLI-11-2, 73 NRC 337 n.14 (2011)
- Commission will not accept the filing of a vague, unparticularized issue; CLI-11-2, 73 NRC 337 n.14 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 286-87 (2009)
- a heavier burden applies to motions to reopen than to proponents of contentions in ongoing proceedings; CLI-11-5, 74 NRC 169 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 (2009)
- at the threshold contention admission stage, the burden of providing support for a contention is on petitioner and the added burden of satisfying the reopening requirements is a deliberately a heavy one; CLI-12-15, 75 NRC 714 (2012)

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- bare assertions and speculation do not supply the requisite support for a motion to reopen; CLI-11-2, 73 NRC 346 (2011)
- bare assertions are insufficient to show an exceptionally grave issue for reopening the record; LBP-11-23, 74 NRC 313 n.136, 321 (2011)
- burden of satisfying the reopening requirements is a heavy one, and it rests with the party moving to reopen; CLI-11-2, 73 NRC 346 (2011); CLI-12-3, 75 NRC 139 n.41 (2012); CLI-12-6, 75 NRC 367 (2012); CLI-12-21, 76 NRC 501 n.68 (2012); CLI-15-19, 82 NRC 155-56 (2015) ; LBP-11-20, 74 NRC 81, 84 n.108 (2011)
- merely showing that changes to the severe accident mitigation alternatives analysis results are possible or likely or probable is not enough to reopen an record; LBP-11-35, 74 NRC 729 (2011)
- motion to reopen will not be granted unless movant satisfies all three criteria listed in 10 C.F.R. 2.326(a) and the motion is accompanied by an affidavit that satisfies section 2.326(b); CLI-15-19, 82 NRC 156 (2015); LBP-11-20, 74 NRC 81, 84 n.108 (2011)
- movant has the burden to present information in a manner that complies with section 2.326(b); LBP-12-10, 75 NRC 652 n.126 (2012)
- NRC imposes a deliberately heavy burden on an intervenor who seeks to supplement the evidentiary record after it has been closed, even with respect to an existing contention; CLI-11-2, 73 NRC 338 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-11, 63 NRC 391, 396 n.3 (2006)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 138-39 (2012)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-11, 63 NRC 391, 399 (2006)
- the GALL Report is a nonbinding guidance document which, in the case of revisions, does not have the force of the law; LBP-13-13, 78 NRC 283-84 (2013)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006)
- a contention of omission alleges that an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application; LBP-11-6, 73 NRC 200 n.53 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 n.7 (2006)
- it is possible for a contention to contain an omission component and an inadequacy component; LBP-11-6, 73 NRC 200 n.53 (2010)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 744 (2006)
- the licensing board dismissed all pending contentions on mootness grounds due to new information, which ordinarily would terminate the proceeding, but the board permitted new contentions to be filed on the new information before terminating the proceeding; LBP-11-22, 74 NRC 285 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 231-32, 245-46 (2007), *aff'd*, CLI-09-7, 69 NRC 235 (2009)
- intervenors opposed renewal of the nuclear power plant license, and proposed new contentions for increased ultrasonic testing of sand bed epoxy coating integrity; LBP-15-1, 81 NRC 32 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 244 (2006)
- petitioner need not prove its contentions at the admissibility stage because boards do not adjudicate disputed facts at that juncture; LBP-11-2, 73 NRC 45 (2011); LBP-11-16, 73 NRC 655 (2011); LBP-11-21, 74 NRC 125 (2011)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 246 (2006), *aff'd*, CLI-09-7, 69 NRC 235 (2009)
- as a matter of law and logic if applicant's enhanced program is inadequate, then applicant's unenhanced program is a fortiori inadequate, and intervenor has a regulatory obligation to challenge

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- it in its original petition to intervene; LBP-11-9, 73 NRC 417 (2011); LBP-11-20, 74 NRC 87 (2011)
- as a matter of policy, applicant's decision to improve an existing program to promote health and safety or to boost public support and confidence ought not ordinarily be viewed as conferring petitioners with an automatic opportunity to advance a new contention; LBP-15-1, 81 NRC 32 (2015)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009)
- boards may view petitioner's supporting information in a light favorable to the petitioner, but the petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-13-8, 78 NRC 9 (2013)
- AmerGen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 290-91 (2009)
- because petitioner's claim of likelihood of success on the merits is conclusory, with no attempt to show how they would be likely to prevail, the motion to reopen falls far short of meeting the requirements of section 2.326(a)(3); LBP-12-10, 75 NRC 661 (2012)
- American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 539 (1970)
- except upon a showing of substantial prejudice to the complaining party, it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it; CLI-13-8, 78 NRC 232-233 n.68 (2013)
- American Petroleum Institute v. Environmental Protection Agency*, 683 F.3d 382, 387 (D.C. Cir. 2012)
- debating compliance with another agency's proposed policies before they have been finalized would subject administrative agencies to needless and repetitive litigation; LBP-15-15, 81 NRC 614 (2015)
- precedence requires a licensing board to let EPA's rulemaking run its course, allowing intelligent resolution of any remaining claims instead of piecemeal and repetitive litigation; LBP-15-15, 81 NRC 610 (2015)
- proposed rules are not binding upon administrative agencies and are not ripe for review by NRC boards; LBP-15-15, 81 NRC 610 n.83 (2015)
- Anchorage Associates v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 174-76 (3d Cir. 1990)
- where a nonmoving party declines to oppose a motion for summary disposition, the board shall accept as admitted the moving party's prima facie showing of material facts, but boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 219 (2012)
- Anderson Brothers Ford v. Valencia*, 452 U.S. 205, 212-13 (1981)
- courts have relied on language accompanying proposed rulemakings to determine agency intent; LBP-15-15, 81 NRC 610 (2015)
- Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985)
- Commission gives substantial deference to licensing board findings of fact, and will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-15-9, 81 NRC 522 (2015)
- Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 247-52 (1986)
- at issue is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the summary disposition opponent for a reasonable trier of fact to find in favor of that party; LBP-11-4, 73 NRC 100 (2011)
- if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 100 (2011)
- only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition; LBP-11-4, 73 NRC 100 (2011)
- Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 247-52, 255 (1986)
- if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; LBP-11-20, 74 NRC 103-04 n.72 (2011)
- Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248 (1986)
- if the question is a close one, boards must, in considering summary disposition opponent's submission, carefully ascertain whether any factual disputes asserted are genuine and relate to issues that would affect the outcome of the proceeding under relevant substantive law; LBP-11-4, 73 NRC 100 (2011)

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- summary disposition, like summary judgment, is an extreme remedy that should be granted with caution especially before the parties have been afforded an opportunity to marshal their evidence; LBP-11-7, 73 NRC 263 (2011)
- Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986)
- with regard to the first criterion for summary disposition, the correct inquiry is whether there are material factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party; LBP-11-31, 74 NRC 648 (2011)
- Anderson v. Liberty Lobby*, 477 U.S. 242, 250-51 (1986)
- if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; LBP-12-23, 76 NRC 478 (2012)
- Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986)
- in deciding motions for summary disposition, all facts are to be construed in the light most favorable to the nonmoving party; LBP-11-31, 74 NRC 648 (2011)
- licensing boards or presiding officers should not conduct a trial on affidavits; LBP-12-23, 76 NRC 478 (2012)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 714 n.3 (2006)
- demands for a hearing by the subject of an enforcement order are automatic without regard to satisfying section 2.309; LBP-14-4, 79 NRC 326, 342 (2014)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 716 (2006)
- discretionary intervention is allowed only if some other person has established standing but only in very extraordinary situations; LBP-14-4, 79 NRC 373 (2014)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 720-21 (2006)
- boards must not redraft an inadmissible contention to cure deficiencies and thereby render it admissible; CLI-11-11, 74 NRC 437 (2011)
- Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 724 (2006)
- both the Commission and licensing boards have continued to treat third-party requests for a hearing on an enforcement order as traditional petitions for intervention under Subpart C; LBP-14-4, 79 NRC 327 (2014)
- Andrew Siemaszko*, LBP-09-11, 70 NRC 151 (2009)
- if an enforcement order blacklists a worker by name, under 10 C.F.R. 2.202(a)(3) he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 347 (2014)
- Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988)
- an environmental impact statement that contains an incomplete or misleading comparison of alternatives is deficient; LBP-11-21, 74 NRC 137 n.126 (2011)
- Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988)
- inaccurate, incomplete, or misleading information in an environmental impact statement concerning the comparison of alternatives is itself sufficient to render the EIS unlawful and to compel its revision; LBP-12-17, 76 NRC 120 (2012)
- Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129, 134 (1991)
- the Equal Access to Justice Act does not apply to a proceeding that is not governed by the provisions of Administrative Procedure Act § 554 even if the procedures governing the proceeding substantially conform to the procedures required for formal adjudication under the APA; LBP-11-8, 73 NRC 360 n.48 (2011)
- Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129, 135 (1991)
- the most natural reading of the Equal Access to Justice Act's applicability to adjudications under Administrative Procedure Act § 554 is that those proceedings must be subject to or governed by § 554; LBP-11-8, 73 NRC 354-55 n.14 (2011)
- Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129, 137 (1991)
- agency's discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether the Equal Access to Justice Act applies to a particular proceeding; LBP-11-8, 73 NRC 360 (2011)
- Equal Access to Justice Act renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity, and any such waiver must be strictly construed in favor of the United States; LBP-11-8, 73 NRC 357 n.28 (2011)

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- only in rare cases does legislative history overcome the strong presumption that the legislative purpose is expressed by the ordinary meaning of the statutory language; LBP-11-8, 73 NRC 357 n.31 (2011)
- Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129, 138 (1991)
- underlying purpose of the Equal Access to Justice Act is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter the unreasonable exercise of government authority; LBP-11-8, 73 NRC 363 n.60 (2011)
- AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), CLI-11-4, 74 NRC 1, 8 n.35 (2011)
- guidance documents, although not binding, describe an approach to compliance with NRC rules that is acceptable to the NRC, and thus can be informative for that reason; LBP-13-6, 77 NRC 291 (2013)
- NRC guidance documents are not legally binding, and compliance with them is not required; LBP-15-20, 81 NRC 847 n.100 (2015)
- AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), LBP-11-11, 73 NRC 455 (2011)
- guidance on the role of licensing boards in mandatory proceedings is provided; LBP-12-21, 76 NRC 233 (2012)
- AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), LBP-11-26, 74 NRC 499 (2011),
Commission review declined, Memorandum from Annette L. Vietti-Cook, NRC Secretary, to Board and Parties (Nov. 17, 2011)
- guidance on the role of licensing boards in mandatory proceedings is provided; LBP-12-21, 76 NRC 233 (2012)
- AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), LBP-11-26, 74 NRC 499, 553-61 (2011)
- fugitive dust generated onsite at a facility, particularly during construction, can be a concern in the vicinity of a facility; LBP-12-3, 75 NRC 186 n.20 (2012)
- AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), LBP-11-26, 74 NRC 499, 584-85 (2011)
- light pollution is a matter of concern as a proposed nuclear materials facility undergoes agency licensing review; LBP-12-3, 75 NRC 188 (2012)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 143, 155 (1991)
- board decisions that have inferred additional bases for contentions beyond those supplied by the petitioner have been overturned; CLI-14-2, 79 NRC 28 (2014)
- boards may appropriately view petitioner's supporting information in a light favorable to the petitioner; LBP-13-10, 78 NRC 147-48 (2013)
- board may appropriately view petitioner's support for its contention in a light favorable to petitioner, but the board cannot do so by ignoring the requirements set forth in 10 C.F.R. 2.309(f)(1); CLI-15-23, 82 NRC 329 (2015); LBP-15-5, 81 NRC 288 n.248 (2015); LBP-15-17, 81 NRC 789 n.234 (2015); LBP-15-19, 81 NRC 827 (2015); LBP-15-20, 81 NRC 858 n.155 (2015)
- boards may appropriately view petitioner's supporting information in a light favorable to petitioner, but failure to provide such information requires that the contention be rejected; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 26 (2012); LBP-12-27, 76 NRC 595 (2012); LBP-13-6, 77 NRC 285 (2013); LBP-15-1, 81 NRC 38 (2015); LBP-15-11, 81 NRC 426 n.156, 438 n.232 (2015)
- boards must not redraft an inadmissible contention to cure deficiencies and thereby render it admissible; CLI-11-11, 74 NRC 437 (2011)
- if petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor petitioner, nor may the board supply information that is lacking; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 26 (2012); LBP-12-18, 76 NRC 182 (2012); LBP-12-27, 76 NRC 595 (2012); LBP-13-6, 77 NRC 285 (2013); LBP-15-1, 81 NRC 39 (2015)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)
- failure to comply with any of the requirements of 10 C.F.R. 2.309(f)(1) precludes admission of a contention; LBP-11-7, 73 NRC 280 (2011); LBP-11-21, 74 NRC 125 (2011)
- licensing boards are discouraged from adding material to bolster a petitioner's or party's arguments or pleadings; CLI-11-11, 74 NRC 447 n.113, 451 (2011)

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- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 156 (1991)
at the contention admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application; CLI-11-9, 74 NRC 243-44 (2011)
contention asserting that additional analysis is necessary, without a basis to support the need for additional physical testing, is not admissible; CLI-15-23, 82 NRC 328-29 (2015)
intervenors must assert a sufficiently specific challenge that demonstrates that further inquiry is warranted; CLI-11-9, 74 NRC 247 (2011)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1991 (1982)
NRC adjudication is not the appropriate forum for a challenge to a decision by a state regulatory agency; LBP-12-23, 76 NRC 464 (2012)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991)
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- Armed Forces Radiobiology Research Institute* (Cobalt-60 Storage Facility), LBP-82-24, 15 NRC 652, 655-56 (1982), *rev'd on other grounds*, ALAB-682, 16 NRC 150 (1982)
where NRC Staff provided advice regarding timing that misled a petitioner, the Staff had conceded timeliness in light of such advice; LBP-12-16, 76 NRC 50 (2012)
- Armed Forces Radiobiology Research Institute* (Cobalt-60 Storage Facility), LBP-82-24, 15 NRC 652, 658 (1982), *rev'd on other grounds*, ALAB-682, 16 NRC 150 (1982)
fundamental fairness requires that applicant and NRC Staff be estopped from asserting that petitioners' contention is untimely; LBP-12-16, 76 NRC 50 (2012)
- Army Times Publishing Co. v. U.S. Department of the Air Force*, 998 F.2d 1067, 1071 (D.C. Cir. 1993)
deliberative process privilege does not protect documents in their entirety and if the government can segregate and disclose nonprivileged factual information within a document, it must; LBP-13-5, 77 NRC 240 (2013)
- Ashley v. U.S. Department of Labor*, 589 F. Supp. 901 (D.D.C. 1983)
deliberative process privilege has been extended to draft documents, proposals, suggestions, instructions to work deletions and alterations into drafts, instructions to conduct an investigation, documents reflecting personal and advisory opinions, and rejections of recommendations; LBP-13-5, 77 NRC 239-40 (2013)
- Associations Working for Aurora's Residential Environment v. Colorado Department of Transportation*, 153 F.3d 1122, 1127 n.4 (10th Cir. 1998)
Council on Environmental Quality Guidance does not change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable, and some courts have declined to defer to it; LBP-12-23, 76 NRC 467 (2012)
- Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973)
whatever the ground for the agency's departure from prior norms, it must be clearly set forth so that the reviewing court may understand the basis of the agency's action; LBP-14-2, 79 NRC 150 n.87 (2014)
- Atlas Corp.* (Moab, Utah), LBP-00-4, 51 NRC 53, 59 (2000)
analysis of standing of other petitioning organizations was unnecessary when public interest organization had clear representational standing; LBP-13-6, 77 NRC 283 n.23 (2013)
- Auer v. Robbins*, 519 U.S. 452, 461 (1997)
courts give controlling weight to an agency's interpretation of its own regulation unless it is plainly erroneous or inconsistent with the regulation; LBP-12-19, 76 NRC 196 n.65 (2012)
- Babbitt v. Sweet Home*, 515 U.S. 687, 708 (1995)
when it enacted the Endangered Species Act, Congress delegated broad administrative and interpretive power to the Secretary of the Interior; LBP-12-10, 75 NRC 640 n.37 (2012)

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- Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-31, 36 NRC 255, 263 (1992)
in addressing the stay criteria in a Subpart L proceeding, litigant must come forth with more than general or conclusory assertions in order to demonstrate its entitlement to relief; LBP-15-2, 81 NRC 54 (2015)
- Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 84 (1993)
even if an import or export license authorized possession and/or use of the low-level radioactive waste, the petition does not assert how the LLRW is a significant source of radioactivity or provide any scenario in which the import or export of the LLRW would result in an accident that could produce obvious offsite consequences; CLI-11-3, 73 NRC 622 n.46 (2011)
- Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 87-88 (1993)
mere potential exposure to minute doses of radiation within regulatory limits does not constitute a distinct and palpable injury on which standing can be founded; CLI-11-3, 73 NRC 623 n.51 (2011)
- Babcock & Wilcox Co. v. United Technologies Corp.*, 435 F. Supp. 1249, 1256 (N.D. Ohio 1977)
baseload generation is different than peaking power, which provides supplemental power during hours of the day when demand is highest; LBP-11-13, 73 NRC 563 (2011)
- Baker v. Carr*, 369 U.S. 186, 204 (1962)
intervention petitioner must allege such a personal stake in the outcome of the controversy as to demonstrate that a concrete adverseness exists that will sharpen the presentation of issues;
CLI-15-25, 82 NRC 394 (2015)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983)
it is not necessary that every alternative device and thought conceivable by the mind of man be considered, but a hard look must be taken at environmental consequences; LBP-12-1, 75 NRC 35 (2012)
NEPA exists in part to ensure that important environmental effects will not be overlooked; LBP-12-10, 75 NRC 679-80 (2012)
NEPA has a dual purpose of ensuring that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions and informing the public, Congress, and other agencies of those consequences; LBP-11-6, 73 NRC 172 n.20 (2010); LBP-11-7, 73 NRC 264 (2011); LBP-11-35, 74 NRC 766 n.13 (2011); LBP-12-1, 75 NRC 34 (2012)
NEPA requirement to prepare an environmental impact statement places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action; LBP-13-4, 77 NRC 119 (2013)
NEPA requires an agency to take a hard look at the environmental consequences before taking a major action and to report the result of that hard look in an environmental impact statement;
LBP-11-6, 73 NRC 172 n.20 (2010); LBP-12-10, 75 NRC 679 (2012); LBP-13-13, 78 NRC 452 n.1413, 524 n.1959 (2013)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97-98 (1983)
NEPA requires agencies to take a hard look at environmental consequences prior to taking major actions; LBP-11-38, 74 NRC 830 n.86 (2011); LBP-12-5, 75 NRC 236 n.49 (2012); LBP-12-17, 76 NRC 82 n.50 (2012)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 98 (1983)
NRC policy statement is not a sufficient vehicle to preclude consideration of severe accident mitigation design alternatives, and NRC must take the requisite hard look at them, giving them the careful consideration and disclosure required by the National Environmental Policy Act; CLI-12-19, 76 NRC 380-81 (2012)
NRC's use of rulemaking to address generic issues has been approved by the Supreme Court;
CLI-15-6, 81 NRC 379 n.204 (2015)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 100, 103 (1983)
generic analyses of the environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 238 (2015)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 100-01, 103 (1983)
NEPA does not mandate how an agency must fulfill its obligations under the statute; LBP-11-23, 74 NRC 331 (2011)

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- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 101 (1983)
NRC has discretion to resolve issues generically by rulemaking; CLI-11-11, 74 NRC 451 (2011); CLI-13-7, 78 NRC 207 (2013)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 102 (1983)
consistent with NEPA's rule of reason, applicant and NRC Staff acted on the basis of best available information and analysis in completing the SAMA evaluation; LBP-13-13, 78 NRC 473 (2013)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 104-05 (1983)
as a logical proposition, risk equals the likelihood of an occurrence times the severity of the consequences; LBP-11-2, 73 NRC 63 n.212 (2011)
- Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 106-07 (1983)
environmental impact statements must disclose significant health, socioeconomic, and cumulative consequences of the environmental impact of a proposed action; LBP-12-9, 75 NRC 623 (2012)
- Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 343 n.3 (1998)
Commission decision to decline review of a referred question does not constitute an endorsement of the board's views on the question of an applicant's duty to supplement its environmental report; CLI-12-13, 75 NRC 686-87 n.31 (2012)
unreviewed board decisions do not create binding legal precedent; CLI-12-13, 75 NRC 686-87 n.31 (2012); CLI-13-9, 78 NRC 558 (2013); CLI-13-10, 78 NRC 569 n.42 (2013); LBP-13-7, 77 NRC 328 (2013)
- Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 347 (1998), *aff'd*, *National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000)
with respect to contentions filed after the initial petition, failure to address the requirements of 10 C.F.R. 2.309(c) and 2.309(f)(2) is reason enough to reject the new contentions; LBP-11-7, 73 NRC 289 n.227 (2011)
- Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 347 & n.9 (1998), *aff'd*, *National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000)
intervenor seeking admission of a nontimely filed contention bear the burden of showing that, on balance, the section 2.309(c)(1) factors weigh in favor of admitting the proposed contention; LBP-11-7, 73 NRC 279 (2011)
- Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 347-48 (1998), *aff'd*, *National Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000)
the Commission has summarily dismissed petitioners who failed to address the factors for a late-filed petition; LBP-11-7, 73 NRC 279 n.159 (2011)
- Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 348-50 (1998)
NRC Staff's responsibilities, parallel to the adjudicatory process, include seeking additional information from applicant after docketing of a pending license application; LBP-12-9, 75 NRC 626 n.15 (2012)
- Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 349-50 (1998)
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- Bank of Dearborn v. Saxon*, 244 F. Supp. 394, 402 (E.D. Mich. 1965)
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- Battelle Memorial Institute Columbus Operations (Columbus, Ohio)*, DD-94-11, 40 NRC 359 (1994)
the record before the board falls far short of rebutting the presumption that a petition for license modification, suspension, or revocation is a meaningful avenue for seeking administrative relief; LBP-12-14, 76 NRC 10 (2012)
- Batterton v. Marshall*, 648 F.2d 694, 700 (D.C. Cir. 1980)
Administrative Procedure Act broadly defines "rule" to include nearly every statement an agency may make; LBP-15-15, 81 NRC 612 n.100 (2015)

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- Batterton v. Marshall*, 648 F.2d 694, 701 (D.C. Cir. 1980)
many agency statements, including statements sometimes called “rules,” do not have force and effect, and advance notice and public participation are required for rules that carry the force of law; LBP-15-15, 81 NRC 612 n.100 (2015)
- BB&L, Inc. v. National Labor Relations Board*, 52 F.3d 366, 369 (D.C. Cir. 1995)
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- Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983)
both standing (redressability) and contention admissibility (scope) in the context of an NRC enforcement order are addressed; LBP-14-4, 79 NRC 357 (2014)
whether licensee or other person consents to an enforcement order, other persons adversely affected by an order issued under section 2.202 will be offered an opportunity for a hearing consistent with current practice and the authority of the Commission to define the scope of the proceeding on an enforcement order; LBP-14-4, 79 NRC 326, 349 (2014)
- Bellotti v. NRC*, 725 F.2d 1380, 1381 (D.C. Cir. 1983), *aff'g, sub nom., Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982)
Commission has the authority to set the scope of its own hearings; LBP-14-4, 79 NRC 341 n.5, 373 n.64 (2014)
court will examine a specific barrier to participation, in isolation, and generally conclude that it is not illegal; LBP-14-4, 79 NRC 374 (2014)
NRC has authority to define the scope of its proceedings, which, in enforcement proceedings, is to permit challenges solely on whether an order should be sustained; LBP-12-14, 76 NRC 5 n.21 (2012)
- Bellotti v. NRC*, 725 F.2d 1380, 1382 (D.C. Cir. 1983), *aff'g Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982)
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if a hearing could be invoked each time NRC engaged in oversight over or inquiry into plant conditions, NRC’s administrative process could be brought to a virtual standstill; CLI-14-11, 80 NRC 175 (2014)
issue to be determined at hearing on a confirmatory order is whether the order should be sustained or denied, not whether the order should be enhanced; CLI-13-2, 77 NRC 44 (2013)
NRC has the authority to define the scope of its proceedings and challenges to an enforcement order may only be made by an affected person who opposes issuance of the order; LBP-14-4, 79 NRC 357 (2014)
- Bellotti v. NRC*, 725 F.2d 1380, 1382-83 (D.C. Cir. 1983), *aff'g, sub nom., Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982)
petitioners denied a hearing for raising an issue outside the scope of a proceeding could still raise the issue through a petition for enforcement under 10 C.F.R. 2.206; LBP-12-14, 76 NRC 5 n.21 (2012)
- Bellotti v. NRC*, 725 F.2d 1380, 1383 (D.C. Cir. 1983), *aff'g, Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982)
automatic participation at a hearing may be denied only when the Commission is seeking to make a facility’s operation safer; CLI-13-2, 77 NRC 45 n.24 (2013)
petition seeking additional enforcement measures beyond those prescribed by the order was properly denied; LBP-12-14, 76 NRC 5 (2012)
when NRC issues orders that require additional or better safety measures, AEA § 189a does not provide a vehicle for third parties to seek a hearing on any issue some member of the public may wish to litigate; CLI-13-2, 77 NRC 45 (2013)
- Bellotti v. NRC*, 725 F.2d 1380, 1386 (D.C. Cir. 1983) (Wright, dissenting)
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- Bennett v. Spear*, 520 U.S. 154, 162 (1997)
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- Bennett v. Spear*, 520 U.S. 154, 169 (1997)
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- Bennett v. Spear*, 520 U.S. 154, 175 (1997)
when no proximity presumption applies, petitioner must assert some specific injury in fact that will result from action taken; CLI-11-3, 73 NRC 622 n.47 (2011)
- Bennett v. Spear*, 520 U.S. 154, 175-76 (1997)
whether plaintiff's interest is arguably protected by the statute within the meaning of the zone-of-interests test is to be determined not by reference to the overall purpose of the act in question, but by reference to the particular provision of law upon which plaintiff relies; LBP-14-4, 79 NRC 355-56 (2014)
- Bennett v. Spear*, 520 U.S. 154, 176-77 (1997)
obvious purpose of the requirement that each agency use the best scientific and commercial data available is to ensure that a statute not be implemented haphazardly, on the basis of speculation or surmise; LBP-14-4, 79 NRC 356 (2014)
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- Bennett v. Spear*, 520 U.S. 154, 178 (1997)
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- Bering Strait Citizens v. U.S. Army Corps of Engineers*, 524 F.3d 398, 952 (9th Cir. 2008)
NEPA does not require circulation of a draft environmental assessment in all cases; CLI-15-17, 82 NRC 41 n.53 (2015)
- Block v. Community Nutrition Institute*, 467 U.S. 340, 348 (1984)
standing is refused only when congressional intent specifically precludes the party or issue from obtaining judicial review; LBP-14-4, 79 NRC 355 n.36 (2014)
- Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998)
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- Blue Ridge Environmental Defense League v. NRC*, 716 F.3d 183, 188 (D.C. Cir. 2013)
environmental impact statements must address all reasonably foreseeable environmental impacts even if the probability of such an occurrence is low; LBP-14-9, 80 NRC 42 (2014)
- Blue Ridge Environmental Defense League v. NRC*, 716 F.3d 183, 189 (D.C. Cir. 2013)
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- Blue Ridge Environmental Defense League v. NRC*, 716 F.3d 183, 196 (D.C. Cir. 2013)
NRC rules provide a mechanism for supplementing an original NEPA analysis, but the rules do not guarantee a hearing nor is a hearing necessary to satisfy NRC's NEPA obligations; CLI-13-7, 78 NRC 211 (2013)
- Bolvin v. Black*, 225 F.3d 36, 42-43 (1st Cir. 2000)
the Commission's action in adopting new procedural rules meets the rational basis test; LBP-11-4, 73 NRC 125 n.147 (2011)
- Border Power Plant Working Group v. U.S. Department of Energy*, 260 F. Supp. 2d 997, 1012-18 (S.D. Cal. 2003)
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- increased air pollution in California resulting from two export turbines at a Mexican plant was a direct effect of the new transmission lines, and DOE was required to evaluate the air pollution impacts under NEPA; LBP-14-9, 80 NRC 50 (2014)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 465-68 (1985)
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- Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982)
hearing on a confirmatory order is limited solely to whether, on the basis of matters set forth in the order, the order should be sustained; LBP-14-4, 79 NRC 341 (2014)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 45 (1982)
scope of a section 2.202 proceeding is limited to the narrow issues of whether the facts stated in the order are true and whether the remedy selected is supported by those facts; CLI-13-2, 77 NRC 44-45 (2013)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 45-46 (1982)
challenges to NRC enforcement orders are limited to whether the order should be sustained; LBP-14-4, 79 NRC 357, 373 n.64 (2014)
- Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 46-47 (1982)
measures intended to strengthen an enforcement order issued under 10 C.F.R. 2.202 are not within the limited scope of enforcement proceedings; CLI-13-2, 77 NRC 43 (2013)
- Boston Edison Co.* (Pilgrim Nuclear Power Station, Unit 2), LBP-76-7, 3 NRC 156, 157 (1976)
if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 14 n.10 (2014)
- Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)
courts give controlling weight to an agency's interpretation of its own regulation unless it is plainly erroneous or inconsistent with the regulation; LBP-12-19, 76 NRC 196 n.65 (2012)
- Brandt v. Hickel*, 427 F.2d 53, 57 (9th Cir. 1970)
to say to appellants that the joke is on you, you shouldn't have trusted us, is hardly worthy of our great government; LBP-13-3, 77 NRC 96 n.68 (2013)
- Braunkohle Transport, USA* (Import of South African Uranium Ore Concentrate), CLI-87-6, 25 NRC 891, 893-94 (1987)
formal adjudicatory procedures are inappropriate in export or import licensing proceedings; CLI-11-3, 73 NRC 623-24 n.53 (2011)
- Bristol-Meyers Co. v. Federal Trade Commission*, 598 F.2d 18 (D.C. Cir. 1978)
to qualify for deliberative process privilege, documents must be generated as part of a definable decisionmaking process that results in a final agency decision and must reflect the flow of opinions, recommendations, or advice between policymakers in formulating some type of definitive and conclusive ruling; LBP-13-5, 77 NRC 239 (2013)
- Brodsky v. NRC*, 704 F.3d 113 (2d Cir. 2013)
NEPA affords agencies considerable discretion to decide the extent to which public involvement is practicable; CLI-15-17, 82 NRC 41 n.53 (2015)
- Brodsky v. NRC*, 704 F.3d 113, 119-20 (2d Cir. 2013)
categorical exclusion is a generic finding that a category of actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 181 (2015)
- Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 1076 (2011)
applying the rule of statutory construction that the mention of one thing implies the exclusion of another, the fact that the regulation sets forth three specific circumstances in which a board's jurisdiction ends implies that jurisdiction does not end in other circumstances not listed; LBP-11-22, 74 NRC 277 (2011)
specific inclusion of some conditions in a statute or regulation implies the exclusion of those not mentioned; CLI-12-14, 75 NRC 697 (2012)

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- Bulova Watch Co. v. United States*, 365 U.S. 753, 758 (1961)
specific regulations control over general regulations; CLI-15-10, 81 NRC 540 (2015)
- Burke v. Kodak Retirement Income Plan*, 336 F.3d 103, 107-08 (2d Cir. 2003)
a notice failing to contain a specific time limit for administrative review, as required by federal regulations, does not trigger a time bar; LBP-11-19, 74 NRC 63 n.9 (2011)
- Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678, 682-83 (D.C. Cir. 1982)
Council on Environmental Quality Guidance does not change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable, and some courts have declined to defer to it; LBP-12-23, 76 NRC 467 (2012)
- Caldwell-Baker Co. v. Southern Illinois Railcar Co.*, 225 F. Supp. 2d 1243, 1251-52 (D. Kan. 2002)
where extraneous writing is incorporated for a specific purpose, the writing will be incorporated only to the extent of the reference and for the specific purpose intended, and the reference must be clear and unequivocal; LBP-12-24, 76 NRC 515 n.57 (2012)
- California v. Environmental Protection Agency*, No. C 07-2055 JSW(JL), 2008 WL 5384623, at *5 (N.D. Cal. Dec. 22, 2008)
deliberative process privilege has been extended to draft documents, proposals, suggestions, instructions to work deletions and alterations into drafts, instructions to conduct an investigation, documents reflecting personal and advisory opinions, and rejections of recommendations; LBP-13-5, 77 NRC 239-40 (2013)
to qualify for deliberative process privilege, documents must be generated as part of a definable decisionmaking process that results in a final agency decision and must reflect the flow of opinions, recommendations, or advice between policymakers in formulating some type of definitive and conclusive ruling; LBP-13-5, 77 NRC 239 (2013)
- California v. Environmental Protection Agency*, No. C 07-2055 JSW(JL), 2008 WL 5384623, at *7 (N.D. Cal. Dec. 22, 2008)
factual material that does not reveal the deliberative process is not protected by privilege, unless it is inextricably intertwined with the deliberative portions of the document or it could reveal the deliberative process being protected if it were disclosed; LBP-13-5, 77 NRC 239 (2013)
- California Wilderness Coalition v. U.S. Department of Energy*, 631 F.3d 1072, 1105-06 (9th Cir. 2011)
deficiencies in NRC Staff's analysis of a combination alternative is not harmless error; LBP-12-17, 76 NRC 119 (2012)
without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an environmental impact statement to inform agency deliberation and facilitate public involvement would be greatly degraded; LBP-11-23, 74 NRC 331 (2011)
- California v. Federal Energy Regulatory Commission*, 329 F.3d 700, 706-07 (9th Cir. 2003)
boards may not rely on a *Federal Register* notice to put petitioner on constructive notice of a requirement that the board itself cannot discern in the regulations; LBP-13-3, 77 NRC 97 (2013)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911 (2009)
Commission affirmed board ruling on standing and upheld the validity of the proximity presumption; CLI-15-13, 81 NRC 561 n.22 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914 (2009)
board rulings on standing are accorded substantial deference on appeal; CLI-12-12, 75 NRC 608 (2012); CLI-14-2, 79 NRC 13 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009)
contemporaneous judicial concepts of standing are applied in NRC proceedings; LBP-13-8, 78 NRC 7 (2013); CLI-15-25, 82 NRC 394 (2015); LBP-12-8, 75 NRC 546 (2012)
NRC follows contemporaneous judicial concepts of standing, which call for showing of a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision, where the injury is to an interest arguably within the zone of interests protected by the governing statute; LBP-11-29, 74 NRC 616 (2011); LBP-14-4, 79 NRC 353 (2014)

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- NRC is not strictly bound by judicial standing doctrines but has long applied contemporaneous judicial concepts of standing; LBP-14-4, 79 NRC 372 n.61 (2014)
- proximity presumption applies if petitioner has frequent contacts within the geographic zone of potential harm; LBP-11-13, 73 NRC 546 (2011)
- to show standing, a hearing request must state petitioner's name, address, and telephone number, nature of its right under the applicable statutes to be made a party, nature and extent of property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on its interest; LBP-11-29, 74 NRC 616 (2011)
- under the proximity presumption, an individual who resides within a 50-mile radius of a nuclear power plant is not required to specifically plead injury, causation, and redressability to establish his or her standing to intervene; LBP-12-10, 75 NRC 638 (2012)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 n.15 (2009)
- although the Commission has never explicitly endorsed using the proximity presumption in a license renewal proceeding, it did cite favorably, in the context of a COL hearing, to a licensing board's application of the presumption in a reactor life extension case; LBP-12-15, 76 NRC 24 n.1 (2012)
- geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet these traditional standing requirements in certain types of proceedings, including operating license renewal proceedings; LBP-12-8, 75 NRC 547 (2012); LBP-13-8, 78 NRC 7-8 (2013)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009)
- standing based on the proximity presumption has been found if petitioner or a representative of a petitioner organization resides within approximately 50 miles of the facility in question; LBP-11-13, 73 NRC 546, 548 (2011); LBP-11-16, 73 NRC 653 (2011); LBP-11-29, 74 NRC 616 (2011); LBP-12-24, 76 NRC 508 n.19 (2012); LBP-13-8, 78 NRC 7 (2013)
- to demonstrate organizational standing, petitioner must show injury-in-fact to the interests of the organization itself; LBP-15-17, 81 NRC 771 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 & n.15 (2009)
- in reactor license renewal proceedings, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the nuclear power facility; LBP-11-21, 74 NRC 122 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-17 (2009)
- proximity presumption allows petitioner living within 50 miles of the reactor to establish standing without the need to make an individualized showing of injury, causation, and redressability; LBP-15-5, 81 NRC 256 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 916-17 (2009)
- for reactor operating license renewal proceedings, a proximity presumption, respecting standing for an individual who resides within a 50-mile radius of a nuclear power plant, is recognized; LBP-12-10, 75 NRC 638 (2012)
- NRC could consider adopting, at least for the initial construction/operation authorization of in situ recovery facilities, a standing regime by which persons living or having substantial contacts within a 50-mile radius of the facility are afforded standing; LBP-12-3, 75 NRC 189 n.27 (2012)
- organization members living within 50 miles of a reactor are presumed to have standing under the Commission's 50-mile proximity presumption; LBP-15-5, 81 NRC 257 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009)
- proximity presumption to establish standing is based on the finding that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-11-2, 73 NRC 41 n.51 (2011); LBP-11-13, 73 NRC 546 (2011); LBP-14-4, 79 NRC 331-32 (2014)

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- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 n.27 (2009)
NRC has latitude to define who is an “affected person” within the meaning of Atomic Energy Act § 189a, 42 U.S.C. § 2239(a); LBP-12-3, 75 NRC 189 n.27 (2012)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 920 (2009)
an entity is under foreign ownership, control, or domination whenever a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant; LBP-11-25, 74 NRC 391 (2011)
there is no specific ownership percentage above which the Commission would conclusively find that an applicant is per se controlled by foreign interests; LBP-11-25, 74 NRC 391 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 920 (2009)
NRC Staff review procedures used to evaluate applications for issuance or transfer of control of a production or utilization facility license in light of the prohibitions in Atomic Energy Act § 103d and 104d and in 10 C.F.R. 50.38 against foreign ownership or control are described; LBP-12-19, 76 NRC 192 (2012)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 920-21 (2009)
foreign control must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares; LBP-11-25, 74 NRC 391 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 921 (2009)
applicant’s eligibility merely to apply for a combined license is material to a combined license proceeding; LBP-11-25, 74 NRC 395 (2011)
foreign control inquiry should be focused on safeguarding the national defense and security as well as five other factors; LBP-11-25, 74 NRC 391 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 922-23 (2009)
correctness of assurance that the license conditions will be replaced by sections 50.75(h) and 50.82(a)(8) is a genuine concern relative to the appropriateness of the license amendment request, and therefore the board concludes that the state has shown the materiality of its contention; LBP-15-24, 82 NRC 86 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 924 (2009)
contentions challenging the ability of combined license applicants to handle onsite storage of Classes B and C low-level radioactive waste, as well as the attendant potential environmental impacts of such storage in the wake of the closure of the Barnwell facility in South Carolina to states outside of the Atlantic Compact are admissible; LBP-11-6, 73 NRC 242 (2010)
mere existence of the letter of intent to ship low-level radioactive waste to a disposal facility does not answer questions as to whether such a plan will ultimately result in a transfer of LLRW title and permanent offsite disposition of the LLRW and whether nontransfer of title will result in environmental impacts; LBP-11-6, 73 NRC 242 (2010)
merits determination cannot be resolved at the contention admissibility stage of the proceeding; LBP-11-6, 73 NRC 241 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012)
final licensing decisions were suspended until the Commission addressed the court’s remand on the Waste Confidence Decision and Temporary Storage Rule and boards were instructed to hold relevant contentions in abeyance pending further order; CLI-15-11, 81 NRC 547 (2015); CLI-15-12, 81 NRC 552 (2015)
onsite waste storage contentions are to be held in abeyance pending further Commission order; CLI-13-7, 78 NRC 202 n.3 (2013); LBP-13-8, 78 NRC 15 (2013)

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- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 63-65 (2012)
Commission responded to a series of petitions to suspend final licensing decisions in twenty-two reactor licensing proceedings; CLI-14-3, 79 NRC 33 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 66-67 (2011)
all final decisions for licenses that relied on the Waste Confidence Decision and Temporary Storage Rule were suspended; CLI-15-4, 81 NRC 230 (2015)
because waste confidence undergirds certain agency licensing decisions, the Commission held that NRC should not issue licenses affected by the Waste Confidence Decision until the remanded issues are resolved; CLI-14-3, 79 NRC 33 (2014)
in issuing the suspension of final licensing decisions in proceedings, NRC recognized that it could not move forward without first addressing the D.C. Circuit's remand because the vacatur left a regulatory gap in the Part 51 regulations that undergird licensing reviews in those matters; CLI-14-7, 80 NRC 9 n.32 (2014)
NRC will not issue final licenses dependent upon the Waste Confidence Rule until the court's remand is appropriately addressed; LBP-12-21, 76 NRC 242 (2012)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (2012)
in light of the vacatur and remand of the Waste Confidence Decision and Temporary Storage Rule and in response to suspension petitions filed on multiple dockets, issuance of final licensing decisions for affected matters were held in abeyance while the Commission addressed the court's remand; CLI-15-13, 81 NRC 562-63 (2015)
members of the public had the opportunity to fully participate in the Continued Storage rulemaking proceeding; CLI-15-10, 81 NRC 541-42 (2015)
NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand is appropriately addressed; CLI-12-17, 76 NRC 212 (2012); LBP-13-13, 78 NRC 270, 276 n.105 (2013); LBP-14-3, 79 NRC 273 n.10 (2014)
to the extent NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-15-11, 81 NRC 547 n.5 (2015); CLI-15-12, 81 NRC 552 n.5 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 & n.7 (2012)
decision to suspend final licensing decisions is highly dependent upon the facts and requires a judgment that the significance of the matter raised is so substantial as to warrant suspension; CLI-15-14, 81 NRC 736 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67-69 & n.10 (2012)
Commission retained authority to provide ultimate direction on the waste confidence contentions being held in abeyance; LBP-14-8, 79 NRC 528 (2014)
waste confidence and similar contentions are held in abeyance pending further order from the Commission; LBP-14-7, 79 NRC 454 n.1 (2014); LBP-14-8, 79 NRC 522 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 68-69 (2012)
as an exercise of its inherent supervisory authority over adjudications, the Commission directed that waste confidence contentions and any related contentions that may be filed in the near term be held in abeyance pending further order; CLI-15-6, 81 NRC 344 n.11 (2015); LBP-12-24, 76 NRC 506, 510 (2012); LBP-13-1, 77 NRC 69 n.46 (2013); LBP-13-4, 77 NRC 114 n.1, 221 n.101 (2013); LBP-13-8, 78 NRC 16 (2013); LBP-13-13, 78 NRC 270 (2013); LBP-14-6, 79 NRC 410 (2014); LBP-14-14, 80 NRC 145 (2014); LBP-14-16, 80 NRC 189 (2014); LBP-15-1, 81 NRC 21 (2015); LBP-15-12, 81 NRC 453 n.2 (2015)
motion for leave to file a new contention concerning storage and disposal of spent nuclear fuel was held in abeyance pending further order of the Commission; LBP-15-14, 81 NRC 592 (2015)

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- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 69 n.11 (2012)
should the Commission determine at a future time that case-specific waste confidence challenges are appropriate for consideration, normal procedural rules will apply; LBP-13-1, 77 NRC 69 n.46 (2013); LBP-14-6, 79 NRC 410 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-13-4, 77 NRC 101, 104 n.9 (2013)
it is within Commission discretion to grant leave for participation as amicus curiae; CLI-15-1, 81 NRC 5 n.19 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-13-4, 77 NRC 101, 105 (2013)
Commission disfavors issuance of advisory opinions; CLI-13-10, 78 NRC 568 (2013)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71 (2014)
Continued Storage Rule makes generic safety findings concerning feasibility and capacity of spent fuel disposal; LBP-15-9, 81 NRC 397 (2015)
decision to suspend final licensing decisions is highly dependent upon the facts and requires a judgment that the significance of the matter raised is so substantial as to warrant suspension; CLI-15-14, 81 NRC 736-37 (2015)
NRC adopted a generic environmental impact statement identifying and analyzing environmental impacts of continued storage of spent nuclear fuel and associated revisions to the Temporary Storage Rule in 10 C.F.R. 51.23; LBP-14-16, 80 NRC 190 (2014); LBP-15-1, 81 NRC 21-22 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 74 (2014)
Commission approved issuance of a revised rule codifying NRC's generic determinations regarding the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's licensed operating life; LBP-14-14, 80 NRC 145 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 74, 79 (2014)
Commission lifted suspension on final licensing decisions, declined to accept contentions concerning continued storage of spent nuclear fuel, and directed boards to reject pending contentions on this issue; LBP-14-14, 80 NRC 145 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 75 (2014)
Commission adopted a generic environmental impact statement to identify and analyze the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-5, 81 NRC 267 (2015); LBP-15-12, 81 NRC 453 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 77 (2014)
Commission lifted its suspension on final licensing decisions after adopting a generic environmental impact statement to identify and analyze environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-5, 81 NRC 267 (2015)
NRC Staff must account for the environmental impacts of continued storage before finalizing individual licensing decisions, and, when appropriate circumstances exist, the question of whether to prepare a supplemental final environmental impact statement is to be part of that analysis; CLI-15-10, 81 NRC 543, 544 (2015)
results of the continued storage proceeding must be accounted for before finalizing individual license decisions; CLI-15-10, 81 NRC 542 (2015)
to address the court's remand and provide a comprehensive analysis of the environmental impacts of continued storage, the Commission issued a final Continued Storage Rule and supporting Generic Environmental Impact Statement; CLI-15-13, 81 NRC 563 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 77-79 (2014)
concurrent with approval of the Continued Storage Rule and Generic Environmental Impact Statement, the Commission lifted the suspension on final licensing decisions and directed that proposed spent

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- fuel storage contentions be dismissed; CLI-15-11, 81 NRC 548 n.6 (2015); CLI-15-12, 81 NRC 552 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 78 (2014)
- assumptions used in the analysis of impacts of continued storage of spent fuel are sufficiently conservative to bound the impacts such that variances that may occur between sites are unlikely to result in environmental impact determinations greater than those presented in the continued storage generic environmental impact statement; CLI-15-11, 81 NRC 548 n.7 (2015)
- impacts of continued storage will not vary significantly across sites and can be analyzed generically; CLI-15-11, 81 NRC 548 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 78-79 (2014)
- impacts of continued storage will not vary significantly across sites and can be analyzed generically; LBP-14-16, 80 NRC 190 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 78-79 n.25 (2014)
- generic approach to high-level waste disposal has been endorsed by higher courts; LBP-14-16, 80 NRC 197 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79 (2014)
- after reviewing the background regarding the continued storage rule, the Commission directed licensing boards to reject waste confidence contentions pending before them; LBP-14-12, 80 NRC 140 (2014); LBP-14-13, 80 NRC 143 (2014); LBP-14-15, 80 NRC 155 (2014); LBP-14-16, 80 NRC 190 (2014)
- assumptions used in the analysis of impacts of continued storage of spent fuel are sufficiently conservative to bound the impacts such that variances that may occur between sites are unlikely to result in environmental impact determinations greater than those presented in the continued storage generic environmental impact statement; CLI-15-12, 81 NRC 552 n.7 (2015)
- because generic impact determinations on impacts of continued storage have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings; LBP-14-15, 80 NRC 155 (2014)
- Commission directed all licensing boards to reject pending waste confidence contentions that had been held in abeyance, because the generic impact determinations have been the subject of extensive public participation in the rulemaking process and therefore are excluded from litigation in individual proceedings; LBP-15-1, 81 NRC 22 (2015); LBP-15-5, 81 NRC 267 (2015); LBP-15-8, 81 NRC 394 (2015)
- contention that impermissibly challenges an agency regulation is outside the scope of an individual licensing proceeding and is therefore inadmissible; CLI-15-11, 81 NRC 549 (2015); LBP-14-15, 80 NRC 155 (2014)
- generic determinations are appropriately excluded from litigation in individual proceedings; CLI-15-11, 81 NRC 548 (2015); CLI-15-12, 81 NRC 552 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79 n.27 (2014)
- contentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings; LBP-14-16, 80 NRC 193 (2014); LBP-15-4, 81 NRC 167 n.64 (2015); LBP-15-17, 81 NRC 778 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79, 81 (2014)
- Commission approval of the Continued Storage Rule and generic environmental impact statement mandates that contentions discussing the long-term storage of spent nuclear fuel are not to be heard by individual licensing boards; LBP-14-16, 80 NRC 197-98 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79-80 (2014)
- concurrent with issuance of a Continued Storage Rule and Generic Environmental Impact Statement, the Commission lifted the licensing suspension and dismissed, or directed licensing boards to

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- dismiss, proposed contentions that had been filed with the multidocket suspension petitions and held in abeyance; CLI-15-13, 81 NRC 563 (2015)
- following adoption of a revised Continued Storage Rule, boards were ordered to reject continued storage contentions pending before them, except contentions unresolved by the Continued Storage Rule; CLI-15-6, 81 NRC 344-45 n.11 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 80 (2014)
- Commission directed all affected licensing boards to reject proffered contentions on environmental impacts of spent nuclear fuel storage; LBP-15-14, 81 NRC 592 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 183 (2009)
- the proximity presumption's rationale is that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-11-13, 73 NRC 546 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 184, *aff'd*, CLI-09-20, 70 NRC 911 (2009)
- it is for the Commission, not licensing boards, to revise its rulings; LBP-15-18, 81 NRC 797 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 184, *aff'd*, CLI-09-20, 70 NRC 911, 917-18, 924 (2009)
- licensing boards are bound by Commission precedent; CLI-13-7, 78 NRC 205 n.19 (2013)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 190 (2009), *aff'd*, CLI-09-20, 70 NRC 911 (2009)
- pleading requirements of 10 C.F.R. 2.309(f)(1)(v), calling for a recitation of facts or expert opinion supporting the issue raised, are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-15-11, 81 NRC 437-38 n.241 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 219-20, 224, *aff'd*, CLI-09-20, 70 NRC 911, 921-24 (2009)
- contentions challenging the ability of combined license applicants to handle onsite storage of Classes B and C low-level radioactive waste, as well as the attendant potential environmental impacts of such storage in the wake of the closure of the Barnwell facility in South Carolina to states outside of the Atlantic Compact are admissible; LBP-11-6, 73 NRC 239 (2010)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 228 (2009), *aff'd*, CLI-09-20, 70 NRC 911 (2009)
- environmental contentions are expected in response to applicant's or NRC Staff's environmental reviews, and contentions regarding their adequacy cannot be expected to be proffered at an earlier stage of the proceeding before the documents are available; LBP-15-11, 81 NRC 423 n.132 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-15, 70 NRC 198, 210 (2009)
- contention dismissal based on mootness is a jurisdictional ruling, not a decision on the merits of the claim; LBP-11-22, 74 NRC 270 n.61 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-10-24, 72 NRC 720, 729-30 (2010)
- contentions may challenge the adequacy of the review contained in NRC Staff's NEPA documents; LBP-11-22, 74 NRC 273 n.72 (2011)
- intervenor may propose new or amended contentions based on data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's environmental documents; LBP-11-7, 73 NRC 277 (2011)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-10-24, 72 NRC 720, 750 (2010)
- although boards do not decide the merits or resolve conflicting evidence at the contention admissibility stage, materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; LBP-15-20, 81 NRC 865 (2015)
- boards may examine both the statements in the document that support petitioner's assertions and those that do not; LBP-15-20, 81 NRC 865 (2015)

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- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-10-24, 72 NRC 720, 750-52 (2010)
licensing board concluded that information on a website cited by the intervenors, instead of supporting intervenors' claim, contradicted it; LBP-15-20, 81 NRC 860 n.187 (2015)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-12-19, 76 NRC 184, 187 (2012), *petition for review denied*, CLI-13-4, 77 NRC 101 (2013)
where a foreign entity proposed to own 100% of the entire facility, a negation action plan was of no consequence; LBP-14-3, 79 NRC 306-07 (2014)
- Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-12-19, 76 NRC 184, 195-201 (2012), *petition for review denied*, CLI-13-4, 77 NRC 101 (2013)
there is generally no specific ownership percentage above which the NRC Staff would conclusively determine that an applicant is per se controlled by foreign interests, but a 100% foreign ownership has formed the basis for the licensing board's grant of summary disposition in favor of the intervenors; LBP-14-3, 79 NRC 280 n.56 (2014)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1112 (D.C. Cir. 1971)
although NEPA's requirements are procedural, federal agencies are held to a strict standard of compliance with the act's requirements; LBP-12-18, 76 NRC 159 (2012)
under NEPA, federal agencies must use all practicable means to avoid environmental degradation to the extent consistent with other essential considerations of national policy; LBP-14-9, 80 NRC 29 (2014)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1115 (D.C. Cir. 1971)
NEPA obligations supplement existing statutory authority and must be complied with to the fullest extent, unless there is a clear conflict of statutory authority; LBP-14-9, 80 NRC 50 (2014)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1118 (D.C. Cir. 1971)
after a licensing board in an uncontested proceeding determines that Staff's NEPA review is adequate, it must then independently consider the final balance among conflicting factors that is struck in the Staff's recommendation; LBP-12-21, 76 NRC 236 (2012)
National Environmental Policy Act requires that agencies consider environmental impacts of their actions to the fullest extent possible; LBP-12-21, 76 NRC 235-36 (2012)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1122 (D.C. Cir. 1971)
rule that excluded certain environmental impacts from NEPA consideration and deferred totally to environmental quality standards devised and administered by other agencies violated NEPA; LBP-15-23, 82 NRC 61 (2015)
- Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission*, 449 F.2d 1109, 1122-23 (D.C. Cir. 1971)
agency cannot relinquish its NEPA responsibility to evaluate environmental impacts by relying on expected compliance with the environmental standards of another agency; LBP-15-23, 82 NRC 61 (2015)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1123 (D.C. Cir. 1971)
although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action; LBP-11-7, 73 NRC 281 (2011)
although NRC does not license construction or operation of a transmission corridor, it has the authority to deny the license for a proposed nuclear plant if, for example, total environmental costs of the new reactor and connected actions exceed benefits; LBP-12-12, 75 NRC 779-80 (2012)
certification by agencies without overall responsibility for the particular federal action in question that its own environmental standards are satisfied attend only to one aspect of the problem without considering the broad range of environmental concerns and considerations mandated by NEPA; LBP-15-23, 82 NRC 61 (2015)
impacts of the possible routes that applicant will use for its transmission lines must be analyzed for applicant to give the NRC the requisite information to make an informed decision on its license; LBP-11-6, 73 NRC 199 n.52 (2010)
merely referencing an actual or anticipated certification by another agency fails to satisfy NEPA requirements; LBP-14-9, 80 NRC 63 (2014)

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- NEPA mandates a case-by-case balancing judgment on the part of federal agencies, not the private parties seeking federal action; LBP-14-9, 80 NRC 51 (2014); LBP-15-23, 82 NRC 61 (2015)
- NRC may not abdicate its duty under NEPA to other agencies to consider environmental impacts, even if those agencies have special expertise relating to environmental impacts; LBP-13-4, 77 NRC 213 n.91 (2013)
- the National Pollutant Discharge Elimination System permitting process does not excuse NRC from addressing relevant water quality issues in its environmental impact statement; LBP-12-10, 75 NRC 678-79 (2012)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1123, 1124 (D.C. Cir. 1971)
rule that excluded certain environmental impacts from NEPA consideration and deferred totally to environmental quality standards devised and administered by other agencies constituted an impermissible abdication of the AEC's NEPA responsibilities; LBP-15-23, 82 NRC 61 (2015)
- Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1125 (D.C. Cir. 1971)
NEPA requires NRC to construe its existing statutory authority consistently with NEPA's goals; LBP-14-9, 80 NRC 54 (2014)
- Carahsoft Technology Corp. v. United States*, 86 Fed. Cl. 325, 350 (2009)
for a contract to incorporate the terms of extrinsic material by reference, it must explicitly, or at least precisely, identify the written material being incorporated and must clearly communicate that the purpose of the reference is to incorporate the referenced material into the contract; LBP-12-24, 76 NRC 515 n.60 (2012)
- Carl Zeiss Stiftung v. V. E. B. Carl Zeiss, Jena*, 40 F.R.D. 318, 329 (D.D.C. 1966), *aff'd*, 384 F.2d 979 (D.C. Cir. 1967)
role of the government in litigation favors disclosure when the government is a party to the litigation and has been accused of unlawful conduct; LBP-13-5, 77 NRC 250 (2013)
when government conduct is challenged, claims of privilege may be used to obtain a litigating advantage; LBP-13-5, 77 NRC 250 (2013)
- Carolina Environmental Study Group v. United States*, 510 F.2d 796, 800 (D.C. Cir. 1975)
contentions could show a genuine dispute with respect to a technology that, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation; CLI-12-5, 75 NRC 342 n.245 (2012)
NEPA was not meant to require detailed discussion of remote and speculative alternatives; CLI-12-5, 75 NRC 342 n.244 (2012)
- Carolina Environmental Study Group v. United States*, 510 F.2d 796, 801 (D.C. Cir. 1975)
NEPA requires that alternatives be considered as they exist and are likely to exist, not merely as they exist at the present time; CLI-12-5, 75 NRC 340 (2012); LBP-11-2, 73 NRC 51 (2011); LBP-11-13, 73 NRC 563 (2011); LBP-12-17, 76 NRC 115 (2012)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 542-43 n.58 (1986)
petitioner may act to vindicate its own rights, but it has no standing to assert the rights of others; CLI-12-6, 75 NRC 363 (2012)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986)
although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 661, 670 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297, 299 (2000)
parties should not seek interlocutory review by invoking the grounds under which the Commission might exercise its supervisory authority; CLI-11-14, 74 NRC 813 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 383 (2001)
arguments not raised before the board or not clearly articulated in the petition for review are deemed waived; LBP-15-5, 81 NRC 290 n.263 (2015)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001)
apart from discretionary review by the Commission, NRC Staff's no significant hazards consideration determination under section 50.92(c) may not be contested; LBP-15-26, 82 NRC 178 n.30 (2015)

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- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 387-88 (2001)
an accident sequence with a probability conservatively estimated at 2.0×10^{-7} per reactor year is remote and speculative for the purposes of NEPA; LBP-11-38, 74 NRC 859 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29 (1999)
the interests a municipality seeks to represent on behalf of its residents are germane to its own purposes in the context of standing; LBP-11-6, 73 NRC 170 n.15 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-31 (1999)
when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, that entity may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual or nongovernmental organization, whether via a proximity presumption or otherwise; LBP-13-6, 77 NRC 272 n.7 (2013)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-00-19, 52 NRC 85, 92 (2000)
delay in filing contentions caused by the schedule of counsel in other matters can support a finding of good cause; LBP-12-12, 75 NRC 749 (2012)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-00-19, 52 NRC 85, 93-98 (2000)
contention challenging the adequacy/propriety of a Staff determination to prepare an environmental assessment in lieu of a supplemental EIS would need to await the issuance of the draft EA; LBP-13-6, 77 NRC 300 n.32 (2013)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1; H.B. Robinson Plant, Unit 2), DD-06-1, 63 NRC 133, 140 (2006)
for contentions that fall within the facility's current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 134 n.115 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-490, 8 NRC 234, 236, 241 (1978)
where the licensing board independently analyzed the data in the record and made its own need-for-power projection based thereon, the NRC did not abdicate its NEPA responsibilities by placing heavy reliance on the judgment of local regulatory bodies; LBP-13-4, 77 NRC 214 (2013)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-490, 8 NRC 234, 240-41 (1978)
NRC Staff's need-for-power analysis may accord an expert, independent agency's forecasts and studies great weight and may give heavy reliance to those forecasts and studies absent a showing that they contain a fundamental error; LBP-11-7, 73 NRC 282-83 n.178 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-490, 8 NRC 234, 241 (1978)
a state public service commission's determination of need for power may be relied on by the NRC in its own analysis, as long as that determination is neither shown nor appears on its face to be seriously defective; LBP-11-6, 73 NRC 218, 223 (2010)
in its need-for-power analysis, NRC Staff may rely on studies and forecasts prepared by expert, independent agencies charged with the duty of ensuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands; LBP-11-7, 73 NRC 282 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-526, 9 NRC 122, 123-24, 124 n.3 (1979)
after a board has authorized issuance of applicant's permits and the Commission has remanded a specific question to board, the board's jurisdiction is limited to what was remanded to it, and the board lacks jurisdiction over a newly filed intervention petition; LBP-11-20, 74 NRC 76 n.71 (2011)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-577, 11 NRC 18, 23-25 (1980), *modified*, CLI-80-12, 11 NRC 514 (1980)
although contention ultimately was resolved in NRC Staff's favor, Commission takes review as a matter of discretion because the board's ruling raises substantial questions of precedential importance; CLI-15-6, 81 NRC 369 (2015)

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- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-79-5, 9 NRC 607, 609-10 (1979)
because need-for-power assessments necessarily entail forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, they are inherently conservative; LBP-11-7, 73 NRC 283 (2011); LBP-12-5, 75 NRC 238 (2012)
long-range forecasts of demand for power are especially uncertain in that they are affected by trends in usage, increasing rates, demographic changes, industrial growth or decline, and the general state of the economy, among others; LBP-11-6, 73 NRC 223 n.84 (2010)
- Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 517 (1980)
concerns about how some aspect of a settlement agreement is being implemented or enforced can be brought to the attention of the Commission, which retains supervisory authority over the parties' agreement; LBP-15-21, 82 NRC 17 n.21 (2015)
- Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)
summary disposition movant bears the initial burden of showing the absence of a genuine issue of material fact; LBP-12-4, 75 NRC 218 (2012)
- Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)
opponent of a summary disposition motion cannot rest on the allegations or denials of a pleading, but instead must go beyond the pleadings and by its own affidavits, or the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; LBP-12-4, 75 NRC 218 (2012)
- Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)
when the issue on which summary judgment is sought is one on which the nonmoving party bears the burden of proof, the burden on the moving party may be discharged by showing that there is an absence of evidence to support the nonmoving party's case; LBP-11-4, 73 NRC 100 n.16 (2011)
- Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)
summary judgment, which is appropriate upon proper showings of the lack of a genuine, triable issue of material fact, is an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action; LBP-11-4, 73 NRC 99 (2011)
- Center for Auto Safety v. National Highway Traffic Safety Administration*, 710 F.2d 842, 844-45 (D.C. Cir. 1983)
advance notice of proposed rulemaking was withdrawn due to changes in market demand; LBP-15-15, 81 NRC 612 (2015)
- Center for Auto Safety v. National Highway Traffic Safety Administration*, 710 F.2d 842, 846 (D.C. Cir. 1983)
nonfinal rulemaking action can be ripe for review; LBP-15-15, 81 NRC 612 (2015)
where the basis behind the determination not to proceed with a rulemaking was a final agency ruling allowing for judicial review, the earlier advance notice of proposed rulemaking itself was not held to have any binding effect on the public; LBP-15-15, 81 NRC 612 (2015)
- Center for Biological Diversity v. Department of Interior*, 563 F.3d 466, 475 (D.C. Cir. 2009)
if an agency determines that a particular action will have no effect on an endangered or threatened species, the consultation requirements are not triggered; LBP-12-10, 75 NRC 640 n.40, 656-57, 671 (2012)
- Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1213 (9th Cir. 2008)
agency's narrowed construction of its statutory authority, as distinct from an express prohibition by Congress, may not be used to limit the agency's obligations under NEPA; LBP-14-9, 80 NRC 49 n.141 (2014)
government agencies are required to comply with NEPA to the fullest extent possible; LBP-14-9, 80 NRC 50 (2014)
NEPA's legislative history reflects Congress's concern that agencies might attempt to avoid any compliance with NEPA by narrowly construing other statutory directives to create a conflict with NEPA; LBP-14-9, 80 NRC 49-50 (2014)

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- Center for Biological Diversity v. U.S. Bureau of Land Management*, 698 F.3d 1101 (9th Cir. 2012)
Biological Opinion and its accompanying Incidental Take Statement issued by the U.S. Fish and Wildlife Service were arbitrary and capricious because they were based in part on a conservation plan that was not enforceable under the Endangered Species Act; LBP-12-23, 76 NRC 468-69 (2012)
- Center for Science in the Public Interest v. Regan*, 727 F.2d 1161, 1170 (D.C. Cir. 1984)
exception to the mootness doctrine occurs if the challenged action is too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again; CLI-13-9, 78 NRC 558 n.26 (2013)
exception to the mootness doctrine occurs when a case is capable of repetition, yet evading review; CLI-13-10, 78 NRC 568 n.35 (2013)
- Center for Special Needs Trust Administration, Inc., v. Olson*, 676 F.3d 688, 698 (8th Cir. 2012)
estoppel claimant must prove a false representation by the government, that the government had the intent to induce the plaintiff to act on the misrepresentation, plaintiff's lack of knowledge or inability to obtain the true facts, and plaintiff's reliance on the misrepresentation to his detriment; LBP-12-16, 76 NRC 51 n.33 (2012)
- Charlissa C. Smith* (Denial of Senior Reactor Operator License), LBP-13-3, 77 NRC 82, 90 (2013)
"demand" for a hearing is understood to confer a right to a hearing; LBP-14-4, 79 NRC 371 (2014)
- Charlissa C. Smith* (Denial of Senior Reactor Operator License), LBP-13-3, 77 NRC 82, 91 (2013)
one demanding a hearing on a challenge to an enforcement order need not comply with the section 2.309(f)(1) requirements; LBP-14-4, 79 NRC 342 n.7 (2014)
- Charlton v. Donley*, 846 F. Supp. 2d 76, 85 (D.D.C. 2012)
in proving prejudicial error by a federal agency, it is sufficient that the agency's error may have affected the outcome; LBP-14-2, 79 NRC 166, 175 (2014)
- Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)
a court cannot defer to interpretive proposals offered by counsel at oral argument and affirm on the basis of that reading when the statute does not plainly compel the reading being proposed; CLI-11-12, 74 NRC 470 (2011)
NRC has discretion in specifying the level of foreign ownership that would constitute a violation of the Atomic Energy Act; LBP-12-19, 76 NRC 196 (2012)
- Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863-64 (1984)
NRC must consider varying interpretations and the wisdom of its policy on a continuing basis; LBP-14-4, 79 NRC 375 n.73 (2014)
- Churchill County v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001)
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- Ciba-Geigy Corp. v. Environmental Protection Agency*, 801 F.2d 430, 436 (D.C. Cir. 1986)
reviewing proposed actions improperly intrudes into NRC's decisionmaking process; LBP-15-15, 81 NRC 610 (2015)
- Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Power Station, Unit 1), CLI-82-20, 16 NRC 109 (1982)
although Commission approval is required before a board exercises its sua sponte authority, that authority still exists; LBP-14-9, 80 NRC 66 (2014)
- Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Power Station, Unit 1), CLI-82-20, 16 NRC 109, 110 (1982)
Commission ordered a licensing board not to exercise sua sponte authority because the Commission had already initiated an ongoing investigation to deal with the issues raised; LBP-14-9, 80 NRC 68 n.231 (2014)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991)
agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; CLI-12-5, 75 NRC 339, 343 (2012); LBP-11-13, 73 NRC 553 n.114 (2011)
NRC Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; LBP-12-15, 76 NRC 38 n.8 (2012)
under the rule of reason governing NEPA, the concept of alternatives must be bounded by some notion of feasibility; CLI-12-15, 75 NRC 724 (2012)
when the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; CLI-12-5, 75 NRC 343 (2012)

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- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195-96 (D.C. Cir. 1991)
reasonable alternatives under NEPA are limited to those alternatives that will bring about the ends of the proposed action; LBP-11-21, 74 NRC 137 (2011)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197-98 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991)
NRC gives substantial weight to the preferences of the applicant and/or sponsor; CLI-12-5, 75 NRC 339 (2012)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 201 (D.C. Cir. 1991)
agency does not have to follow EPA's comments, just take them seriously; LBP-14-9, 80 NRC 51 n.152 (2014)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 209 (D.C. Cir. 1991) (Buckley, J., dissenting)
NEPA requires agencies to exercise a degree of skepticism in dealing with self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives preferred by the applicant; LBP-12-17, 76 NRC 114 (2012)
NRC Staff cannot release NEPA documents that blindly parallel the applicant's information and omissions and then be allowed to argue that applicant's omissions prevent filing of new contentions concerning the newly released NEPA document; LBP-13-9, 78 NRC 59 (2013)
- Citizens Awareness Network, Inc. v. NRC*, 59 F.2d 284, 291 (1st Cir. 1995)
to avoid a finding of arbitrary and capricious agency action, NRC Staff may not depart from its established policies, procedures, and practices without a reasonable explanation for the change; LBP-14-2, 79 NRC 150 n.87 (2014)
- Citizens Awareness Network, Inc. v. NRC*, 59 F.2d 284, 292 (1st Cir. 1995)
Commission examines whether agency actions constituted de facto license amendments; CLI-14-11, 80 NRC 174 n.33 (2014)
- Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 294 (1st Cir. 1995)
by its nature a license is presumptively an exclusive (not an inclusive) regulatory device; LBP-13-7, 77 NRC 332 n.39 (2013)
- Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 294-95 (1st Cir. 1995)
if AEA § 189a is to serve its intended purpose, surely it contemplates that parties in interest be afforded a meaningful opportunity to request a hearing before the Commission retroactively reinvents the terms of an extant license by voiding its implicit limitations on the licensee's conduct; LBP-13-7, 77 NRC 327 (2013)
- Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 295 (1st Cir. 1995)
actions by the NRC Staff constitute a de facto license amendment when they authorize a licensee to engage in activities beyond the scope of its original license; LBP-13-7, 77 NRC 339 n.49 (2013)
factors material to determining whether NRC actions constitute a de facto license amendment are described; LBP-13-7, 77 NRC 332 (2013)
NRC expressly altered the policy and application of 10 C.F.R. 50.59 as it related to decommissioning activities, permitting licensee to dismantle major structural components without prior NRC approval of a final decommissioning plan; CLI-15-14, 81 NRC 734 n.21 (2015)
regulated conduct that is neither delineated nor reasonably encompassed within delineated categories of authorized conduct presumptively remains unlicensed; LBP-13-7, 77 NRC 332 n.39 (2013)
substance of the NRC action determines entitlement to a section 189a hearing, not the particular label that NRC chooses to assign to its action; LBP-13-7, 77 NRC 326 (2013)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 343 (1st Cir. 2004)
in 1982, NRC started to relax the procedural requirements for certain types of proceedings; LBP-11-8, 73 NRC 358 (2011)
the Atomic Energy Act requirement that NRC grant a hearing upon the request of any person whose interest may be affected by certain agency proceedings is interpreted as requiring formal Administrative Procedure Act § 554 on-the-record hearings; LBP-11-8, 73 NRC 358 (2011)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 344 (1st Cir. 2004)
the Atomic Energy Act does not mandate on-the-record hearings for reactor licensing proceedings and the Commission therefore has the option of replacing existing procedural requirements with more informal ones; LBP-11-8, 73 NRC 358 (2011)

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- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 351 (1st Cir. 2004)
NRC's new procedural rules meet the requirements for Administrative Procedure Act § 554 on-the-record formal hearings but the question of whether the Atomic Energy Act requires NRC hearings to be on-the-record was not resolved; LBP-11-8, 73 NRC 359 (2011)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 354 (1st Cir. 2004)
once a legally protectable interest is shown and intervenors are admitted as parties, the procedural rules cannot be administered so as to deprive intervenors of their interest in such rights without due process of law, or without arguably running afoul of the Administrative Procedure Act; LBP-11-4, 73 NRC 125 n.147 (2011)
should the agency's administration of its new procedural rules contradict its present representations that cross-examination will be allowed under the rules when required for a full and true disclosure of the facts or otherwise flout this principle, the rules may be subject to future challenges; LBP-11-4, 73 NRC 125 n.147 (2011)
there is no fundamental right to participate in administrative adjudications; LBP-11-4, 73 NRC 125 n.147 (2011)
- Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 355 (1st Cir. 2004)
the Commission's action in adopting new procedural rules meets the rational basis test; LBP-11-4, 73 NRC 125 n.147 (2011)
the Court applied a rational basis review to intervenor's challenge to NRC's 2004 changes to its procedural rules, citing cases involving challenges to laws regulating aspects of prisoners' right to access to the courts; LBP-11-4, 73 NRC 125 n.147 (2011)
- Citizens' Committee to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1030 (10th Cir. 2002)
agencies are not permitted to define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives; LBP-12-17, 76 NRC 114 (2012)
- Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)
NEPA-required alternatives discussion need not include every possible alternative, but rather every reasonable alternative; LBP-15-3, 81 NRC 104 (2015)
- Citizens for Safe Power, Inc. v. NRC*, 524 F.2d 1291, 1294 n.5 (D.C. Cir. 1975)
appeal board's ruling that the environmental impact statement was deemed modified by the parties' stipulations at hearing did not violate the letter or spirit of NEPA; CLI-15-6, 81 NRC 388 n.255 (2015)
environmental impact statements are effectively amended through the adjudicatory process; LBP-12-17, 76 NRC 83 (2012); LBP-14-9, 80 NRC 67 (2014)
- Citizens for Safe Power, Inc. v. NRC*, 524 F.2d 1291, 1299 (D.C. Cir. 1975)
Atomic Energy Act and National Environmental Policy Act and the regulations promulgated under each must be viewed in pari materia; LBP-14-9, 80 NRC 55 n.172 (2014)
- City of Carmel-by-the-Sea v. Department of Transportation*, 123 F.3d 1142, 1150-51 (9th Cir. 1997)
taking a hard look at environmental impacts fosters both informed decisionmaking and informed public participation and ensures that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct; LBP-13-13, 78 NRC 452 (2013)
- City of Carmel-by-the-Sea v. Department of Transportation*, 123 F.3d 1142, 1152 (9th Cir. 1997)
Clean Water Act 404 permit review can be conducted after issuance of a final environmental impact statement; LBP-15-23, 82 NRC 62-63 (2015)
that the Clean Water Act section 404 permit review is conducted after issuance of the final environmental impact statement does not impact an agency's duty under NEPA, but rather serves to highlight the distinction between NEPA and the CWA; LBP-15-23, 82 NRC 63 (2015)
- City of Carmel-by-the-Sea v. Department of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997)
applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 553 (2011)
- City of Davis v. Coleman*, 521 F.2d 661, 667 (9th Cir. 1975)
compliance with NEPA is a primary duty of every federal agency, and fulfillment of this responsibility should not depend on vigilance and limited resources of environmental plaintiffs; LBP-12-18, 76 NRC 166 (2012)

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- City of Grapevine v. Department of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)
although an agency's alternatives analysis should reflect applicant's goals, the underlying goal should not be purposefully narrowed to predetermine the outcome; LBP-12-17, 76 NRC 114 (2012)
NRC gives substantial weight to the preferences of the applicant and/or sponsor; CLI-12-5, 75 NRC 339 (2012)
reasonable alternatives under NEPA are limited to those alternatives that will bring about the ends of the proposed action; LBP-11-21, 74 NRC 137 (2011)
- City of Las Vegas v. Federal Aviation Administration*, 570 F.3d 1109, 1115 (9th Cir. 2009)
agencies are responsible for taking a hard look at the project's effect on safety as well as the environment; LBP-12-18, 76 NRC 160-61 (2012)
impact of a proposed action on public safety is an issue that must be considered under the National Environmental Policy Act as well as the Atomic Energy Act; LBP-12-18, 76 NRC 138 (2012)
- City of Los Angeles v. Adams*, 556 F.2d 40, 49-50 (D.C. Cir. 1977)
if Congress does not appropriate enough money to meet the needs of a class of beneficiaries prescribed by Congress, and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications; CLI-13-8, 78 NRC 226 n.29 (2013)
- City of New York v. U.S. Department of Transportation*, 715 F.2d 732, 742 (2d Cir. 1983)
project goals determine the alternatives that are considered reasonable; LBP-12-17, 76 NRC 113 (2012)
- City of Oxford v. Federal Aviation Administration*, 428 F.3d 1346, 1356 n.22 (11th Cir. 2005)
in context of cumulative impact analysis, regulations ask whether future actions are foreseeable, not whether they are interdependent; LBP-14-6, 79 NRC 421 (2014)
rather than being determinative, interdependence of proposed actions with potential future actions should be considered alongside other pertinent facts and circumstances to determine whether there is a sufficient likelihood that an action will occur to render that action foreseeable; LBP-14-6, 79 NRC 421 (2014)
- City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990)
agency violates NEPA by failing to rigorously explore and objectively evaluate all reasonable alternatives to the proposed action; LBP-15-15, 81 NRC 607 (2015)
- City of West Chicago v. NRC*, 701 F.2d 632, 638 (7th Cir. 1983)
NRC may hold an informal hearing in which it requests and considers written materials without providing for traditional trial-type procedures such as oral testimony and cross-examination; LBP-11-4, 73 NRC 124 n.147 (2011)
- City of West Chicago v. NRC*, 701 F.2d 632, 642 (7th Cir. 1983)
formal adjudicatory procedures are inappropriate in export or import licensing proceedings; CLI-11-3, 73 NRC 623-24 n.53 (2011)
- City of West Chicago v. NRC*, 701 F.2d 632, 644 n.11 (7th Cir. 1983)
if a formal adjudicatory hearing is mandated by the due process clause, the absence of the on-the-record requirement will not preclude application of the Administrative Procedure Act; LBP-11-8, 73 NRC 361 (2011)
- City of West Chicago v. NRC*, 701 F.2d 632, 645 (7th Cir. 1983)
health, safety, and environmental concerns do not constitute liberty or property subject to due process protection; LBP-11-4, 73 NRC 124-25 n.147 (2011)
intervenor in reactor licensing proceedings ordinarily cannot raise constitutional due process issues with respect to NRC hearing procedures, inasmuch as intervenors cannot claim government deprivation of life, liberty or property as a result of the NRC's licensing action; LBP-11-4, 73 NRC 124 n.147 (2011)
- City of West Chicago v. NRC*, 701 F.2d 632, 647 (7th Cir. 1983)
NRC possesses the authority to change its procedures on a case-by-case basis; CLI-13-8, 78 NRC 233 n.68 (2013)
- City of West Chicago v. NRC*, 701 F.2d 632, 650 (7th Cir. 1983)
failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-6, 79 NRC 421 (2014)

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- segmentation is to be avoided in order to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions; LBP-12-12, 75 NRC 778 n.204 (2012); LBP-14-9, 80 NRC 41 (2014)
- segmentation or piecemealing occurs when an action is divided into component parts, each involving action with less significant environmental effects; LBP-14-6, 79 NRC 421 (2014)
- Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 396-97 (1987)
- to be adversely affected or aggrieved within the meaning of a statute, plaintiff must establish that the injury complained of falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for the complaint; LBP-14-4, 79 NRC 354 (2014)
- Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 399 (1987)
- NRC is to look to federal law in applying the zone-of-interests test; LBP-14-4, 79 NRC 353 (2014)
- where plaintiff is not itself the subject of the contested regulatory action, the zone-of-interests test denies a right of review if plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit; LBP-14-4, 79 NRC 328 n.44, 354 (2014)
- zone-of-interests test is not meant to be especially demanding, there being no indication of congressional purpose to benefit the would-be plaintiff; LBP-14-4, 79 NRC 355 (2014)
- Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985)
- equal protection principles require that all persons similarly situated shall be treated alike; LBP-11-15, 73 NRC 639 n.20 (2011)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 89 (1993)
- pressurized water reactor pressure vessel surveillance program relies on physical material samples, also known as specimens, capsules, or coupons; LBP-15-17, 81 NRC 761 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 89, 90 (1993)
- proximity presumption applied where petitioners' contention concerned a license amendment to move the schedule for withdrawal of reactor vessel material specimens from the technical specifications to the updated safety analysis report; LBP-15-17, 81 NRC 773 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 91 (1993)
- if a license were amended, the public only means to participate in future schedule changes would be through a request for action under 10 C.F.R. 2.206; LBP-15-17, 81 NRC 773 n.124 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)
- contemporaneous judicial concepts of standing are applied in NRC proceedings; LBP-15-17, 81 NRC 770 (2015); LBP-15-19, 81 NRC 819 (2015)
- in determining standing, NRC asks whether an interest arguably within the zone of interests protected by the governing statute has been injured; LBP-14-4, 79 NRC 372 n.62 (2014)
- NRC generally applies traditional judicial standing concepts which require a showing that the individual has suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action, likely redressible by a favorable decision, and arguably within the zone of interests protected by the governing statutes; LBP-11-2, 73 NRC 40 (2011); LBP-11-13, 73 NRC 546 (2011); LBP-11-29, 74 NRC 616 (2011)
- under judicial concepts of standing, petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-15-5, 81 NRC 255-56 (2015); LBP-15-13, 81 NRC 463(2015); LBP-15-17, 81 NRC 770 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 (1993)
- in cases involving the possible construction or operation of a nuclear power reactor, the NRC considers proximity to the proposed facility to be sufficient to establish standing; LBP-11-16, 73 NRC 653 (2011)
- petitioners had proximity-based standing even though they did not provide a reactor vessel failure scenario; LBP-15-17, 81 NRC 774 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95-96 (1993)
- license amendments related to reactor pressure vessel embrittlement present an obvious potential for offsite public health and safety consequences; LBP-15-17, 81 NRC 773 (2015)

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- material condition of a plant's reactor vessel obviously bears on the health and safety of those members of the public who reside in the plant's vicinity; LBP-15-20, 81 NRC 837 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 317 (1996)
- long-term exposure to neutron radiation and elevated temperatures in a reactor vessel decrease the vessel materials' fracture toughness; LBP-15-20, 81 NRC 832-33 (2015)
- Part 50, Appendix H directs licensees to attach a particular number of surveillance capsules to specified areas within the reactor vessel; LBP-15-20, 81 NRC 838 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 319 (1996)
- because technical specifications are an integral part of an operating license, changes to technical specifications require a license amendment; LBP-13-7, 77 NRC 332 n.39 (2013)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 320 (1996)
- updated final safety analysis reports can be modified without a license amendment as long as the modifications do not involve a change to the technical specifications or an unreviewed safety question; LBP-13-7, 77 NRC 332 n.39 (2013)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 321 (1996)
- de facto license amendment proceeding is not initiated merely because licensee takes an action that requires some type of NRC approval; LBP-15-27, 82 NRC 191 (2015)
- license amendment is not required to change the reactor vessel surveillance capsule testing schedule; LBP-15-20, 81 NRC 842 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 322 (1996)
- nature of a reactor vessel surveillance capsule withdrawal schedule is such that modifications may need to be made; LBP-15-20, 81 NRC 842 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326 (1996)
- agency actions not formally labeled as license amendments nevertheless can constitute de facto license amendments and accordingly trigger hearing rights for the public under Atomic Energy Act § 189a; CLI-15-5, 81 NRC 334 (2015); CLI-15-14, 81 NRC 741 (2015)
- agency approval or authorization is a necessary component of NRC action that affords a hearing opportunity under AEA § 189a, but not all agency approvals granted to licensees constitute de facto license amendments; CLI-14-11, 80 NRC 173 (2014)
- Commission examines whether agency actions constituted de facto license amendments; CLI-14-11, 80 NRC 174 n.33 (2014)
- key factors to consider when determining whether agency action constitutes a de facto license amendment are whether the agency action granted licensee any greater authority or otherwise altered the original terms of the license; CLI-14-11, 80 NRC 174 n.33 (2014); CLI-15-5, 81 NRC 334 (2015)
- NRC oversight activities gathering information about and evaluating plant performance, regardless of the findings it makes, do not alter the conditions of a license and therefore cannot form the basis for the right to request a hearing; CLI-14-11, 80 NRC 175 (2014)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326-27 (1996)
- analytic framework for assessing whether a confirmatory action letter process constitutes a de facto license amendment proceeding is provided; LBP-13-7, 77 NRC 332 (2013)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326-28 (1996)
- scope of the referral is limited to whether NRC granted licensee greater authority than that provided by its existing licenses or otherwise altered the terms of its existing licenses, thereby entitling petitioner to an opportunity to request a hearing; CLI-15-14, 81 NRC 734 (2015)

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- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 327 (1996)
actions by NRC Staff constitute a de facto license amendment when they authorize a licensee to engage in activities beyond the scope of its original license; LBP-13-7, 77 NRC 339 n.49 (2013)
any changes to the material specimen withdrawal schedule that conform to the ASTM standard referenced in Appendix H will not alter the plant's license; LBP-15-20, 81 NRC 842 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328 (1996)
ASTM Standard E 185 anticipates that during the course of a nuclear power plant's life the surveillance capsule withdrawal schedule may need to be revised and allows and provides for such changes; LBP-15-20, 81 NRC 842 (2015)
de facto license amendment would exist, and hearing rights would be triggered, if NRC were to grant licensee greater operating authority or otherwise alter terms of the license or permit licensee to go beyond its existing license authority; LBP-15-27, 82 NRC 191 (2015)
where NRC approval does not permit licensee to operate in any greater capacity than originally authorized and all relevant safety regulations and license terms remain applicable, NRC approval does not amend the license; LBP-15-27, 82 NRC 191 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-95-17, 42 NRC 137 (1995), *rev'd and vacated*, CLI-96-13, 44 NRC 315 (1996)
board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets standing and contention admissibility requirements; CLI-12-20, 76 NRC 441 (2012)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-95-17, 42 NRC 137, 143 (1995), *rev'd on other grounds*, CLI-96-13, 44 NRC 315 (1996)
rules of interpretation applicable to statutes are equally germane in determining a regulation's meaning; LBP-13-3, 77 NRC 92 n.53 (2013)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-95-17, 42 NRC 137, 145 (1995), *rev'd on other grounds*, CLI-96-13, 44 NRC 315 (1996)
where the meaning of a regulation is clear and obvious, the regulatory language is conclusive, and the board may not disregard the letter of the regulation, but rather must enforce the regulation as written; LBP-14-7, 79 NRC 473 (2014)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977)
summary disposition proponent bears the burden of establishing that no facts remain in dispute, even if the motion is unopposed; LBP-12-26, 76 NRC 564 (2012)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 754 (1977)
if summary disposition proponent meets its burden, the party opposing the motion must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials, but no defense to an insufficient showing is required; LBP-11-7, 73 NRC 263 (2011); LBP-11-14, 73 NRC 595 (2011)
no defense to an insufficient showing for summary disposition is required; LBP-12-19, 76 NRC 190 (2012); LBP-12-23, 76 NRC 450 (2012)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 755 (1977)
affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein; LBP-11-23, 74 NRC 332 (2011)

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- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 492-93 (1985)
quality assurance programs establish measures to ensure that conditions adverse to quality are promptly identified and corrected; LBP-12-23, 76 NRC 476 (2012)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 492-93 (1985)
quality assurance programs must establish measures to ensure that conditions adverse to quality are promptly identified and corrected; LBP-14-7, 79 NRC 470 (2014)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-820, 22 NRC 743, 746 n.8 (1985)
upon a strong showing of irreparable injury, stay movant need not always establish a high probability of success on the merits; LBP-15-2, 81 NRC 54 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-841, 24 NRC 64, 95 (1986)
unless a schedule is so onerous or unfair that it deprives a party of procedural due process, scheduling is a matter of licensing board discretion; LBP-15-29, 82 NRC 254 (2015)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-79, 16 NRC 1116, 1118 (1982)
late-filed contentions lack good cause when they are based on a draft environmental impact statement that contains no new information relevant to the contention; LBP-13-9, 78 NRC 54 n.80 (2013)
- Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-79, 16 NRC 1116, 1119 (1982)
licensing boards may request Commission approval to consider the merits of a serious environmental issue even when it was excluded from the proceeding for procedural reasons; LBP-14-9, 80 NRC 38 (2014)
- Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior*, 100 F.3d 837, 840-41 (10th Cir. 1996)
a prospective intervenor must show a direct, substantial, and legally protectable interest, the test for which is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process; LBP-11-4, 73 NRC 125 n.147 (2011)
- Coastal States Gas Corp. v. U.S. Department of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980)
cursory and conclusory assertions that merely paraphrase the standards applicable to the deliberative process privilege without explaining how they apply to any specific document in dispute will not suffice to carry the government's burden of proof in defending FOIA cases; LBP-13-5, 77 NRC 243, 247 (2013)
in attempting to assert agency privilege, NRC Staff must remember that the burden is on it to establish its right to withhold information from the public and it must supply sufficient information to allow the decisionmaker to make a reasoned determination that it was correct; LBP-13-5, 77 NRC 242 (2013)
- Cogema Mining, Inc.* (Irigaray and Christensen Ranch Facilities), LBP-09-13, 70 NRC 168, 185 (2009)
Bureau of Indian Affairs lists federally recognized Native American tribes; LBP-13-6, 77 NRC 272 (2013)
- Cogema Mining, Inc.* (Irigaray and Christensen Ranch Facilities), LBP-09-13, 70 NRC 168, 191 (2009)
general environmental and policy interests are insufficient for organizational standing; LBP-12-3, 75 NRC 178 (2012)
petitioner's claim of organizational standing is of the sort that repeatedly have been found insufficient; CLI-12-12, 75 NRC 606 n.6 (2012)
- Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998)
equivalent words have equivalent meaning when repeated in the same statute; LBP-13-3, 77 NRC 91-92 (2013)
- Cohens v. State of Virginia*, 19 U.S. 264, 399-400 (1821)
dicta ought not to control the judgment in a subsequent suit when the very point is presented for decision; LBP-14-4, 79 NRC 360 n.39 (2014)

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- Coliseum Square Ass'n, Inc. v. Jackson*, 465 F.3d 215, 237-38 (5th Cir. 2006)
reasonable foreseeability test for cumulative impacts is applied; LBP-14-6, 79 NRC 421 (2014)
- Collins v. Shinseki*, 2013 WL 6000535 at *6 (Vet. App. 2013)
although public officials are afforded a presumption of regularity in the discharge of their duties, if facts before the board do not appear regular, then the presumption does not attach; LBP-14-2, 79 NRC 151 (2014)
- Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999)
NEPA requires that an actual range of alternatives be considered, so that the Act will preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only applicant's proposed project; LBP-15-15, 81 NRC 607 n.57 (2015)
- Colorado Wild, Inc. v. U.S. Forest Service*, 523 F. Supp. 2d 1213, 1219 (D. Colo. 2007)
NEPA's purpose is to influence the decisionmaking process by focusing the federal agency's attention on the environmental consequences of a proposed project, so as to ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast; LBP-14-9, 80 NRC 56 (2014)
when a decision to which NEPA obligations attach is made without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent has been suffered; LBP-14-9, 80 NRC 56 (2014)
- Colorado Wild, Inc. v. U.S. Forest Service*, 523 F. Supp. 2d 1213, 1224-25 (D. Colo. 2007)
activities that have sufficient federal involvement to qualify as federal actions must be included in the scope of the proposed action evaluated in an environmental impact statement; LBP-14-9, 80 NRC 47-48 n.127 (2014)
- Colorado Wild, Inc. v. U.S. Forest Service*, 523 F. Supp. 2d 1213, 1225 (D. Colo. 2007)
grounds were found for litigation regarding defendants' assertion that treatment of highway interchanges and village development as cumulative impacts in the final environmental impact statement was sufficient under NEPA even if these actions should have been treated as connected actions under the statute's implementing regulations; LBP-14-9, 80 NRC 56-57 (2014)
- Colorado Wild, Inc. v. U.S. Forest Service*, 523 F. Supp. 2d 1213, 1225-26 (D. Colo. 2007)
heated debate would not have occurred unless the label attached to the actions made a difference to the content, scope, and/or depth of environmental analysis; LBP-14-9, 80 NRC 57 (2014)
- Comcast Corp. v. Federal Communications Commission*, 526 F.3d 763, 769 n.2 (D.C. Cir. 2008)
courts presume that federal agencies act in good faith; LBP-11-39, 74 NRC 868 n.21 (2011)
- Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), ALAB-874, 26 NRC 156, 158 (1987)
stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983, 985 (1981)
it is not customary for an appeal to proceed through at least the briefing process while the trial tribunal has before it an authorized and timely filed petition for reconsideration of the decision or order in question; CLI-12-5, 75 NRC 306 n.23 (2012)
- Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), ALAB-770, 19 NRC 1163, 1169 (1984)
licensing board was not justified in rendering a final judgment in the face of unfolding developments having a deciding bearing and conceivably crucial effect on the issue that shaped that judgment; LBP-12-19, 76 NRC 203 (2012)
- Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981)
scope of any hearing should include the proposed license amendments, and any health, safety, or environmental issues fairly raised by them; LBP-12-25, 76 NRC 552 (2012)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), 4 AEC 231, 233 (1969)
if allegations are accurate that applicant is subject to foreign direction, it would be reasonable to expect that there would be manifestations of this in the corporate organization and management and that there would be recognition of such circumstances by those corporate officers who must furnish

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- the Commission with the sworn information prescribed by 10 C.F.R. 50.33; LBP-14-3, 79 NRC 303 (2014)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974)
- where contentions are defective for any reason, licensing boards have no duty to make them acceptable under 10 C.F.R. 2.309; LBP-12-3, 75 NRC 206 n.35 (2012); LBP-13-9, 78 NRC 101 (2013)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 94-98 (2000)
- Congress intentionally limited the opportunity for a hearing to certain designated agency actions which do not include exemptions; LBP-15-18, 81 NRC 797 n.20 (2015); LBP-15-24, 82 NRC 76 n.38 (2015)
- exemption did not modify the license because the ability to request an exemption is part of the license itself; LBP-15-24, 82 NRC 103 n.227 (2015)
- rule exemption requests are not entitled to a hearing under AEA § 189a; CLI-13-1, 77 NRC 10 n.36 (2013)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)
- if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether standing has been satisfied; LBP-12-3, 75 NRC 177-78 (2012); LBP-13-6, 77 NRC 270 (2013)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999)
- in license amendment proceedings, petitioners may not claim standing simply upon a residence or visits near the plant unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-11-29, 74 NRC 616 (2011)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999)
- proximity presumption applies in more limited license amendment proceedings only if the proposed amendment obviously entails an increased potential for offsite consequences; LBP-15-17, 81 NRC 770-71 (2015)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999)
- burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 394 (2015)
- neither the Commission nor the board should be expected to sift through a lengthy document in search of asserted factual support that petitioner has not specified; CLI-12-5, 75 NRC 332 (2012)
- petitioner bears burden for setting forth clear arguments for its contentions; CLI-12-5, 75 NRC 332 n.189 (2012)
- Commonwealth of Massachusetts v. Watt*, 716 F.2d 946 at 953 (1st Cir. 1983)
- when a decision is made without the information that NEPA seeks to put before the decision maker, the harm that NEPA seeks to prevent occurs; LBP-13-6, 77 NRC 296-97 (2013)
- Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992)
- agency NEPA requirements are tempered by a practical rule of reason; LBP-11-18, 74 NRC 38 (2011)
- Communities, Inc. v. Busey*, 956 F.2d 619, 627 (6th Cir. 1992)
- "connected actions" are defined as those that lack independent utility; LBP-14-9, 80 NRC 41 (2014)
- discussion of alternatives that present severe engineering requirements or are imprudent for reasons including their high cost, safety hazards, and operational difficulties are excluded under NEPA; LBP-15-3, 81 NRC 104-05 (2015)
- reasonable alternatives under NEPA do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-15-3, 81 NRC 104 (2015)

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- Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993)
preponderance-of-the-evidence standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence; LBP-14-3, 79 NRC 278 (2014)
- Connecticut Bankers Association v. Board of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980)
at the admission stage, petitioners should provide a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-11-2, 73 NRC 50 n.122 (2011); LBP-11-13, 73 NRC 564 n.196 (2011); LBP-15-20, 81 NRC 850, 860 (2015); LBP-15-24, 82 NRC 90 n.139 (2015)
- Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir.), *cert. denied*, 459 U.S. 835 (1982)
preamble to notice of proposed rulemaking addresses agency's duty to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules; LBP-15-15, 81 NRC 612-13 (2015)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 373-74 (2001)
labor and expense of pursuing litigation that petitioner sought to curtail do not constitute irreparable harm; CLI-11-10, 74 NRC 256 n.24 (2011)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 374 (2001)
board's assertedly erroneous ruling does not constitute a pervasive and unusual effect on the proceeding; CLI-15-17, 82 NRC 47 (2015)
expansion of issues for litigation that results from a board action does not have a pervasive and unusual effect on the litigation; CLI-11-10, 74 NRC 256 n.24 (2011)
expansion of issues for litigation that results from admission of a contention or denial of motion for summary disposition does not have a pervasive and unusual effect on the litigation; CLI-15-17, 82 NRC 44 n.71 (2015)
rejection of contention where petitioner has other contentions pending for hearing does not constitute serious and irreparable harm or affect the structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 37 n.23, 44 (2015)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 6 (2003)
waiver petition would permit consideration of an issue in an adjudicatory proceeding that would otherwise impermissibly challenge an NRC rule or regulation; CLI-14-7, 80 NRC 6-7 n.16 (2014)
- Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 7 & n.14 (2003)
challenges to rules are appropriately lodged through a request for rulemaking; CLI-13-1, 77 NRC 9 (2013)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), LBP-82-1,15 NRC 37, 40 (1982)
publication of a regulation in the *Federal Register* constitutes notice to all persons residing in the United States; LBP-13-3, 77 NRC 97 (2013)
- Consolidated Edison Co. of New York* (Indian Point, Unit 2), LBP-83-5, 17 NRC 134, 136 (1983)
in NRC proceedings, pro se litigants are generally not held to the same high standards of pleading and practice as parties with counsel; LBP-11-20, 74 NRC 96 n.26 (2011); LBP-11-23, 74 NRC 333 n.23 (2011)
- Consolidated Edison Co. of New York* (Indian Point, Unit 3), CLI-74-28, 8 AEC 7, 8 (1974)
it is not enough, in an agency that values the hearing process and has preserved the opportunity for boards to look at matters on their own motion, just to refer safety matters to the Staff for resolution; LBP-11-9, 73 NRC 421 (2011)
- Consolidated Edison Co. of New York* (Indian Point, Unit 3), CLI-74-28, 8 AEC 7, 8-9 (1974)
to tie a board's hands when it sees an issue that needs to be explored would be utterly inconsistent with its stature and the responsibility of these expert tribunals, and simply referring such a matter to the Staff for resolution would not be an adequate solution; LBP-11-9, 73 NRC 418 n.12 (2011)
- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 129-30 (2001)
any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 260 n.31 (2014)

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- Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 134 (2001)
mere notice pleading is insufficient, but requirement for contention specificity and factual support rather than vague or conclusory statements is not intended to prevent intervention when material and concrete issues exist; LBP-15-20, 81 NRC 852-53 & n.140 (2015)
- Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), ALAB-319, 3 NRC 188, 190 (1976)
licensing boards may raise significant environmental and safety issues sua sponte; LBP-11-23, 74 NRC 367 (2011)
- Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), ALAB-319, 3 NRC 188, 193 (1976)
because the licensing board's hearing had concluded and the seismic issues raised in the proceeding had been resolved or abandoned, the adequacy of the seismic design of the facility was a matter within the jurisdiction of the NRC Staff; LBP-11-22, 74 NRC 284 (2011)
- Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175-76 (1975)
abuse of discretion standard of review is applicable to discretionary Staff actions not subject to a hearing opportunity; CLI-13-1, 77 NRC 29 n.158 (2013)
- Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI-77-2, 5 NRC 13, 15 (1977)
NRC Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 243 (2014)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007)
each organization member seeking representation must qualify for standing in his or her own right; LBP-11-29, 74 NRC 617, 619 (2011)
interests that an organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; LBP-11-6, 73 NRC 169 (2010); LBP-11-29, 74 NRC 617, 619 (2011); LBP-15-5, 81 NRC 256, 257 (2015); LBP-15-17, 81 NRC 771 (2015)
representational standing claims must have supporting declarations from members identifying themselves, outlining their interests, and authorizing petitioners to represent them; LBP-12-3, 75 NRC 178 n.6 (2012)
to demonstrate representational standing, an organization must show that at least one of its members might be affected by the proceeding, identify that member by name and address, and show that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf; LBP-11-2, 73 NRC 40 (2011); LBP-11-6, 73 NRC 169 (2010); LBP-11-13, 73 NRC 545 (2011); LBP-11-16, 73 NRC 653 (2011); LBP-11-29, 74 NRC 617 (2011); LBP-14-4, 79 NRC 327-28 (2014)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007)
if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether standing has been satisfied; LBP-12-3, 75 NRC 177-78 (2012); LBP-13-6, 77 NRC 270 (2013)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411-12 (2007)
organization that seeks representational standing must show that at least one of its members would be affected by the proceeding, identify that member by name and address, show that the member would have standing to intervene in his/her own right, and that identified member has authorized the organization to request a hearing on his/her behalf; LBP-15-5, 81 NRC 256 (2015)
to demonstrate organizational standing, petitioner must show a discrete injury to the organization itself; LBP-15-5, 81 NRC 256 (2015)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 414 n.49 (2007)
contention admissibility criteria are strict by design but should not be turned into a fortress to deny intervention; LBP-15-20, 81 NRC 855-56 (2015)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-22, 65 NRC 525, 529 (2007)
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- scope of a license amendment proceeding, which concerns compliance with Appendix G of 10 C.F.R. Part 50; LBP-15-20, 81 NRC 862 (2015)
issues addressed in a separate proceeding are beyond the scope of a later proceeding; LBP-15-20, 81 NRC 862 n.200 (2015)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 345 (1973)
although applicant carries the burden of proof on safety issues, intervenors have the initial burden of going forward with each contention and must provide sufficient evidence to support the claims made; LBP-14-1, 79 NRC 53 (2014)
if intervenors provide sufficient evidence to support the claims made, applicant has the burden of demonstrating by a preponderance of the evidence that it has met the relevant NRC regulations and that the board should therefore reject each contention on the merits; LBP-14-1, 79 NRC 53 (2014)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-283, 2 NRC 11, 17 (1975)
applicant has the burden of proof on safety issues in a licensing proceeding; LBP-13-13, 78 NRC 279 (2013); LBP-14-3, 79 NRC 278 (2014)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 910 (1982)
materiality depends on whether the information is capable of influencing the decisionmaker, not on whether the decisionmaker would, in fact, have relied on it; LBP-15-24, 82 NRC 101 n.217 (2015)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-842, 24 NRC 197, 198-99 (1986)
stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), CLI-74-3, 7 AEC 7, 12 (1974)
exemption from regulations will only be issued if the license is granted; LBP-15-24, 82 NRC 82 n.82 (2015)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19, 31 (1974), *rev'd on other grounds*, CLI-97-15, 46 NRC 294 (1997)
applicant may bear the burden of proof on contentions asserting deficiencies in its environmental report and where applicant becomes a proponent of a particular challenged position set forth in the environmental impact statement; LBP-11-38, 74 NRC 830 (2011)
- Consumers Power Co.* (Palisades Nuclear Plant), CLI-82-18, 16 NRC 50 (1982)
licensing board rejected union's claim to standing, but the appeal board under the rules then in effect permitted discretionary intervention and subsequently vacated both decisions, ruling that they should not be cited as precedent; LBP-14-4, 79 NRC 321-22 n.6 (2014)
- Consumers Power Co.* (Palisades Nuclear Plant), CLI-82-18, 16 NRC 50, 51 (1982)
stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- Consumers Power Co.* (Palisades Nuclear Plant), CLI-82-18, 16 NRC 50, 52 (1982)
in vacating decisions of the Licensing and Appeal Boards, the Commission observed that the decisions also should not be used for guidance; CLI-13-9, 78 NRC 559 n.34 (2013)
- Consumers Power Co.* (Palisades Nuclear Plant), LBP-81-26, 14 NRC 247 (1981), *rev'd on other grounds*, ALAB-670, 15 NRC 493 (1982)
licensing board rejected union's claim to standing, but the appeal board under the rules then in effect permitted discretionary intervention; LBP-14-4, 79 NRC 321-22 (2014)
- Consumers Power Co.* (Palisades Nuclear Plant), LBP-81-26, 14 NRC 247, 249 (1981)
third-party requests for a hearing on an enforcement order have been treated as a petition for intervention under the Commission's generally applicable rules; LBP-14-4, 79 NRC 326-27 (2014)
- Costle v. Pacific Legal Foundation*, 445 U.S. 198, 204 (1980)
lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 113-14 (2011)

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- County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)
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general proposition that an appeal is not moot if there is a possibility of similar acts recurring in the future applies to instances where the same litigants likely will be subject to similar future action; CLI-13-9, 78 NRC 557 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336 (2009)
absent error of law or abuse of discretion, the Commission generally defers to board rulings on contention admissibility; CLI-11-11, 74 NRC 431 (2011); CLI-12-5, 75 NRC 307 (2012); CLI-12-8, 75 NRC 397 (2012); CLI-12-10, 75 NRC 484 (2012); CLI-12-15, 75 NRC 710 (2012); CLI-14-2, 79 NRC 13-14 (2014)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 337-39 (2009)
Native American tribe's statutorily recognized interest in tribal cultural resources that may still be extant on its recognized aboriginal lands provides a cognizable interest for the purpose of establishing its standing; LBP-13-6, 77 NRC 272 n.7 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339 (2009)
by reason of their own standing in a proceeding, intervenors may assert any violation of law that would lead to a redress of their injuries, including their interests in seeing that the NEPA process is properly carried out or in preventing or delaying issuance of the requested combined license; LBP-12-12, 75 NRC 753 n.40 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339-40 (2009)
there is no contention-based requirement mandating that to have standing, besides showing that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury, petitioner also must establish a link between that injury and the issues it wishes to litigate in challenging an application; LBP-12-3, 75 NRC 190 n.28 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339-41 (2009)
to have standing, petitioner need only show that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury; LBP-13-6, 77 NRC 274 n.9 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 343 (2009)
standing in each agency proceeding depends on the factual circumstances associated with that case; LBP-13-6, 77 NRC 276 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 346 (2009)
once it made a determination of plausible injury from the proposed project, the board was not required to weigh the evidence to determine whether the harm to petitioners was beyond doubt; CLI-12-12, 75 NRC 613 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 348 (2009)
licensing boards should not consider premature contentions; LBP-12-19, 76 NRC 199 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 348-51 (2009)
contention alleging that an Indian tribe had not been consulted concerning cultural resources, in violation of the National Historic Preservation Act, was premature because NRC Staff, not applicant, has the duty to consult with the tribe under the Act, and Staff had not completed its review process; LBP-12-19, 76 NRC 199 (2012); LBP-12-23, 76 NRC 484-85 (2012)
contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 287 (2013)

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- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 350-51 (2009)
challenge to NRC Staff's environmental analysis, which may come in the form of a categorical exclusion, may be filed as a timely motion to add a new contention once that analysis is complete; LBP-15-24, 82 NRC 95 (2015)
issue of the alleged failure to consult with the tribe on historic and cultural resources is material and within the scope of a materials license proceeding; LBP-13-9, 78 NRC 51 n.54 (2013); LBP-15-16, 81 NRC 643 n.143 (2015)
whether and how NRC Staff fulfills its consultation obligations are issues that could form the basis for a new contention that might appropriately be made in a timely fashion after Staff issues its draft environmental impact statement; CLI-15-18, 82 NRC 147 n.56 (2015)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 351 (2009)
contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of the Staff's draft environmental review document; CLI-14-2, 79 NRC 20 n.49 (2014)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 353-54 (2009)
although boards are expected to review the relevant documents to determine whether arguments presented by litigants are properly supported, the board may not substitute its own support for a contention or make arguments for the litigants that were never made by the litigants themselves; CLI-15-18, 82 NRC 149 n.74 (2015)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 365 (2009)
contention admissibility decisions generally are not considered to be extraordinary for purposes of interlocutory appellate review, particularly where petitioner has been admitted as a party and has other contentions pending; CLI-13-3, 77 NRC 55 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 365 & n.178 (2009)
piecemeal appeals during ongoing licensing board proceedings are generally disfavored; CLI-11-6, 74 NRC 210 (2011)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 365 & n.180 (2009)
following issuance of the board's final dispositive decision on contentions held in abeyance, and consistent with NRC procedural rules, applicant and intervenor will have the opportunity to appeal the board's decisions; CLI-14-3, 79 NRC 37 (2014)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 704 (2008), *aff'd in part, rev'd in part, and remanded*, CLI-09-9, 69 NRC 331 (2009)
in situ recovery process, also referred to as the in situ leach process, is described; LBP-12-3, 75 NRC 176 n.3 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 708-10 (2008), *aff'd in part, rev'd in part, and remanded*, CLI-09-9, 69 NRC 331 (2009)
when an ore zone and petitioner's water source exist in separate aquifers, the injury/causation question is whether there is an interconnection between those aquifers; LBP-12-3, 75 NRC 181-82 n.11 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 709 (2008), *aff'd in part and rev'd in part*, CLI-09-9, 69 NRC 331 (2009)
representational standing must be based on individual standing of at least one member; LBP-13-6, 77 NRC 280-81 n.19 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 709 & n.77 (2008), *aff'd in part, rev'd in part, and remanded*, CLI-09-9, 69 NRC 331 (2009)
for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 181 n.11 (2012)

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- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 714 (2008), *aff'd in part, rev'd in part*, CLI-09-9, 69 NRC 331 (2009)
board based tribe's standing on the presence onsite of cultural resources that could be harmed as a result of mining activities; CLI-14-2, 79 NRC 14 (2014)
federal law not only recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal land, but as well has imposed on federal agencies a consultation requirement under the National Historic Preservation Act to ensure the protection of tribal interests in cultural resources; CLI-14-2, 79 NRC 14 (2014)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 719-24 (2008)
contention alleging a failure to protect historic and cultural resources is admissible; LBP-13-9, 78 NRC 51 n.53 (2013)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 756 (2008), *aff'd in part, rev'd in part, and remanded*, CLI-09-9, 69 NRC 331 (2009)
references to prior problems involving estimation of decommissioning costs are inadequate to establish a likelihood that the amount of applicant's decommissioning bond will be insufficient; LBP-12-3, 75 NRC 205 (2012)
- Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 759 (2008)
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- Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 13-14 (2014)
Commission defers to board's contention admissibility rulings unless the appeal points to an error of law or abuse of discretion; CLI-15-25, 82 NRC 397 (2015)
- Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 20 n.49 (2014)
contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of Staff's draft environmental impact statement; LBP-15-5, 81 NRC 280 n.178 (2015)
- Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014)
Commission affords substantial deference to licensing boards' contention admission decisions; CLI-15-6, 81 NRC 355 (2015)
- Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 266, 267 (2013)
licensing strategy whereby applicant seeks initial in situ recovery licensing authorization to mine a particular area on which a central processing plant is located, followed thereafter by additional license amendments to cover ISR activities on contiguous or nearby areas, has been employed previously under the agency's ISR facility licensing regime; LBP-13-10, 78 NRC 146 (2013)
- Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 286-88 (2013)
contention alleging a failure to protect historic and cultural resources is admissible; LBP-13-9, 78 NRC 51 n.53 (2013)
- Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 292 (2013), *aff'd*, CLI-14-2, 79 NRC 11 (2014)
requirement that a contention refer to specific portions of the application ensures that the board will be able to determine whether the contention is within the scope of the proceeding and that applicant knows which portions of the application it must defend; LBP-15-20, 81 NRC 861-62 (2015)
- Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 293 (2013), *aff'd*, CLI-14-2, 79 NRC 11 (2014)
requirement that a contention refer to specific portions of the application is satisfied when a commonsense reading of the petition makes abundantly clear which sections of the application petitioners are challenging, even though petitioners do not specifically cite particular sections; LBP-15-20, 81 NRC 862 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 543 (2009)
board rulings on standing are given substantial deference on appeal; CLI-14-2, 79 NRC 13-14 (2014)
Commission defers to a board's contention admissibility rulings unless the appeal points to an error of law or abuse of discretion; CLI-14-2, 79 NRC 13-14 (2014); CLI-15-18, 82 NRC 138 (2015); CLI-15-25, 82 NRC 394, 397 (2015)

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- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 544-45 (2009)
potential harm necessary to demonstrate standing in NRC proceedings need not relate to physical or bodily injury; CLI-12-12, 75 NRC 612-13 n.49 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 548-49, 568-70 (2009)
for any new arguments or new support for a contention, a petitioner must, among other things, explain why it could not have raised the argument or introduced the factual support earlier; CLI-15-18, 82 NRC 147 n.56 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 549 n.61 (2009)
good cause for failure to file on time is the most important factor of the 10 C.F.R. 2.309(c) analysis; LBP-11-2, 73 NRC 38 (2011); LBP-11-9, 73 NRC 401 (2011); LBP-11-13, 73 NRC 543 (2011); LBP-11-32, 74 NRC 662 (2011)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 549-50 (2009)
lack of prejudice, standing alone, does not excuse an untimely filing, but it is a factor the Commission has considered in determining whether good cause exists; LBP-15-4, 81 NRC 164 n.40 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 550-52 (2009)
petitioner may not rely on a document generated by a state agency if that document contains nothing more than a request for information; LBP-11-6, 73 NRC 249 n.115 (2010)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552 (2009)
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when raising a genuine material dispute with an application, petitioner must present well-defined issues, not issues based on little more than guesswork; CLI-15-23, 82 NRC 325-26 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552-53 (2009)
boards have some discretion to reformulate or narrow contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding, but this authority is not without limit; CLI-15-18, 82 NRC 141 (2015); CLI-15-25, 82 NRC 401 (2015)
contention pleading rules are designed to ensure that only well-defined issues are admitted for hearing and a board should not add material not raised by a petitioner in order to render a contention admissible; CLI-11-11, 74 NRC 437, 457 (2011)
it is intervention petitioner's responsibility to put others on notice as to the issues it seeks to litigate in a proceeding; CLI-11-11, 74 NRC 457 (2011)
to eliminate the inadmissible issue of tribal notification and to clarify the scope of the subsistence consumption issue, board narrows and reformulates a contention; LBP-15-5, 81 NRC 281 n.194 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552-53, 565-66 (2009)
boards may not supply information that is lacking in a contention that otherwise would be inadmissible; CLI-15-18, 82 NRC 141 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 (2009)
if petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor petitioner, nor may the board supply information that is lacking; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 26 (2012); LBP-12-18, 76 NRC 182 (2012); LBP-12-27, 76 NRC 595 (2012); LBP-13-6, 77 NRC 285 (2013); LBP-15-1, 81 NRC 39 (2015)
to define the scope of an admitted contention properly, the board should have specified which bases were admitted; LBP-13-6, 77 NRC 298 (2013); LBP-13-10, 78 NRC 138 (2013)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 & n.81 (2009)
boards are not responsible for providing support for contentions so as to make them admissible; LBP-12-3, 75 NRC 206 n.35 (2012)

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- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553-54 (2009)
licensing boards must specify each basis relied upon for admitting a contention; CLI-12-5, 75 NRC 310 n.50 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 557 (2009)
any contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed; LBP-12-3, 75 NRC 192 (2012); LBP-12-15, 76 NRC 27 (2012); LBP-12-27, 76 NRC 595 (2012); LBP-13-6, 77 NRC 285-86 (2013); LBP-15-1, 81 NRC 37 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 559 (2009)
confinement of aquifers is material to the environmental impacts of the licensing action; CLI-14-2, 79 NRC 26 (2014)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 562, 573 (2009)
bare assertions are insufficient to support a contention; CLI-11-11, 74 NRC 452 n.139 (2011)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 564-66 (2009)
contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 287 (2013)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 565-71 (2009)
board erred in reformulating contentions with arguments not originally raised by petitioners; CLI-15-18, 82 NRC 149 n.74 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 566 (2009)
burden of fulfilling the National Historic Preservation Act's consultation requirements rests exclusively with the NRC, not with the applicant; LBP-12-23, 76 NRC 486 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 568 (2009)
petitioner may respond to the legal or logical arguments presented in the answers to its hearing request, but may not use its reply to raise new issues for the first time; CLI-15-18, 82 NRC 146 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 568-69 (2009)
new claim would not have met the timeliness standards because petitioner could have raised its environmental justice concerns when it filed its initial petition; CLI-15-18, 82 NRC 147 n.59 (2015)
original contention did not point to any specific grievance with the environmental justice discussion provided in applicant's environmental report and so the board should have applied the standards in 10 C.F.R. 2.309(c) to determine whether petitioner had demonstrated good cause for its late filing; CLI-15-18, 82 NRC 147 (2015)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 569 (2009)
it is presumed that applicants intend to comply with state law; LBP-11-16, 73 NRC 678 n.185 (2011)
- Crowe Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 571 (2009)
materials license regulations contain no express prohibition on foreign ownership, but require Staff to make a finding that license issuance will not be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 488 (2011)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 272-73 (2008), *aff'd in part and rev'd in part*, CLI-09-12, 69 NRC 535 (2009)
petitioner made no effort to establish that any proximity plus presumption should be applicable in determining standing relative to the challenged licensing action; LBP-13-6, 77 NRC 271 n.5 (2013)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 272-73 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535, 544-48 (2009)
petitioners have made no attempt to establish that any promixity-plus presumption should be applicable to the licensing action they are challenging; LBP-12-3, 75 NRC 179 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 278-80, 282-84, 288-89 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535 (2009)
when an ore zone and petitioner's water source exist in separate aquifers, the injury/causation question is whether there is an interconnection between those aquifers; LBP-12-3, 75 NRC 181-82 n.11 (2012)

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- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 281 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535 (2009)
petitioner whose property is upgradient but nonetheless located in close proximity to a proposed in situ recovery facility may be able to establish its plausible pathway with a less particularized showing; LBP-12-3, 75 NRC 182 n.13 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 281-82 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535 (2009)
for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 181 n.11 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 284-87 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535 (2009)
surface water contamination has played a significant role in standing determinations in in situ recovery cases; LBP-12-3, 75 NRC 183 (2012)
- Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 288-89 (2008), *aff'd as to ruling on standing*, CLI-09-12, 69 NRC 535 (2009)
standing was found for petitioner fishing a river 60 miles downstream from a proposed in situ recovery facility expansion alleged to allow drainage into the river from operations; LBP-12-3, 75 NRC 182 n.13 (2012)
petitioner asserts standing based on use of proposed site to gather eagle feathers for ceremonial and religious uses; LBP-13-6, 77 NRC 277 (2013)
- Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985)
upon a strong showing of irreparable injury, stay movant need not always establish a high probability of success on the merits; LBP-15-2, 81 NRC 54 (2015)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 98 (1995)
although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 661, 670 (2011)
NUREGs and Regulatory Guides, by their very nature, serve merely as guidance and cannot prescribe requirements; LBP-13-13, 78 NRC 284 n.168 (2013); LBP-14-9, 80 NRC 52 n.161 (2014)
standard review plan does not in itself impose requirements on an applicant but provides guidance to NRC Staff in reviewing an application; CLI-14-2, 79 NRC 23 n.70 (2014)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121-22 (1995)
primary responsibility to address and comply with AEA safety-related requirements resides with a license applicant, and so, that application, not the Staff's application review, is the focus of any safety-related contentions; LBP-13-10, 78 NRC 132 n.7 (2013)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 150 (1995)
NRC Staff guidance documents do not have the force of law and boards are not bound to follow them; CLI-15-6, 81 NRC 358 (2015)
where NRC guidance document is not directly applicable to the issue at hand, the presiding officer is afforded greater leeway in its application; CLI-15-6, 81 NRC 358 n.86 (2015)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 170 (1995)
contentions calling for requirements in excess of those imposed by regulations will be rejected as a collateral attack on regulations; CLI-12-5, 75 NRC 315 n.88 (2012)
contention that regulatory provisions are themselves insufficient to protect the public health and safety constitutes an improper collateral attack on NRC regulations; LBP-15-4, 81 NRC 167 n.64 (2015)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395 (1995)
a dynamic licensing process is followed in Commission licensing proceedings; LBP-11-22, 74 NRC 271 (2011)
permitting an application to be modified or improved throughout the NRC's review is compatible with the dynamic licensing process followed in Commission licensing proceedings; CLI-11-2, 73 NRC 345 (2011)

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- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395-96 (1995)
adequacy of NRC Staff's review is not a litigable issue in a licensing case; CLI-15-9, 81 NRC 531 (2015)
- Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 396 (1995)
because primary responsibility to address and comply with AEA safety-related requirements resides with a license applicant, that application, not the Staff's application review, is the focus of any safety-related contentions and thus the migration tenet does not apply; LBP-13-10, 78 NRC 132 n.7 (2013)
- David B. Kuhl, II* (Denial of Senior Reactor Operator License), LBP-09-14, 70 NRC 193 (2009)
hearing demand under section 2.103(b)(2) has only to meet the prescribed filing deadline and specify the reasons why the demander deemed the denial of the sought operator's license to have been unjustified; LBP-13-3, 77 NRC 94 (2013)
- David B. Kuhl, II* (Denial of Senior Reactor Operator License), LBP-09-14, 70 NRC 193, 195 (2009)
section 2.309(f)(1) has no application to reactor operator licensee proceedings; LBP-13-3, 77 NRC 94 n.64 (2013)
- David B. Kuhl, II* (Denial of Senior Reactor Operator License), LBP-09-14, 70 NRC 193, 195-96 (2009)
hearing request was dismissed as moot where petitioner's claim was not susceptible to meaningful adjudicative relief; LBP-13-7, 77 NRC 345 n.59 (2013)
- David B. Kuhl, II* (Denial of Senior Reactor Operator License), LBP-09-14, 70 NRC 193, 196 (2009)
any senior reactor operator license is limited to the facility for which it is issued; LBP-13-3, 77 NRC 94 (2013)
- David Geisen*, CLI-09-23, 70 NRC 935, 936 (2009)
the Commission traditionally has entertained motions to stay agency action pending judicial review; CLI-12-11, 75 NRC 528 (2012)
- David Geisen*, CLI-09-23, 70 NRC 935, 936 & n.4 (2009)
irreparable injury is the most important of the stay criteria; CLI-12-11, 75 NRC 529 (2012); LBP-15-2, 81 NRC 53-54 (2015)
- David Geisen*, CLI-09-23, 70 NRC 935, 937 (2009)
without a showing of irreparable injury, petitioners seeking a stay of effectiveness must demonstrate that reversal of the licensing board is a virtual certainty; CLI-12-11, 75 NRC 529 (2012)
- David Geisen*, CLI-10-23, 72 NRC 210 (2010)
oversight activities at times involve enforcement actions, including orders and civil penalties, to which a hearing right or opportunity attaches; CLI-15-5, 81 NRC 338 n.52 (2015)
- David Geisen*, CLI-10-23, 72 NRC 210, 220 (2010)
Commission gives substantial deference to licensing board findings of fact and will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-15-9, 81 NRC 522 (2015)
where issues in a case have been sharply contested, the Commission will explain its view of the case in some detail; CLI-13-1, 77 NRC 19 (2013)
- David Geisen*, CLI-10-23, 72 NRC 210, 224-25 (2010)
Commission gives substantial deference to licensing board findings of fact, and it will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-14-10, 80 NRC 162 (2014)
Commission reviews questions of law de novo, but defers to a board's findings with respect to the underlying facts unless they are clearly erroneous; CLI-15-7, 81 NRC 493 (2015); CLI-15-9, 81 NRC 519 (2015)
to show clear error, petitioner must show that the board's determination is not even plausible in light of the record as a whole; CLI-15-7, 81 NRC 493 (2015); CLI-15-9, 81 NRC 519 (2015)
- David Geisen*, CLI-10-23, 72 NRC 210, 224-25 & n.61 (2010)
deferential clear error standard is applied in analyzing a board's findings of fact; CLI-13-1, 77 NRC 18 n.102 (2013)
question before the Commission is not whether it would have made different factual findings than those of the board but whether the board's findings of fact are so lacking in record support as to be clearly erroneous; CLI-13-1, 77 NRC 19 (2013)

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- David Geisen*, CLI-10-23, 72 NRC 210, 225 (2010)
mere presence of evidence supporting both sides does not call for Commission review, where it appears that the board considered all the evidence and arguments before it; CLI-15-7, 81 NRC 497 n.96 (2015)
- David Geisen*, LBP-06-25, 64 NRC 367, 380 (2006)
among the categories of privileged documents are interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Commission; LBP-13-5, 77 NRC 238 (2013)
deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 238 (2013)
- David Geisen*, LBP-06-25, 64 NRC 367, 383 (2006)
qualified persons, such as head of a department or division, having both expertise and an overview-type perspective concerning the balance between the agency's duty of disclosure versus its need to conduct frank internal debate must sign an affidavit asserting deliberative process privilege; LBP-13-5, 77 NRC 240 n.34 (2013)
- David Geisen*, LBP-09-24, 70 NRC 676 (2009)
if an enforcement order blacklists a worker by name, under 10 C.F.R. 2.202(a)(3) he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 347 (2014)
- Davis v. Mineta*, 302 F.3d 1104, 1121-22 (10th Cir. 2002)
agency's decision to issue a finding of no significant impact rather than prepare an environmental impact statement was arbitrary because the agency had obligated itself contractually to issue a FONSI before it conducted an environmental assessment; LBP-14-6, 79 NRC 425 n.112 (2014)
failure of decision underlying the Clean Water Act §404 permit to analyze the cumulative impacts reasonably foreseeable from the expected addition of a second generation unit at the plant is one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 422 (2014)
- Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002)
agency's reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation is more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 467 (2012)
Court of Appeals disagreed with the district court's conclusion that the increase in noise levels would not be a significant impact because the agency's environmental assessment made no firm commitment to any noise mitigation measures; LBP-12-23, 76 NRC 469 n.152 (2012)
reliance on mitigation is justified if the proposed mitigation underlying the finding of no significant impact must be more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-14-7, 79 NRC 461 (2014)
- Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1243-44 (D.C. Cir. 1980)
NEPA applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-11-32, 74 NRC 666 (2011)
- Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988)
when no proximity presumption applies, petitioner must assert some specific injury in fact that will result from action taken; CLI-11-3, 73 NRC 622 n.47 (2011)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 756-57 (2004)
NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-14-9, 80 NRC 40 (2014)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 764 (2004)
primary responsibility for compliance with NEPA lies with the Commission; LBP-14-9, 80 NRC 69 (2014)

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- Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004)
NEPA requires a reasonably close causal relationship between the environmental effect and the alleged cause; LBP-12-21, 76 NRC 241 (2012)
rule of reason is inherent in NEPA and its implementing regulations; LBP-13-13, 78 NRC 452 n.1417 (2013)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 767-69 (2004)
rule of reason is inherent in NEPA and its implementing regulations; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 237 n.52 (2012)
- Department of Transportation v. Public Citizen*, 541 U.S. 752, 770 (2004)
where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant cause of the effect; LBP-12-12, 75 NRC 779 n.212 (2012)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)
mother was denied standing based on her son's residence within 50 miles of a power plant, because she herself lived more than 50 miles away; LBP-15-17, 81 NRC 775 n.135 (2015)
parent could attain proximity-based standing through reference to her child if the child was a minor or otherwise under a legal disability and thus unable to participate; LBP-15-17, 81 NRC 775 n.139 (2015)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978)
an organization's standing can be demonstrated through the interests of its members, but if a member acts or speaks on behalf of the organization, that member must also demonstrate authorization by that organization to represent it; LBP-11-13, 73 NRC 548-49 (2011)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 584-85 (1978)
special circumstances required to obtain a rule waiver have been described as a prima facie showing that application of a rule in a particular way would not serve the purposes for which the rule was adopted; LBP-15-5, 81 NRC 272 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 85 (2009)
the Commission refused to suspend the combined license proceeding pending completion of the design certification review of the ESBWR design certification process; CLI-11-1, 73 NRC 4 n.11 (2011)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-09-22, 70 NRC 932, 933 (2009)
NRC rules of practice provide for an automatic right to appeal a licensing board decision deciding standing and contention admissibility, on the question whether a petition to intervene and request for hearing should have been granted, or denied in its entirety; CLI-12-8, 75 NRC 396-97 (2012)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 242-43, *aff'd*, CLI-09-22, 70 NRC 932 (2009)
petitioners' averment that proffered environmental contentions will better position NRC to fully review the possible impacts of the proposed project and, based on petitioners' and their experts' information, may address concerns and mitigate impacts to water, land, and other resources is sufficient to fulfill the redressability element of the standing requirement; CLI-12-12, 75 NRC 613 n.51 (2012); LBP-12-3, 75 NRC 188 n.24 (2012)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 255 (2009)
petitioners cannot argue for an analysis different from that required by regulation; LBP-15-20, 81 NRC 845 (2015)
when an NRC regulation permits use of a particular analysis, a contention asserting that a different analysis or technique should be used is inadmissible because it indirectly attacks NRC's regulations; LBP-15-20, 81 NRC 845 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 262, *aff'd*, CLI-09-22, 70 NRC 932 (2009)
environmental considerations that the environmental report must discuss are equivalent to, and in most instances verbatim restatements of, environmental considerations that NEPA requires the agency to describe in detail in the environmental impact statement; LBP-15-5, 81 NRC 265 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 263, *aff'd*, CLI-09-22, 70 NRC 932 (2009)
applicant's environmental report need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 339 (2012); LBP-12-15, 76 NRC 38 n.8 (2012)

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- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 267, *aff'd*, CLI-09-22, 70 NRC 932 (2009)
contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the environmental assessment, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 614 n.111 (2015)
when an application is alleged to be deficient, petitioner must identify the deficiencies and provide supporting reasons for its position that such information is required; LBP-15-1, 81 NRC 37 (2015)
when an NRC regulation permits use of a particular analysis, a contention asserting that a different analysis or technique should be used is inadmissible because it indirectly attacks the Commission's regulations; LBP-15-17, 81 NRC 782 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 278-79 (2009)
the National Pollutant Discharge Elimination System permitting process does not excuse NRC from addressing relevant water quality issues in its environmental impact statement; LBP-12-10, 75 NRC 678-79 (2012)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 279-80 (2009)
contention that environmental report failed to explain whether a discharge pipe with phosphoric acid as a corrosion inhibitor would increase algae production and potential for toxic algal blooms is admissible; LBP-15-5, 81 NRC 305 n.393 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-10-9, 71 NRC 493, 510-11 (2010)
contention that raised two distinct issues is best divided into separate contentions; LBP-15-5, 81 NRC 268 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-12, 75 NRC 742, 764-65 (2012)
applicant is not required to explain in its environmental report every aspect of the process it must pursue in the course of obtaining a federal permit, license, or approval; LBP-12-15, 76 NRC 35 n.6 (2012)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 454-55 (2012)
harmful algae blooms from *Lyngbya wollei* are unlikely to form in unsheltered areas; LBP-15-5, 81 NRC 305 n.393 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 461, 465, 466, 468 (2012)
adequacy of draft environmental impact statement that relied on applicant's mitigation measure that a state agency might not require the applicant to implement was challenged; LBP-13-4, 77 NRC 220 n.98 (2013)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 469 (2012)
agency preparing the NEPA document must explain the statutory or regulatory requirements it is relying on and its reasons for concluding that the application of those requirements will actually result in the mitigation and monitoring it assumes will occur; LBP-15-11, 81 NRC 432 (2015)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 470-71 (2012)
board may construe an admitted contention contesting applicant's environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the necessity for intervenors to file a new or amended contention; LBP-13-9, 78 NRC 47 n.27 (2013); LBP-14-5, 79 NRC 383 n.29 (2014); LBP-15-11, 81 NRC 410 n.38 (2015)
contention migrates when a licensing board construes a contention challenging the environmental section of an application as a challenge to a subsequently issued Staff NEPA document without petitioner amending the contention; CLI-15-17, 82 NRC 42 n.58 (2015)
contentions of adequacy may migrate into contentions of omission; LBP-13-10, 78 NRC 133 (2013)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 471 (2012)
migration tenet applies where information in the draft environmental impact statement is sufficiently similar to information in the environmental report; LBP-14-6, 79 NRC 416-17 n.67 (2014)
- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 486 n.259 (2012)
environmental impact statement must discuss any adverse environmental effects that cannot be avoided should the proposal be implemented and must provide a reasonably complete discussion of possible mitigation measures; LBP-15-11, 81 NRC 431 n.189 (2015)

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- Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-14-9, 80 NRC 15, 41 (2014)
action lacks independent utility when it would be irrational or unwise to pursue the action without the presence of the EIS-generating central action; LBP-15-16, 81 NRC 697 (2015)
- Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49 (2010)
measures intended to strengthen an enforcement order issued under 10 C.F.R. 2.202 are not within the limited scope of the proceedings; CLI-13-2, 77 NRC 43 (2013)
- Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 50 (2010)
petition challenging an immediately effective enforcement order asking that licensee take certain physical security measures in addition to those already required by NRC regulations, to protect the spent fuel it planned to store at its power plant site, was rejected; LBP-12-14, 76 NRC 6-7 (2012)
- Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 51 n.4 (2010)
denial of hearing request is appealable as of right; CLI-13-2, 77 NRC 44 (2013)
- Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 52-53 (2010)
NRC rejected the argument that an enforcement order regarding addition of physical security measures should be rescinded because it could have negative effects by creating a false sense of security by emphasizing the formation of human security workforce over the substance of putting into place physical barriers and important technologies to protect the plant itself; LBP-12-14, 76 NRC 7 (2012)
petitioner does not meet the redressability requirement for standing, because vacating the confirmatory orders would not ameliorate the injury of which petitioner complains; CLI-13-2, 77 NRC 49 (2013)
- Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 53 (2010)
petitioners' argument opposing an order that imposed additional security measures at a spent fuel storage facility, because it created a false sense of security was rejected because petitioners did not explain how they would be better off without the measures in the order; CLI-13-2, 77 NRC 48 (2013)
- Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), LBP-09-20, 70 NRC 565, 568 (2009)
physical security measures developed by NRC in the wake of the September 11 terrorist attacks were deemed necessary to protect the public health and safety in the current threat environment and were intended 'to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility; LBP-12-14, 76 NRC 7 n.31 (2012)
- Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936 (1974)
NRC can, as a condition of licensure, insist that offsite transmission lines built solely to serve a nuclear facility be designed to minimize environmental disturbance; LBP-14-9, 80 NRC 30 (2014)
NRC's has authority to impose environmental restrictions on new transmission lines intended to serve new nuclear power plants; LBP-14-9, 80 NRC 46 (2014)
- Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 937 (1974)
power plants without transmission lines are like airplanes that can't fly; LBP-14-9, 80 NRC 46 (2014)
- Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 939 (1974)
transmission lines are a foreseeable consequence of licensing construction of the nuclear power units; LBP-14-9, 80 NRC 47 (2014)
- Detroit Edison Co. v. NRC*, 630 F.2d 450, 450 (6th Cir. 1980)
NRC can, as a condition of licensure, insist that offsite transmission lines built solely to serve a nuclear facility be designed to minimize environmental disturbance; LBP-14-9, 80 NRC 30 (2014)
- Detroit Edison Co. v. NRC*, 630 F.2d 450, 451 (6th Cir. 1980)
by 1974, NRC had adopted an aggressive approach to its environmental responsibilities in the context of transmission line siting; LBP-14-9, 80 NRC 30 (2014)
under NEPA, federal agencies must use all practicable means to avoid environmental degradation to the extent consistent with other essential considerations of national policy; LBP-14-9, 80 NRC 29 (2014)

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- Detroit Edison Co. v. NRC*, 630 F.2d 450, 452 (6th Cir. 1980)
in ruling that NRC had appropriately interpreted the Atomic Energy Act to include regulatory authority over attendant transmission lines, the court did not decide whether NEPA is an independent source of substantive jurisdiction; LBP-14-9, 80 NRC 54 (2014)
regulation of offsite transmission lines is within NRC's authority under section 101 of the Atomic Energy Act and nothing in the AEA precludes NRC from implementing, through issuance of conditional licenses, NEPA's environmental mandate; LBP-14-9, 80 NRC 49 (2014)
- Detroit Edison Co. v. NRC*, 630 F.2d 450, 454 (6th Cir. 1980)
under the Atomic Energy Act, NRC can issue conditional licenses for regulatory purposes, and thus there can be no objection to its use of the same means to achieve environmental ends as well; LBP-14-9, 80 NRC 53 (2014)
- Deukmejian v. NRC*, 751 F.2d 1287, 1300 (D.C. Cir. 1984)
NEPA requirements are subject to a rule of reason, and an environmental impact statement need not address remote and highly speculative consequences; LBP-14-9, 80 NRC 42 (2014)
- Dickow v. United States*, 740 F. Supp. 2d 231, 239 (D. Mass. 2010)
affirmative misconduct means an affirmative misrepresentation or affirmative concealment of a material fact by the government, although it does not require that the government intends to mislead a party; LBP-12-16, 76 NRC 51 n.33 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003)
contention admissibility requirements seek to ensure that NRC hearings serve to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; CLI-15-8, 81 NRC 504 (2015)
contention admission standards are strict by design and exist to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-15-5, 81 NRC 258 (2015); LBP-15-11, 81 NRC 407 (2015); LBP-15-15, 81 NRC 601 (2015); LBP-15-17, 81 NRC 777 (2015); LBP-15-20, 81 NRC 867-68 (2015)
contentions cannot be based on speculation but must have some reasonably specific factual or legal basis; CLI-15-8, 81 NRC 504 (2015); CLI-15-20, 82 NRC 221 (2015)
rules on contention admissibility are strict by design; LBP-11-16, 73 NRC 655 (2011); LBP-11-21, 74 NRC 125 (2011); LBP-12-25, 76 NRC 545 (2012); LBP-14-4, 79 NRC 374 n.70 (2014)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 219 (2003)
NRC deliberately raised the admission standards for contentions to obviate serious hearing delays caused in the past by poorly defined or poorly supported contentions; LBP-15-1, 81 NRC 38 (2015)
NRC properly reserves its hearing process for genuine, material controversies between knowledgeable litigants; CLI-12-5, 75 NRC 307 (2012); CLI-12-8, 75 NRC 396, 416 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-18, 58 NRC 433, 434 (2003)
reconsideration motions should not simply reargue matters already considered but rejected; CLI-12-17, 76 NRC 210 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-02-22, 56 NRC 213, 227-28 (2002)
reopening a proceeding with respect to a specific issue would not have the effect of reopening the proceeding for adjudication on unrelated matters once a record is closed; CLI-12-17, 76 NRC 212-13 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 233 (2008)
board declines to entertain contentions based on little more than speculation, which represent negligible knowledge of the issues being challenged; LBP-15-1, 81 NRC 43 (2015)
contention admissibility requirements are strict by design in order to help assure that the NRC hearing process will be appropriately focused on disputes that can be resolved in the adjudication; LBP-11-29, 74 NRC 618 (2011)
NRC's "strict by design" contention admissibility standards focus the hearing process on disputes that can be resolved in adjudication; CLI-15-22, 82 NRC 315 (2016); CLI-15-23, 82 NRC 325 (2015)

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- rules on contention admissibility are strict by design; LBP-12-25, 76 NRC 545 (2012); LBP-13-8, 78 NRC 9 (2013); LBP-14-4, 79 NRC 374 n.70 (2014)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 234 (2008)
- regardless of whether a hearing request is granted, NRC Staff performs a full safety review of every license amendment request and no request is approved until all necessary public health and safety findings have been made; CLI-15-22, 82 NRC 317 (2016)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 119 (2009)
- for threshold issues such as contention admissibility, the Commission gives substantial deference to a board's determinations; CLI-12-3, 75 NRC 138 (2012); CLI-12-6, 75 NRC 361 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120 (2009)
- motion to file new or amended contentions must address the motion to reopen standards after an intervention petition has been denied; LBP-11-20, 74 NRC 92 (2011)
- NRC rules do not contemplate motions filed as placeholders for a further motion to be filed later; CLI-14-6, 79 NRC 449 (2014)
- once there has been an appeal or petition to review a board order, jurisdiction generally passes to the Commission; CLI-12-14, 75 NRC 701 n.60 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120, 122-23 (2009)
- NRC's rules of procedure do not permit the filing of notice pleadings, i.e., general, vague, or unsupported claims intended to act as placeholders for later elaboration; LBP-11-21, 74 NRC 133 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120-21 (2009)
- a licensing board's use of the reopening standard to evaluate the admissibility of contentions submitted after the board denied petitioners' hearing request was affirmed on appeal; LBP-11-22, 74 NRC 283 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 121-22 (2009)
- adjudicatory proceeding on license amendment is not terminated by issuance of the amendment; CLI-15-17, 82 NRC 40 n.47 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 122-23 (2009)
- appellants may not amend their contentions on appeal; CLI-11-8, 74 NRC 221 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 123 n.39 (2009)
- contention fails because it contests NRC Staff's safety review rather than the license renewal application; LBP-15-15, 81 NRC 614 n.111 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009)
- motions to reopen on issues not previously litigated must satisfy the balancing test of 10 C.F.R. 2.309(c) in addition to the reopening standards; CLI-12-3, 75 NRC 140 (2012)
- petitioner who satisfies the reopening standard must also show that its proposed new contention meets the standard for new or amended contentions in section 2.309(c) and the underlying admissibility standards of section 2.309(f)(1); LBP-14-8, 79 NRC 523 (2014)
- section 2.309(f)(1) establishes the basic admissibility criteria that all contentions must satisfy; LBP-11-9, 73 NRC 400 n.55 (2011)
- when petitioner proposes a new contention after the record has closed, petitioner must address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing; CLI-11-8, 74 NRC 226 (2011)

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- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124-25 (2009)
failure to address the reopening criteria is enough to reject contentions that are filed after a record has closed; CLI-12-3, 75 NRC 143 n.72 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 125 (2009)
speculation by an expert cannot form the basis for admission of a contention on the basis of the matter being exceptionally grave; LBP-11-20, 74 NRC 89 n.125 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 125-26 (2009)
good cause for the failure to file on time is afforded the most weight in balancing the eight late-filing factors of 10 C.F.R. 2.309(c)(i)-(viii); LBP-12-27, 76 NRC 593-94 & n.57 (2012); LBP-15-1, 81 NRC 30 n.73 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 126 (2009)
failure to address the requirements of 10 C.F.R. 2.309(c) and (f)(2) is reason enough to reject proposed new contentions; LBP-11-7, 73 NRC 286 n.203, 289 n.227 (2011); LBP-11-21, 74 NRC 134 n.111 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-01-17, 53 NRC 398, 406-07 (2001)
the board, on reconsideration and after remand from the Commission, reopened the record with respect to a previously disposed contention, to consider the effect of licensee's losing track of a fuel rod; CLI-12-14, 75 NRC 700 n.55 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-02-5, 55 NRC 131, 145 (2002), *aff'd*, CLI-02-27, 56 NRC 367, 371-72 (2002)
post-9/11 motion to reopen satisfied rules for reopening the record and for late-filed contentions, but contention involving a license amendment request for reconfiguring a spent fuel pool was inadmissible; CLI-11-5, 74 NRC 170 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349 (2001)
contention challenging removal of details from licensee's Technical Specifications to a licensee-controlled document was rejected; LBP-12-25, 76 NRC 548 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 351 (2001)
the Commission has authority to determine, and prescribe by rule or regulation, what additional information should be included in technical specifications to ensure public health and safety and the common defense and security; LBP-13-7, 77 NRC 329 n.35 (2013)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 351-52 (2001)
NRC's original rule governing technical specifications, 10 C.F.R. § 50.36, was promulgated in 1968 and lacked well-defined criteria as to what requirements need to be a technical specification and what provisions need not be in the license; LBP-12-25, 76 NRC 550 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 352 (2001)
every license to operate a nuclear power reactor must contain a list of technical specifications necessary for adequate protection of public health and safety; LBP-12-25, 76 NRC 549 (2012)
NRC has authority to determine, and to prescribe by rule or regulation, what additional information should be included in technical specifications to ensure public health and safety; LBP-12-25, 76 NRC 549-50 (2012)
NRC revised 10 C.F.R. 50.36 in 1995 and established clearer criteria as to what constitutes a technical specification that must be in the license; LBP-12-25, 76 NRC 550 (2012)
technical specifications must include information on the amount, kind, and source of special nuclear material, the place of use, and the particular characteristics of the facility; LBP-12-25, 76 NRC 549 (2012)

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- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 355 (2001)
license amendment to eliminate numerous detailed procedures for monitoring routine radioactive releases from the technical specifications and transfer them to a licensee-controlled document would allow licensee to make future changes to the radiation monitoring procedures without going through another license amendment; LBP-12-25, 76 NRC 550 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002)
because petitioner fails to address information in the draft supplemental environmental impact statement and generic EIS that is relevant to the issue it raises, the board must reject arguments relating to liquid waste disposal; LBP-13-9, 78 NRC 94 (2013)
boards must reject intervenors' arguments that fail to specifically address the draft environmental impact statement; LBP-13-9, 78 NRC 56 (2013)
contention admissibility rules are strict by design, and only focused, well-supported issues will be admitted for hearing; CLI-15-21, 82 NRC 302 (2015); LBP-15-26, 82 NRC 174 (2015)
contention that the draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 70 (2013)
intervenor must do more than submit bald or conclusory allegations of a dispute with the applicant; LBP-13-9, 78 NRC 82 n.304 (2013)
rules on contention admissibility are strict by design; LBP-11-22, 74 NRC 278 (2011); LBP-12-7, 75 NRC 511 (2012); LBP-12-25, 76 NRC 545 (2012); LBP-14-4, 79 NRC 374 n.70 (2014); LBP-15-19, 81 NRC 820 (2015); LBP-15-23, 82 NRC 59 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358-59 (2001)
admissible contention must meet six pleading requirements; LBP-15-17, 81 NRC 777 (2015)
board declines to entertain contentions based on little more than speculation, which represent negligible knowledge of the issues being challenged; LBP-15-1, 81 NRC 43 (2015)
rules on contention admissibility are strict by design; LBP-11-16, 73 NRC 655 (2011); LBP-11-21, 74 NRC 125 (2011); LBP-15-5, 81 NRC 258 (2015); LBP-15-20, 81 NRC 867-68 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 359 (2001)
petitioners must articulate at the outset the specific issues they wish to litigate as a prerequisite to gaining formal admission as parties; CLI-15-9, 81 NRC 529 n.110 (2015)
petitioners' reliance on loss of future opportunities to challenge by adjudicatory intervention licensee-initiated changes in the low-level effluent monitoring details fell short of an admissible contention; LBP-12-25, 76 NRC 550 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 359-60 (2001)
bald allegations do not suffice to support contention admissibility; LBP-13-8, 78 NRC 14 (2013)
petitioner must explain, with specificity, particular safety or legal reasons why moving a requirement from the license into a licensee-controlled document would be improper; LBP-12-25, 76 NRC 551 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 360 (2001)
almost every item originally contained in technical specifications has some conceivable connection to safety, but this general premise is insufficient, by itself, as a ground for intervention; LBP-12-25, 76 NRC 550-51 (2012)
because changes to technical specifications require a license amendment, technical specifications should be limited to those plant conditions most important to safety; LBP-13-7, 77 NRC 330 n.37 (2013)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 361 (2001)
contentions must include references to the specific portions of the application that petitioner disputes and the supporting reasons for each dispute; LBP-12-25, 76 NRC 551 (2012)

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- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 363 (2001)
conclusory statements do not amount to a challenge to a severe accident mitigation alternatives analysis; CLI-15-18, 82 NRC 142 n.39 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001)
for management integrity and character to be a viable contention, there must be a direct and obvious relationship between these issues and the challenged licensing action; CLI-11-8, 74 NRC 231 n.83 (2011)
past violations of NRC regulations would indicate a deficiency in an application only if they are directly germane to the licensing action, rather than being of simply historical interest; CLI-12-2, 75 NRC 83-84 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-02-1, 55 NRC 1, 2 (2002)
reconsideration motions should be based on an elaboration of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification; CLI-12-17, 76 NRC 209-10 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004)
failure to comply with any of the contention pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi) is grounds for rejection of a contention; LBP-11-16, 73 NRC 655 (2011); LBP-11-21, 74 NRC 125 (2011); LBP-12-25, 76 NRC 544 (2012); LBP-13-8, 78 NRC 9 (2013)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637-38 (2004)
NRC's license renewal process concerns a particularized and limited inquiry into the potential impacts of an additional 20 years of nuclear power plant operation, not day-to-day operational issues; LBP-11-21, 74 NRC 129 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 639 n.25 (2004)
appellants must clearly identify the errors in the decision below and ensure that their brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for their claims; CLI-11-8, 74 NRC 220 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 639-40 (2004)
failure of petitioner to cite even a single specific deficiency in the application precludes satisfaction of the specificity requirement of 10 C.F.R. 2.309(f)(1)(vi); LBP-11-29, 74 NRC 622 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551 (2005)
four-part test for granting a waiver under 10 C.F.R. 2.335(b) is set forth; LBP-14-16, 80 NRC 194 (2014)
rule waiver may be granted only upon a showing that all four factors of 10 C.F.R. 2.335 have been satisfied; LBP-15-6, 81 NRC 325-26 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005)
all four parts of the test for rule waiver petitions must be met; LBP-13-1, 77 NRC 63 (2013)
boards are not empowered to reword the clear language of the Commission's regulations; LBP-13-12, 78 NRC 243 (2013)
even a properly supported request for a waiver cannot be granted when it seeks to exempt circumstances that are common to a large class of facilities rather than unique; LBP-13-12, 78 NRC 243 (2013)
four-factor test for grant of a rule waiver is presented; CLI-12-6, 75 NRC 364 (2012)
four-factor test for showing of special circumstances demonstrating that application of a rule would not serve the purpose for which it was adopted is outlined; CLI-12-19, 76 NRC 387 n.55 (2012); LBP-12-24, 76 NRC 539 n.8 (2012)
four-factor test is applied to rule waiver requests; CLI-15-21, 82 NRC 302 (2015)

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petition for rule waiver or exception must allege special circumstances that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived and those circumstances must be unique rather than common to a large class of facilities; LBP-12-6, 75 NRC 271 (2012)

petition for waiver of a specific NRC regulation must satisfy a four-factor test; LBP-15-17, 81 NRC 778 n.156 (2015)

rule waiver case law that reflects the four-part test that NRC has long used is compiled; CLI-13-7, 78 NRC 207 (2013)

rule waiver petitions must address the criteria in 10 C.F.R. 2.335; CLI-15-22, 82 NRC 318 (2016)

rule waivers may be granted only when all four factors in 10 C.F.R. 2.335(b) are met; LBP-14-15, 80 NRC 153-54 (2014)

special circumstances required to obtain a rule waiver have been described as a prima facie showing that application of a rule in a particular way would not serve the purposes for which the rule was adopted; LBP-15-5, 81 NRC 272 (2015)

the Commission has endorsed a four-pronged test for grant of a rule waiver; LBP-11-35, 74 NRC 714 (2011)

to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in a license renewal proceeding, the Commission must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 449 (2011)

where the rules in question, as well as the contention itself, address compliance with NEPA and not safety issues under the Atomic Energy Act, the rule waiver is needed to address a significant environmental issue instead of a significant safety issue; LBP-14-16, 80 NRC 195 (2014)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 & nn.29-34 (2005)

rule waiver petitions are reviewed under section 2.335 as well as case law; CLI-13-7, 78 NRC 205 (2013)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005)

all four factors must be met for a rule waiver request to be granted; LBP-11-35, 74 NRC 714-15 (2011); LBP-14-16, 80 NRC 195 (2014)

NRC, by necessary implication, considered Indian tribe's trust responsibility concerns during its rulemaking; LBP-14-16, 80 NRC 199, 200 (2014)

rule waiver petitioners must demonstrate that applying the rule would not serve its intended purpose; CLI-13-7, 78 NRC 205 n.19 (2013)

rule waiver requires that special circumstances exist that were not considered, either explicitly or by necessary implication, when NRC adopted its license renewal regulations; CLI-15-21, 82 NRC 307 (2015)

use of "and" in the list of requirements for rule waiver means that all four factors must be met; CLI-11-11, 74 NRC 452 n.138 (2011)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560-61 (2005)

challenges to emergency planning fall outside the scope of a license renewal proceeding; LBP-15-5, 81 NRC 296, 299 n.340 (2015)

emergency planning is neither germane to age-related degradation nor unique to the period covered by a license renewal application; LBP-11-35, 74 NRC 715 (2011)

it makes no sense to spend valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging; CLI-15-21, 82 NRC 304 n.47 (2015)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 561 (2005)

challenges to 10 C.F.R. 50.54(hh)(2) are neither germane to age-related degradation nor unique to the license renewal period; LBP-11-21, 74 NRC 131 (2011)

it makes no sense to spend the parties' and NRC's own valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging; LBP-15-6, 81 NRC 326 (2015)

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- license renewal regulations serve exactly their intended purpose by focusing the proceeding on future-oriented aging issues; CLI-15-21, 82 NRC 306 (2015)
- NRC regulations provide two other procedural mechanisms under 10 C.F.R. 2.206 and 2.802 by which petitioner may pursue its concerns about current deficiencies; LBP-15-6, 81 NRC 326 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 562 (2005)
- even proximity to a nuclear power facility or ISFSI is hardly unique in context of a rule waiver request; LBP-14-16, 80 NRC 196 (2014)
- “uniqueness” factor of the rule waiver test is interpreted; LBP-11-35, 74 NRC 717 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564 (2005)
- if good cause is not shown, a board may still permit the late filing, but petitioner or intervenor must make a strong showing on the other factors of 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 401 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564-65 (2005)
- “good cause” for late filing is defined as a showing that petitioner could not have met the filing deadline and filed as soon as possible thereafter; LBP-11-7, 73 NRC 288 n.213 (2011)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565 (2005)
- good cause is the most important of the factors in the 2.309(c) balancing test, and in the absence of good cause, a party must make an especially strong showing on the other factors to justify admission of a nontimely contention; LBP-12-10, 75 NRC 665 n.180 (2012)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565 & n.60 (2005)
- even one lacking actual notice may be charged with constructive notice of regulations published in the Federal Register; LBP-13-3, 77 NRC 97 (2013)
- publication in the Federal Register is legally sufficient notice to all affected people; LBP-15-5, 81 NRC 280 n.181 (2015)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38-39 (2006)
- Commission has imposed or upheld disciplinary measures against parties and their representatives when they failed to comply with board directives and procedural rules; CLI-14-10, 80 NRC 165 n.41 (2014)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89 (2004)
- where a contention alleges a deficiency or error in the application, the deficiency or error must have some independent health and safety significance; LBP-11-23, 74 NRC 336 (2011)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 222 (2007)
- applicant’s environmental report must evaluate alternative sites to determine whether any is obviously superior to the proposed site; CLI-12-9, 75 NRC 471 n.312 (2012)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 222 n.21 (2007)
- Council on Environmental Quality regulations provide guidance on agency compliance with NEPA and are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-12-17, 76 NRC 82 n.57 (2012); LBP-15-16, 81 NRC 636 (2015)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 230 & n.79 (2007)
- in mandatory hearings, Commission discussion regarding alternative site review supplements the environmental impact statement; LBP-11-26, 74 NRC 536 n.13 (2011)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 235-36 & n.115 (2007)
- information may be unavoidably incomplete or unavailable, and under those circumstances, a final environmental impact statement can overcome this deficiency if it states that fact, explains how the

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- missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-11-11, 74 NRC 444 n.94 (2011)
NRC looks to Council on Environmental Quality regulations for guidance, but is not bound by them; CLI-11-11, 74 NRC 444 (2011)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 265 (2004)
although boards do not decide the merits at the contention admissibility stage, materials cited as the basis for a contention are subject to scrutiny to determine whether, on their face, they actually support the facts alleged; LBP-12-12, 75 NRC 774 (2012)
providing any material or document as the basis of a contention, without setting forth an explanation of its significance, is inadequate to support admission of the contention; LBP-12-12, 75 NRC 774 (2012); LBP-15-20, 81 NRC 865 (2015)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-06-24, 64 NRC 360, 365 (2006)
the licensing board chose to terminate the contested portion of the proceeding after granting summary disposition on the only pending contentions, but the board did not state that its decision was compelled by either precedent or regulation; LBP-11-22, 74 NRC 285 (2011)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007)
guidance on the role of licensing boards in mandatory proceedings is provided; LBP-12-21, 76 NRC 233-34 (2012)
mandatory proceedings for licensing of proposed uranium enrichment facility sites were conducted; LBP-11-11, 73 NRC 475 (2011)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 559-60, *permit issuance authorized*, CLI-07-27, 66 NRC 215 (2007)
relative to NEPA, in mandatory hearings, boards are to determine whether the review conducted by NRC Staff has been adequate, but they need not rethink or redo every aspect of Staff's environmental findings or undertake their own fact-finding activities; LBP-11-11, 73 NRC 476 (2011); LBP-11-26, 74 NRC 519 (2011)
- Dow, Lohnes & Albertson v. Presidential Commission on Broadcasting to Cuba*, 624 F. Supp. 572, 573-74 (D.D.C. 1984)
the FOIA exemption for inter- or intra-agency materials incorporates the deliberative process privilege, which protects documents that are prepared to assist an agency, board, or official to arrive at a decision; LBP-13-5, 77 NRC 239 (2013)
- Dr. James E. Bauer* (Order Prohibiting Involvement in NRC-Licensed Activities), LBP-95-7, 41 NRC 323, 328 (1995)
NRC cannot take advantage of applicant's ignorance of information that the agency itself was obligated to provide; LBP-13-3, 77 NRC 97 (2013)
the time for applicant to request a hearing should be tolled until notice is issued if NRC Staff fails to provide the notice and hearing opportunity mandated by 10 C.F.R. 2.103(b); LBP-11-19, 74 NRC 63 n.9 (2011)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-4, 81 NRC 221 (2015)
motion to reopen regarding spent nuclear fuel was denied; LBP-15-14, 81 NRC 592 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 (2015)
reply brief cannot introduce new issues or expand the scope of arguments advanced in the original petition, but rather must focus on actual or logical arguments presented in the original petition or raised in answers to it; LBP-15-26, 82 NRC 182 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 81 NRC 249, 286 (2015)
burden of setting forth a clear and coherent argument for standing is generally on petitioner, but pro se petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 394 (2015)
pleadings submitted by pro se petitioners are afforded greater leniency than petitions drafted with the assistance of counsel; LBP-15-13, 81 NRC 468 n.65 (2015)

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- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-7, 80 NRC 1, 5 & n.11, 10 (2014)
suspension request that would have halted final licensing decisions pending action on a petition for rulemaking regarding the Staff's review of the potential expedited transfer of spent fuel from pools to dry casks was denied; CLI-15-13, 81 NRC 564 n.42 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-7, 80 NRC 1, 7 n.22 (2014)
where petition fails on the merits, the Commission need not address procedural issues; CLI-15-10, 81 NRC 539 n.8 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-9, 80 NRC 147 (2014)
Commission exercised its inherent supervisory authority over agency adjudications to review petition and motions challenging the Continued Storage Rule; LBP-14-16, 80 NRC 198 (2014)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-9, 80 NRC 147, 149-50 (2014)
Commission exercised its supervisory authority and dismissed proposed waste confidence safety contention and denied suspension petitions; CLI-15-13, 81 NRC 563-64 (2015); LBP-15-1, 81 NRC 22 (2015); LBP-15-8, 81 NRC 394 (2015); LBP-15-9, 81 NRC 397 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-10, 80 NRC 157, 164 n.38 (2014)
boards are given broad discretion in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case-management decisions; LBP-15-15, 81 NRC 615 n.114 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-10, 80 NRC 157, 164 n.39 (2014)
NRC Rules of Practice provide the board with substantial authority to regulate hearing procedures; LBP-15-15, 81 NRC 615 n.114 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221 (2015)
waste confidence issues are addressed; CLI-15-7, 81 NRC 484 n.9 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 223-24 (2015)
Commission declined to admit new safety-related waste confidence contentions and denied suspension petitions; LBP-15-8, 81 NRC 394 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 223-24, 225 (2015)
Commission exercised its supervisory authority and dismissed proposed waste confidence safety contention and denied suspension petitions; CLI-15-13, 81 NRC 563-64 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 223-24, 242 (2015)
Commission denied suspension petitions and intervenors' motion to admit new continued storage safety findings contentions; LBP-15-9, 81 NRC 397 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 239 n.100 (2015)
where petition fails on the merits, the Commission need not address procedural issues; CLI-15-10, 81 NRC 539 n.8 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 241-42 (2015)
petitions to suspend final reactor licensing decisions pending a waste confidence safety finding were denied; DD-15-9, 82 NRC 286 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 242 (2015)
Commission denied motions for leave to file new contentions concerning the Continued Storage Rule; LBP-15-7, 81 NRC 392 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC 535 (2015)
Commission denied petition to supplement and declined to admit "placeholder" contention; CLI-15-13, 81 NRC 564 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC 535, 564 n.46 (2015)
licensing board's jurisdiction terminates when there are no longer any contested matters pending before it; LBP-15-29, 82 NRC 253 (2015)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC 551 (2015)
contention that supplementation of the environmental impact statement is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the Continued Storage GEIS and Continued Storage Rule is inadmissible; CLI-15-10, 81 NRC 538 n.7 (2015); CLI-15-13, 81 NRC 564 (2015); CLI-15-15, 81 NRC 805 (2015)

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- placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-27, 82 NRC 414-15 (2015)
- Dubinsky v. Mermart, LLC*, 595 F.3d 812, 818 (8th Cir. 2010)
- absence of any reference to "cumulative impacts" in a document incorporated by reference negates any intention to incorporate any discussion of cumulative impacts from these prior documents into an environmental report, consistent with the maxim of *expressio unius est exclusio alterius*, meaning that the expression of one thing is to the exclusion of another; LBP-12-24, 76 NRC 515-16 (2012)
- Dubois v. U.S. Department of Agriculture*, 102 F.3d 1273, 1291 (1st Cir. 1996)
- NEPA exists in part to ensure that important environmental effects will not be overlooked; LBP-12-10, 75 NRC 679-80 (2012)
- NEPA has a dual purpose of ensuring that federal officials fully take into account environmental consequences of a federal action before reaching major decisions, and informing the public, Congress, and other agencies of those consequences; LBP-11-35, 74 NRC 766 n.13 (2011); LBP-12-1, 75 NRC 34 (2012)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393 (2001), *reconsideration denied*, CLI-02-2, 55 NRC 5 (2002)
- petitions to suspend multiple license renewal proceedings in view of an Inspector General's report on the agency's license renewal process were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)
- requests to suspend or hold proceedings in abeyance following the September 11 terrorist attacks, as well as more recently, were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 398-401 (2001), *reconsideration denied*, CLI-02-2, 55 NRC 5 (2002)
- petition for suspension of proceeding following 9/11 attack was denied; CLI-11-5, 74 NRC 156 (2011)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213-14 (2002)
- petition for interlocutory review that questions the very structure of the two-step licensing process is suitable for Commission consideration; CLI-13-3, 77 NRC 55 n.18 (2013)
- petitions to review interlocutory board orders typically are denied summarily, without engaging in extensive merits discussion; CLI-13-3, 77 NRC 55 n.18 (2013)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 411 (2001)
- licensing of the MOX facility has been governed by a two-part licensing process designed specifically for it; LBP-14-1, 79 NRC 124 (2014)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-04-9, 59 NRC 286, 293-95 (2004)
- at the Construction Authorization Request stage, the board dismissed a material control and accounting contention as moot, pending submittal of applicant's Fundamental Nuclear Material Control Plan which would require inclusion of a detailed MC&A program; LBP-14-1, 79 NRC 45 (2014)
- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-15, 62 NRC 53, 54 (2005)
- boards may continue the adjudicatory proceeding until the deadlines for filing proposed new contentions have expired and the board has resolved all admitted and proposed contentions filed within the deadlines; LBP-11-22, 74 NRC 271 (2011)
- proceedings are terminated after all admitted contentions had been resolved and the time for late-filed contentions arising out of information in the Staff's final safety evaluation report has expired without the filing of any such contentions; LBP-11-22, 74 NRC 273 n.75, 285 (2011)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009)
- for power reactors, NRC Staff review should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed; LBP-11-26, 74 NRC 541 (2011)

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- if impacts are remote or speculative, the environmental impact statement need not discuss them, including greenhouse gas emissions; LBP-11-7, 73 NRC 301 (2011)
- under NEPA, NRC must assess the environmental impacts of a proposed facility; LBP-11-26, 74 NRC 545 (2011)
- under NEPA, NRC Staff must consider the cumulative impact of greenhouse gas emissions from a proposed facility; LBP-11-7, 73 NRC 307 (2011); LBP-11-26, 74 NRC 545 (2011)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-15-15, 81 NRC 803 (2015)
- placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-27, 82 NRC 414-15 (2015)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 439 (2008)
- in the standing analysis, boards construe the petition in favor of the petitioner; CLI-14-2, 79 NRC 19 n.45 (2014)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 443 (2008)
- consideration of an admissible contention can be deferred, where appropriate, but an inadmissible one cannot; LBP-11-28, 74 NRC 610 (2011)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 67 (2004)
- board determination of expert's need to know with regard to a document withheld as safeguards information was reversed; LBP-11-9, 73 NRC 405 n.87 (2011)
- licensing boards are not empowered to superintend, to any extent, the conduct of Staff technical reviews; LBP-11-30, 74 NRC 633 (2011); LBP-15-2, 81 NRC 52 (2015)
- recognizing its lack of authority to supervise NRC Staff's review, the board referred its concerns to the Commission; CLI-12-4, 75 NRC 156 (2012)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 67-69 (2004)
- petitioner was denied access to a safeguards-protected design-related document on the basis of his lacking a need to know; LBP-11-9, 73 NRC 410 (2011)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 71 (2004)
- review at the end of a case would be meaningless if the Commission could not later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-13-3, 77 NRC 55 n.18 (2013)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004)
- boards lack authority to direct NRC Staff's regulatory reviews; LBP-12-19, 76 NRC 193 n.41 (2012); LBP-13-7, 77 NRC 326 (2013)
- boards lack authority to direct the Secretary's administrative activities regarding the handling of documents; CLI-11-13, 74 NRC 641 (2011)
- boards lack authority to order NRC Staff to bring licensee employees into settlement negotiations; LBP-14-4, 79 NRC 369 (2014)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 205-07 (2004)
- limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, that is, when it has admitted or rejected all proposed contentions; CLI-14-3, 79 NRC 36 n.30 (2014)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 208 (2004)
- for a hearing petitioner to take an appeal pursuant to section 2.311(c), petitioner must claim that, after considering all pending contentions, the board has erroneously denied a hearing; CLI-14-3, 79 NRC 36 n.31 (2014)
- license applicant may take an appeal under 2.311(d)(1) if it contends that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-14-3, 79 NRC 36 n.31 (2014)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 208 n.12 (2004)
- NRC often refers to the Statement of Considerations as an aid in interpreting the agency's regulations; LBP-14-9, 80 NRC 52 (2014)

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- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-19, 60 NRC 5, 12 (2004)
when the Commission has determined that compliance with a regulation is sufficient to provide for reasonable assurance of public health and safety, a licensing board cannot impose requirements that exceed those in the regulation; LBP-15-20, 81 NRC 848 n.108 (2015)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004)
boards have considerable discretion in their evidentiary rulings; CLI-15-6, 81 NRC 383 (2015)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27-28 (2004)
based on his qualifications in education and experience, intervenors' witness was found qualified to testify but not specifically on issues related to nuclear engineering, such as events at the Fukushima Dai-ichi plant, core damage frequency calculations, and effectiveness of SAMDAs; LBP-11-38, 74 NRC 834 (2011)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27-28, *aff'g* LBP-04-13, 60 NRC 33, 36-37 (2004)
intervenors have demonstrated their ability to contribute to the development of a sound record where they have put forward in support of those contentions the views of a witness whose expertise has been recognized in other NRC proceedings; LBP-11-9, 73 NRC 413 n.123 (2011)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-29, 60 NRC 417, 424 (2004)
guidance documents are, by nature, only advisory and need not apply in all situations and do not themselves impose legal requirements on licensees; LBP-13-13, 78 NRC 284 n.168 (2013)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-10, 59 NRC 296, 309 (2004)
contention presenting a genuine dispute on a material issue should either reference specific portions of the application in dispute or identify omissions in the application, as well as provide supporting reasons; LBP-15-1, 81 NRC 37 n.117 (2015)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-12, 59 NRC 388, 391 (2004)
information offered in evidence, even if not specifically stated in the original contention and bases, may be relevant if it falls within the envelope, reach, or focus of the contention when read with the original bases offered for it; LBP-12-17, 76 NRC 85 (2012)
- Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-32, 60 NRC 713, 720-21 (2004)
license amendment request must provide sufficient documentation and analysis to show that licensee has complied with relevant requirements, thereby demonstrating that the amended license will continue to provide reasonable assurance of adequate protection of public health and safety; CLI-15-22, 82 NRC 316 (2016)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 447 (2008)
boards admit contentions, not their supporting bases; LBP-11-2, 73 NRC 56 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001)
scope of the license renewal proceeding on safety-related issues is limited to plant structures and components that will require an aging management review for the period of extended operation under the renewed license and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; CLI-15-21, 82 NRC 304 (2015); LBP-15-6, 81 NRC 321 (2015)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 214 (2001)
boards may not commence a hearing on environmental issues before the final environmental impact statement is issued, and may only commence a hearing with respect to safety issues prior to issuance of the final safety evaluation report if it will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner; LBP-11-22, 74 NRC 272 n.69 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 NRC 385 (2001)
requests to suspend or hold proceedings in abeyance following the September 11 terrorist attacks, as well as more recently, were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)

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- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 NRC 385, 388, 390-91 (2001)
abeyance of proceeding denied where proceeding was at an early stage, there was no risk of immediate threat to public health and safety, there were non-terrorism-related contentions to be considered, and the only “harm” to petitioner would be inevitable litigation costs; CLI-11-5, 74 NRC 157, 163 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 NRC 385, 388, 391 (2001)
any changes in NRC rules post-9/11 that might bear on license renewal reviews could be addressed via late-filed contentions; CLI-11-5, 74 NRC 157 (2011)
post-9/11 abeyance of proceeding is unnecessary because there would be time to apply any new rules that might result from the generic review of terrorism-related issues; CLI-11-5, 74 NRC 157 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 NRC 385, 388, 392 (2001)
motion to dismiss operating license renewal application or hold the proceeding in abeyance pending the Commission’s comprehensive post-September 11 review of its rules and policies is denied; CLI-11-5, 74 NRC 157 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 NRC 385, 391 (2001)
request for a protective stay to hold the proceeding in abeyance indefinitely pending potential future events is inconsistent with NRC’s longstanding interest in sound case management and regulatory finality and would be unfair to the other parties; CLI-14-6, 79 NRC 448-49 (2014)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278 (2002)
contention alleging that license renewal application fails to consider plutonium fuel use, which would place it outside the current licensing basis, is inadmissible; LBP-13-8, 78 NRC 23 (2013)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 292 (2002)
contention questioning whether future anticipated use of MOX fuel is sufficiently definite to constitute a proposal under the law, with a connection, cumulative impact, interdependence, or similar relationship to matters at issue in a license renewal proceeding to warrant being addressed in the supplemental environmental impact statement is admissible; LBP-14-6, 79 NRC 417 (2014)
inquiry into future, inchoate plans of licensee would generally invite petitioners in license renewal cases to raise safety issues involving a myriad of possible future license amendments; LBP-13-8, 78 NRC 23 (2013)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 292-93 (2002)
nothing in NRC case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans; LBP-14-6, 79 NRC 417 (2014)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002)
if licensee endeavors to use MOX fuel during the license renewal term, it will need to seek a license amendment; LBP-13-8, 78 NRC 23 (2013)
nothing in NRC case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans; LBP-13-8, 78 NRC 23 (2013)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 294 (2002)
to establish that cumulative impacts must be addressed, petitioner must first show that any proposal applicant has made is so interdependent with the application at issue that it would be unwise or irrational to complete one without the other; LBP-14-6, 79 NRC 419, 422 (2014)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 294-95 (2002)
to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-14-6, 79 NRC 440 (2014)

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- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002)
possible future action must at least constitute a proposal pending before the agency to be ripe for adjudication, and to establish that cumulative impacts of the action must be addressed, petitioner must first show that any proposal applicant has made is so interdependent with the application at issue that it would be unwise or irrational to complete one without the other; LBP-14-6, 79 NRC 414 (2014)
to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-13-10, 78 NRC 145-46 (2013)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 297 (2002)
when developing an environmental impact statement, an agency must consider the impact of other proposed projects only if the projects are so interdependent that it would be unwise or irrational to complete one without the other; LBP-13-10, 78 NRC 147 (2013)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 2 (2002)
NRC generally reviews severe accident mitigation alternatives using a cost-benefit analysis, and SAMAs that are not cost-beneficial need not be implemented by licensee; LBP-12-18, 76 NRC 152 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 3-7 (2002)
inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 298 (2015)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 4 (2002)
cost-effective candidate severe accident mitigation alternatives are identified by comparing the annualized cost of the mitigation measure with the benefit as determined by the averted cost of severe accidents (consequences), as weighted by the probability of the accidents' occurrence; LBP-11-13, 73 NRC 565 (2011)
severe accident mitigation alternatives analysis evaluates the degree to which specific additional mitigation measures may reduce the risk of various accident scenarios on a site-specific basis; LBP-13-13, 78 NRC 286 (2013)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 5 (2002)
performed under NEPA, a severe accident mitigation alternatives analysis evaluates the degree to which specific additional mitigation measures may reduce the probability or consequences of various accident scenarios on a site-specific basis; LBP-13-13, 78 NRC 452-53 (2013)
severe accident mitigation alternatives analyses identify and assess possible plant changes, such as hardware modifications and improved training or procedures, that could cost-effectively reduce the radiological risk from a severe accident; LBP-11-13, 73 NRC 565 (2011); LBP-11-17, 74 NRC 21 (2011); LBP-11-18, 74 NRC 40 n.60 (2011); LBP-15-5, 81 NRC 260 (2015)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 7 (2002)
a SAMA analysis fulfills the requirement to provide a consideration of alternatives to mitigate severe accidents and therefore is governed by NEPA's rule of reason; LBP-11-13, 73 NRC 566 (2011)
although a contention might have been more detailed or otherwise better supported, petitioners have done enough to raise a question about the adequacy of the probability figures used in applicant's SAMA analysis, namely, whether they should have incorporated or otherwise acknowledged information from a Sandia study; LBP-12-18, 76 NRC 165 (2012)
hard look under NEPA is subject to a rule of reason, and consideration of environmental impacts need not address all theoretical possibilities, but only those that have some reasonable possibility of occurring; LBP-15-16, 81 NRC 638 (2015)

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- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 7-8 (2002)
whether a SAMA may be worthwhile to implement is based upon a cost-benefit analysis, i.e., a weighing of the cost to implement with the reduction in risks to public health, occupational health, and offsite and onsite property; LBP-11-2, 73 NRC 63 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 8 (2002)
for an admissible contention petitioners did not have to prove outright that a SAMA analysis was deficient; CLI-11-11, 74 NRC 443 (2011)
portion of a contention asserting that applicant failed to consider the results of a particular study in its SAMA analysis is admissible; CLI-11-11, 74 NRC 443 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 9-10 (2002)
licensing boards must admit an adequately supported contention alleging that the agency's NEPA analysis of severe accident mitigation alternatives is deficient; LBP-12-18, 76 NRC 164 (2012)
petitioner or intervenor need not prove that the analysis of mitigation is deficient, it being sufficient if the board finds that a sufficient genuine dispute existed concerning the alleged deficiency; LBP-12-18, 76 NRC 165 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 11 (2002)
every conceivable mitigation alternative does not require a detailed analysis in the final environmental impact statement; LBP-12-18, 76 NRC 164 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 11-12 (2002)
petitioner must approximate the relative cost and benefit of a challenged SAMA or provide at least some ballpark consequence and implementation costs should the SAMA be performed; CLI-11-11, 74 NRC 442 (2011)
whether a severe accident mitigation alternative is worthy of more detailed analysis in an environmental report or supplemental environmental impact statement hinges on whether it may be cost-beneficial to implement; CLI-12-3, 75 NRC 149 n.111 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 12 (2002)
a severe accident mitigation alternatives analysis is mandated by NEPA considerations and thus subject to a rule of reason; LBP-11-2, 73 NRC 61 (2011)
conclusionary statements do not amount to a challenge to a severe accident mitigation alternatives analysis; CLI-15-18, 82 NRC 142 n.39 (2015)
question of material impacts hinges upon whether a severe accident mitigation alternative may be cost-beneficial to implement; LBP-13-13, 78 NRC 287 (2013)
under the rule of reason governing NEPA, the concept of alternatives must be bounded by some notion of feasibility; CLI-12-15, 75 NRC 724 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002)
license renewal safety review is limited to the matters specified in 10 C.F.R. Part 54, which focus on the management of aging for certain systems, structures, and components, and review of time-limited aging analyses; LBP-11-21, 74 NRC 126 (2011); LBP-15-5, 81 NRC 259 (2015)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363-64 (2002)
safety issues that are routinely addressed through the agency's ongoing regulatory oversight are outside the scope of license renewal proceedings because considering them in that context would be unnecessary and wasteful; LBP-11-2, 73 NRC 45 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002)
license renewal applications must contain any significant new information relevant to environmental impacts of which applicant is aware, and new information generally may be challenged in individual adjudications; CLI-12-19, 76 NRC 385 n.51 (2012)

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the scope of a contention is limited to the issues of law and fact pleaded with particularity in the contention and any factual and legal material in support thereof; LBP-11-38, 74 NRC 833 (2011); LBP-12-5, 75 NRC 239 (2012)

the scope of an admitted contention is determined by the bases set forth in support of the contention; LBP-11-14, 73 NRC 609 (2011); LBP-12-17, 76 NRC 85 (2012); LBP-12-23, 76 NRC 463 (2012)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002)

although a contention contesting applicant's environmental report generally may be viewed as a challenge to the NRC Staff's subsequent draft environmental impact statement, new claims must be raised in a new or amended contention; LBP-13-10, 78 NRC 134 (2013); LBP-14-5, 79 NRC 383-84 & n.32 (2014)

board's designation of a contention as a contention of omission is a means to limit its scope; CLI-11-11, 74 NRC 443 n.92 (2011)

contentions challenging an environmental report may be viewed as a challenge to the NRC Staff's subsequent draft or final environmental impact statement; CLI-12-1, 75 NRC 61 n.107 (2012)

new or amended contentions related to portions of the draft environmental impact statement that differ from the environmental report must be timely filed under section 2.309(c) and meet the contention admissibility standards of section 2.309(f)(1) to be admitted; LBP-13-9, 78 NRC 47 n.29 (2013)

the draft environmental impact statement might cure alleged omissions or deficiencies in the environmental report by including additional analysis that addresses such omissions or deficiencies; LBP-11-7, 73 NRC 276 n.150 (2011)

when omissions are cured by the subsequent issuance of licensing-related documents, a contention of omission must be disposed of or modified; LBP-12-5, 75 NRC 238 (2012)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382, 383 n.44 (2002)

a contention contesting an applicant's environmental report generally may be viewed as a challenge to the NRC Staff's subsequent draft EIS, but new claims must be raised in a new or amended contention; LBP-11-1, 73 NRC 26 n.12 (2011)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002)

a contention based solely upon omissions from the environmental report is rendered moot when the missing information is supplied; LBP-11-14, 73 NRC 598 (2011)

contentions of omission are appropriate when an issue that by law should be discussed is not, whereas contentions of adequacy are those that assert the existing discussion of an issue is incomplete; CLI-15-25, 82 NRC 403 n.95 (2015)

issues framed in contentions challenging an application generally encompass two categories alleging an informational or analytical omission from the application and/or alleging that information/analysis in the application is inadequate (as opposed to missing); LBP-13-10, 78 NRC 132 n.6 (2013)

there is a difference between contentions that merely allege an omission of information and those that challenge substantively and specifically how particular information has been discussed in a license application; LBP-13-9, 78 NRC 47-48 n.31 (2013); LBP-14-5, 79 NRC 384 n.34 (2014)

where a contention alleges omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by NRC Staff in a draft environmental impact statement, the contention is moot, and intervenors must timely file a new or amended contention to raise specific challenges regarding the new information; LBP-12-5, 75 NRC 247 (2012)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-84 (2002)

contentions of omission and contentions of inadequacy are defined; LBP-15-5, 81 NRC 284 n.213 (2015)

licensing boards have commonly afforded intervenors the opportunity to propose new contentions to challenge the new information, even though no contention is pending; LBP-11-22, 74 NRC 277 (2011)

petitioners' challenge to the adequacy of applicant's existing analysis of solar and wind as alternative energy sources is not a contention of omission; CLI-12-8, 75 NRC 406 n.72 (2012)

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- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002)
- a significant change in the nature of the purported NEPA imperfection, from one focusing on comprehensive information omission to one centered on a deficient analysis of subsequently supplied information, warrants issue modification by the complaining party because otherwise, absent any new pleading, the other parties would be left to speculate whether the concerns first expressed had been satisfied by the new information; LBP-12-5, 75 NRC 247 n.124 (2012)
 - admitted contentions of omission may be rendered moot by subsequent license-related documents filed by the NRC Staff that address the alleged omission; LBP-13-9, 78 NRC 48 (2013)
 - alleged defects in applicant's environmental report may be mooted by the content of NRC's environmental impact statement or supplemental environmental impact statement; LBP-11-28, 74 NRC 608 (2011)
 - contention of omission that has been admitted may be rendered moot by subsequent license-related documents filed by NRC Staff that address the alleged omission; LBP-14-5, 79 NRC 384-85 & n.35 (2014)
 - facts relied on to support a contention of omission need not show that the facility cannot be safely operated, but only that the application is incomplete; LBP-15-5, 81 NRC 258 (2015)
 - if a contention is rendered moot by information supplied by applicant or considered by Staff in a draft EIS, the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of the NRC Staff's treatment of the relevant issue; LBP-13-9, 78 NRC 48 n.33 (2013)
 - if a motion for summary disposition is granted, then the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of the NRC Staff's treatment of the relevant issue; LBP-14-5, 79 NRC 385 (2014)
 - if applicant cures the omission cited in a contention, the contention will become moot unless revised by intervenors; LBP-15-5, 81 NRC 258 (2015)
 - intervenor may need to amend an admitted environmental contention based on applicant's environmental report, or file a new contention altogether challenging Staff's draft environmental impact statement; LBP-12-12, 75 NRC 768 (2012)
 - the board may consider environmental contentions made against an applicant's ER as challenges to an agency's subsequent DEIS only as long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention; LBP-11-1, 73 NRC 26 n.14 (2011)
 - when omissions are cured by the subsequent issuance of licensing-related documents, intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information; LBP-12-5, 75 NRC 238 (2012)
 - where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot; LBP-11-16, 73 NRC 705 (2011); LBP-12-27, 76 NRC 610 (2012)
 - where the information in the DEIS is so different from the information in the ER that the DEIS dispenses with and moots the issues raised in the original contention, intervenor must file a new or amended contention against the DEIS; LBP-11-1, 73 NRC 26 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 n.44 (2002)
- boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-23, 76 NRC 471 n.159 (2012)
 - under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final environmental impact statement without the necessity for Intervenor to file a new or amended contention; LBP-12-12, 75 NRC 768 n.140 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 n.45 (2002)
- a board's conclusion that a contention is one of omission is driven by its examination of the contention, including its underlying arguments; LBP-11-6, 73 NRC 200 (2010)

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- based on its language, a contention can be characterized as a contention of omission, a contention of adequacy, or both; LBP-13-9, 78 NRC 47-48 n.31 (2013); LBP-14-5, 79 NRC 384 (2014)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002)
- hearing petitioners have an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to uncover any information that could serve as the foundation for a specific contention; LBP-11-9, 73 NRC 403 n.73, 405 (2011)
- NRC proceedings would prove unmanageable and unfair to the other parties if an intervenor could freely change an admitted contention at will as litigation progresses; CLI-12-1, 75 NRC 56 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 388 n.77 (2002)
- a severe accident mitigation alternative need not be implemented during a particular plant's license renewal review if the Commission is concurrently resolving the safety improvement achieved by that SAMA through a generic process attached to the agency's review of all plants' current licensing bases; LBP-11-17, 74 NRC 25 (2011)
- NEPA does not mandate the particular decisions that an agency must reach, only the process the agency must follow while reaching decisions; LBP-11-17, 74 NRC 27 n.77 (2011)
- NRC shall require backfitting of a facility only when it determines that there will be a substantial increase in the overall protection of the public health and safety or the common defense and security and the direct and indirect costs of implementation are justified in view of this increased protection; LBP-11-17, 74 NRC 22 n.53 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 427 (2003)
- petitioners must raise and reasonably specify at the outset their objections to a license application; CLI-12-1, 75 NRC 56 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428 (2003)
- contention pleading standards require petitioners to plead specific grievances, not simply to provide general notice pleadings; CLI-15-18, 82 NRC 147 n.58 (2015); LBP-11-29, 74 NRC 618 (2011)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 429 (2003)
- intervenor is expected to file contentions on the basis of applicant's environmental report and not delay their contentions until after NRC Staff issues its environmental analysis; CLI-12-13, 75 NRC 687 n.31 (2012)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003)
- a SAMA analysis need only ensure that the environmental consequences of the project have been fairly evaluated; LBP-11-2, 73 NRC 64 (2011)
- adjudicatory hearings are not environmental impact statement editing sessions wherein the board sits to parse and fine-tune EISs; CLI-12-1, 75 NRC 57 (2012); CLI-12-6, 75 NRC 369 (2012); LBP-13-13, 78 NRC 286 n.183 (2013)
- because severe accident mitigation alternatives analysis is site-specific, NEPA demands no fully developed plan or detailed examination of specific measures that will be used to mitigate adverse environmental effects; LBP-11-18, 74 NRC 37 (2011); LBP-11-23, 74 NRC 330 (2011)
- contentions must directly controvert relevant sections of the environmental report; LBP-11-16, 73 NRC 677 (2011)
- severe accident mitigation alternatives analyses, as issues of mitigation, need only be discussed in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-13-13, 78 NRC 453 (2013)
- sufficiency of the NRC's hard look at the benefits of SAMAs in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 21 (2011)
- the burden is on the proponent of a contention to show that NRC Staff's analysis or methodology is unreasonable or insufficient; CLI-12-6, 75 NRC 369 (2012)

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to be successful, intervenors must demonstrate with adequate support that NRC Staff failed to take a hard look at important environmental questions or failed to provide a reasonable analysis; LBP-13-13, 78 NRC 286 (2013)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431-32 (2003)

in judging whether NRC Staff took the NEPA-mandated hard look, the Board reviewed the proposed mitigation programs to ensure that sufficient detail was provided on mitigation measures to show a fair agency evaluation of mitigation and environmental consequences, and that NRC Staff did not ignore or minimize pertinent environmental effects; LBP-15-16, 81 NRC 688 (2015)

Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333-34 (1999)

dispute at issue is material if its resolution would make a difference in the outcome of the licensing proceeding; CLI-14-2, 79 NRC 30 (2014)

under 10 C.F.R. 2.309(f)(1)(iv), intervenors need only demonstrate that the issue raised in the contention is material, i.e., that it would make a difference in the licensing decision; LBP-11-7, 73 NRC 292 (2011)

where implementation of a building code could not make a difference in the outcome of the proceeding, it cannot be material; LBP-11-7, 73 NRC 292 (2011)

Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)

although an admissible contention requires no more than some minimal factual and legal foundation in support, the Commission expects that in almost all instances petitioner must go beyond merely quoting a request for additional information to justify admission; LBP-15-1, 81 NRC 42 (2015)

contention admissibility requirements seek to ensure that NRC hearings serve to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; CLI-15-8, 81 NRC 504 (2015); LBP-11-6, 73 NRC 171 (2010)

contention rule reflects a deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly supported contentions that were admitted for hearing although based on little more than speculation; CLI-15-8, 81 NRC 504 (2015)

contentions shall not be admitted if at the outset they are not supported by some alleged fact or facts demonstrating a genuine material dispute; LBP-12-8, 75 NRC 561 (2012)

intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 527-28 n.98 (2015)

it is intervention petitioner's responsibility to put others on notice as to the issues it seeks to litigate; CLI-11-11, 74 NRC 457 (2011)

NRC deliberately raised contention admissibility standards to relieve the hearing delays that poorly defined or supported contentions had caused in the past; CLI-12-5, 75 NRC 307 (2012); CLI-12-8, 75 NRC 396 (2012)

prior to NRC's 1989 rule revision, intervenors were able to trigger hearings after merely copying a contention from another proceeding, even though these admitted intervenors often had negligible knowledge of the issues and no direct case to present; CLI-12-5, 75 NRC 307 (2012); CLI-12-8, 75 NRC 396 (2012)

the Commission toughened its contention admissibility rule in 1989 to ensure that only intervenors with genuine and particularized concerns participate in NRC hearings; LBP-11-6, 73 NRC 171 (2010)

the contention admissibility rule serves to ensure that admitted contentions focus on real disputes that can be resolved in an adjudication, establish a sufficient factual and legal foundation to warrant further inquiry, and put other parties on notice of the disputed issues so they will know precisely those claims they must support or oppose; LBP-11-6, 73 NRC 171 n.17 (2010)

the multifactor contention admissibility test in section 2.309(f)(1) was crafted by the Commission to raise the threshold bar for an admissible contention; LBP-11-6, 73 NRC 170-71 (2010)

to meet the section 2.309(f)(1)(v) requirement for providing factual and expert support, petitioners must proffer at least some minimal factual and legal foundation in support of their contentions; LBP-15-1, 81 NRC 38 (2015)

to trigger a full adjudicatory hearing, petitioners must be able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-12-27, 76 NRC 595 (2012)

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- under the previous contention admissibility rule, a contention could be admitted and litigated based on little more than speculation, with parties attempting to unearth a case through cross-examination; LBP-11-6, 73 NRC 171 (2010)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999) admissible contention must meet six pleading requirements; LBP-15-17, 81 NRC 777 (2015) contention admissibility criteria are strict by design; LBP-11-16, 73 NRC 655 (2011); LBP-11-21, 74 NRC 125 (2011); LBP-12-25, 76 NRC 545 (2012); LBP-15-5, 81 NRC 258 (2015); LBP-15-20, 81 NRC 867-68 (2015)
- NRC deliberately raised the admission standards for contentions to obviate serious hearing delays caused in the past by poorly defined or poorly supported contentions; LBP-15-1, 81 NRC 38 (2015)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999) contention admissibility criteria are strict by design but should not be turned into a fortress to deny intervention; LBP-11-6, 73 NRC 171 (2010); LBP-15-20, 81 NRC 855-56 (2015)
- contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute with applicant; LBP-12-8, 75 NRC 548 (2012); LBP-15-1, 81 NRC 38 (2015)
- factual basis requirement for contention admission is intended to preclude contentions from being admitted where an intervenor has no facts to support its position and instead contemplates using discovery or cross-examination as a fishing expedition that might produce relevant supporting facts; LBP-14-6, 79 NRC 442 (2014)
- intervenors may use discovery to develop a case once contentions are admitted; CLI-12-5, 75 NRC 307 (2012); CLI-12-8, 75 NRC 396 (2012)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336 (1999) asking questions and seeking additional information is an essential part of the NRC's licensing process, and such questioning does not automatically give rise to an admissible contention; LBP-12-27, 76 NRC 605 n.130 (2012)
- issuance of a request for additional information does not alone establish deficiencies in an application or that NRC Staff will go on to find any of applicant's clarifications, justifications, or other responses to be unsatisfactory; CLI-15-8, 81 NRC 506 n.47 (2015)
- petitioners must do more than rest on the mere existence of requests for additional information as a basis for their contention; CLI-15-8, 81 NRC 506 n.47 (2015)
- requests for additional information are a routine means for NRC Staff to ask for clarification or additional corroborating information from an applicant; CLI-15-8, 81 NRC 506 (2015)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336-38 (1999) mere general references to NRC Staff's requests for additional information do not provide the requisite reasonable specificity to support admission of a contention; CLI-12-5, 75 NRC 310 n.52 (2012)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 337 (1999) contention must explain what specific deficiencies exist and why they materially impact the license renewal application or environmental impact statement; LBP-15-1, 81 NRC 37 (2015)
- contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the environmental assessment, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 614 n.111, 617 (2015)
- requests for additional information reflect followup questions, an ongoing dialogue between NRC Staff and applicant; CLI-15-8, 81 NRC 506 (2015)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 337-38 (1999) contention rules are intended to prevent admission of ill-defined contentions where petitioners at the outset have not set forth particularized concerns; CLI-12-5, 75 NRC 334 n.197 (2012)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338-39 (1999) although boards may appropriately view petitioner's support for its contention in a light favorable to petitioner, they cannot do so by ignoring the contention admissibility requirements; CLI-15-18, 82 NRC 145-46 & n.53 (2015)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 341 (1999) intervenor must do more than point to issues with the shield building, but must also indicate what is wrong with applicant's response and its amended inspection program and why intervenor believes the

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- particular inspection program makes the license renewal application unacceptable; LBP-15-1, 81 NRC 40 (2015)
- intervenor must develop a fact-based argument that actually and specifically challenges the application; LBP-15-1, 81 NRC 42 (2015)
- intervenor's requests for more testing, more methods of testing, and more information, without an explanation of why the current program is inadequate, are not sufficient to create a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 41 n.150 (2015)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999)
- admission of contentions that NRC may ultimately deal with generically through notice-and-comment rulemaking is precluded; LBP-11-32, 74 NRC 663 (2011)
- boards should not accept in individual license proceedings contentions that are, or are about to become, the subject of rulemaking by the Commission; LBP-12-24, 76 NRC 510 (2012)
- challenges to NRC rules and regulations are generally prohibited, with limited exceptions, in view of expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis on rulemaking proceedings as the appropriate forum for settling basic policy issues; CLI-13-7, 78 NRC 207 n.32 (2013)
- collateral attacks on NRC regulations, unsupported by any showing of special circumstances warranting a waiver, are rejected; LBP-14-16, 80 NRC 202 (2014)
- Commission sensibly has chosen to address high-level waste disposal generically rather than unnecessarily to revisit the same waste disposal questions, license by license, when reviewing individual applications; LBP-14-16, 80 NRC 197 n.88 (2014)
- contention that impermissibly challenges an agency regulation is outside the scope of an individual licensing proceeding and is therefore inadmissible; CLI-15-11, 81 NRC 549 (2015)
- contentions that are the subject of general rulemaking by the Commission may not be litigated in individual licensing proceedings; CLI-14-8, 80 NRC 79 n.27 (2014); LBP-14-16, 80 NRC 193 (2014); LBP-15-17, 81 NRC 778 (2015)
- erring on the side of caution and at least looking at the information would be in order, except to the extent that the matters are about to become the subject of rulemaking; LBP-11-23, 74 NRC 327 (2011)
- Fukushima-related matters relevant to license renewal could be addressed in a rulemaking that could specifically inform a decision on the renewal application and preclude the filing of additional contentions; LBP-12-1, 75 NRC 35-36 (2012)
- petitioners may not raise in adjudicatory proceedings contentions attacking the agency's rules and regulations or contentions that are the subject of ongoing rulemakings; LBP-11-29, 74 NRC 618 (2011)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 385 n.1 (1998)
- proximity-based standing is allowed because license renewal allows operation of a reactor over an additional period of time during which the reactor could be subject to the same equipment failures and personnel errors as during operations over the original period of the license; LBP-12-8, 75 NRC 547 (2012)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 410 (1976)
- because need-for-power assessments necessarily entail forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, they are inherently conservative; LBP-11-7, 73 NRC 283 n.183 (2011)
- if demand for power turns out to be less than predicted, it cannot be argued that the cost of the unneeded generating capacity may turn up in customers' electric bills because the surplus can be profitably marketed to other systems or the new capacity can replace older, less efficient units; LBP-12-5, 75 NRC 238 n.60 (2012)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 412 (1976)
- even if a witness's testimony was entirely hearsay, evidence of that character is generally admissible in administrative proceedings; LBP-11-14, 73 NRC 600 n.59 (2011)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982)
- good cause is the most important of the late-filing factors and is entitled to the most weight; LBP-12-9, 75 NRC 621-22 (2012)

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- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 86 (1985)
contentions that are the subject of general rulemaking by the Commission may not be litigated in individual licensing proceedings; LBP-14-16, 80 NRC 193 (2014)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985)
hearing notices are the means by which the Commission identifies the subject matter of the hearings and delegates to boards the authority to conduct proceedings; LBP-11-22, 74 NRC 274 (2011)
licensing boards may exercise only the jurisdiction conferred upon them by the Commission; LBP-11-22, 74 NRC 274 (2011)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985)
contentions must be within the scope of the proceeding as defined by the Commission in its initial Notice and Order referring the proceeding to the licensing board; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 25 (2012); LBP-12-18, 76 NRC 157 (2012); LBP-12-27, 76 NRC 594 (2012); LBP-13-6, 77 NRC 285 (2013); LBP-15-20, 81 NRC 849 (2015)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983)
applicant has the burden of proof on safety issues in a licensing proceeding; LBP-13-13, 78 NRC 279 (2013); LBP-14-1, 79 NRC 52-53 n.62 (2014)
by participating in NRC proceedings, intervenors accept the obligation of uncovering relevant, publicly available information; CLI-12-13, 75 NRC 686 n.30 (2012); CLI-12-21, 76 NRC 499 (2012)
intervenors retain the responsibility to raise new or amended contentions as new information becomes available if they wish to litigate those issues; CLI-12-13, 75 NRC 689-90 (2012)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048-49 (1983)
NRC Staff's safety analysis and environmental analysis occur separately, and intervenors are expected to raise safety challenges in response to the safety reports and environmental challenges in response to the environmental statements; LBP-15-11, 81 NRC 423 n.132 (2015)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048-50 (1983)
should NRC Staff provide a different analysis in its draft environmental impact statement, there will be ample opportunity to either amend or dispose of a contention challenging the environmental report; CLI-12-13, 75 NRC 687 n.31 (2012)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983)
although all environmental contentions may, in a general sense, ultimately challenge NRC's compliance with NEPA, NRC regulations expressly permit the lodging of contentions against applicant's environmental report well before release of NRC's NEPA documents; LBP-11-38, 74 NRC 830 (2011)
although applicant carries the burden of proof on safety issues, NRC Staff has the overall burden of complying with NEPA; LBP-13-13, 78 NRC 279 (2013); LBP-15-2, 81 NRC 57 n.63 (2015); LBP-15-3, 81 NRC 84 (2015); LBP-15-16, 81 NRC 641 (2015)
environmental contentions are expected in response to applicant's or NRC Staff's environmental reviews, and contentions regarding their adequacy cannot be expected to be proffered at an earlier stage of the proceeding before the documents are available; LBP-15-11, 81 NRC 423 n.132 (2015)
environmental contentions ultimately challenge NRC's compliance with the National Environmental Policy Act; LBP-12-5, 75 NRC 236 (2012)
intervenors are not permitted to wait until information reappears in the draft environmental impact statement to file their contentions; LBP-13-9, 78 NRC 60 (2013)
NEPA imposes a nondiscretionary duty on NRC to amend an environmental impact statement if new and significant information comes to light; LBP-12-18, 76 NRC 157 (2012)
NRC Staff, not the applicant, bears the ultimate burden of establishing compliance with NEPA; LBP-11-38, 74 NRC 829-30 (2011); LBP-12-5, 75 NRC 235-36 (2012); LBP-12-17, 76 NRC 80 (2012); LBP-14-7, 79 NRC 458-59 (2014)
on safety issues, applicant has the burden of establishing that it is entitled to the applied-for license by a preponderance of the evidence; LBP-14-3, 79 NRC 278 (2014)
- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983)
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- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1946 (1982)
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contention that challenges sufficiency of the equivalent margins analysis to provide reasonable assurance of reactor safety is within the scope of the proceeding; LBP-15-20, 81 NRC 849 (2015)
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- Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-83-8A, 17 NRC 282, 285 (1983)
NRC cannot delegate its NEPA responsibilities to a private party; LBP-11-32, 74 NRC 666 n.29 (2011)
- Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460, 462 (1977)
where good cause is not shown for the late filing of a contention, the requestor's demonstration on the other factors must be particularly strong; LBP-11-15, 73 NRC 634-35 (2011)
- Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978)
intervention petitioner must allege such a personal stake in the outcome of the controversy as to demonstrate that a concrete adverseness exists that will sharpen the presentation of issues; CLI-15-25, 82 NRC 394 (2015)
- Duquesne Light Co.* (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 246 (1973)
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contentions cannot be automatically discarded by a hearing board simply because they repeat contentions advanced in a different proceeding; LBP-11-34, 74 NRC 696 (2011)
- Duquesne Light Co.* (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1385 (1977)
boards' authority to seek to trigger review in extraordinary circumstances remains and has been put to good use; LBP-11-9, 73 NRC 418 n.13 (2011)
- Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1306-07 (9th Cir. 2006)
agencies may not undertake a piecemeal review of environmental impacts; LBP-13-9, 78 NRC 83 (2013)
- Eastern Testing & Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996)
board authority under section 2.338(i) is to approve or reject a settlement agreement, and so it cannot amend the agreement without consent of the parties; LBP-15-21, 82 NRC 18 n.23 (2015)
concerns about how some aspect of a settlement agreement is being implemented or enforced can be brought to the attention of the Commission, which retains supervisory authority over the parties' agreement; LBP-15-21, 82 NRC 17 n.21 (2015)
- Ecology Action v. AEC*, 492 F.2d 998, 1001-02 (2d Cir. 1974)
deficiency in a final environmental impact statement is not automatic ground for reversal of an order granting a permit although the issue has been opened for full consideration in an agency hearing; CLI-15-6, 81 NRC 388 n.255 (2015)
environmental impact statements are effectively amended through the adjudicatory process; LBP-12-17, 76 NRC 83 (2012)
federal courts of appeal have approved of the process by which an environmental impact statement is effectively amended through the adjudicatory process; LBP-14-9, 80 NRC 67 (2014)
- Ed A. Wilson, Inc. v. General Services Administration*, 126 F.3d 1406, 1408 (Fed. Cir. 1997)
neither the Equal Access to Justice Act nor the legislative history provides a definition of the word "incur"; LBP-11-8, 73 NRC 364 (2011)
- Ed A. Wilson, Inc. v. General Services Administration*, 126 F.3d 1406, 1409 (Fed. Cir. 1997)
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- Ed A. Wilson, Inc. v. General Services Administration*, 126 F.3d 1406, 1410 (Fed. Cir. 1997)
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- Edlow International Co.* (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 572 (1976)
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- Energy Fuels Nuclear, Inc.*, LBP-95-20, 42 NRC 197, 198-99 (1995)
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- EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 621 (2011)
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- EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 621-22 (2011)
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- English v. General Electric Co.*, 496 U.S. 72, 81 (1990)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-2, 65 NRC 10, 11 (2007)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 33-35 (2008)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 34 (2008)
a partial initial decision is one rendered following an evidentiary hearing on one or more contentions, but that does not dispose of the entire matter; CLI-11-6, 74 NRC 209 (2011); CLI-11-10, 74 NRC 255 (2011)
grant of summary disposition where other contentions are pending is not a final decision and is appealable only upon a showing that the standards for interlocutory review have been met; CLI-11-6, 74 NRC 209 n.38 (2011); CLI-11-14, 74 NRC 810 (2011)
parties may file a petition for review of licensing board full or partial initial decisions, both of which are considered to be final; CLI-11-14, 74 NRC 810 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 34 n.14 (2008)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 35 (2008)
a board's disputed legal ruling does not necessarily warrant immediate interlocutory review; CLI-11-6, 74 NRC 208 n.31 (2011)
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- broadening of issues for hearing caused by the board's admission of a contention that applicant opposes does not constitute a 'pervasive and unusual effect on the litigation meriting interlocutory review; CLI-15-17, 82 NRC 37 n.23 (2015)
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- routine contention admissibility decisions do not affect the basic structure of a proceeding in a pervasive or unusual manner; CLI-12-13, 75 NRC 688 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 35-36 (2008)
- petitioner will have an opportunity to challenge the board's contention admissibility decision at the end of the case; CLI-12-13, 75 NRC 688-89 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-10, 69 NRC 521, 527-28 (2009)
- Commission is not inclined to issue a protective stay based on petitioner's bare assertion that it intends to file a petition for rulemaking at some unknown time in the future; CLI-14-6, 79 NRC 449 n.28 (2014)
- results of judicial review of rulemaking petition denial would be implemented in a meaningful way where petitioner had timely taken every conceivable procedural step to ensure that the ultimate outcome of its rulemaking petition would inform the NEPA analysis of the licensing proceedings; CLI-14-6, 79 NRC 449 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 533 (2009)
- NRC adjudicatory hearings are not environmental impact statement editing sessions; LBP-11-2, 73 NRC 62 (2011)
- petitioners have not established that use of another source term would identify additional cost-beneficial severe accident mitigation alternatives; LBP-11-13, 73 NRC 579 n.323 (2011)
- ultimate issue on severe accident mitigation alternatives analysis is whether any additional SAMA should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; CLI-11-11, 74 NRC 441 (2011); LBP-11-2, 73 NRC 62 (2011); LBP-11-13, 73 NRC 566 (2011); LBP-15-29, 82 NRC 250-51 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 534 (2009)
- references to affidavits and other exhibits supporting petitioner's claims should include page citations; CLI-12-8, 75 NRC 404 n.67 (2012)
- the Commission should not be expected to sift unaided through documents filed before the board to piece together and discern a party's argument and the grounds for its claims; LBP-12-3, 75 NRC 206, 207 (2012); CLI-12-8, 75 NRC 404 n.67 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 287 (2010)
- at issue is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the summary disposition opponent for a reasonable trier of fact to find in favor of that party; LBP-11-4, 73 NRC 100 (2011)
- if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 100 (2011)
- only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition; LBP-11-4, 73 NRC 100 (2011)
- summary disposition opponent may not rest upon mere allegations or denials, but must state specific facts showing that there is a genuine issue of fact for hearing; LBP-11-4, 73 NRC 100 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 290-91 (2010), *reconsideration denied*, CLI-10-15, 71 NRC 479 (2010)
- purpose of SAMA analyses is to identify safety enhancements that would be cost-beneficial to adopt; LBP-15-29, 82 NRC 250 (2015)
- severe accident mitigation alternatives are safety enhancements such as a new hardware item or procedure intended to reduce the risk of severe accidents; LBP-11-33, 74 NRC 680 n.7 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 290-91, 316-17 (2010)
- nature and purposes of the severe accident mitigation alternatives analysis are described; CLI-12-8, 75 NRC 406 (2012)

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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 291 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 293-94 n.26 (2010)
a license renewal applicant is compelled to implement safety-related severe accident mitigation alternatives that deal with aging management; LBP-11-17, 74 NRC 22 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 294 n.26 (2010)
severe accident mitigation alternatives unrelated to aging management need not be implemented pursuant to the NRC's license renewal safety review under Part 54; LBP-11-17, 74 NRC 25 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010)
correct inquiry regarding the first criterion for summary disposition is whether there are material factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party; LBP-11-31, 74 NRC 648 (2011)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297-98 (2010)
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caution should be exercised in granting summary disposition, which may be denied if there is reason to believe that the better course would be to proceed to a full hearing; LBP-11-7, 73 NRC 264 (2011)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 300-01 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 301 (2010)
the Gaussian plume model's incorporation in the MACCS2 code and the wide, customary use of the code are not sufficient grounds to exclude the code's integral dispersion model from all challenge if adequate support is provided for a contention; LBP-11-2, 73 NRC 71 n.301 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 303, 305 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 303, 317 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 304 n.87 (2010)
unlike plume modeling for an actual severe accident, the SAMA analysis is not focused on predicting the precise trajectory of a real-time plume but rather is a probabilistic analysis involving statistical averaging over many hundreds of randomly selected hourly weather sequences obtained from a year of hourly weather data; CLI-12-8, 75 NRC 415 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 305 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 306 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 307 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 308-09 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010)
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NRC adjudications are limited to the scope of admitted contentions; CLI-15-9, 81 NRC 529 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 & n.103 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 310 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 311 & n.121 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 312 (2010)
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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 313-14 (2010)
failure to offer factual support for the proposition that applicant's inputs for evacuation times are flawed or unreasonable or that its sensitivity analysis of these inputs was incorrect renders a contention inadmissible; LBP-15-5, 81 NRC 299 n.338 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010)
a licensing board's inquiry should not be whether there are plainly better methodologies or whether the severe accident mitigation alternatives analysis can be refined further, but rather whether the SAMA analysis resulted in erroneous conclusions on which SAMAs and SAMDAs are found cost-beneficial to implement; LBP-11-7, 73 NRC 265 (2011)
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- NEPA does not require NRC to use the best scientific methodology available; LBP-13-4, 77 NRC 211 (2013)
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- there is no NEPA requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-15-3, 81 NRC 82 (2015)
- Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 71 NRC 287, 315-16 (2010) although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-11-38, 74 NRC 831-32 (2011); LBP-12-5, 75 NRC 237 (2012); LBP-13-13, 78 NRC 452 (2013)
- appropriate inquiry under NEPA is not whether there are alternative models that NRC could have used, or whether the analysis could have been refined or improved by gathering additional data, but whether the NRC's chosen methodology is reasonable; LBP-13-4, 77 NRC 212 (2013)
- environmental impact statements are not intended to be research documents, reflecting the frontiers of scientific methodology, studies, and data; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 237 (2012); LBP-13-13, 78 NRC 452, 505 (2013)
- in judging adequacy of a severe accident mitigation design alternatives analysis, the pertinent legal question becomes not whether plainly better SAMDA analysis assumptions or methodologies could have been employed, or whether a particular SAMDA analysis could have been refined further; LBP-11-38, 74 NRC 832 (2011)
- NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-11-38, 74 NRC 832 (2011); LBP-12-5, 75 NRC 237 (2012); LBP-13-13, 78 NRC 452 (2013)
- NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-11-38, 74 NRC 831 (2011); LBP-13-13, 78 NRC 452 (2013)
- there is no NEPA requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 237 (2012)
- Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 71 NRC 287, 316 (2010) a severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis; LBP-11-7, 73 NRC 265 (2011)
- because the generic EIS provides a severe accident impacts analysis that envelopes potential impacts at all existing plants, the environmental impacts of severe accidents during the license renewal term already have been addressed generically in bounding fashion; LBP-12-18, 76 NRC 142 n.68 (2012)
- common practice in an environmental impact statement is to use bounding evaluations when more exact calculations cannot be performed or are not necessary; LBP-12-18, 76 NRC 142 n.68 (2012)
- generic environmental impact statement findings with respect to severe accident consequences are not subject to challenge in individual license renewal proceedings; CLI-15-6, 81 NRC 380 n.214 (2015)
- NEPA permits agencies to select their own methodology for mitigation analysis as long as that methodology is reasonable; LBP-11-2, 73 NRC 71 (2011); LBP-11-7, 73 NRC 265 (2011); LBP-13-13, 78 NRC 540 (2013)
- NRC is required to consider severe accident mitigation alternatives in issuing a new operating license; LBP-11-7, 73 NRC 264-65 (2011)
- Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 71 NRC 287, 316-17 (2010) license renewal applicants are not required to base their SAMA analysis on consequence values at the 95th percentile consequence level; LBP-11-2, 73 NRC 77 (2011)
- NRC inquiry is to ascertain whether it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the severe accident mitigation design alternatives analysis; LBP-11-38, 74 NRC 832 (2011)
- Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 71 NRC 287, 317 (2010) severe accident mitigation alternatives contentions are admissible only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; CLI-12-5, 75 NRC 323 (2012);

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- LBP-11-2, 73 NRC 46, 62 (2011); LBP-11-7, 73 NRC 265, 273 n.128, 315 (2011); LBP-11-13, 73 NRC 579 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 453-54 (2010)
“current licensing basis” is the set of NRC requirements (including regulations, orders, technical specifications, and license conditions) applicable to a specific plant, and includes the licensee’s written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; CLI-12-5, 75 NRC 304 n.12 (2012); LBP-11-17, 74 NRC 21-22 n.48 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 453-56 (2010)
license renewal review is a limited one, focused on aging management issues; CLI-11-5, 74 NRC 164 (2011)
safety issue that does not involve aging management issues is outside the scope of a license renewal proceeding; LBP-15-5, 81 NRC 264 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 453-56, 460-63 (2010)
scope of license renewal safety review is explained; CLI-11-11, 74 NRC 435 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 454 (2010)
active components are not subject to an aging management review because existing regulatory programs, including required maintenance programs, can be expected to directly detect the effects of aging on active functions; LBP-11-2, 73 NRC 57 (2011)
existing regulatory programs can be expected to directly detect the effects of aging on active functions; CLI-12-5, 75 NRC 304 n.10 (2012)
license renewal applicants must conduct aging management reviews of any structure, system, or component that performs one of these intended functions if the SSC is passive (performs its intended function(s) without moving parts or without a change in configuration or properties); CLI-12-5, 75 NRC 303-04 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 459-60 (2010)
because petitioner has not shown how a proposed plan would fail to ensure that buried pipes continue to fulfill their intended safety purposes, the contention is inadmissible; LBP-15-5, 81 NRC 295 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 461 (2010)
key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 60 (2011)
through the regulatory process, which includes plant inspections, notice and guidance to licensees, and enforcement actions, NRC takes a host of measures to improve the ability to timely detect and correct inadvertent leaks to assure compliance with public dose limits; LBP-11-2, 73 NRC 60 n.194 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 461-62 (2010)
current operating issues are, by their very nature, beyond the scope of a license renewal proceeding; CLI-11-2, 73 NRC 348 n.77 (2011)
license renewal is limited to aging-related issues, not issues already monitored and reviewed in the ongoing regulatory oversight processes; CLI-11-2, 73 NRC 348 n.77 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 462 (2010)
applicant must demonstrate that the effects of aging will be managed so that the intended function(s) will be maintained consistent with the current licensing basis and that the intended functions are described in section 54.4(a)(1)-(3); LBP-11-2, 73 NRC 60 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 463 (2010)
regulatory process continuously reassesses whether there is a need for additional oversight or regulations to protect public health and safety; LBP-15-4, 81 NRC 175 n.105 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 465-67 (2010)
with respect to the definition of “reasonable assurance,” applicant is required to show that safety features will fulfill their intended function, not that every structure will maintain its current licensing basis throughout the renewal period; LBP-15-5, 81 NRC 295 (2015)

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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 469 (2010)
all parties are obliged to follow the procedures in 10 C.F.R. Part 2 and board scheduling orders;
CLI-14-10, 80 NRC 164 (2014)
even if intervenors are appearing pro se, adherence to board directives is expected; CLI-14-10, 80
NRC 164 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 471 (2010)
license renewal applicants need not provide site-specific analyses of environmental impacts of subjects
identified as Category 1 issues; LBP-15-5, 81 NRC 266 n.92 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 471, 477 (2010)
generic analysis remains appropriate for spent fuel pool accidents in license renewal proceedings;
LBP-11-35, 74 NRC 716 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 473-76 (2010)
generic environmental impact statement for spent fuel pools is not limited to discussing only normal
operations, but also discusses potential accidents and other nonroutine events, and thus need not be
included in the severe accident mitigation alternatives analysis for license renewal; LBP-15-5, 81
NRC 307 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 474 (2010)
chapter 6 of the generic environmental impact statement clearly is not limited to discussing only
normal operations, but also discusses potential accidents and other nonroutine events, and the
Category 1 finding for onsite spent fuel storage is not limited to routine or normal operations;
LBP-11-2, 73 NRC 66 (2011); LBP-11-13, 73 NRC 570 n.248 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 476 (2010)
NEPA imposes no legal duty on NRC to consider intentional malevolent acts in conjunction with
commercial power reactor license renewal applications; LBP-11-2, 73 NRC 64 (2011); LBP-11-13,
73 NRC 571 (2011)
NRC has analyzed terrorist acts in connection with license renewal and concluded that the core
damage and radiological release from such acts would be no worse than the damage and release
expected from internally initiated events; LBP-11-2, 73 NRC 64 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 476-77 (2010)
only those NRC-regulated facilities located within the Ninth Circuit's jurisdictional boundaries are
required to conduct environmental analyses of possible terrorist acts; LBP-14-6, 79 NRC 428 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC 479, 482 (2010)
to be admissible, contentions must include specific grievances beyond mere notice pleading;
LBP-11-29, 74 NRC 618 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 207 n.34 (2010)
petitioner may question the practice for severe accident mitigation alternatives analysis to utilize mean
consequence values, which results in an averaging of potential consequences; LBP-11-13, 73 NRC
576 n.296 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 207-08 (2010)
nature and purposes of the severe accident mitigation alternatives analysis are described; CLI-12-8, 75
NRC 406 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208 (2010)
duty to prepare an environmental impact statement and to identify and consider every significant
environmental impact is tempered by the rule of reason; LBP-13-4, 77 NRC 120 (2013)
environmental impact statement is not intended to be a research document; LBP-15-3, 81 NRC 82
(2015); LBP-15-16, 81 NRC 638 (2015)
it is not possible simply to plug in and run a different atmospheric dispersion model in the MACCS2
code; LBP-11-2, 73 NRC 72 (2011)
legal adequacy of a final environmental impact statement is assessed under the rule of reason;
LBP-13-4, 77 NRC 210 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208-09 (2010)
NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable
estimates, including, where appropriate, full disclosures of any known shortcomings in available
methodology, incomplete or unavailable information and significant uncertainties, and a reasoned
evaluation of whether and to what extent these or other considerations credibly could or would alter

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- the analysis on which SAMDAs are considered; LBP-11-38, 74 NRC 832 (2011); LBP-13-13, 78 NRC 453 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-28, 72 NRC 553, 554 (2010)
the Commission generally defers to licensing boards on case management issues; CLI-11-13, 74 NRC 640 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39 (2012)
environmental analysis of severe accidents is designated as a Category 2 site-specific issue for license renewal, and therefore the SAMA analysis normally is subject to challenge in a license renewal adjudicatory proceeding; CLI-13-7, 78 NRC 211 (2013)
severe accident mitigation alternatives analyses in NRC license renewal proceedings are discussed; CLI-15-18, 82 NRC 139 n.16 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 41-43 (2012)
Category 2 issues focus on severe accident mitigation, to further reduce severe accident risk (probability or consequences); CLI-12-19, 76 NRC 381 n.20 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 46 (2012)
although the Commission has authority to undertake a de novo factual review, where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally defers to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-13-1, 77 NRC 19 n.110 (2013)
question before the Commission is not whether it would have made different factual findings than those of the board but whether the board's findings of fact are so lacking in record support as to be clearly erroneous; CLI-13-1, 77 NRC 19 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 57 (2012)
document's unavailability does not render NRC Staff's or applicant's reliance on the NUREG-1150 decontamination cost values altogether unreasonable under NEPA; LBP-13-13, 78 NRC 472 (2013)
to litigate SAMA-related issues requires demonstration of potentially significant deficiency in the SAMA analysis that credibly could render the SAMA analysis unreasonable under NEPA standards; CLI-13-7, 78 NRC 215-16 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 57-58 (2012)
unless a contention, submitted with adequate factual, documentary, or expert support, raises a potentially significant deficiency in the severe accident mitigation alternatives analysis, a SAMA-related dispute will not be material to the licensing decision and is not appropriate for litigation in NRC proceedings; LBP-12-26, 76 NRC 565 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 61 (2012)
despite the ability of both NRC Staff and applicant to present evidence and witnesses on environmental issues, the ultimate issue in determining NEPA compliance is the adequacy of the Staff's environmental review, not the applicant's environmental report; LBP-13-13, 78 NRC 279 (2013)
section 51.102(c) has been consistently interpreted to provide that environmental impact statements are modified by any subsequent board or Commission decision; CLI-15-6, 81 NRC 388 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 138 (2012)
level of support required for a motion to reopen is greater than that required for a contention under the general admissibility requirements; CLI-12-7, 75 NRC 391 n.47 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 139 n.41 (2012)
Commission discourages incorporating pleadings or arguments by reference; LBP-15-5, 81 NRC 290 n.263 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 140-41 (2012)
heavy barrier to reopening applies whenever an adjudication has been closed and not merely after a case has been terminated following a full evidentiary hearing on the merits; LBP-15-14, 81 NRC 595 (2015)
once all contentions have been decided, the contested proceeding is terminated; CLI-12-14, 75 NRC 699 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 141 (2012)
NRC rules contain ample provisions through which litigants may seek admission of new or amended contentions; CLI-12-13, 75 NRC 689 (2012)

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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 145 n.86 (2012)
litigants seeking to reopen a record must comply fully with section 2.326(b); LBP-12-10, 75 NRC 639 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 357 & nn.10-11 (2012)
adjudications are not the proper arena for challenges to NRC regulations; CLI-13-1, 77 NRC 35 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 360 n.36 (2012)
section 2.311 does not provide for the filing of replies; CLI-14-3, 79 NRC 34 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 364-65 (2012)
any interested person may petition the Commission to issue, amend, or rescind any regulation;
CLI-13-7, 78 NRC 208 n.42 (2013)
to challenge generic application of a rule, petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply;
CLI-13-7, 78 NRC 207 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 365 (2012)
waiver of a rule pertaining to the agency's environmental responsibilities is possible; CLI-13-7, 78 NRC 209 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 371 (2012)
any contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed; LBP-12-15, 76 NRC 27 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 372-75 (2012),
petitions for review denied, Massachusetts v. NRC, 708 F.3d 63 (1st Cir. 2013)
waiver petition would permit consideration of an issue in an adjudicatory proceeding that would otherwise impermissibly challenge an NRC rule or regulation; CLI-14-7, 80 NRC 6-7 n.16 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 372-76 (2012)
admission of a "placeholder" contention is not necessary to ensure that petitioner's challenges to the Continued Storage Rule and GEIS receive a full and fair airing; CLI-15-11, 81 NRC 550 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 373 (2012),
petitions for review denied, Massachusetts v. NRC, 708 F.3d 63 (1st Cir. 2013)
to determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes; CLI-14-7, 80 NRC 7 (2014)
when considering stays or other forms of temporary injunctive relief, the Commission has applied the stay factors outlined in 10 C.F.R. 2.342(e), which restate commonplace principles of equity;
CLI-14-6, 79 NRC 449 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 374 n.138 (2012)
because applicant has not shown that it could not have addressed issues in its appeal, nor has presented genuinely new information in its reply, neither necessity nor fairness dictates that its reply should be permitted; CLI-14-3, 79 NRC 35 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 374-75 & n.140 (2012),
petitions for review denied, Massachusetts v. NRC, 708 F.3d 63 (1st Cir. 2013)
suspending a final decision indefinitely in an adjudicatory proceeding upon receipt of a claim of new and significant information runs counter to the goal of promoting fair and efficient resolution of disputes; CLI-14-7, 80 NRC 8 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 376 (2012),
petitions for review denied, Massachusetts v. NRC, 708 F.3d 63 (1st Cir. 2013)
requirement that NRC suspend its licensing decisions upon receipt of a claim of new and significant information would render its decisionmaking intractable; CLI-14-7, 80 NRC 8 (2014)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479 (2012)
purpose of the reopening rule is to make sure that petitioners have an opportunity to raise serious issues after the close of the record; CLI-12-14, 75 NRC 700 (2012)

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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 487 (2012)
NEPA severe accident mitigation alternatives analysis need not reflect the most conservative, or worst-case, analysis; LBP-12-26, 76 NRC 573 n.73 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 488-89 (2012)
material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 7 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 492 n.69 (2012)
good cause is the most important of the late-filing factors under section 2.309(c)(1), and absent good cause, a compelling showing must be made on the other seven factors; LBP-12-12, 75 NRC 749 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 492-94 (2012)
petitioners who choose to wait to raise contentions that could have been raised earlier risk the possibility that there will not be a material difference between the application and NRC Staff's review documents, thus rendering any newly proposed contention on previously available information impermissibly late; CLI-15-1, 81 NRC 7 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 495 (2012)
the reopening standard imposes a deliberately heavy burden on parties seeking to supplement the evidentiary record at the 11th hour, after the record has closed; LBP-12-10, 75 NRC 639 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 497 (2012)
later revisions to license renewal application that bring the plant into compliance with the GALL-2 have generally been deemed acceptable; LBP-13-13, 78 NRC 284 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 706 (2012)
performed under NEPA, a severe accident mitigation alternatives analysis evaluates the degree to which specific additional mitigation measures may reduce the probability or consequences of various accident scenarios on a site-specific basis; LBP-13-13, 78 NRC 286, 452-53 (2013)
severe accident mitigation alternatives analysis is conducted pursuant to NEPA, and thus is an environmental issue, not a safety one; LBP-13-8, 78 NRC 29 (2013); LBP-15-1, 81 NRC 28 n.67 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 706-07 (2012)
although a SAMA analysis considers safety issues, it is actually an environmental review that must be judged under NEPA's rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 250 n.22 (2015)
severe accident mitigation alternatives analysis is a quantitative cost-benefit analysis, assessing whether the cost of implementing a specific enhancement outweighs its benefit; CLI-15-18, 82 NRC 142-43 & n.40 (2015); LBP-13-13, 78 NRC 453 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 707 (2012)
severe accident mitigation alternatives analysis is a quantitative cost-benefit analysis, comparing the costs of a mitigation measure against its benefits; LBP-13-13, 78 NRC 286 (2013)
severe accident mitigation alternatives analysis takes into account probabilities of accident scenarios, so that the analysis ultimately assesses whether and to what extent the probability-weighted consequences of the analyzed severe accident sequences would decrease if a specific mitigation alternative were implemented; LBP-13-13, 78 NRC 286, 453 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 708 (2012)
as a NEPA analysis, the severe accident mitigation alternatives analysis is not based on either the best-case or the worst-case accident scenarios, but on mean accident consequence values, averaged over the many hypothetical severe accident scenarios; LBP-13-13, 78 NRC 286-87, 453, 470 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012)
contentions challenging a severe accident mitigation alternatives analysis must identify a deficiency that plausibly could alter the overall result of the analysis in a material way; LBP-13-13, 78 NRC 287 (2013)
it will always be possible to envision and propose some alternative approach to severe accident mitigation alternatives analysis, some additional detail to include, or some refinement; LBP-15-29, 82 NRC 250 (2015)

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- NRC regulations place an intentionally heavy burden on parties seeking to reopen the record; CLI-15-19, 82 NRC 155 (2015)
- petitioner, rather than the licensing board, bears the burden of establishing the admissibility of proffered contentions; CLI-14-2, 79 NRC 28 (2014)
- when a board is called upon to assess a severe accident mitigation alternatives analysis, the question is not whether more or different analysis can be done; LBP-13-13, 78 NRC 287, 453, 474 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714-15 (2012)
- petitioners must offer more than speculation at the contention admission stage; LBP-15-5, 81 NRC 305 n.391 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 724 (2012)
- severe accident mitigation alternatives analysis evaluation is governed by the rule of reason and alternatives must be bounded by some notion of feasibility; LBP-13-13, 78 NRC 287, 454 (2013)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 725 (2012)
- NEPA is not intended to encompass every possible impact, and does not encompass potential losses due to individuals' perception of a risk; LBP-12-24, 76 NRC 523 n.100 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257 (2006)
- severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; LBP-12-8, 75 NRC 551 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 280 (2006)
- contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible; LBP-12-8, 75 NRC 551 (2012)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 280-300 (2006)
- contention that environmental report is inadequate insofar as it does not consider the risk of spent fuel pool fires is inadmissible; LBP-15-5, 81 NRC 306-07 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 288 (2006)
- Commission precedent interprets the term, "severe accidents," to encompass only reactor accidents and not spent fuel pool accidents; LBP-11-2, 73 NRC 66 n.237 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 340 (2006)
- to evaluate the impact of a fault on current operations, a probabilistic risk assessment rather than a deterministic analysis is the accepted and standard practice in SAMA analyses; CLI-11-11, 74 NRC 439 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 341 (2006)
- a severe accident mitigation alternatives contention was admitted; LBP-11-2, 73 NRC 62 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006)
- admissibility requirement generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons; LBP-15-1, 81 NRC 36-37 (2015)
- intervenor do not point to any recitation of the factors underlying the contention or references to documents and texts that give the board reason to believe applicant's inspection program may lead to a material negative impact on public safety, or that an improved program will lead to any positive impact; LBP-15-1, 81 NRC 40 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131, 137 (2007)
- a severe accident mitigation alternatives contention was summarily dismissed; LBP-11-2, 73 NRC 62 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131, 149 (2007)
- petitioner's failure to address applicant's supplemental economic analyses, demonstrate specific knowledge of the analysis, and not indicate, even broadly, that the SAMA economic cost-benefit conclusions are not sufficiently conservative renders a contention inadmissible; LBP-15-5, 81 NRC 299 n.339 (2015)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-08-22, 68 NRC 590, 601 (2008)
- challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of the license renewal proceeding; LBP-12-24, 76 NRC 525 n.117 (2012)

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- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-11-23, 74 NRC 287, 324 (2011)
(Young, J., concurring in part and dissenting in part)
the board has ruled on these Fukushima-related hearing requests and rejected them pursuant to 10 C.F.R. 2.326, 2.309(c), and 2.309(f)(1); CLI-11-5, 74 NRC 164-64 n.91 (2011)
- Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-12-16, 76 NRC 44, 59-60 (2012)
licensing board lacks authority to hold a hearing on the adequacy of a different agency's regulations; LBP-15-5, 81 NRC 306 (2015)
- Entergy Nuclear Generation Co. v. Department of Environmental Protection*, 459 Mass. 319, 330; 944 N.E.2d 1027 (Mass. 2011)
another permitting regime for discharges does not foreclose the department from developing compatible methods of regulating water intakes at cooling water intake structures; LBP-12-16, 76 NRC 54 (2012)
in areas with a designated use as aquatic habitat, cooling water intake structures hinder the attainment of water quality standards; LBP-12-16, 76 NRC 54 n.49 (2012)
- Entergy Nuclear Generation Co. v. Department of Environmental Protection*, 949 N.E.2d 1027, 1037 (Mass. 2011)
cooling water intake structures have harmed aquatic species and their habitats; LBP-12-10, 75 NRC 677 (2012)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187, 192 (2008)
Commission has declined to take interlocutory review with respect to case management decisions; CLI-15-24, 82 NRC 335 n.19 (2015)
the Commission generally defers to licensing boards on case management issues; CLI-11-13, 74 NRC 640 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275, 275 (2007)
Commission has imposed or upheld disciplinary measures against parties and their representatives when they failed to comply with board directives and procedural rules; CLI-14-10, 80 NRC 165 n.41 (2014)
presiding officers have the duty to conduct a fair and impartial hearings according to law, to take appropriate actions to control the prehearing and hearing process, and to avoid delay and to maintain order and have all the powers necessary to those ends; CLI-14-10, 80 NRC 164 n.38 (2014)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-27, 68 NRC 655 (2008)
the Commission has considered whether to exercise pendent jurisdiction of otherwise unappealable issues, such as where those issues are inextricably intertwined with a related legal question properly before it, or where consideration of the issues together has the potential to resolve the entire litigation; CLI-12-12, 75 NRC 607 n.13 (2012)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133 (2009)
interlocutory review is generally disfavored and requests for such review are granted only under extraordinary circumstances; CLI-12-13, 75 NRC 687 (2012); CLI-15-24, 82 NRC 335 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133-36 (2009)
expense is not irreparable harm; CLI-15-24, 82 NRC 337 n.35 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 133-37 (2009)
appellate review of interlocutory licensing board orders is disfavored, and will be undertaken as a discretionary matter only in extraordinary circumstances; CLI-11-10, 74 NRC 256 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 135 & n.25 (2009)
the ordinary burden on parties in pursuing litigation pending rulemaking does not justify disrupting ongoing license review; CLI-11-1, 73 NRC 6 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 136-38 (2009)
increased litigation burden did not have a pervasive effect on the basic structure of the proceeding; CLI-15-24, 82 NRC 337 n.35 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 137 (2009)
piecemeal appeals during ongoing licensing board proceedings are generally disfavored; CLI-11-6, 74 NRC 210 (2011)
routine contention admissibility determinations generally are not appropriate for interlocutory review; CLI-12-12, 75 NRC 608 (2012)

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- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 138 (2009)
broadening of issues for hearing caused by the board's admission of a contention that applicant opposes does not constitute a pervasive and unusual effect on the litigation meriting interlocutory review; CLI-15-17, 82 NRC 37 n.23 (2015)
the Commission disfavours requests to invoke its inherent supervisory authority over adjudications; CLI-11-13, 74 NRC 637 n.11 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-10-30, 72 NRC 564, 568 (2010)
admission of a contention that might require further explanation of severe accident mitigation alternatives cost-benefit analysis did not have a pervasive and unusual effect on the litigation; CLI-11-6, 74 NRC 209 n.38 (2011)
a board's disputed legal ruling does not necessarily warrant immediate interlocutory review; CLI-11-6, 74 NRC 208 n.31 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-10-30, 72 NRC 564, 568-69 (2010)
the Commission will address licensing board rulings after a licensing board has issued a final decision in a case, barring extraordinary circumstances; CLI-13-3, 77 NRC 54-55 (2013)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 807 (2011)
filings not otherwise authorized by NRC rules are permitted only where necessity or fairness dictates; CLI-14-3, 79 NRC 35 (2014)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 807-08 (2011)
motion to reply is denied because petitioner should have anticipated the arguments in the Staff's and applicant's answers, which were logical responses to petitioner's suspension motion; CLI-12-6, 75 NRC 374 n.138 (2012)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 809 (2011)
reply briefs may not contain new information that was not raised in either the petition or answers, but arguments that respond to the petition or answers, whether they are offered in rebuttal or in support, are not precluded; LBP-12-8, 75 NRC 570 (2012)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 809-10 (2011)
issues raised in an intervention petition or answer are within the appropriate scope of a reply brief; LBP-15-5, 81 NRC 304 n.386 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 811-12 (2011)
Commission generally disfavours interlocutory review; CLI-15-17, 82 NRC 36 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 813 (2011)
NEPA requires a hard look at severe accident mitigation measures; LBP-12-26, 76 NRC 573 n.72 (2012)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-12-18, 76 NRC 371, 374 (2012)
Commission has declined to take interlocutory review with respect to case management decisions; CLI-15-24, 82 NRC 335 n.19 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 354-56 (2015)
petitioners may challenge a Staff guidance document such as a Regulatory Guide; LBP-15-20, 81 NRC 846-47 & n.100 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 356, 358 n.85, 359 (2015)
NRC Staff guidance is entitled to special weight in a decision on the merits; LBP-15-20, 81 NRC 847 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 359 (2015)
boards should accord special weight to NRC Staff guidance; LBP-15-16, 81 NRC 659 n.242 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 369, 371 (2015)
original contention did not point to any specific grievance with the environmental justice discussion provided in applicant's environmental report and so the board should have applied the standards in 10 C.F.R. 2.309(c) to determine whether petitioner had demonstrated good cause for its late filing; CLI-15-18, 82 NRC 147 n.58 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 112 (2008)
contention that population used for analysis might underestimate the exposed population in a severe accident and, in turn, underestimate the benefit achieved in implementing a severe accident mitigation alternatives analysis is admissible; LBP-15-5, 81 NRC 298 (2015)

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- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 187 (2008)
contention calling for alternative analysis, with no showing that the original analysis failed to meet applicable requirements, is inadmissible; CLI-12-8, 75 NRC 408 (2012)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 60 (2008)
with standing of various organizations unchallenged by applicant or NRC Staff, each organization has demonstrated institutional injury to the organization itself and representational standing; LBP-13-6, 77 NRC 283 n.23 (2013)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 64 (2008)
contentions that amount to an attack on applicable statutory requirements or represent a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-11-29, 74 NRC 618 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 86, *aff'd*, CLI-08-28, 68 NRC 655 (2008)
commitment to develop a program by the time the 20-year extension begins does not demonstrate that the effects of aging will be adequately managed; LBP-15-1, 81 NRC 36 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 89 (2008)
whether petitioners have adequately raised an issue as to whether transformers constitute active or passive components survived a motion for summary disposition; LBP-11-2, 73 NRC 57 (2011)
whether transformers are active or passive components remains an unresolved issue and thus requires fact-based determinations best left to further adjudicatory proceedings; LBP-11-2, 73 NRC 58 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 95 (2008)
applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 553 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 95-96 (2008)
allegation that multiple, unrelated sources of electricity ought to be evaluated collectively is inadmissible; LBP-11-2, 73 NRC 52 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 196 (2008)
to challenge a Category 1 issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 302 n.365 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-10-13, 71 NRC 673, 678 & n.12 (2010)
the current licensing basis is the set of NRC requirements (including regulations, orders, technical specifications, and license conditions) applicable to a specific plant, and includes the licensee's written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; LBP-11-17, 74 NRC 21 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-10-13, 71 NRC 673, 679 n.17 (2010)
sufficiency of the NRC's hard look at the benefits of SAMAs in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 21 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-10-13, 71 NRC 673, 679 & n.18 (2010)
a license renewal applicant is compelled to implement safety-related severe accident mitigation alternatives that deal with aging management; LBP-11-17, 74 NRC 22 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-10-13, 71 NRC 673, 679 & n.19 (2010)
NRC Staff has authority to require implementation of non-aging-management severe accident mitigation alternatives through its current licensing basis backfit review under Part 50 or through setting conditions of the license renewal; LBP-11-17, 74 NRC 22 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-10-13, 71 NRC 673, 680-81 (2010)
including probability-weighted consequences into SAMA analyses does not reduce the consequences so low as to reject all possible mitigation as too costly; LBP-11-2, 73 NRC 63 (2011)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-10-13, 71 NRC 673, 686-87 (2010)
contention that applicant's severe accident mitigation alternatives analysis is significantly flawed because of the use of inaccurate factual assumptions about population is admissible; LBP-15-5, 81 NRC 297 (2015)

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- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-11-17, 74 NRC 11, 20-22, interlocutory review denied, CLI-11-14, 74 NRC 801, 803 (2011)
NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-15-5, 81 NRC 260 (2015)
to evaluate a power reactor license renewal application, NRC reviews management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components and environmental impacts and alternatives to the proposed action; LBP-15-5, 81 NRC 259 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-11-17, 74 NRC 11, 21 (2011)
severe accident mitigation alternatives analysis must be considered as part of the environmental report and, ultimately, as part of NRC Staff's supplemental environmental impact statement for a power reactor license renewal; LBP-15-5, 81 NRC 260 (2015)
severe accident mitigation alternatives fall within Category 2 and must therefore be addressed on a site-specific basis; LBP-15-5, 81 NRC 260 (2015)
severe accident mitigation alternatives review identifies and assesses possible changes, such as improvements in hardware, training, or procedures, that could cost-effectively mitigate the environmental impacts that would otherwise flow from a potential severe accident; LBP-15-5, 81 NRC 260 (2015)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-13-13, 78 NRC 246, 475-76 (2013)
petitioner asserted that applicant underestimated the population projections used in the SAMA analysis in part through failure to consider certain U.S. Census estimates and nonresident populations (tourists and commuters); CLI-15-18, 82 NRC 148 n.68 (2015)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 254 (2008)
radius for the proximity presumption has to be at least as large as the range where obvious offsite consequences can occur; LBP-15-17, 81 NRC 773 (2015)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 260 (2008)
absent an obvious potential for harm, to obtain standing, it is petitioner's burden to show how harm will or may occur; LBP-14-4, 79 NRC 332 (2014)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 (2008)
contention filing deadlines support the Commission's interest in promoting efficient adjudication; LBP-15-11, 81 NRC 409 n.32 (2015)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 266 (2008)
union's organizational standing argument was rejected in an indirect license transfer proceeding initiated before the Commission because it was merely the Local's representational standing argument dressed up in different clothes; LBP-14-4, 79 NRC 332 n.69 (2014)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 266, 269-70 (2008)
claims of interest-based organizational standing were denied; LBP-13-6, 77 NRC 282-83 n.23 (2013)
in a license transfer proceeding, 3-mile distance between facility and organization's offices does not qualify for organizational standing; LBP-13-6, 77 NRC 283 n.23 (2013)
organizational standing in an agency adjudicatory proceeding could arise based on an asserted injury to a tangible asset, such as a building or land owned or regularly utilized by an organization, that is located near a proposed licensing activity; LBP-13-6, 77 NRC 283 n.23 (2013)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-15-17, 81 NRC 753, 789 & n.237 (2015)
when the Commission has determined that compliance with a regulation is sufficient to provide for reasonable assurance of public health and safety, a licensing board cannot impose requirements that exceed those in the regulation; LBP-15-20, 81 NRC 848 (2015)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-15-20, 81 NRC 829, *rev'd*, CLI-15-23, 82 NRC 321 (2015)
petitioners' argument that additional testing should be required to demonstrate compliance with 10 C.F.R. 50.61a is an impermissible challenge to that regulation; CLI-15-22, 82 NRC 318 n.55 (2016)
- Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 (2007)
adjudications are not the proper arena for challenges to NRC regulations; CLI-13-1, 77 NRC 35 (2013)

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- Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 839-40 (2005)
adequacy of the privilege log with respect to the sufficiency of the information contained therein is particularly important with respect to Subpart L proceedings because without sufficient information as to what allegedly makes the document deliberative, the challenger is forced to shoot in the dark and face a substantive answer by the document withholder, without the right to reply; LBP-13-5, 77 NRC 246-47 (2013)
- Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 843 (2005)
deliberative process privilege must be asserted by an individual who holds a sufficiently senior position such that he or she has control over the requested information and possesses a balanced perspective that enables him or her to discern the nature of the material at issue; LBP-13-5, 77 NRC 240 (2013)
factual material that does not reveal the deliberative process is not protected by privilege, unless it is inextricably intertwined with the deliberative portions of the document or it could reveal the deliberative process being protected if it were disclosed; LBP-13-5, 77 NRC 239 (2013)
- Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 846-47 (2005)
qualified persons, such as head of a department or division, having both expertise and an overview-type perspective concerning the balance between the agency's duty of disclosure versus its need to conduct frank internal debate must sign an affidavit asserting deliberative process privilege; LBP-13-5, 77 NRC 240 n.34 (2013)
- Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 849-50 (2005)
person qualified to assert deliberative process privilege must be involved in the initial assertion of privilege; LBP-13-5, 77 NRC 240 (2013)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 236-38 (2006)
issuance of power uprate license amendment in advance of hearing did not deprive intervenor of hearing rights because the license amendment may be revoked or conditioned after hearing; CLI-15-17, 82 NRC 40 n.47 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 (2006)
for a potential injury to be irreparable, it must be shown to be imminent, certain, and great; LBP-15-2, 81 NRC 54 (2015)
merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-14-4, 79 NRC 253 (2014)
parties seeking a stay must show that they face imminent, irreparable harm that is both certain and great; CLI-12-11, 75 NRC 529, 530 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 n.4 (2008)
when considering stays or other forms of temporary injunctive relief, the Commission has applied the stay factors outlined in 10 C.F.R. 2.342(e), which restate commonplace principles of equity; CLI-14-6, 79 NRC 449 n.30 (2014)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 238 (2008)
if a board determines after full adjudication that the license amendment should not have been granted, it may be revoked or conditioned; LBP-15-16, 81 NRC 658 n.235 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13 (2007)
severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; LBP-12-8, 75 NRC 551 (2012)

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- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 17, 20 (2007)
challenges to Category 1 findings based on new and significant information require a waiver of 10 C.F.R. Part 51, Subpart A, Appendix B, in order to be litigated in a license renewal adjudication; CLI-13-7, 78 NRC 203 (2013)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 (2007)
generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 350-51 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007)
adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a generic environmental impact statement; LBP-12-8, 75 NRC 551 (2012)
any contention on a Category 1 issue amounts to a challenge to the regulation barring challenges to generic environmental findings; CLI-12-19, 76 NRC 384 n.39 (2012)
generically applicable concerns are not appropriate for resolution in an adjudicatory proceeding, a rulemaking petition being the appropriate mechanism for raising those concerns; CLI-12-6, 75 NRC 357 (2012)
in theory, Commission approval of a rule waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist; CLI-15-6, 81 NRC 379 n.204 (2015)
it makes more sense for NRC to study whether, as a technical matter, the agency should modify its requirements relating to spent fuel storage for all plants than to litigate the issue in particular adjudications; CLI-12-6, 75 NRC 365 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20-21 (2007)
any interested person may petition the Commission to issue, amend, or rescind any regulation; CLI-13-7, 78 NRC 208 n.42 (2013)
concerns that apply generically to all spent fuel pools at all reactors are more appropriately addressed via rulemaking or other appropriate generic activity; CLI-12-6, 75 NRC 365 (2012)
petitioners, not just parties, may request a rule waiver in NRC adjudicatory proceedings; CLI-12-19, 76 NRC 387 n.55 (2012)
rule waiver would be necessary to litigate the issue of potentially new and significant information pertaining to bird collisions in an adjudicatory proceeding; CLI-13-7, 78 NRC 213 n.73 (2013)
the board properly rejected state's contention that raised concerns similar to those in its rulemaking petition as an impermissible challenge to NRC regulations; CLI-12-6, 75 NRC 357 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 21 (2007)
adjudicating Category 1 issues site by site based merely on a claim of new and significant information, would defeat the purpose of resolving generic issues in a generic EIS; CLI-12-19, 76 NRC 384 (2012); CLI-13-7, 78 NRC 216 n.94 (2013)
because the probability of a spent fuel pool accident causing significant harm is remote, there is no need for applicants to assess spent fuel pool accident mitigation alternatives as part of license renewal; LBP-15-5, 81 NRC 266, 307 (2015)
"new and significant information" requirement does not override, for purposes of litigating the issues in an adjudicatory proceeding, the exclusion of Category 1 issues in section 51.53(c)(3)(i) from site-specific review; CLI-12-19, 76 NRC 384 (2012)
no discussion of mitigation alternatives for Category 1 issues is necessary because NRC has already generically concluded that additional site-specific mitigation alternatives are unlikely to be beneficial; LBP-15-5, 81 NRC 266 (2015)

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- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 22 (2007), *aff'd, Massachusetts v. United States*, 522 F.3d 115 (1st Cir. 2008)
NRC rules provide a mechanism for supplementing an original NEPA analysis, but the rules do not guarantee a hearing nor is a hearing necessary to satisfy NRC's NEPA obligations; CLI-13-7, 78 NRC 211 n.62 (2013)
NRC Staff could seek Commission permission to suspend one or more of the generic determinations in the license renewal environmental rules, and include a new analysis in pending, plant-specific environmental impact statements; CLI-11-5, 74 NRC 175 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 22 n.37 (2007), *aff'd, Massachusetts v. United States*, 522 F.3d 115 (1st Cir. 2008)
request to suspend license renewal proceedings pending disposition of a rulemaking petition is premature; CLI-11-5, 74 NRC 174 (2011)
rulemaking petitioner who is not a party to a licensing proceeding has no right under NRC rules to request a stay of that proceeding; CLI-12-6, 75 NRC 357 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-13, 65 NRC 211, 214-15 (2007)
rulemaking petitioner may request that NRC suspend all or any part of any licensing proceeding to which petitioner is a party pending disposition of the petition for rulemaking; CLI-12-6, 75 NRC 357 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 377 (2007)
licensing boards do not have jurisdiction to determine whether other government entities have properly followed their regulations or procedures; LBP-12-16, 76 NRC 59 n.74 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 385-86 (2007)
Congress has severely limited the scope of NRC's inquiry into Clean Water Act § 316(a) determinations; LBP-12-16, 76 NRC 53 n.43 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1 (2010)
the Commission generally defers to licensing boards on case management issues; CLI-11-13, 74 NRC 640 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 10 & n.36 (2010)
the Commission generally has declined to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-11-1, 73 NRC 4 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 10 n.37 (2010)
a proceeding will remain open during the pendency of a remand; LBP-11-23, 74 NRC 294 (2011)
a remand held the proceeding open, but only for the limited purpose of litigating the remanded contention; CLI-12-3, 75 NRC 140 (2012)
arguments from an earlier petition were incorporated by reference; CLI-12-3, 75 NRC 139 n.41 (2012)
during pendency of remand, intervenors are free to submit a motion to reopen the record pursuant to 10 C.F.R. 2.326, should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; LBP-11-20, 74 NRC 76 n.70 (2011)
once a proceeding has closed, the mechanism to raise a new issue no longer would be a contention accompanied by a motion to reopen, but rather a request for action under 10 C.F.R. 2.206 or a petition for rulemaking under 10 C.F.R. 2.802; CLI-12-3, 75 NRC 140 (2012)
petitioner who files a new contention after the board has already closed the evidentiary record is obliged to address the reopening standards; CLI-12-6, 75 NRC 366 (2012)
the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; LBP-11-20, 74 NRC 77 n.75 (2011)
where the proceeding remained open during the pendency of a remand, but the record remained closed, any contentions raising genuinely new issues would have to be accompanied by a motion to reopen; CLI-12-3, 75 NRC 140 (2012); LBP-11-20, 74 NRC 92 (2011)

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- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 11, 35 (2010)
Commission reviews board's legal rulings de novo and will reverse them if they are contrary to established law; CLI-15-6, 81 NRC 351 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 36 (2010)
commitment to implement an aging management plan consistent with the GALL Report is an acceptable method for compliance with 10 C.F.R. 54.21(c)(1)(iii); LBP-13-13, 78 NRC 283, 290, 386 (2013)
commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for demonstrating that the effects of aging will be adequately managed; LBP-11-2, 73 NRC 55 (2011)
if NRC concludes that an aging management program is consistent with the GALL Report, then it accepts applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance under section 54.29(a); CLI-12-5, 75 NRC 304, 315 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 36, 38 (2010)
a commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance, but this does not insulate such an approach from challenge by an intervenor, and is not binding on a licensing board in an adjudication; LBP-11-20, 74 NRC 104 n.73 (2011)
assertion by applicant that its aging management plan is consistent with the GALL Report does not immunize it against a challenge to the AMP; CLI-12-5, 75 NRC 309 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 37 (2010)
although commitment to implement an aging management plan consistent with the GALL Report is an acceptable method for compliance with 10 C.F.R. 54.21(c)(1)(iii), such a commitment does not absolve the applicant from demonstrating, prior to issuance of a renewed license, that its aging management plan is indeed consistent with the GALL Report; LBP-13-13, 78 NRC 283, 290, 334, 380 (2013)
incorporation by reference of the applicable section of the GALL Report is permissible, but applicant must also provide sufficient plant-specific information to demonstrate that its aging management plan will be designed and implemented consistent with the GALL Report; LBP-13-13, 78 NRC 381 (2013)
license renewal applicant must demonstrate, not just promise, consistency with the GALL Report; LBP-13-13, 78 NRC 324 (2013)
license renewal applicant must present an aging management plan with sufficient information that NRC will be able to draw its own independent conclusion as to whether the applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 283, 290, 324, 380 (2013)
license renewal applicants' use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-12-10, 75 NRC 497 n.93 (2012)
sufficiency of an aging management program that meets the GALL Report's recommendations can be challenged if the contention admissibility requirements are otherwise met; CLI-12-10, 75 NRC 497 n.93 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 38 (2010)
NRC Staff's independent finding of license renewal applicant's consistency with GALL does not prevent the board from reviewing the substance of the applicant's commitments, and exploring deficiencies alleged by intervenors in its proceedings; LBP-13-13, 78 NRC 283 (2013)
referencing an aging management program described in the GALL Report does not insulate a program from an adequately supported challenge at a hearing; LBP-11-2, 73 NRC 55 (2011)

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- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 45 n.246 (2010)
burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 394-95 (2015)
in NRC proceedings, *pro se* litigants are generally not held to the same high standards of pleading and practice as parties with counsel; LBP-11-9, 73 NRC 408 (2011); LBP-11-20, 74 NRC 96 n.26 (2011); LBP-11-23, 74 NRC 333 n.23 (2011); LBP-15-5, 81 NRC 286 n.234 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 53 n.304 (2010)
good cause for late filing is given the greatest weight in a section 2.309(c) analysis; LBP-11-23, 74 NRC 328 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 337 (2011)
rationale for NRC's policy of generally disfavoring the filing of new contentions at the eleventh hour of an adjudication is based on the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; LBP-11-20, 74 NRC 77 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 337-38 (2011)
reopening the record for any reason is considered to be an extraordinary action; CLI-15-19, 82 NRC 156 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 338 (2011)
a request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 77 n.75 (2011)
given the need for finality in adjudications, reopening the record is an extraordinary action imposing a deliberately heavy burden on intervenor; CLI-12-10, 75 NRC 495 (2012); LBP-15-14, 81 NRC 594 (2015)
the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-8, 74 NRC 222 n.39 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 338-39 (2011)
there simply would be no end to NRC licensing proceedings if petitioners could ignore timeliness requirements and add new contentions at their convenience based on information that could have formed the basis for a timely contention at the outset of the proceeding; LBP-11-20, 74 NRC 85 n.109 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 339 (2011)
new contentions must be timely and based on new information relevant to the plant and the application that is materially different from information previously available; LBP-12-1, 75 NRC 12 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 341-42 (2011)
if applicant's enhanced monitoring program, which was the topic of a late-filed contention, was insufficient, it must have been insufficient beforehand too; CLI-12-10, 75 NRC 493 n.70 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 342 n.43 (2011)
NRC generally considers approximately 30-60 days as the limit for timely filings based on new information; CLI-12-21, 76 NRC 499 n.50 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 344 (2011)
an information notice merely summarizes information that has long been publicly available and does not provide new information that would constitute good cause for the late filing; CLI-12-10, 75 NRC 490 (2012); LBP-11-20, 74 NRC 82-83 (2011)

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- intervenor cannot simply point to documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source as doing so does not render “new” the summarized or compiled information; LBP-12-27, 76 NRC 602 (2012)
- tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable; CLI-12-10, 75 NRC 493 n.70 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 345 (2011)
- there was no prejudice to intervenor where the board considered licensee’s supplement to the application, which contained the updated aging management plan, because intervenor could have sought to amend its contention to respond to the supplement; CLI-12-10, 75 NRC 493 n.70 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 346 (2011)
- “materially different result” requirement of section 2.326(a)(3) is analyzed using the Commission’s test of whether it has been shown that a motion for summary disposition could be defeated; LBP-12-1, 75 NRC 27 (2012)
- standard for a motion to reopen is measured using the Commission’s test of whether it has been shown that a motion for summary disposition could be defeated; LBP-11-20, 74 NRC 81 n.94, 94 (2011); LBP-11-23, 74 NRC 321 n.169, 332 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 346-47 (2011)
- the quality of evidence presented for reopening must be at least of a level sufficient to withstand a motion for summary disposition; CLI-12-10, 75 NRC 498 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 348 (2011)
- intervenor did not come close to demonstrating a likelihood that it would have prevailed on the merits of a new contention and that its success would have materially altered the outcome of the proceeding; LBP-11-20, 74 NRC 83, 84 n.108 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), DD-06-2, 63 NRC 425 (2006)
- concerns about a facility’s emergency plans may be raised at any time pursuant to 10 C.F.R. 2.206; CLI-15-6, 81 NRC 386 n.248 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553 (2004)
- extended power uprate proceedings trigger application of the 50-mile proximity presumption, given that such license applications entail an obvious increase in the potential for offsite consequences; LBP-11-29, 74 NRC 619 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 560-61 (2004)
- no significant hazards consideration determination is a procedural decision barred from litigation; LBP-15-17, 81 NRC 790 (2015)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-33, 60 NRC 749, 753 (2004)
- a dynamic licensing process is followed in Commission licensing proceedings; LBP-11-22, 74 NRC 271 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813, 821 n.21 (2005)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 138-39 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 122 (2006)
- regardless of the level of the dispute, at the summary disposition stage, it is not proper for a board to choose which expert has the better of the argument; LBP-12-23, 76 NRC 478 (2012)
- when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper; LBP-12-23, 76 NRC 478 (2012)

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- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571-76 (2006)
new contentions filed after the record has closed must satisfy the timeliness requirement of either 10 C.F.R. 2.309(f)(2) or 2.309(c), and the admissibility requirements of section 2.309(f)(1); LBP-11-22, 74 NRC 269 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573-74 & n.14 (2006)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 138-39 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131 (2006)
severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; LBP-12-8, 75 NRC 551 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 152 (2006)
contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible; LBP-12-8, 75 NRC 551 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 152-55 (2006), *rev'd on other grounds*, CLI-07-16, 65 NRC 371, 375 (2007)
contention regarding severe spent fuel pool accidents is not admissible in license renewal proceeding because it is a Category 1 issue; LBP-11-2, 73 NRC 66 n.236 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 201 (2006)
Subpart G procedures are mandated for certain proceedings and parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-11-13, 73 NRC 587 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 266 n.11 (2007)
motions seeking admission of new or amended contentions must be filed within 30 days of the date the information that forms the basis for the contention becomes available; CLI-11-8, 74 NRC 218 n.8 (2011)
unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances in the case; LBP-12-27, 76 NRC 597 n.80 (2012)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 272 (2007)
selection of hearing procedures for contentions at the outset of a proceeding is not immutable because availability of Subpart G procedures under 10 C.F.R. 2.310(d) depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified, under 10 C.F.R. 2.336(a)(1), until after contentions are admitted; LBP-11-13, 73 NRC 588 n.389 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-08-25, 68 NRC 763, 785-89 (2008)
issues and concerns involved in an extended 20 years of operation are not identical to the issues reviewed when a reactor facility is first built and licensed; LBP-13-13, 78 NRC 280 (2013)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 531, 552 (Attach. A) (2010), *aff'd*, CLI-11-2, 73 NRC 333 (2011)
the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; LBP-11-22, 74 NRC 269 (2011)
- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 543, 548 (2010)
amendment to aging management plan extended the AMP for medium-voltage cables to also cover low-voltage cables; LBP-11-20, 74 NRC 99 n.42 (2011)

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- Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-15-18, 81 NRC 793, 799 (2015)
exemption requests ordinarily do not trigger hearing rights when an already-licensed facility is asking for relief from performing a duty imposed by NRC regulations; LBP-15-24, 82 NRC 94 n.163 (2015)
state challenged the adequacy of licensee's decommissioning fund exemption request and associated analyses; LBP-15-24, 82 NRC 81 n.74 (2015)
- Envirocare of Utah, Inc.* (Byproduct Waste Disposal), LBP-92-8, 35 NRC 167, 174 (1992)
economic injuries suffered by ratepayers are not particularized or distinct to the extent required to support standing, but are instead generalized and shared by a large class; LBP-14-4, 79 NRC 352 (2014)
- Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 74 (D.C. Cir. 1999)
NRC sometimes imposes standing requirements more stringent than those imposed in federal court; LBP-14-4, 79 NRC 375 n.75 (2014)
- Environmental Defense Fund v. Tennessee Valley Authority*, 468 F.2d 1164 (6th Cir. 1972)
continued construction was barred pending the filing of an adequate environmental impact statement, notwithstanding the fact that the project was initially approved and construction commenced prior to the effective date of NEPA; LBP-12-1, 75 NRC 37 n.48 (2012)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 679 (7th Cir. 2006)
"baseload power" is defined as power generating energy intended to continuously produce electricity at or near full capacity, with high availability; LBP-12-15, 76 NRC 37 (2012)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 679 (7th Cir. 2006)
"baseload power" generates energy intended to continuously produce electricity at or near full capacity, with high availability; CLI-12-5, 75 NRC 339 n.223 (2012)
because a single wind turbine cannot provide continuous production of electricity at or near full capacity, it does not constitute a source of baseload power; CLI-12-5, 75 NRC 346 (2012)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 683-84 (7th Cir. 2006)
neither NRC nor applicant need consider any alternative that does not bring about the ends of the proposed action; CLI-12-5, 75 NRC 343 (2012)
- Environmental Law & Policy Center v. NRC*, 470 F.3d 676, 684 (7th Cir. 2006)
generation of baseload power is an acceptable purpose for a licensing action and has been determined to be broad enough to permit consideration of a host of energy-generating alternatives; LBP-11-13, 73 NRC 553 (2011)
- Essex County Preservation Association v. Campbell*, 536 F.2d 956, 960-61 (1st Cir. 1976)
mitigation must be discussed in sufficient detail in an environmental impact statement to ensure that environmental consequences have been fairly evaluated; LBP-12-18, 76 NRC 159 (2012)
- Evans v. Perry*, 944 F. Supp. 25, 29 (D.D.C. 1996)
in proving prejudicial error by a federal agency, it is sufficient that the agency's error may have affected the outcome; LBP-14-2, 79 NRC 166 (2014)
- Exelon Generation Co., LLC* (Byron Nuclear Power Station, Units 1 and 2; Braidwood Nuclear Power Station, Units 1 and 2), CLI-14-6, 79 NRC 445, 449 (2014)
once all contentions have been decided, the contested proceeding is terminated; LBP-15-9, 81 NRC 397 n.10 (2015); LBP-15-30, 82 NRC 345 n.30 (2015)
when there are no proffered or admitted contentions remaining in the adjudicatory proceeding, the board's jurisdiction terminates; LBP-15-12, 81 NRC 454 (2015)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461 (2004)
because the board granted a hearing request, its decision to reject some contentions may not be appealed until the end of the case; CLI-14-2, 79 NRC 13 n.3 (2014)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 465-66 (2004)
piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)

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- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 465-67 (2004)
intervenor normally is not allowed to challenge a board's rejection of contentions where the board has granted a hearing on any contention; CLI-12-12, 75 NRC 607 n.12 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 466-67 (2004)
contention admissibility decisions generally are not considered to be extraordinary for purposes of interlocutory appellate review, particularly where petitioner has been admitted as a party and has other contentions pending; CLI-13-3, 77 NRC 55 (2013)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-04-31, 60 NRC 461, 468 (2004)
license applicant may take an appeal under 2.311(d)(1) if it contends that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-14-3, 79 NRC 36 n.31 (2014)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 35-36, 39 (2005)
function of uncontested hearings is only to review the adequacy of NRC Staff's work, not to make a de novo inquiry into NEPA issues; LBP-14-9, 80 NRC 68 (2014)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 35-36, 49 (2005)
because the scope of intervenors' participation in adjudications is limited to their admitted contentions, they are barred from participation in the uncontested portion of the hearing; LBP-14-9, 80 NRC 68 (2014)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005)
for mandatory proceedings, licensing boards are to conduct a simple sufficiency review rather than a de novo review on both AEA and NEPA issues; LBP-11-11, 73 NRC 475, 526 (2011)
for the mandatory uncontested proceeding on uranium enrichment facility license, a licensing board is to conduct a simple sufficiency review rather than a de novo review on both safety and environmental issues; LBP-11-26, 74 NRC 519 (2011)
in mandatory proceedings, boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-11-11, 73 NRC 475-76 (2011)
the Commission does not review the combined license application de novo, but rather, considers the sufficiency of the Staff's review of that application; CLI-12-2, 75 NRC 74 (2012); CLI-12-9, 75 NRC 428 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39-40 (2005)
NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 519 (2011)
the board's role in mandatory hearings is to carefully probe NRC Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the Staff review inadequate or its findings insufficient; LBP-11-11, 73 NRC 476 (2011)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 49 (2005)
the scope of intervenors' participation in combined license adjudications is limited to their admitted contentions, and they are barred from participating in the uncontested portion of the hearing; CLI-12-11, 75 NRC 527 n.17 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806 (2005), *aff'd*, *Environmental Law and Policy Center v. NRC*, 470 F.3d 676 (7th Cir. 2006)
alternatives might not be feasible for a variety of reasons, including a failure of an alternative to meet the project's purpose and need; LBP-13-9, 78 NRC 88 n.354 (2013)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-08 (2005)*aff'd*, *Environmental Law and Policy Center v. NRC*, 470 F.3d 676 (7th Cir. 2006)
an alternative that fails to meet the purpose of the project does not need to be further examined in the environmental report; LBP-11-6, 73 NRC 225 (2010)

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- energy efficiency alternative is excluded because it would not advance applicant's goal to provide additional baseload electrical generation capacity for use in the owner's current markets and/or for potential sale on the wholesale markets; LBP-11-7, 73 NRC 304 n.333 (2011)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 807 (2005)
hard look under NEPA is subject to a rule of reason, and consideration of environmental impacts need not address all theoretical possibilities, but only those that have some reasonable possibility of occurring; LBP-15-16, 81 NRC 638 (2015)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005)
contention admissibility rules are strict by design; LBP-14-4, 79 NRC 374 n.70 (2014)
contention admissibility rules require that a proposed contention be supported by alleged fact or expert opinion; CLI-12-7, 75 NRC 390 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 810 (2005)
aff'd, Environmental Law and Policy Center v. NRC, 470 F.3d 676 (7th Cir. 2006)
because a solely wind- or solar-powered facility could not satisfy the project's purpose, there was no need to compare the impact of such facilities to the impact of the proposed nuclear plant; LBP-11-7, 73 NRC 308 n.371 (2011)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 21-22 (2006)
based on Staff's and applicant's written responses to board questions, and on the resumes, CVs, and SPQs admitted as part in the evidentiary record to respond to the questions, the board considers safety issues resolved for the proceeding; LBP-11-11, 73 NRC 514, 525-26, 529 (2011)
highly site-specific seismic hazard analysis reflects consideration not only of the location and magnitude of historic earthquakes, but also the nature of the bedrock and the style of faulting in the surrounding region; LBP-11-11, 73 NRC 519 (2011)
in a mandatory hearing, licensing boards must narrow their inquiry to topics or sections in Staff documents that they deem most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-11, 73 NRC 476 (2011); LBP-11-26, 74 NRC 519-20 (2011); LBP-12-21, 76 NRC 244 (2012)
no purpose is served for NRC Staff to produce copies of every document used in its review when the board cannot possibly read through every one, let alone scrutinize them; LBP-12-21, 76 NRC 244 (2012)
no purpose is served for NRC Staff to produce volumes of documents and information supporting facts and conclusions that are of small importance and are beyond dispute; LBP-12-21, 76 NRC 244 (2012)
the Commission does not review the combined license application de novo, but rather, considers the sufficiency of NRC Staff's review of that application; CLI-12-2, 75 NRC 74 (2012); CLI-12-9, 75 NRC 428 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-07-12, 65 NRC 203, 207-08 (2007)
regulatory approach, of relying on licensees to submit complete and accurate information, and auditing that information as appropriate, is considered to be entirely consistent with sound regulatory practice; LBP-15-24, 82 NRC 79 n.66 (2015)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 182 (2005)
when omissions are cured by the subsequent issuance of licensing-related documents, a contention of omission must be disposed of or modified; LBP-12-5, 75 NRC 238 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 183 (2005)
once all contentions have been decided, the contested proceeding is terminated; CLI-12-14, 75 NRC 700 n.51 (2012)
- Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-06-28, 64 NRC 460 (2006),
permit issuance authorized, CLI-07-12, 65 NRC 203 (2007)
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- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 379-80 (2012)
on appeal, Commission defers to board's rulings on contention admissibility absent an error of law or abuse of discretion; CLI-15-23, 82 NRC 324-25 (2015)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 385-86 (2012)
interpretation of statutes at issue and the regulations governing their implementation falls within the Commission's province; LBP-15-5, 81 NRC 302 n.363 (2015)
pointing to alleged new and significant information is not enough to allow boards to adjudicate an issue resolved generically by regulation; LBP-15-5, 81 NRC 302 (2015)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 385-88 (2012)
it is a well-established principle that a petitioner in an adjudicatory proceeding cannot use one regulation to challenge another without first obtaining a waiver by showing special circumstances; LBP-15-4, 81 NRC 173 (2015)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 385-88 (2012)
no rule or regulation of the Commission, or any provision thereof, is subject to attack in any adjudicatory proceeding subject to 10 C.F.R. Part 2 except as provided by the waiver provision of 10 C.F.R. 2.335(b); LBP-15-24, 82 NRC 76 n.37 (2015)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 386 (2012)
exception in section 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 designation for Limerick and similarly situated plants for which SAMAs were already considered in an environmental impact statement or environmental assessment; CLI-13-7, 78 NRC 212 (2013)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 387 (2012)
to challenge a Category 1 issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 302 n.365 (2015)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 388 (2012)
waiver of a rule pertaining to the agency's environmental responsibilities is possible; CLI-13-7, 78 NRC 209 (2013)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 205 (2013), *petition for review docketed*, No. 14-1225 (D.C. Cir. filed Nov. 4, 2014)
rule waiver petitioners must satisfy four factors; LBP-14-16, 80 NRC 195 n.71 (2014)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 205 n.19 (2013)
all four of the *Millstone* rule waiver requirements derive from the language and purpose of 10 C.F.R. 2.335(b), and all must be met in order for a waiver to be granted; LBP-14-16, 80 NRC 195 n.72 (2014)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 206-07 (2013)
rule waiver requests must demonstrate that special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted; CLI-15-21, 82 NRC 302 (2015)
to obtain waiver of a rule, the allegation of special circumstances must be set forth with particularity and supported by an affidavit or other proof; LBP-15-5, 81 NRC 272 n.129 (2015)
waivers of NRC regulations may be granted in extraordinary situations where special circumstances can be demonstrated; LBP-13-12, 78 NRC 243 (2013)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 207-09 (2013)
four-factor test is applied to rule waiver requests; CLI-15-21, 82 NRC 302 (2015)

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- special circumstances required to obtain a rule waiver have been described as a prima facie showing that application of a rule in a particular way would not serve the purposes for which the rule was adopted; LBP-15-5, 81 NRC 272 (2015)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 209 (2013), *petition for review docketed*, No. 14-1225 (D.C. Cir. filed Nov. 4, 2014)
rule waiver test applies equally to safety and significant environmental concerns; LBP-14-16, 80 NRC 195 n.70 (2014)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539 (2012)
to the extent that applicant proposes modifications to the facility in response to a request for information, NEPA also requires consideration of effectiveness and relative costs of a range of alternatives for satisfying the NRC's concerns; LBP-12-15, 76 NRC 32 (2012)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-13-1, 77 NRC 57, 64, *aff'd on other grounds*, CLI-13-7, 78 NRC 199 (2013)
Millstone test for rule waiver establishes an appreciably higher burden for would-be waiver seekers than does 10 C.F.R. 2.335(b); LBP-14-16, 80 NRC 195 n.72 (2014)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005)
if proximity-based standing cannot be not demonstrated, then standing must be established according to traditional principles of redressability, injury, and causation; LBP-12-3, 75 NRC 179 (2012); LBP-13-6, 77 NRC 271 n.5 (2013)
- Exelon Nuclear Texas Holdings, LLC* (Victoria County Station Site), LBP-11-16, 73 NRC 645, 667 (2011)
to be admissible, a contention must provide more than a bare assertion, but must explain the supporting reasons for the dispute raised in that contention; LBP-15-1, 81 NRC 42 (2015)
- Exelon Nuclear Texas Holdings, LLC* (Victoria County Station Site), LBP-11-16, 73 NRC 645, 690-91 (2011)
under the NEPA rule of reason, NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-13-13, 78 NRC 286 (2013)
- Exelon Nuclear Texas Holdings, LLC* (Victoria County Station Site), LBP-12-20, 76 NRC 215 (2012)
motion to withdraw application without prejudice is granted and proceeding is terminated; CLI-14-8, 80 NRC 77 n.20 (2014)
- Exxon Nuclear Co.* (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873, 878 (1977)), *aff'd*, CLI-06-14, 63 NRC 510 (2006)
licensing boards should not interpret regulatory text in a way that would essentially negate the stated purpose of the regulation or impute to the Commission an intent to create a schizophrenic rule; LBP-14-7, 79 NRC 475-76 (2014)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)
boards may appropriately view petitioner's supporting information in a light favorable to the petitioner, but neither mere speculation nor bare or conclusory assertions, even by an expert, will suffice to allow admission of a proffered contention; LBP-13-10, 78 NRC 148 (2013)
boards must not adjudicate the merits of allegations at the contention admissibility stage, but, to be admissible, a contention must provide more than a bare assertion, and must explain the supporting reasons for the dispute raised in that contention; LBP-11-16, 73 NRC 667, 677 (2011)
claim that application fails to adequately present the true extent of historical exploration drilling, borehole abandonment details, R&D testing, changes to groundwater water quality, and interconnections of geologic strata contains no alleged facts to support this opinion and thus does not raise a genuine dispute; LBP-12-3, 75 NRC 203 (2012)
contentions will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-11-6, 73 NRC 250 (2010); LBP-13-8, 78 NRC 19 (2013); LBP-14-6, 79 NRC 442 (2014)
mere notice pleading is insufficient for contention admission; LBP-11-2, 73 NRC 45 (2011); LBP-11-13, 73 NRC 551 (2011); LBP-11-16, 73 NRC 655 (2011); LBP-11-21, 74 NRC 125 (2011); LBP-12-8, 75 NRC 548 (2012)
neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-12-3, 75

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- NRC 191 (2012); LBP-12-15, 76 NRC 26 (2012); LBP-12-27, 76 NRC 595 (2012); LBP-13-6, 77 NRC 285 (2013); LBP-15-1, 81 NRC 38-39, 42 (2015)
- petitioner cannot rest its contentions on bare assertions and speculation; LBP-11-21, 74 NRC 128, 133 (2011)
- statement of supporting facts or expert opinion to establish how the project would impair the visual resources, rather than mere speculation, is required for an admissible contention; LBP-12-3, 75 NRC 207 (2012)
- to be admissible, a contention must provide more than a bare assertion, and must explain the supporting reasons for the dispute raised; LBP-15-1, 81 NRC 42 (2015)
- Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 204-05 (2003)
- attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-13-6, 77 NRC 285 (2013); LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 26-27 (2012); LBP-12-27, 76 NRC 595 (2012); LBP-15-1, 81 NRC 39 (2015)
- boards will not hunt for information that the agency's procedural rules require be explicitly identified and fully explained; CLI-11-8, 74 NRC 222 (2011)
- petitioners fail to link any of their past criticisms to specific provisions of the environmental report, and the board declines to pore through the attachments to their intervention submission to assemble the basis for such a contention; LBP-12-3, 75 NRC 207 (2012)
- the Commission should not be expected to sift unaided through documents filed before the board to piece together and discern a party's argument and the grounds for its claims; LBP-12-3, 75 NRC 206 (2012)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 205 (2003)
- providing any material or document as the basis of a contention without setting forth an explanation of its significance is inadequate to support admission of the contention; LBP-12-12, 75 NRC 774 (2012); LBP-15-20, 81 NRC 865 (2015)
- Federal Election Commission v. Rose*, 806 F.2d 1081, 1087 (D.C. Cir. 1986)
- reasonableness, the legal standard governing the determination of substantial justification, is separate and distinct from the legal standard used in assessing the merits phase of a proceeding; LBP-11-8, 73 NRC 369 (2011)
- Federal Open Market Committee of the Federal Reserve System v. Merrill*, 443 U.S. 340 (1979)
- deliberative process privilege has been extended to draft documents, proposals, suggestions, instructions to work deletions and alterations into drafts, instructions to conduct an investigation, documents reflecting personal and advisory opinions, and rejections of recommendations; LBP-13-5, 77 NRC 239-40 (2013)
- Fewell Geotechnical Engineering, Ltd.* (Thomas E. Murray, Radiographer), CLI-92-5, 35 NRC 83, 84 (1992)
- stare decisis* is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 157 (2004)
- before any hearing is granted on a confirmatory order, a threshold question, intertwined with both standing and contention admissibility issues, is whether the hearing requests are within the scope of the proceeding outlined in the order itself, that is, whether the order should be sustained; CLI-13-2, 77 NRC 44 (2013)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 157-58 (2004)
- sections 2.309(d) and (f) are the relevant legal standards when evaluating a third-party petition for hearing on a confirmatory order; LBP-14-4, 79 NRC 327 n.40 (2014)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 158 (2004)
- enforcement proceeding's limited scope undermines petitioner's claim of standing as well as the materiality of its proposed contentions; CLI-13-2, 77 NRC 49 (2013)

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- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 395-96 (2012)
admissible contention must satisfy all six criteria of 10 C.F.R. 2.309(f)(1); LBP-13-6, 77 NRC 284 (2013); LBP-15-4, 81 NRC 164 (2015); LBP-15-18, 81 NRC 798 (2015); LBP-15-20, 81 NRC 840 (2015); LBP-15-24, 82 NRC 75-76 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 396 (2012)
Commission generally defers to board decisions on contention admissibility unless it finds an error of law or abuse of discretion; CLI-15-20, 82 NRC 222 (2015)
contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute with the applicant; LBP-12-8, 75 NRC 548 (2012); LBP-15-1, 81 NRC 38 (2015)
NRC Staff is required to issue a final environmental impact statement that thoroughly and objectively evaluates reasonable alternatives to the proposed action; LBP-12-17, 76 NRC 113 (2012)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 400-02 (2012)
it is not enough to demonstrate a theoretical possibility that wind farms spread across a wide area could provide consistent power, but rather petitioners must show concretely that wind could be a reliable, commercially viable source of baseload power during the license renewal period; LBP-15-5, 81 NRC 279 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 401-02 (2012)
contention seeking full impacts generation alternative analysis of wind, either alone or in combination with solar and storage, is inadmissible because it fails to adequately demonstrate the capacity to produce baseload power; LBP-12-15, 76 NRC 38 (2012)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 402 (2012)
discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 combined license proceeding; LBP-12-15, 76 NRC 38 (2012)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 402, 405 (2012)
failure to reference specific sources showing that wind or other renewables are viable sources of baseload power within the service area renders a contention inadmissible; LBP-15-5, 81 NRC 279 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 404-05 (2012)
petitioner that fails to provide sufficient factual or expert support for the claims in its contention in contravention of section 2.309(f)(1)(v), also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-12-15, 76 NRC 27 (2012); LBP-15-1, 81 NRC 38 n.124 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 405 (2012)
failure to provide a direct critique of the analysis in the environmental report discussing the potential for offshore power and interconnected wind farms is a failure to identify a genuine dispute with the applicant; LBP-15-5, 81 NRC 279 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 406 (2012)
because the severe accident mitigation alternatives analysis is largely quantitative, resting on inputs used in computer modeling, it will always be possible to propose that the analysis use one or more other inputs; LBP-13-13, 78 NRC 453 (2013)
proper question is not whether there are plausible alternative choices for use in the SAMA analysis, but whether the analysis that was done is reasonable under NEPA; LBP-15-29, 82 NRC 250 (2015)

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- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 406-18 (2012)
petitioner may raise a SAMA-related contention in a license renewal adjudication if it satisfies the general contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 211 (2013)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 407 (2012)
unless a petitioner sets forth a supported contention pointing to an apparent error or deficiency that may have significantly skewed the environmental conclusions, there is no genuine material dispute for hearing; LBP-15-5, 81 NRC 293 (2015); LBP-15-29, 82 NRC 250 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 409 (2012)
board is the appropriate arbiter of fact-specific questions of contention admissibility, and the Commission defers to the board's decision; CLI-15-25, 82 NRC 405 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 410-11 (2012)
petitioners must provide site-specific support to show that the severe accident mitigation alternatives analysis is unreasonable; LBP-15-5, 81 NRC 294 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 415 (2012)
although petitioners are not required to run their own computer models at the contention admissibility stage, a contention challenging a SAMA analysis nonetheless must be tethered to the computer modeling and mathematical aspects of the analysis; CLI-12-15, 75 NRC 715 (2012)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 416 (2012)
NRC rules are designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims and do not demonstrate a potential to meaningfully participate in a hearing; CLI-12-15, 75 NRC 728 (2012); LBP-12-27, 76 NRC 592 (2012)
to the extent petitioner is challenging the adequacy of computer modeling of plume variability, petitioner bears the burden of providing evidence specific to the license renewal applicant; LBP-15-5, 81 NRC 296-97, 299 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC 685 (2011)
Fukushima-related contentions were dismissed as premature; LBP-11-39, 74 NRC 870 (2011)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC 685, 689 (2011)
admissibility of Fukushima-related contentions is determined; LBP-11-37, 74 NRC 779 n.3 (2011)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC 685, 696-97 (2011)
Fukushima-related contention is denied for failure of its proponent to contact the other parties to resolve the issue presented by the contention prior to its submission, for failure to show that the contention is within the scope of the proceeding or is material to the findings NRC must make, and for failure to reference any specific portion of the application at issue; LBP-11-37, 74 NRC 783 n.6 (2011)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC 685, 697-98 (2011)
absent voluntary action by applicant to amend its environmental report, intervenor wishing to raise new or revised post-ER environmental concerns must await issuance of Staff's draft environmental impact statement; LBP-11-37, 74 NRC 784 (2011)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC 685, 698-99 (2011)
Fukushima-related contention based on a Staff Requirements Memorandum are inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 784 n.7 (2011)

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- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-12-27, 76 NRC 583, 592-94 (2012)
SAMA analysis is an analysis of a class of SAMA candidates using probabilistic risk assessment techniques to determine whether any of the SAMA candidates would be cost-beneficial; LBP-13-1, 77 NRC 65 (2013)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-1, 81 NRC 15, 30 n.72 (2015)
contentions proposed after the filing deadline, which would have been allowable under the previous 10 C.F.R. 2.309(f)(2) requirements, will also be allowable under the current section 2.309(c)(1) requirements; LBP-15-11, 81 NRC 408 n.30 (2015)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-1, 81 NRC 15, 41 (2015)
contentions that request more testing, more methods of testing, and more information, without explaining why the current program is inadequate, are inadmissible; LBP-15-20, 81 NRC 853 (2015)
- Five Points Road Joint Venture v. Johanss*, 542 F.3d 1121, 1124 n.3 (7th Cir. 2008)
once Congress has waived sovereign immunity over certain subject matter, a court should be careful not to assume the authority to narrow the waiver that Congress intended; LBP-11-8, 73 NRC 360 (2011)
- F.J. Vollmer Co., Inc. v. Magaw*, 102 F.3d 591, 595 (D.C. Cir. 1996)
although a court's merits reasoning may be quite relevant to the resolution of the substantial justification question, the inquiry into the reasonableness of the government's position may not be collapsed into an antecedent evaluation of the merits; LBP-11-8, 73 NRC 368-69 (2011)
- Flaherty v. Coughlin*, 713 F.2d 10, 13 (2d. Cir. 1983)
summary disposition, like summary judgment, is an extreme remedy that should be granted with caution; LBP-11-7, 73 NRC 263 (2011)
- Flast v. Cohen*, 392 U.S. 83, 95 (1968)
pursuant to the case or controversy doctrine, a justiciable controversy must involve parties who raise questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-13-7, 77 NRC 345 n.59 (2013)
- Flint Ridge Development Co. v. Scenic Rivers Ass'n of Oklahoma*, 426 U.S. 776, 787 (1976)
no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance with NEPA; LBP-14-9, 80 NRC 50 (2014)
- Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-06-21, 64 NRC 30, 33 (2006)
failure of counsel to review the scheduling order does not constitute good cause for failure to meet a filing deadline; LBP-12-12, 75 NRC 750 (2012)
failure to read NRC regulations carefully does not constitute good cause for accepting late-filed petitions; LBP-11-34, 74 NRC 693 (2011)
- Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, et al.), CLI-06-21, 64 NRC 30, 33-34 (2006)
failure to comply with pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-11-7, 73 NRC 279 n.159 (2011)
- Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, et al.), CLI-06-21, 64 NRC 30, 34 (2006)
a late-filed contention is inadmissible both for lack of a good cause showing and for failure to address the other factors of 10 C.F.R. 2.309(c)(1); LBP-11-6, 73 NRC 247 (2010)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830, 842 n.26 (1976)
board considered evidence submitted with petitioner's reply to which opposing parties didn't object; LBP-15-5, 81 NRC 289 n.252 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 173 (2014)
agency approval or authorization is a necessary component of Commission action that affords a hearing opportunity under AEA § 189a, but not all agency approvals granted to licensees constitute de facto licensee amendments; CLI-15-14, 81 NRC 734-35 (2015)

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- licensee action without NRC approval of an increase in authority or alteration of the terms of the license does not constitute a de facto amendment; CLI-15-14, 81 NRC 735 n.23 (2015)
- licensee cannot amend the terms of its license unilaterally, but rather must request and obtain agency approval; CLI-15-5, 81 NRC 334 (2015); CLI-15-14, 81 NRC 734 n.21, 741 (2015); LBP-15-27, 82 NRC 197 (2015)
- petitioners' premise that a series of NRC Staff communications relating to plant oversight should be considered as an element of a single, overarching de facto license amendment is rejected; CLI-15-14, 81 NRC 735 n.24 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 173 & n.31 (2014)
- licensee action, as opposed to agency action, is insufficient to trigger a de facto license amendment proceeding; CLI-15-14, 81 NRC (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 174 (2014)
- NRC's inspection process is separate from its licensing process; LBP-15-27, 82 NRC 196-97 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 174 n.33 (2014)
- licensee actions made in response to NRC Staff oversight activities do not constitute de facto license amendments; CLI-15-5, 81 NRC 335 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 175 (2014)
- if a hearing could be invoked each time NRC engaged in oversight over or inquiry into plant conditions, NRC's administrative process could be brought to a virtual standstill; CLI-15-14, 81 NRC 745-46 (2015); LBP-15-27, 82 NRC 194 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 178 & n.53 (2014)
- licensing boards may not assume that a licensee intends to contravene NRC regulations; LBP-15-24, 82 NRC 83 n.91 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 179 (2014)
- assertion that the section 2.206 process does not provide a viable forum for relief is rejected; CLI-15-14, 81 NRC 736 n.32 (2015)
- challenges to licensee actions taken under 10 C.F.R. 50.59 may only be taken by means of a petition for enforcement action under 10 C.F.R. 2.206; CLI-15-5, 81 NRC 337 (2015)
- section 2.206 provides a process for stakeholders to advance concerns and obtain full or partial relief, or written reasons why the requested relief is not warranted; CLI-15-20, 82 NRC 230 (2015); LBP-15-4, 81 NRC 175 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 179 n.60 (2014)
- intervention as a matter of discretion is permitted only where at least one petitioner has established standing and at least one contention has been admitted, and petitioner is required to address six factors in its initial petition; CLI-15-14, 81 NRC 738 n.41 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-80-41, 12 NRC 650, 652 (1980)
- Commission authority to reconsider or clarify a decision, if needed, is inherent in its authority to render the decision in the first instance; CLI-14-1, 79 NRC 2 (2014)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), CLI-81-12, 13 NRC 838, 844 (1981)
- containments must be designed to remain essentially leaktight during postulated accidents; LBP-13-8, 78 NRC 30-31 (2013)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989)
- proximity presumption was applied in a license amendment proceeding where management's lack of character and competence was alleged; LBP-15-17, 81 NRC 773 n.121 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)
- although it might be fatal for standing purposes if an Indian tribe were seeking to have intervenors represent their interests in the proceeding, intervenors' lack of authority to represent them is not a bar to intervenors raising the tribe's contention; LBP-12-12, 75 NRC 753 n.40 (2012)

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- although NRC applies traditional standing concepts, it presumes that an individual has standing to intervene without the need to address them upon a showing that he or she lives within, or otherwise has frequent contacts with, a geographic zone of potential harm; LBP-11-2, 73 NRC 41 (2011); LBP-11-16, 73 NRC 653 (2011)
- in reactor license renewal proceedings, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the nuclear power facility; LBP-11-21, 74 NRC 122 (2011)
- individual member who qualifies an organization for standing must have suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action, likely redressable by a favorable decision, and arguably within the zone of interests protected by the governing statute; LBP-14-4, 79 NRC 328 (2014)
- living within 50 miles of a nuclear power reactor is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto; LBP-15-17, 81 NRC 770 n.96 (2015); LBP-15-20, 81 NRC 836-37 & n.30 (2015)
- petitioner who lives, has frequent contacts, or has significant property interest within 50 miles of a nuclear power reactor has standing without the need to make an individualized showing of injury, causation, and redressability; LBP-15-17, 81 NRC 770 (2015)
- petitioners cannot gain standing from the interests of third parties except in very limited circumstances; LBP-15-17, 81 NRC 775 n.139 (2015)
- proximity presumption applies when there are clear implications for the offsite environment or major alterations to the facility with a clear potential for offsite consequences; LBP-15-17, 81 NRC 770 (2015)
- traditional judicial standing concepts require a showing that the individual has suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action, likely to be redressed by a favorable decision, and arguably within the zone of interests protected by the governing statutes; LBP-11-2, 73 NRC 40 (2011)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)
- in license amendment proceedings, petitioners may not claim standing simply upon a residence or visits near the plant, unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-11-29, 74 NRC 616 (2011)
- in situations involving obvious potential for offsite consequences, Commission has routinely granted standing to petitioners who live within a certain distance of the facility at issue under the proximity presumption, effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability; LBP-15-13, 81 NRC 463 (2015)
- proximity presumption applies in more limited license amendment proceedings only if the proposed amendment obviously entails an increased potential for offsite consequences; LBP-15-17, 81 NRC 770-71 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), LBP-08-14, 68 NRC 279, 283-84 (2008)
- license amendment request must be complete and accurate in all material respects; LBP-15-24, 82 NRC 98 (2015)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), LBP-08-14, 68 NRC 279, 290-92 (2008)
- third-party request for a hearing on a confirmatory order was denied, in part, because petitioner failed to establish standing or raise an admissible contention under section 2.309(f); LBP-14-4, 79 NRC 327 n.40 (2014)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), LBP-08-14, 68 NRC 279, 291 (2008)
- state's claim that license amendment request contains incomplete and incorrect statements concerning its use of the trust fund is within the scope of the license amendment proceeding as defined in the notice of opportunity to request a hearing; LBP-15-24, 82 NRC 79 (2015)

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- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2; Turkey Point Nuclear Generating Plant, Units 3 and 4), DD-97-20, 46 NRC 96 (1997)
the record before the board falls far short of rebutting the presumption that a petition for license modification, suspension, or revocation is a meaningful avenue for seeking administrative relief; LBP-12-14, 76 NRC 11 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-950, 33 NRC 492, 500-01 (1991)
a licensing board was not in error in finding a person not competent to address technical issues in responding to a motion for summary disposition; LBP-11-23, 74 NRC 332 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000)
contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to a licensing board; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 25 (2012); LBP-12-27, 76 NRC 594 (2012); LBP-13-6, 77 NRC 285 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 5-6 (2001)
contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible; LBP-12-8, 75 NRC 552 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6-13 (2001)
safety issue that does not involve aging management issues is outside the scope of a license renewal proceeding; LBP-15-5, 81 NRC 264 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001)
relevant issues for an additional 20 years of reactor plant operation differ from those when a reactor plant is first built and licensed; LBP-11-21, 74 NRC 129 (2011); LBP-13-13, 78 NRC 280 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7-8 (2001)
license renewal safety review is limited to licensee's management of aging for certain systems, structures, and components, and review of time-limited aging analyses; LBP-11-21, 74 NRC 126 (2011); LBP-15-5, 81 NRC 259 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8 (2001)
applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation, at a detailed component and structure level, rather than at a more generalized system level; LBP-11-21, 74 NRC 126-27 (2011)
for license renewal, it is unnecessary to review all those issues already monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-11-2, 73 NRC 45-46 n.92 (2011)
integrated plant assessments require that applicants demonstrate that systems, structures, and components will continue to perform their intended functions during the period of extended operation; LBP-13-13, 78 NRC 280 (2013)
it is unnecessary to include in license renewal review all those issues already monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-13-8, 78 NRC 12 (2013)
license renewal applicants are required to reassess any time-limited aging analyses that were based upon a particular time period, such as an assumed service life of a specific number of years or some period of operation defined by the original 40-year license term; LBP-13-13, 78 NRC 280 (2013)
license renewal applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation, at a detailed component and structure level, rather than at a more generalized system level; LBP-15-5, 81 NRC 259 (2015)
license renewal safety reviews are generally limited to aging-related issues because NRC recognizes that it has the ongoing responsibility to oversee the safety and security of operating nuclear reactors,

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- and maintains an aggressive and ongoing program to oversee plant operation; LBP-13-13, 78 NRC 281 (2013)
- NRC has the ongoing responsibility to oversee the safety and security of operating nuclear reactors and maintains an aggressive and ongoing program to oversee plant operation and to maintain compliance with the current licensing basis; LBP-13-8, 78 NRC 12 (2013)
- reassessment of time-limited aging analyses must show that the earlier analysis will remain valid for the extended operation period or modify and extend the analysis to apply to a longer term, such as 60 years, or otherwise demonstrate that the effects of aging will be adequately managed in the renewal term; LBP-13-13, 78 NRC 280-81 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8-10 (2001)
- compliance with orders issued as part of NRC's ongoing oversight program are enforcement issues that are not within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 291, 292 (2015)
- current safety issues are beyond the scope of a license renewal proceeding; LBP-12-27, 76 NRC 609 (2012)
- license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors; CLI-15-6, 81 NRC 347 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001)
- "current licensing basis" is a term of art comprehending the various NRC requirements applicable to a specific plant that are in effect at the time of a license renewal application; LBP-13-13, 78 NRC 281 n.149 (2013); LBP-15-20, 81 NRC 844 (2015)
- entertaining contentions in a license renewal proceeding that challenge the current licensing basis would be both unnecessary and wasteful given ongoing agency oversight, review, and enforcement; LBP-11-21, 74 NRC 127 (2011)
- for active structures, systems, and components, NRC chose to exempt from license renewal, challenges to a plant's operational activities covered by its current licensing basis; LBP-13-13, 78 NRC 281 (2013)
- in establishing its license renewal process, NRC did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to reanalysis because those are effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-13-8, 78 NRC 13 (2013); LBP-13-13, 78 NRC 281 (2013)
- it is not necessary or appropriate to throw open the full gamut of provisions in a facility's current licensing basis to reanalysis during the license renewal review, because the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-12-24, 76 NRC 525 (2012)
- many safety questions that relate to plant aging become important during the extended renewal term since the design of some components may have been based upon a service lifetime of only 40 years; LBP-11-21, 74 NRC 129 (2011)
- the current licensing basis includes licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports; LBP-11-21, 74 NRC 130 n.86 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9-10 (2001)
- while the license renewal process seeks to mitigate the detrimental effects of aging from operation beyond the initial license term, everyday public health and safety are ensured by the comprehensive and continuous process of operational oversight; LBP-11-21, 74 NRC 130 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001)
- adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as NRC Staff review, for NRC's hearing process, like NRC Staff's review, necessarily examines only the questions NRC safety rules make pertinent; LBP-15-5, 81 NRC 259 n.43 (2015)

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- Commission distinguishes between aging management issues, reviewed at the time of license renewal, and operational issues, reviewed at all times as part of the current licensing basis; LBP-15-5, 81 NRC 259 (2015)
- safety culture, operational history, quality assurance, quality control, management competence, human factors, and emergency planning issues are beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 129-30 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11 (2001)
- Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-13, 73 NRC 551 (2011)
- Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. 2.335, because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-21, 74 NRC 132 (2011); LBP-15-5, 81 NRC 260 (2015)
- license renewal applicants need not submit in their site-specific environmental reports an analysis of Category 1 issues; LBP-11-2, 73 NRC 76 n.306 (2011)
- site-specific environmental issues are Category 2 issues; LBP-12-8, 75 NRC 553 (2012)
- to meet its environmental review burden in license renewal cases, NRC Staff developed the generic environmental impact statement, which contains findings that apply to all nuclear power plants and are codified in Appendix B of Subpart A of 10 C.F.R. Part 51; LBP-13-13, 78 NRC 285 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11-13 (2001)
- Part 51 process for environmental review associated with license renewal, focusing upon the potential impacts of an additional 20 years of plant operation, is described; CLI-12-5, 75 NRC 341 n.241 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 13 (2001)
- in the context of license renewal, NRC's Atomic Energy Act review under Part 54 does not compromise or limit the National Environmental Policy Act; LBP-13-8, 78 NRC 13 n.18 (2013); LBP-13-13, 78 NRC 271 n.67, 284 (2013)
- NRC's AEA safety review under Part 54 does not compromise or limit NEPA; LBP-15-5, 81 NRC 260 (2015)
- the aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 21 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 14 (2001)
- in 1989, NRC revised its rules to prevent the admission of poorly defined or supported contentions or those based on little more than speculation; CLI-12-8, 75 NRC 396 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 15 (2001)
- pleadings submitted by pro se petitioners are afforded greater leniency than petitions drafted with the assistance of counsel; LBP-15-5, 81 NRC 286 n.234 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 16 (2001)
- challenges to the generic environmental impact statement's generic determinations amount to attacks on NRC regulations and are not within the scope of license renewal proceedings; LBP-13-8, 78 NRC 34 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 19 (2001)
- prior to NRC's 1989 rule revision, intervenors were able to trigger hearings after merely copying contentions from another proceeding involving another reactor, even though many of these intervenors often had negligible knowledge of the issues and, in fact, no direct case to present; CLI-12-8, 75 NRC 396 (2012)

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- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 20 (2001)
rule waiver is required to litigate any new and significant information relating to a Category 1 issue; CLI-12-19, 76 NRC 384 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21 (2001)
Part 51's reference to severe accident mitigation alternatives deals only with nuclear reactor accidents, not spent fuel storage accidents; LBP-11-2, 73 NRC 66 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21-22 (2001)
no discussion of mitigation alternatives for Category 1 issues is necessary because NRC has already generically concluded that additional site-specific mitigation alternatives are unlikely to be beneficial; LBP-15-5, 81 NRC 266 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21-23 (2001)
generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 351 (2015)
petitioners, not just parties, may request a rule waiver in NRC adjudicatory proceedings; CLI-12-19, 76 NRC 387 n.55 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 22 (2001)
Part 51 treats all spent fuel pool accidents, whatever their cause, as generic, Category 1 events not suitable for case-by-case adjudication; LBP-11-2, 73 NRC 66 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 22-23 (2001)
Category 1 issues in section 51.53(c)(3)(i) are excluded from site-specific review absent a waiver of the rule; CLI-12-19, 76 NRC 384 n.41 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 23 (2001)
license renewal boards cannot admit environmental challenges regarding spent fuel pool issues; LBP-11-2, 73 NRC 65 (2011)
Part 51's license renewal provisions cover environmental issues relating to onsite spent fuel storage generically and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-11-13, 73 NRC 570 n.244 (2011); LBP-15-5, 81 NRC 266 n.92 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 NRC 185, 188 (1991)
licensing boards can refer potentially significant safety issues that cannot be addressed through the adjudicatory process to NRC Staff for review; LBP-15-1, 81 NRC 45 n.181 (2015)
licensing boards may not raise issues sua sponte when the sole intervenor has withdrawn from the proceeding; LBP-11-22, 74 NRC 282 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 NRC 185, 188 n.1 (1991)
adjudicatory proceedings terminate if intervenor either settles or abandons all of its contentions; LBP-11-22, 74 NRC 271 n.64 (2011)
once the sole intervenor in a proceeding withdraws, the proceeding is been brought to a close; LBP-11-22, 74 NRC 282 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), DD-82-2, 15 NRC 1343, 1345 (1982)
section 2.802(d) suspension request is inapplicable where no petition for rulemaking has been filed before the Commission; CLI-14-6, 79 NRC 449 (2014)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-81-16, 13 NRC 1115, 1120 (1981)
prior to license issuance NRC must find reasonable assurance that activities authorized by the amendment can be conducted without endangering the health and safety of the public, and in

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- compliance with Commission regulations; LBP-15-17, 81 NRC 778 n.154 (2015); LBP-15-20, 81 NRC 841 n.65 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 515, 521 & n.12 (1990)
- petitioner must provide factual evidence or supporting documents that produce some doubt about the adequacy of a specified portion of applicant's documents or that provide supporting reasons that tend to show that there is some specified omission from applicant's documents; LBP-15-20, 81 NRC 850 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146-50 (2001)
- for reactor operating license renewal proceedings, a proximity presumption, respecting standing for an individual who resides within a 50-mile radius of a nuclear power plant, is recognized; LBP-12-10, 75 NRC 638 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 148 (2001)
- proximity presumption applies across the board to all proceedings regardless of type because the rationale underlying it is not based on the type of proceeding per se but on whether the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-15-17, 81 NRC 770-71 n.102 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 149-50 (2001)
- licensing actions that could increase reactor vessel embrittlement, such as license renewals, hold the potential for offsite consequences that are obvious; LBP-15-17, 81 NRC 774 n.127 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)
- geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet these traditional standing requirements in certain types of proceedings, including operating license renewal proceedings; LBP-12-8, 75 NRC 547 (2012)
- proximity presumption applies in reactor operating license renewal proceedings; LBP-13-8, 78 NRC 7 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150, *aff'd on other grounds*, CLI-01-17, 54 NRC 3, 26 n.20 (2001)
- in power reactor license renewal proceedings, standing associated with causation is deemed fulfilled if a member of the organization that is seeking representational standing resides or has significant contacts in an area within a 50-mile radius of the facility; LBP-12-15, 76 NRC 24 n.1 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001)
- contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-13-6, 77 NRC 284 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-08-18, 68 NRC 533, 539 (2008)
- proximity presumption applies in more limited license amendment proceedings only if the proposed amendment obviously entails an increased potential for offsite consequences; LBP-15-17, 81 NRC 770-71 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 169 n.13 (2011)
- organizations may claim standing on their own behalf; LBP-11-29, 74 NRC 617 n.15 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 169-70 (2011)
- when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an

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- individual or nongovernmental organization, whether via a proximity presumption or otherwise;
LBP-13-6, 77 NRC 272 n.7 (2013)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 199-200 (2011)
- based on its language, a contention can be characterized as a contention of omission, a contention of adequacy, or both; LBP-13-9, 78 NRC 47-48 (2013); LBP-14-5, 79 NRC 384 (2014)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 (2011)
- two primary types of contentions are contentions of omission and contentions of adequacy; LBP-13-9, 78 NRC 47 n.30 (2013); LBP-14-5, 79 NRC 384 (2014)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 n.53 (2011)
- contention of omission alleges an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application; LBP-13-9, 78 NRC 47 n.30 (2013); LBP-14-5, 79 NRC 384 (2014)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 236 n.102 (2011)
- it is not the province of NRC and thus the board to enforce another agency's regulations; LBP-12-12, 75 NRC 769 n.148 (2012)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 244 n.111 (2011)
- board members are not required to comb through the record seeking support for contentions;
LBP-11-13, 73 NRC 575 n.287 (2011)
- judges are not like pigs, hunting for truffles buried in briefs; LBP-11-14, 73 NRC 608 n.106 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 247 (2002)
- good cause doesn't exist where petitioner's late-filed contention is due to careless inadvertence and not, as petitioner claimed, attributable to technical difficulties with the E-Filing system; LBP-15-4, 81 NRC 163 n.39 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 253 (2011)
- to be admissible, a contention must provide more than a bare assertion, and must explain the supporting reasons for the dispute raised in that contention; LBP-15-1, 81 NRC 42 n.154 (2015)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675 (2011)
- Fukushima-related contentions were dismissed as premature; LBP-11-39, 74 NRC 870 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675, 678-79 (2011)
- admissibility of Fukushima-related contentions is determined; LBP-11-37, 74 NRC 779 n.3(2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675, 681 n.9 (2011)
- applicant may update an environmental report if relevant new and significant information becomes available, but is under no regulatory or statutory obligation to effect such an update; LBP-11-34, 74 NRC 697 n.78 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675, 681-82 (2011)
- absent voluntary action by applicant to amend its environmental report, intervenor wishing to raise new or revised post-ER environmental concerns must await issuance of Staff's draft environmental impact statement; LBP-11-37, 74 NRC 784 (2011)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675, 682 n.12 (2011)
- petitioners may amend their contentions or file new contentions if the draft supplemental environmental impact statement differs significantly from the data or conclusions in applicant's documents; LBP-11-34, 74 NRC 698 (2011)

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- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-33, 74 NRC 675, 683 (2011)
Fukushima-related contention based on a Staff Requirements Memorandum are inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 784 n.7 (2011)
issuance of a Staff Requirements Memorandum directing Staff to implement “without delay” the recommendations of the Fukushima Task Force does not render contentions admissible; LBP-11-36, 74 NRC 772 (2011)
- Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 731 (1985)
for contentions that fall within the facility’s current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 134 n.115 (2011)
- Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985)
fact-finding administrative body, such as a licensing board, with authority to develop an evidentiary record, is distinguished from reviewing adjudicatory and judicial bodies, generally with a more limited record-creating authority; LBP-15-3, 81 NRC 122 n.49 (2015)
- Forelows on Board v. Johnson*, 743 F.2d 677, 683 (9th Cir. 1985)
government agencies are required to comply with NEPA to the fullest extent possible; LBP-14-9, 80 NRC 50 (2014)
- Forest Guardians v. U.S. Forest Service*, 495 F.3d 1162, 1172 (10th Cir. 2007)
federal agencies must consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-17, 76 NRC 81 (2012)
NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-18, 76 NRC 159 (2012); LBP-14-9, 80 NRC 40 (2014)
- Fort Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990)
agencies must abide by their own regulations; LBP-14-4, 79 NRC 371 n.56 (2014)
- Foundation for North American Wild Sheep v. U.S. Department of Agriculture*, 681 F.2d 1172, 1179 (9th Cir. 1982)
purpose of NEPA’s requirement that an EIS be prepared is to obviate the need for speculation by ensuring that available data are gathered and analyzed prior to the implementation of the proposed action; LBP-15-23, 82 NRC 63 (2015)
- Frank J. Calabrese Jr.* (Denial of Senior Reactor Operator License), LBP-97-16, 46 NRC 66, 68-69 (1997)
licensing boards have limited their review of NRC Staff reactor operator licensing decisions to those issues that were resolved against the license applicant in NRC Staff’s informal review; LBP-14-2, 79 NRC 148 (2014)
- Frank J. Calabrese Jr.* (Denial of Senior Reactor Operator License), LBP-97-16, 46 NRC 66, 86 (1997)
in assessing whether applicant satisfies the burden of establishing that NRC Staff’s determination of applicant’s performance was inappropriate, unjustified, arbitrary, or an abuse of discretion, the board should consult NUREG-1021; LBP-14-2, 79 NRC 150 (2014)
NRC Staff improperly discharges its duties with respect to the grading of an operating test if the grading is inappropriate or unjustified or if the grading strays too far afield of the twin goals of equitable and consistent examination administration, thus becoming arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 150 (2014)
- Frank J. Calabrese Jr.* (Denial of Senior Reactor Operator License), LBP-97-16, 46 NRC 66, 89 (1997)
applicants may prevail against NRC Staff if they prove that a particular contested assessment of a deficiency was arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 150 (2014)
- Friends of Clearwater v. Dombeck*, 222 F.3d 552, 555, 559 (9th Cir. 2000)
the Forest Service prepared a supplemental information report, which is a formal instrument for documenting whether new information is sufficiently significant to trigger the need for a SEIS and several other analyses that specifically addressed the significance of the new information; LBP-12-18, 76 NRC 173 (2012)

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- Friends of Clearwater v. Dombeck*, 222 F.3d 552, 557-58 (9th Cir. 2000)
agency that has prepared an EIS cannot simply rest on the original document but must be alert to new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned action, even after a proposal has received initial approval; LBP-12-18, 76 NRC 166 (2012)
- Friends of Clearwater v. Dombeck*, 222 F.3d 552, 559 (9th Cir. 2000)
compliance with NEPA is a primary duty of every federal agency, and fulfillment of this responsibility should not depend on vigilance and limited resources of environmental plaintiffs; LBP-12-18, 76 NRC 166 (2012)
Forest Service's failure to timely evaluate need to supplement the original EIS in light of new information violated NEPA; LBP-12-18, 76 NRC 179-80 (2012)
- Friends of Clearwater v. Dombeck*, 222 F.3d 552, 561 (9th Cir. 2000)
the Forest Service's requisite hard look at newly designated sensitive species and its determination that an SEIS was not required was not arbitrary and capricious; LBP-12-18, 76 NRC 173 (2012)
- Friends of Sierra Railroad, Inc. v. Interstate Commerce Commission*, 881 F.2d 663, 667-68 (9th Cir. 1989)
publication in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance; LBP-15-5, 81 NRC 280 n.181 (2015)
- Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998)
existence of a reasonable but unexamined alternative renders an environmental impact statement inadequate; LBP-12-17, 76 NRC 83 (2012); LBP-14-9, 80 NRC 43 (2014)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 181 (2000)
an association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit; LBP-11-2, 73 NRC 40 (2011); LBP-11-13, 73 NRC 545 n.52 (2011); LBP-11-16, 73 NRC 653 (2011)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 183-85 (2000)
injury-in-fact can result when the risk of encountering environmental harms prevents a plaintiff from taking an action; LBP-14-4, 79 NRC 351 n.28 (2014)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 184 (2000)
a more subjective appraisal of declining property values might be permissible in the context of a licensing action associated with an applicant or facility shown to have engaged in a continuous and pervasive course of illegal conduct; LBP-12-3, 75 NRC 184 n.16 (2012)
- Friends of the Earth, Inc. v. O'Reilly*, 966 F.2d 690, 695 (D.C. Cir. 1992)
a proceeding is an adversary adjudication under the Equal Access to Justice Act only if Congress intended that the proceeding be subject to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 356 n.26 (2011)
an agency's decision to add protections matching those of Administrative Procedure Act § 554 is irrelevant absent Congress's having compelled the augmentation; LBP-11-8, 73 NRC 356 n.26 (2011)
an agency's discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether the Equal Access to Justice Act applies to a particular proceeding; LBP-11-8, 73 NRC 360 (2011)
- Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997)
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- Fuel Safe Washington v. Federal Energy Regulatory Commission*, 389 F.3d 1313, 1323 (10th Cir. 2004)
agency need not analyze environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or impractical or ineffective; LBP-13-9, 78 NRC 88 n.353 (2013)
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- General Electric Co. and Southwest Atomic Energy Associates*, (Southwest Experimental Fast Oxide Reactor), 3 AEC 99, 101 (1966)
in context with the other provisions of the Atomic Energy Act § 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security; CLI-15-7, 81 NRC 489 (2015); LBP-14-3, 79 NRC 280, 307 (2014)
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“owned, controlled, or dominated” in the Atomic Energy Act refers to relationships in which the will of one party is subjugated to the will of another; CLI-15-7, 81 NRC 489-90, 498 (2015); LBP-14-3, 79 NRC 280 (2014)
to be inimical to the common defense and security or to the health and safety of the public, control or domination must be of such a degree that the will of the licensee is subjugated to the will of the foreign entity, and the foreign entity must have the power to direct the actions of the licensee; LBP-14-3, 79 NRC 307 n.250 (2014)
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- General Electric Co. and Southwest Atomic Energy Associates*, (Southwest Experimental Fast Oxide Reactor), 3 AEC 99, 101-02 (1966)
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- General Motors Corp. v. Federal Energy Regulatory Commission*, 656 F.2d 791, 795 & n.7 (D.C. Cir. 1981)
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- General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-97-1, 45 NRC 7, 12-13 (1997)
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- licensing board, construing the petition in favor of petitioners, based its standing finding on potential harm from traffic-generated dust and light pollution; CLI-12-12, 75 NRC 606 (2012)
- NRC generally applies traditional judicial standing concepts which require a showing that the individual has suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action and likely redressable by a favorable decision; LBP-11-2, 73 NRC 40 (2011); LBP-11-13, 73 NRC 545-46 (2011); LBP-15-13, 81 NRC 463 (2015); LBP-15-17, 81 NRC 770 (2015)
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- organizations may base standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members; LBP-12-8, 75 NRC 547 (2012); LBP-13-8, 78 NRC 7 (2013)
- to derive standing from a member, an organization must demonstrate that the individual member has standing to participate and has authorized the organization to represent his or her interests; LBP-12-8, 75 NRC 547 (2012); LBP-13-8, 78 NRC 7 (2013)
- to establish representational standing, organizations must show that at least one of its members may be harmed by the licensing action and would have standing to sue in his or her own right, identify that member by name and address, show that the organization is authorized to request a hearing on behalf of that member, and show that the interests that the representative organization seeks to protect are germane to its own interests; LBP-12-10, 75 NRC 638 (2012)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995)
- proximity presumption applies across the board to all proceedings regardless of type because the rationale underlying it is not based on the type of proceeding per se but on whether the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-15-17, 81 NRC 770-71 n.102 (2015)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995)
- no proximity presumption applies in an import/export licensing case because petitioners have not shown that the import or export involves a significant source of radioactivity producing an obvious potential for offsite consequences; CLI-11-3, 73 NRC 622 (2011)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 118 (1995)
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- for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion; LBP-12-18, 76 NRC 163-64 (2012)
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- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 118-22 (1995)
- admission of a management integrity contention relied on references to a serious incident involving shutdown of the reactor, management responsible for the incident remained in place, and a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert witness in support of the contention; CLI-11-11, 74 NRC 436 n.47 (2011)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 120 (1995)
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- Georgia Power Co.* (Alvin W. Vogtle Nuclear Plant, Units 1 and 2, ALAB-291, 2 NRC 404, 408 (1975)
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- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 31-32 (1993)
- challenges to an applicant's or licensee's character require sufficient support; CLI-11-9, 74 NRC 249 n.92 (2011)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 193 (1994)
- where the adverse impact of disclosure would occur immediately, the alleged harm is immediate for purpose of interlocutory review; CLI-13-3, 77 NRC 55 n.18 (2013)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 197 (1994)
- among the categories of privileged documents are interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Commission; LBP-13-5, 77 NRC 238 (2013)
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- deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 238 (2013)
- deliberative process privilege serves to protect creative debate and candid consideration of alternatives within an agency, to guard against public confusion that could result from the release of policy-oriented discussions that occur prior to policy being made, and to protect the integrity of the decisionmaking process; LBP-13-5, 77 NRC 239 (2013)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 197-98 (1994)
- to qualify for deliberative process privilege, a document must be both predecisional or antecedent to the adoption of agency policy and deliberative, meaning it must actually be related to the process by which policies are formulated; LBP-13-5, 77 NRC 239 (2013)
- Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 198 (1994)
- although deliberative process privilege is a qualified privilege and the agency claiming the privilege bears the initial burden of demonstrating that it is applicable, once this demonstration is made, the moving party can only defeat the privilege by a demonstration of an overriding need for the material; LBP-13-5, 77 NRC 241-42 (2013)
- in applying deliberative process privilege, courts have allowed the government to withhold memoranda containing advice, opinions, recommendations, and subjective analysis; LBP-13-5, 77 NRC 239 (2013)
- party invoking deliberative process privilege bears the burden of explaining with particularity how and why disclosure of the documents' substance would harm an identified deliberative function; LBP-13-5, 77 NRC 242 (2013)
- Gersman v. Group Health Association, Inc.*, 975 F. 2d 886, 890 (D.C. Cir. 1992)
- it would be impermissible to construe the prohibition of foreign ownership so as to make it redundant or otherwise deprive it of operative effect; LBP-12-19, 76 NRC 196 n.69 (2012)
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- Gordon v. United States*, 344 U.S. 414, 420-21 (1953)
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- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 206 (2000)
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- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000)
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inspection reports could be seen as objective evidence that applicant may not adequately manage aging in the future; CLI-11-11, 74 NRC 433 n.28 (2011)
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- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)
bare assertions and speculation do not meet the Commission's standard of a concise statement of the alleged facts or expert opinions together with references to the specific sources and documents upon which the petitioner relies; LBP-11-21, 74 NRC 133 (2011)
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- Grand Canyon Trust v. Federal Aviation Administration*, 290 F.3d 339, 341, 346 (D.C. Cir. 2002)
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- Greater Yellowstone Coalition v. Flowers*, 359 F.3d 1257, 1269 (10th Cir. 2004)
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- Greater Yellowstone Coalition v. Flowers*, 359 F.3d 1257, 1273-74 (10th Cir. 2004)
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- Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992)
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- Greenpeace v. National Marine Fisheries Service*, 198 F.R.D. 540, 545 (W.D. Wash. 2000)
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- GUARD v. NRC*, 753 F.2d 1144, 1146 (D.C. Cir. 1985)
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- Guerini Stone Co. v. P. J. Carlin Construction Co.*, 240 U.S. 264, 277 (1916)
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- Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47-48 (1994)
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- Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48 (1994)
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- Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994)
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- Half Moon Bay Fisherman’s Marketing Association v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)
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- Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)
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- Halverson v. Slater*, 206 F.3d 1205, 1208 (D.C. Cir. 2000)
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- Hammond v. Norton*, 370 F. Supp. 2d 226, 245, 251 (D.D.C. 2005)
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- Hazardous Waste Treatment Council v. Environmental Protection Agency*, 861 F.2d 277, 281-82 (D.C. Cir. 1988)
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- Heartland Regional Medical Center v. Leavitt*, 415 F.3d 24, 29-30 (D.C. Cir. 2005)
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- Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 59 (1984)
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- Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 60 (1984)
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- Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 61 n.13 (1984)
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- Hein v. Freedom from Religion Foundation*, 551 U.S. 587, 599 (2007)
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- Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013)
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- Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 18-19 (2013)
Commission reviews questions of law de novo, but defers to a board's findings with respect to the underlying facts unless they are clearly erroneous; CLI-15-7, 81 NRC 493 (2015); CLI-15-9, 81 NRC 519 (2015)
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- Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 19 (2013)
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- Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 29 n.158, 31-32 (2013)
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- Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), LBP-12-6, 75 NRC 256, 270 (2012)
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- Honeywell v. NRC*, 628 F.3d 568, 575-76 (D.C. Cir. 2010)
when licensee requests a rule exemption in a related license amendment application, hearing rights on the amendment application are considered to encompass the exemption request as well; CLI-13-1, 77 NRC 10 (2013)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station), ALAB-535, 9 NRC 377, 389-400 (1979)
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- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-96 (1979)
although an allegation that a purported representative is acting without his or her organization's authorization, i.e., is acting *ultra vires*, is distinct from a challenge to the organization's standing, petitioner may cure such a defect in representation as well; LBP-11-13, 73 NRC 549 (2011)
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- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 524 (1979)
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- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980)
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- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981)
if summary disposition movant meets its burden, opponent must set forth specific facts showing that there is a genuine issue and may not rely on mere allegations or denials; LBP-12-19, 76 NRC 190-91 (2012)
- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84, 86 (1981)
procedural rulings involving discovery rarely meet the standard for interlocutory review; CLI-15-24, 82 NRC 335 n.19 (2015)

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- Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-631, 13 NRC 87, 89 (1981)
litigants are not entitled to challenge a board ruling unless and until that ruling has worked a concrete injury to their personal interests; CLI-12-6, 75 NRC 363 n.49 (2012)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644 (1979)
board may appropriately view petitioner's support for its contention in a light favorable to petitioner but may not do so by ignoring other admissibility requirements; LBP-15-17, 81 NRC 789 n.234 (2015)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981), *reconsideration denied*, CLI-81-28, 14 NRC 933 (1981)
government may withhold from disclosure the identity of persons who furnish information on violations of law to officers charged with enforcement of the law; CLI-13-5, 77 NRC 229 (2013)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 477 (1981), *reconsideration denied*, CLI-81-28, 14 NRC 933 (1981)
disclosure to intervenors of the names of power plant employees who provided NRC with information during the course of its investigation would be inappropriate, even with a protective order in place; CLI-13-5, 77 NRC 229 (2013)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382, 384-85 (1985)
issues originally raised by a later-withdrawing party have been remanded to the board for further consideration of whether issues presented serious safety or environmental questions that warrant Board examination pursuant to its sua sponte authority; LBP-11-9, 73 NRC 414 n.125 (2011)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516, 519 (1985)
licensing boards may raise significant environmental and safety issues sua sponte; LBP-11-23, 74 NRC 367 (2011)
- Howard R.L. Cook & Tommy Shaw Foundation ex rel. Black Employees of the Library of Congress, Inc. v. Billington*, 737 F.3d 767, 771 (D.C. Cir. 2013)
zone-of-interests requirement poses a low bar; LBP-14-4, 79 NRC 355 (2014)
- Huang v. Immigration and Naturalization Service*, 47 F.3d 615, 617-18 (3d Cir. 1995)
notice of appeal of immigration judge's deportation order was timely filed because regulations governing timing of appeals were ambiguous; LBP-11-19, 74 NRC 63 n.12 (2011)
- Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996)
NEPA's has twin goals of forcing agencies to take a hard look at the environmental consequences of a proposed project, and, making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-11-14, 73 NRC 598 (2011); LBP-12-18, 76 NRC 179 (2012); LBP-14-9, 80 NRC 57 (2014)
NEPA's primary goals include fostering informed public participation in the decisionmaking process; LBP-12-17, 76 NRC 120-21 (2012)
- Hughes River Watershed Conservancy v. Johnson*, 165 F.3d 283, 288 (4th Cir. 1999)
NEPA hard look must emerge from an engagement in informed and reasoned decisionmaking, as the agency obtains opinions from its own experts and experts outside the agency and gives careful scientific scrutiny and responds to all legitimate concerns that are raised; LBP-15-16, 81 NRC 637 n.98 (2015)
- Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977)
an association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit; LBP-11-2, 73 NRC 40 (2011); LBP-11-13, 73 NRC 545 n.52 (2011)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-8, 47 NRC 314, 320-21 (1998)
petition is considered under interlocutory review standard because neither NRC Staff's issuance of the license nor the board's denial of a stay of the effectiveness of that license constitutes final agency action; CLI-15-17, 82 NRC 39 n.40 (2015)

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- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-8, 47 NRC 314, 322 (1998)
claim of violation of the National Historic Preservation Act did not in itself establish irreparable harm warranting interlocutory review; CLI-15-17, 82 NRC 40 n.45 (2015)
to show imminent, irreparable harm to cultural resources, petitioner would need to describe with specificity the resources and the manner in which they are threatened; CLI-15-17, 82 NRC 42 (2015)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-8, 47 NRC 314, 324 (1998)
procedural rulings involving discovery rarely meet the standard for interlocutory review; CLI-15-24, 82 NRC 335 n.19 (2015)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 120 (1998)
licensing boards should not admit contentions alleging that the applicant must obtain permits from other agencies; LBP-12-12, 75 NRC 767 (2012)
whether non-NRC permits are required is the responsibility of bodies that issue such permits; LBP-12-16, 76 NRC 59 (2012)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 120-22 & n.3 (1998)
petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 236 n.102 (2010)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999)
Commission approved NRC Staff completion of some National Historic Preservation Act documents after the environmental impact statement process was complete, but before the license was issued; LBP-15-16, 81 NRC 694 (2015)
new contention must present a seriously different picture of the environmental impact of the proposed project; LBP-14-5, 79 NRC 399 (2014)
new information requiring NRC Staff to prepare supplemental environmental review documents must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-11-5, 74 NRC 168 (2011); LBP-11-27, 74 NRC 601 (2011)
overall record for the licensing action includes a complete analysis of cultural resources; LBP-15-16, 81 NRC 694 n.489 (2015)
recirculation of the draft environmental impact statement is required only when the information presents a seriously different picture of the environmental impacts; LBP-13-9, 78 NRC 64 (2013)
supplementation of the final environmental impact statements is not necessary every time new information comes to light after the environmental impact statement is finalized; CLI-15-10, 81 NRC 543 (2015)
supplementing an environmental impact statement is not necessary unless new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-18, 76 NRC 141-42, 162, 167 (2012)
the measure of "significance" is whether the new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-11-35, 74 NRC 751 n.218 (2011)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 17 (1999)
future actions on which the draft environmental impact statement purports to rely in its analysis of impacts constitute a license condition, the use of which is permitted in NEPA documents; LBP-13-9, 78 NRC 56 (2013)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 4 (1999)
supplementation of the final environmental impact statement is required when new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-15-10, 81 NRC 543 (2015)

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- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 8 (1999)
although 10 C.F.R. Part 40 applies to ISL mining, some of the specific requirements in Part 40, such as many of those found in Appendix A, address hazards posed only by conventional uranium milling operations, and do not carry over to ISL mining; LBP-15-16, 81 NRC 659 n.239 (2015)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 8-9 (1999)
although the Part 40, Appendix A criteria were developed for conventional uranium milling facilities, they have since been applied in limited fashion to ISR facilities; LBP-15-3, 81 NRC 89-90 n.15 (2015)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 9 (1999)
requirements in Part 40, such as many of the provisions in Appendix A, that, by their own terms, apply only to conventional uranium milling activities, cannot sensibly govern in situ leach mining; LBP-15-16, 81 NRC 637 (2015)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999)
to constitute a basis for supplementing an EIS, the new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-12-7, 75 NRC 388-89, 390-91 (2012)
- Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 18-19 (1999)
waiting until after licensing (although before mining operations begin) to establish definitively the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach well fields; LBP-15-3, 81 NRC 91 (2015)
- Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-04-33, 60 NRC 581, 659 (2004)
with respect to the need to supplement an issued final EIS, the party offering the new contention has the burden of presenting information sufficient to show that there is a genuine issue regarding whether the NRC Staff should supplement its document; LBP-15-16, 81 NRC 704 (2015)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-00-12, 52 NRC 1, 5 (2000)
alleged deficiency of applicant's severe accident mitigation alternatives analysis does not present an exceptionally grave issue that must call into question the licensed activity; LBP-12-1, 75 NRC 15 (2012)
an "exceptionally grave issue" is one that raises a sufficiently grave threat to public safety; LBP-12-11, 75 NRC 739 n.47 (2012)
boards will reopen the record only when new evidence raises an exceptionally grave issue calling into question the safety of the licensed activity; CLI-12-21, 76 NRC 500 (2012); LBP-12-16, 76 NRC 58 n.72 (2012)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 38 (2001)
board's findings and the adjudicatory record are, in effect, part of the final supplemental environmental impact statement; LBP-15-16, 81 NRC 694 n.490, 707 (2015)
objectives of the NRC adjudicatory procedures and policies include producing an informed adjudicatory record that supports agency decisionmaking on public health and safety, the common defense and security, and the environment; LBP-15-20, 81 NRC 848 n.105 (2015)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 52 (2001)
to reopen a record, petitioners must reveal a seriously different picture of the environmental impact of a proposed project; LBP-12-16, 76 NRC 57 (2012)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 53 (2001)
board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to NRC Staff's final environmental impact statement; LBP-15-3, 81 NRC 82 (2015)
decision of the board or Commission becomes the record of decision, which may also incorporate the final environmental impact statement; CLI-15-6, 81 NRC 376, 388 n.255 (2015)

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- to the extent that any environmental findings by the presiding officer or the Commission differ from those in the final environmental impact statement, the FEIS is deemed modified by the decision; LBP-13-13, 78 NRC 524-25 (2013)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 54 (2001) for the no-action alternative, there need not be much discussion in the environmental documents because it is most simply viewed as maintaining the status quo; LBP-12-8, 75 NRC 569 (2012)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) an environmental report need only consider the range of alternatives that are capable of achieving the goals of the proposed action; LBP-11-13, 73 NRC 553 n.114 (2011)
- neither NRC nor applicant need consider any alternative that does not bring about the ends of the proposed action; CLI-12-5, 75 NRC 339, 343 (2012)
- NRC Staff may accord substantial weight to the stated purpose of the project, i.e., to provide additional baseload electrical generation capacity for use in the owner's current markets and/or for potential sale on the wholesale market; LBP-11-7, 73 NRC 304 (2011)
- NRC Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; LBP-12-15, 76 NRC 38 n.8 (2012)
- reasonable alternatives under NEPA are limited to those alternatives that will bring about the ends of the proposed action; LBP-11-21, 74 NRC 137 (2011)
- when reviewing a discrete license application filed by a private applicant, a federal agency may appropriately accord substantial weight to the preferences of the applicant in siting and design of the project, taking into account the economic goals of the project's sponsor; CLI-12-5, 75 NRC 339 n.222 (2012)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 71 (2001) boards do not sit to "flyspeck" environmental documents or to add details or nuances, but the environmental report or environmental impact statement must come to grips with all important considerations; LBP-15-5, 81 NRC 283 (2015)
- flyspecking of environmental documents is inappropriate for environmental contentions; CLI-14-2, 79 NRC 30 (2014)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-39, 60 NRC 657, 659 (2004) agency decisions regarding the need to supplement an environmental impact statement based on new and significant information are subject to the rule of reason; LBP-11-26, 74 NRC 536 n.13 (2011)
- NRC Staff need not recirculate a supplemental NEPA document every time new information becomes available; LBP-13-9, 78 NRC 63, 64 (2013)
- supplementation of the final environmental impact statement is not necessary every time new information comes to light after the EIS is finalized; CLI-15-10, 81 NRC 543 (2015)
- supplementation of the final environmental impact statement is required when new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-15-10, 81 NRC 543 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 2 (2006) where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-12-1, 75 NRC 46 (2012)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 4 (2006) post-hearing resolution of licensing issues must not be employed to obviate the basic findings prerequisite to a license; LBP-15-3, 81 NRC 141 n.66 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 5 (2006) intervenors litigated whether the performance-based licensing complies with the Atomic Energy Act and National Environmental Policy Act, and whether undue discretion was accorded to licensee; LBP-15-16, 81 NRC 665 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 5-6 (2006) in NEPA context, path that licensee and NRC Staff must follow relative to a license condition is sufficiently clear that continuing to hold the hearing open while it is completed would be an unnecessary extension of the adjudicatory process; LBP-15-3, 81 NRC 141 n.66 (2015)

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- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1, 6 (2006)
site-specific data to confirm proper baseline quality values, and confirm whether existing rock units provide adequate confinement cannot be collected until an in situ leach wellfield has been installed; LBP-15-3, 81 NRC 91 (2015)
waiting until after licensing, although before mining operations begin, to establish definitively the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach wellfields; LBP-15-16, 81 NRC 665 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-9, 64 NRC 417, 419 (2006)
the Fukushima accident does not provide a seriously different picture of the environmental impact of the proposed uranium enrichment facility from what was previously envisioned; LBP-11-26, 74 NRC 536 n.13 (2011)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-29, 64 NRC 417, 422 & n.23 (2006)
cumulative impact analysis is required for reasonably foreseeable future actions and test for connected actions in CEQ regulation 40 C.F.R. 1508.25 need not be satisfied; LBP-14-6, 79 NRC 423 (2014)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-29, 64 NRC 417, 427 (2006)
draft environmental impact statements need not contain more information on mitigation measures than a description of the mitigation measures on which the NRC relies and an explanation of the limiting effect of the mitigation measures on environmental impacts; LBP-13-9, 78 NRC 66 (2013)
mitigation plan in final supplemental environmental impact statement need not be in final form to comply with NEPA's procedural requirements; LBP-15-16, 81 NRC 694 (2015)
NEPA does not demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-15-16, 81 NRC 688 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-29, 64 NRC 417, 429 (2006)
though mitigation measures must be discussed in an environmental impact statement, NEPA does not guarantee that federally approved projects will have no adverse impacts; LBP-15-16, 81 NRC 687-88 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-04-23, 60 NRC 441, 448 (2004)
new information on the need to supplement an issued final EIS must point to impacts that affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-15-16, 81 NRC 704 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-17, 62 NRC 77, 91 (2005)
absent compelling reasons, the Commission adheres to the case or controversy doctrine in its adjudicatory proceedings; LBP-13-7, 77 NRC 345 n.59 (2013)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-26, 62 NRC 442, 472 (2005)
although an agency may coordinate and, where practicable, integrate its National Environmental Policy Act and National Historic Preservation Act review efforts, the two statutes impose separate and distinct obligations; LBP-15-16, 81 NRC 654 n.214 (2015)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-1, 63 NRC 41, 68-69 (2006)
licensing boards should not interpret regulatory text in a way that would essentially negate the stated purpose of the regulation or impute to the Commission an intent to create a schizophrenic rule; LBP-14-7, 79 NRC 475-76 (2014)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53 (2006)
hard look at the environmental justice aspects of relicensing having been taken, the Commission, without additional Staff action, can now with respect to the EJ issue, make an informed decision whether to grant the requested license; LBP-13-13, 78 NRC 544 n.2107 (2013)

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- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53, 62 (2006)
the twin aims of NEPA require the agency to consider all environmental impacts of a proposed action and to inform the public that it has conducted that review; LBP-11-17, 74 NRC 26 nn.70 (2011)
- Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53, 69 n.11 (2006)
adjudicatory record, board decision, and any Commission appellate decisions become, in effect, part of the final environmental impact statement; LBP-13-13, 78 NRC 543 (2013)
NRC Staff typically prepares the record of decision but when a hearing is held, the board's initial decision constitutes the record of decision as to those issues that were litigated during the hearing; LBP-13-13, 78 NRC 525 (2013)
- Idaho By and Through Idaho Public Utilities Commission v. Interstate Commerce Commission*, 35 F.3d 585, 595 (D.C. Cir. 1994)
although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action; LBP-11-7, 73 NRC 281 (2011)
- Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d 562, 566 n.2 (9th Cir. 2000)
NEPA imposes a continuing obligation on federal agencies to supplement an existing environmental impact statement, if the proposed action has not been taken, in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-12-7, 75 NRC 388 (2012)
- Immigration and Naturalization Service v. National Center for Immigrants' Rights, Inc.*, 502 U.S. 183, 189-90 (1991)
regulation's title can aid in construing regulatory text; LBP-15-4, 81 NRC 170 n.82 (2015)
- In re Aiken County*, 725 F.3d 255, 267 (D.C. Cir. 2013), *reh'g en banc denied* (Oct. 28, 2013)
court grants writ of mandamus directing NRC to promptly resume the licensing process for the high-level radioactive waste repository construction authorization application unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining; CLI-13-8, 78 NRC 222 (2013)
- In re Franklin National Bank Securities Litigation*, 478 F. Supp. 577 (E.D.N.Y. 1979)
even where the government identifies significant reasons for nondisclosure, the interest in accurate judicial factfinding is predominant, especially where no satisfactory alternative source of information exists; LBP-13-5, 77 NRC 249-50 (2013)
- In re Franklin National Bank Securities Litigation*, 478 F. Supp. 577, 582 (E.D.N.Y. 1979)
strong competing interests must be weighed against the government's interest in nondisclosure and foremost is the interest of the litigants, and ultimately of society, in accurate judicial fact finding; LBP-13-5, 77 NRC 248 (2013)
- In re Subpoena Served upon Comptroller of Currency*, 967 F.2d 630, 634 (D.C. Cir. 1992)
factors that boards should consider in balancing applicants need for disclosure against the agency's interest in confidentiality are described; LBP-13-5, 77 NRC 248 (2013)
- In re Three Mile Island Alert, Inc.*, 771 F.2d 720 (3d Cir. 1985)
NRC approvals of plant restart and lifting suspension did not trigger AEA § 189a hearing rights; CLI-15-14, 81 NRC 734 n.21 (2015)
- In re Three Mile Island Alert, Inc.*, 771 F.2d 720, 729 (3d Cir. 1985), *cert. denied*, 475 U.S. 1082 (1986)
NRC's lifting of license suspension and authorizing restart under stipulated restrictions was not a license amendment because nothing in the record indicates that license amendments are necessary to permit the licensee to operate in accordance with the restrictions that have been imposed; LBP-13-7, 77 NRC 333 n.39 (2013)
- In re Three Mile Island Alert, Inc.*, 771 F.2d 720, 729-30 (3d Cir. 1985)
decision lifting license suspension and authorizing restart under stipulated conditions is not a license amendment; LBP-15-27, 82 NRC 191 n.41 (2015)
- Indiana & Michigan Electric Co. v. Federal Power Commission*, 502 F.2d 336, 339 (D.C. Cir. 1974)
intervenor must make a showing for admission of a NEPA contention sufficient to require reasonable minds to inquire further; LBP-12-18, 76 NRC 165-66 (2012)

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- International Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 632 n.51 (D.C. Cir. 1973)
contrary rule on notice of proposed rulemaking would lead to the absurdity that the agency can learn from the comments on its proposed rules only at the peril of starting a new procedural round of commentary; LBP-15-15, 81 NRC 611 n.95 (2015)
- International Union, United Mine Workers of America v. Mine Safety and Health Administration*, 407 F.3d 1250, 1259 (D.C. Cir. 2005)
agency is generally not required to issue a new notice of proposed rulemaking if it changes its position, as long as the final rule is a logical outgrowth of the proposed rule; LBP-15-15, 81 NRC 611 n.95 (2015)
- International Union v. Clark*, 2006 WL 2598046, at 12 (D.D.C. Sept. 11, 2006)
elements of a showing of estoppel against the government are described; LBP-12-16, 76 NRC 51 (2012)
- International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 NRC 137, 142 n.7 (1998)
simple reference to a large number of documents is not enough to put the parties on notice as to the basis for intervention, but rather, petitioner must clearly identify and summarize the facts being relied on in the specific portions of the documents cited; LBP-13-6, 77 NRC 292 n.29 (2013)
- International Uranium (USA) Corp.* (Request for Materials License Amendment), CLI-00-1, 51 NRC 9, 19 (2000)
guidance documents describe particular means of satisfying regulatory requirements in ways acceptable to NRC Staff, but do not bind applicants, who remain free to choose different means; LBP-14-1, 79 NRC 53 (2014)
guidance documents do not bind the board, and so applicant's compliance with guidance does not ensure grant of a license; LBP-14-1, 79 NRC 53 n.67 (2014)
license applications that comply with existing guidance may be challenged, provided that contention admissibility requirements are met; CLI-12-5, 75 NRC 339 (2012)
NRC is not bound by guidance documents, which do not carry the force of regulations and do not impose legal requirements on licensees; CLI-12-5, 75 NRC 339 n.219 (2012); CLI-15-6, 81 NRC 358 (2015)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998)
the Commission will defer to board rulings on standing absent an error of law or abuse of discretion; CLI-12-12, 75 NRC 608 (2012)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001)
as a matter of law and logic, if applicant's enhanced program is inadequate, then applicant's unenhanced program is a fortiori inadequate, and intervenor has a regulatory obligation to challenge it in its original petition to intervene; LBP-11-9, 73 NRC 417 (2011)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001)
organization seeking standing as a party must show either a discrete injury to its own institutional interests or authorization to represent an individual who would have standing in his or her own right; LBP-12-24, 76 NRC 508 (2012)
organizations may claim standing on their own behalf; LBP-11-6, 73 NRC 169 (2010); LBP-11-29, 74 NRC 617 n.15 (2011)
petitioner asserting organizational standing must establish a discrete institutional injury to the organization's interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding; LBP-12-3, 75 NRC 177, 178 (2012); LBP-13-6, 77 NRC 269 (2013)
petitioner's claim of organizational standing is of the sort that repeatedly has been found insufficient; CLI-12-12, 75 NRC 606 n.6 (2012)
the Commission will defer to board rulings on standing absent an error of law or abuse of discretion; CLI-12-12, 75 NRC 608 (2012)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 253 (2001)
health-impact potential of facility traffic-associated dust, if properly pleaded, could provide a basis for standing; LBP-12-3, 75 NRC 187 (2012)
nonspeculative showing that increased traffic accidents could be another impact of increased road usage might establish standing; LBP-12-3, 75 NRC 186 n.20 (2012)

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- speculation about accidents along feed material's transport routes does not establish standing; CLI-11-3, 73 NRC 623 n.50 (2011)
- Interstate Commerce Commission v. Jersey City*, 322 U.S. 503, 514-15 (1944)
rehearings are not matters of right, but are pleas to discretion; LBP-11-20, 74 NRC 77 n.77 (2011)
- Investment Co. Institute v. Board of Governors of the Federal Reserve System*, 551 F.2d 1270, 1282-83 (D.C. Cir. 1977)
applicant is excused from filing in the wrong court because the rules are unclear; LBP-11-19, 74 NRC 63 n.12 (2011)
- Iowa Utilities Board v. Federal Communications Commission*, 109 F.3d 418, 425 (8th Cir. 1996)
for injunctive relief, party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief; LBP-15-2, 81 NRC 56 (2015)
- Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95 (1990)
waivers of the government's sovereign immunity, to be effective, must be unequivocally expressed; LBP-11-8, 73 NRC 360 n.46 (2011)
- Izaak Walton League of America v. Marsh*, 655 F.2d 346, 377 (D.C. Cir. 1981)
NEPA does not require agencies to resolve all uncertainties, including uncertainties associated with the NUREG-1150 values used in the severe accident mitigation alternatives analysis; LBP-13-13, 78 NRC 473 (2013)
- Jackson v. Chater*, 94 F.3d 274, 278 (7th Cir. 1996)
in determining whether the government's position was substantially justified, the board does not make separate determinations regarding each stage but arrives at one conclusion that simultaneously encompasses and accommodates the entire civil action; LBP-11-8, 73 NRC 368 (2011)
- Jacobson v. Massachusetts*, 197 U.S. 11, 30 (1905)
to determine whether the record facts before it established the position being advocated, the court looked beyond the record by indicating that what everybody knows, the court must know; LBP-14-1, 79 NRC 125 (2014)
- James v. Honaker Drilling, Inc.*, 254 F.2d 702, 706 (10th Cir. 1958)
summary disposition, like summary judgment, is an extreme remedy that should be granted with caution; LBP-11-7, 73 NRC 263 (2011)
- Jaroma v. Massey*, 873 F.2d 17, 20 (1st Cir. 1989)
where a nonmoving party declines to oppose a motion for summary disposition, the board shall accept as admitted the moving party's prima facie showing of material facts, but boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 219 (2012)
- Jicarilla Apache Nation v. U.S. Department of the Interior*, 613 F.3d 1112, 1121 (D.C. Cir. 2010)
burden of proving prejudicial error by a federal agency rests with the party challenging the agency's action, but this is not a particularly onerous requirement; LBP-14-2, 79 NRC 166 (2014)
if the agency error did not affect the outcome, it did not prejudice the petitioner; LBP-14-2, 79 NRC 166 (2014)
- John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989)
requirements and exemptions under FOIA reflect a balancing of public disclosure with confidentiality, but this balancing does not affect the NRC's authority to obtain requested information; CLI-13-5, 77 NRC 228-29 (2013)
- Jordan v. U.S. Department of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978) (en banc)
cursory and conclusory assertions that merely paraphrase the standards applicable to the deliberative process privilege without explaining how they apply to any specific document in dispute will not suffice to carry the government's burden of proof in defending FOIA cases; LBP-13-5, 77 NRC 243 (2013)
deliberative process privilege serves to protect creative debate and candid consideration of alternatives within an agency, to guard against public confusion that could result from the release of policy-oriented discussions that occur prior to policy being made, and to protect the integrity of the decisionmaking process; LBP-13-5, 77 NRC 239 (2013)

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- Jordan v. U.S. Department of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978)
to qualify for deliberative process privilege, a document must be both predecisional or antecedent to the adoption of agency policy and deliberative, meaning it must actually be related to the process by which policies are formulated; LBP-13-5, 77 NRC 239 (2013)
- Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 261 (D.D.C. 2004)
because draft documents are not presumptively privileged, the Staff must provide specific information to justify withholding them from disclosure; LBP-13-5, 77 NRC 244 (2013)
- Julian v. U.S. Department of Justice*, 806 U.S. 1411, 1419 (1986), *aff'd*, *Department of Justice v. Julian*, 486 U.S. 1 (1988)
in applying deliberative process privilege, courts have allowed the government to withhold memoranda containing advice, opinions, recommendations, and subjective analysis; LBP-13-5, 77 NRC 239 (2013)
- Justice v. Town of Cicero, Illinois*, 682 F.3d 662, 665 (7th Cir. 2012)
when a filing deadline is approaching, notwithstanding that an attorney is engaged in good-faith settlement discussions, prudence should compel the attorney to take all actions that are necessary to ensure the deadline will be met in the event that settlement discussions are unsuccessful; LBP-15-4, 81 NRC 164 (2015)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 576 (1975)
adherence to deadlines and procedures in NRC rules is required so that other litigants are not taken by surprise and are accorded an appropriate opportunity to respond to new arguments or new information; CLI-15-18, 82 NRC 146 n.56 (2015)
contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend; CLI-15-18, 82 NRC 146 n.53 (2015)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 576-77 (1975)
pro se petitioners are not required to provide the same level of specificity as those with counsel; LBP-15-5, 81 NRC 294-95 (2015)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 577 (1975)
board is wrong to strain to discern the outlines of any contention in an amorphous petition; CLI-15-18, 82 NRC 143 n.43 (2015)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 327 (1978)
demand for electricity is of course the justification for building any power plant, although other benefits have been considered; LBP-11-7, 73 NRC 282 n.174 (2011)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 328 (1978)
given the legal responsibility imposed upon a public utility to provide at all times adequate, reliable service, and the severe consequences that may attend upon a failure to discharge that responsibility, the most that can be required is that need-for-power forecasts be reasonable in the light of what is ascertainable at the time made; LBP-11-7, 73 NRC 283 n.179 (2011); LBP-12-5, 75 NRC 237 n.56 (2012)
- Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978)
proponents of motions to reopen the record bear a heavy burden; LBP-11-22, 74 NRC 270 (2011)
- Kaufman v. City of New York*, No. 98CIV.2648(MJL)(KNF), 1999 WL 239698, at *4 (S.D.N.Y. 1999)
a blanket approach to asserting the deliberative process privilege is unacceptable and is itself grounds for denying invocation of the privilege; LBP-13-5, 77 NRC 247 (2013)
- Kelley v. Selin*, 42 F.3d 1501, 1514 (6th Cir. 1995)
if a hearing could be invoked each time NRC engaged in oversight over or inquiry into plant conditions, NRC's administrative process could be brought to a virtual standstill; CLI-14-11, 80 NRC 175 (2014)
- Kelley v. Selin*, 42 F.3d 1501, 1515 (6th Cir. 1995)
neither licensee activities nor NRC inspection of or inquiry about those activities provides the opportunity for a hearing under the AEA because those activities only concern compliance with the terms of an existing license; CLI-14-11, 80 NRC 174 (2014)
NRC Staff inspections and confirmatory action letters are oversight activities normally conducted to ensure that licensees comply with existing NRC requirements and license conditions and therefore do not typically trigger the opportunity for a hearing; CLI-15-5, 81 NRC 334 (2015)

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- Kelley v. Selin*, 42 F.3d 1501, 1521 (6th Cir. 1995)
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- Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002)
given that so many more environmental assessments are prepared than environmental impact statements, adequate consideration of cumulative effects requires that EAs address them fully; LBP-14-6, 79 NRC 425 (2014)
restricted environmental analysis that fails to consider cumulative impacts would impermissibly subject the decisionmaking process contemplated by NEPA to the tyranny of small decisions; LBP-14-6, 79 NRC 425 (2014)
- Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1079 (9th Cir. 2002)
if actions are reasonably foreseeable future actions within the meaning of 40 C.F.R. 1508.7, CEQ regulations require that they be included in a cumulative impact analysis; LBP-14-6, 79 NRC 421, 422 (2014)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), ALAB-928, 31 NRC 263, 269 (1990)
without a showing of irreparable injury, petitioners seeking a stay of effectiveness must demonstrate that reversal of the licensing board is a virtual certainty; CLI-12-11, 75 NRC 529 n.31 (2012)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13 (1996)
controversy often ends during the pendency of appeals before the Commission or the Appeal Board; CLI-13-9, 78 NRC 558 (2013)
- Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 15 (1996)
although transfer of pending license applications to an agreement state is not precluded on the ground that NRC and licensee had already devoted resources to the application when it was before the NRC, litigation at NRC had actually reached the point of NRC approval of an onsite plan at the time of the transfer of authority; CLI-11-12, 74 NRC 486 n.104 (2011)
Commission decision to vacate an unreviewed board decision does not intimate any opinion on the soundness of the board's decision; CLI-13-9, 78 NRC 559 n.31 (2013)
- Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 235 (1982)
NRC started to relax the procedural requirements for certain types of proceedings; LBP-11-8, 73 NRC 358 (2011)
- Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989, 1001 (9th Cir. 2004)
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- Kleppe v. Sierra Club*, 427 U.S. 390 (1976)
agencies must make sure that the proposal that is the subject of an environmental impact statement is properly defined; LBP-13-10, 78 NRC 144 (2013)
- Kleppe v. Sierra Club*, 427 U.S. 390, 405-06 (1976)
applicant's obligation is to consider alternatives as they exist and are likely to exist; LBP-11-2, 73 NRC 51 n.132 (2011)
under NEPA § 102(2)(C), which requires that an agency create an EIS, the moment at which an agency must have a final statement ready is the time at which it makes a recommendation or report on a proposal for federal action; LBP-13-10, 78 NRC 145 (2013)
- Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)
when several proposals for actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together; LBP-13-10, 78 NRC 145 (2013)
- Kleppe v. Sierra Club*, 427 U.S. 390, 410 & n.20 (1976)
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- NEPA does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions; LBP-13-10, 78 NRC 145 (2013) to require detailed analysis in the final environmental impact statement, a transmission corridor must be a proposed action rather than one that is merely contemplated; LBP-12-12, 75 NRC 779 n.211 (2012)
- Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)
if the adverse environmental impacts of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-14, 73 NRC 605 (2011)
it is not necessary that every alternative device and thought conceivable by the mind of man be considered, but a hard look must be taken at the environmental consequences; LBP-12-1, 75 NRC 35 (2012)
NEPA requires that a hard look must be taken at environmental consequences; LBP-11-17, 74 NRC 22 n.52 (2011); LBP-12-10, 75 NRC 679 (2012)
- Kungys v. United States*, 485 U.S. 759, 778 (1988)
no provision of a statute should be construed to be entirely redundant; LBP-12-19, 76 NRC 196 (2012)
- La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee v. U.S. Department of the Interior*, No. EDCV 11-1478-GW(SSX), 2012 WL 6839790, at *4 (C.D. Cal. 2012)
argument that, in addition to the tribe, individual tribal representative has standing to sue under NHPA section 106 consultation provisions is rejected; LBP-13-6, 77 NRC 277 n.12 (2013)
- Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete Co.*, 484 U.S. 539 (1988)
National Labor Relations Board is the agency equipped to handle alleged violations of the National Labor Relations Act, including collective bargaining disputes; LBP-14-4, 79 NRC 331 n.65 (2014)
- LaFlamme v. Federal Energy Regulatory Commission*, 852 F.2d 389, 399-403 (9th Cir. 1988)
NRC must adequately consider impacts to visual and aesthetic resources in its NEPA review; LBP-12-3, 75 NRC 206-07 (2012)
- Laguna Greenbelt, Inc. v. U.S. Department of Transportation*, 42 F.3d 517, 528 (9th Cir. 1994)
NEPA does not require a fully developed plan that will mitigate all environmental harm before an agency can act, but only requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated; LBP-11-14, 73 NRC 607 (2011); LBP-12-23, 76 NRC 458 (2012); LBP-14-7, 79 NRC 460 (2014)
- Lands Council v. Powell*, 395 F.3d 1019, 1026, 1034 (9th Cir. 2005)
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- Lee v. U.S. Air Force*, 354 F.3d 1229, 1244 (10th Cir. 2004)
NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 396 n.46 (2015)
- Legal Environmental Assistance Foundation, Inc. v. Environmental Protection Agency*, 400 F.3d 1278, 1279 (11th Cir. 2005)
a source permit is an operating permit that the Clean Air Act requires major stationary sources of air pollution to obtain; LBP-11-13, 73 NRC 583 n.356 (2011)
- Limerick Ecology Action v. NRC, Inc.* 869 F.2d 719 (3d Cir. 1989)
NEPA regulations require consideration of severe mitigation alternatives in its EISs and supplements thereto at the operating license stage; LBP-12-15, 76 NRC 29 n.3 (2012)
NRC must consider certain severe accident mitigation alternatives in environmental reviews performed under NEPA § 102(2) in conjunction with operating license applications; CLI-11-5, 74 NRC 167 n.100 (2011)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 722-23 (3d Cir. 1989)
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 725, 743 (3d Cir. 1989)
Advisory Council on Historic Preservation regulations provide guidance on agency compliance with NEPA and are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 727 (3d Cir. 1989)
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 727, 741 (3d Cir. 1989)
SAMDAAs should not be considered in the agency's NEPA reviews for individual facilities, but must be given careful consideration in the Limerick EIS; LBP-12-18, 76 NRC 173 n.221 (2012)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 728 (3d Cir. 1989)
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 729-30 (3d Cir. 1989)
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 730 (3d Cir. 1989)
NRC must consider the alternatives available for reducing or avoiding adverse environmental and other effects; LBP-12-18, 76 NRC 175-76 (2012)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 730-31 (3d Cir. 1989)
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NRC cannot look to the sufficiency of safety standards enacted under the Atomic Energy Act to avoid its NEPA obligations; LBP-12-18, 76 NRC 175 n.238 (2012)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 736-37, 739, 741 (3d Cir. 1989)
NRC policy statement is not a sufficient vehicle to preclude consideration of severe accident mitigation design alternatives, and NRC must take the requisite hard look at them, giving them the careful consideration and disclosure required by the National Environmental Policy Act; CLI-12-19, 76 NRC 380-81 (2012)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 737 (3d Cir. 1989)
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NEPA requires that NRC take a hard look at alternatives, including severe accident mitigation alternatives, and to provide a rational basis for rejecting alternatives that are cost-effective; LBP-12-8, 75 NRC 549 (2012)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 737, 738-41 (3rd Cir. 1989)
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 738 (3d Cir. 1989)
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- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989)
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- NRC's obligation to evaluate mitigation in an EIS for a new nuclear reactor license includes evaluating measures to mitigate the impact of severe accidents on public health and safety; LBP-12-18, 76 NRC 161 (2012)
- only if the harm in question is so remote and speculative as to reduce the effective probability of its occurrence to zero may the agency dispense with the consequences portion of its environmental analysis; LBP-13-13, 78 NRC 542 (2013)
- severe accident mitigation alternatives analysis must necessarily be site specific because the potential consequences of a severe accident will largely be the product of the location of the plant; LBP-13-13, 78 NRC 453, 465-66 (2013)
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 741 (3d Cir. 1989)
- alternatives to mitigate the impacts of severe accidents must be given careful consideration in EISs supporting NRC licensing decisions; LBP-12-18, 76 NRC 172 (2012)
- careful consideration of severe accident mitigation design alternatives is required under NEPA, and NRC's failure to consider them is a violation of NEPA; LBP-12-8, 75 NRC 565 (2012)
- Link v. Wabash Railroad Co.*, 370 U.S. 626, 633-34 (1962)
- to the extent that petitioner's counsel is blameworthy, petitioner may be held accountable; LBP-13-2, 77 NRC 77 n.14 (2003)
- Local No. 93, International Association of Firefighters v. Cleveland*, 478 U.S. 501, 529 (1986)
- parties who choose to resolve litigation through settlement may not dispose of the claims of a third party and may not impose duties or obligations on a third party without that party's agreement; LBP-14-4, 79 NRC 368 (2014)
- Long Island Lighting Co.* (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631 (1975)
- even if petitioner fails to establish good cause for an untimely petition, the other late-filing factors must be examined; LBP-12-12, 75 NRC 750 n.21 (2012)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-99, 6 AEC 53, 55-56 (1973)
- generic issues generally should not be considered in individual licensing proceedings, where the issues appropriately could be considered via rulemaking; CLI-13-4, 77 NRC 104 n.12 (2013)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station), CLI-85-1, 21 NRC 275, 280 (1985)
- rule waiver petitioners face a substantial burden; CLI-13-7, 78 NRC 208 (2013)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 836 (1973)
- according to the rule of reason, an agency need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequentially small; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 236-37 (2012); LBP-12-17, 76 NRC 82 (2012); LBP-13-13, 78 NRC 452 (2013); LBP-14-7, 79 NRC 460 (2014)
- hard look under NEPA is subject to a rule of reason, and consideration of environmental impacts need not address all theoretical possibilities, but only those that have some reasonable possibility of occurring; LBP-15-3, 81 NRC 81-82 (2015); LBP-15-16, 81 NRC 638 (2015)
- NEPA's "hard look" is tempered by a rule of reason; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 236-37 n.52 (2012); LBP-12-17, 76 NRC 82 (2012); LBP-13-13, 78 NRC 452 (2013)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 n.30 (1984)
- deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 238 (2013)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1343 (1984)
- overriding need or special circumstances test to overcome deliberative process privilege only applies after a showing that the requested materials are covered by the deliberative process privilege; LBP-13-5, 77 NRC 247 (2013)
- overriding need or special circumstances would support granting a motion to compel; LBP-13-5, 77 NRC 251 (2013)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288 (1988)
- NRC is bound by the unambiguous language of its own regulations; LBP-11-22, 74 NRC 276 (2011)

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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288, 290, review declined, CLI-88-11, 28 NRC 603 (1988)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154, 1156 n.3 (1984)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 66, 74-75 (1991)
the Commission, in deciding an issue, can take into consideration a matter beyond reasonable controversy and one that is capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy; LBP-11-7, 73 NRC 290 n.231 (2011)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 72 n.3 (1991)
although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 670 (2011)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 74-75 (1991)
because NRC's decision to grant the exemptions is a matter of public record, the board takes notice that the exemptions have now been approved; LBP-15-24, 82 NRC 81 n.78 (2015)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 468 (1991)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 568 n.2 (1991)
because 10 C.F.R. 2.342 does not apply to petitioners' motion for a stay, the Commission does not address applicant's request to strike the motion because it exceeds that rule's 10-page limit; CLI-12-11, 75 NRC 528 n.26 (2012)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-92-4, 35 NRC 69, 80-82 (1992)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1163-64 (1982)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1135, 1138 (1983)
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- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 183 (1991)
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- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-92-7, 35 NRC 93 (1992)
this decision may be relied upon as precedent for licensing of a uranium enrichment facility;
LBP-12-21, 76 NRC 233 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997)
 cursory assertions are insufficient to raise an issue for appeal; CLI-13-1, 77 NRC 22 n.129 (2013)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 294 (1997)
this decision may be relied upon as precedent for licensing of a uranium enrichment facility;
LBP-12-21, 76 NRC 233 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 296-97 (1997)
enrichment facilities are to be licensed pursuant to Atomic Energy Act §§ 53 and 63, 42 U.S.C. §§ 2073, 2093; LBP-12-21, 76 NRC 232-33 & n.73 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 299 (1997)
interpretation of regulations, like interpretation of a statute, begins with the language and structure of the provisions, and the entirety of each provision must be given effect; LBP-14-7, 79 NRC 473 (2014)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998)
hard look at the environmental justice aspects of relicensing having been taken, the Commission, without additional Staff action, can now with respect to the EJ issue, make an informed decision whether to grant the requested license; LBP-13-13, 78 NRC 544 n.2107 (2013)
this decision may be relied upon as precedent for licensing of a uranium enrichment facility;
LBP-12-21, 76 NRC 233 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 84 (1998)
admitted contentions challenging applicant's environmental report may function as challenges to similar portions of NRC Staff's NEPA document; LBP-11-1, 73 NRC 26 n.13 (2011); LBP-13-9, 78 NRC 46 (2013); LBP-14-5, 79 NRC 383 (2014); LBP-15-11, 81 NRC 409-10 (2015)
if all matters at issue in a contention of omission are addressed by NRC Staff in its DEIS through the actual provision of information on all such matters, then no legal interest in that contention remains, and the contention is moot; LBP-11-4, 73 NRC 127-28 n.155 (2011)
"migration" tenet does not change the basic form of the contention, i.e., whether it challenges the soundness of the information provided or claims that necessary information has been omitted (or some combination of the two); LBP-11-1, 73 NRC 26 n.13 (2011)
NRC Staff's issuance of an environmental assessment under NEPA does not necessarily moot contentions challenging an applicant's environmental report; LBP-14-6, 79 NRC 416 n.67 (2014)
safety matters generally need to be raised, relative to an admitted safety contention, in the context of the merits disposition of the already admitted safety contention or, in the case of a new issue, as a wholly new safety contention; LBP-13-10, 78 NRC 132-33 (2013)
under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 767-68 n.140 (2012); LBP-12-23, 76 NRC 470-71 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87 (1998)
environmental impact statement or environmental assessment must describe the potential environmental impact of a proposed action and discuss any reasonable alternatives; LBP-15-11, 81 NRC 437 n.238 (2015)
NEPA has twin goals of forcing agencies to take a hard look at the environmental consequences of a proposed project, and, making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-11-14, 73 NRC 598 (2011); LBP-12-18, 76 NRC 179 (2012); LBP-14-9, 80 NRC 57 (2014); LBP-15-16, 81 NRC 697 n.511 (2015)
NEPA's primary goals include fostering informed public participation in the decisionmaking process; LBP-12-17, 76 NRC 120-21 (2012)

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- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998)
in assessing greenhouse gas impacts, NRC must devote its resources to taking a hard look at the issue; LBP-11-26, 74 NRC 545 (2011)
NEPA does not mandate substantive results but rather imposes procedural restraints on agencies, requiring them to take a hard look at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-11-38, 74 NRC 830 (2011); LBP-12-5, 75 NRC 236 (2012); LBP-13-13, 78 NRC 451-52, 524 (2013)
NEPA imposes procedural restraints on agencies, which require them to take a hard look at the environmental impacts of a proposed action and the reasonable alternatives to that action; LBP-12-17, 76 NRC 81-82 (2012); LBP-14-7, 79 NRC 460 (2014); LBP-15-3, 81 NRC 81 (2015); LBP-15-16, 81 NRC 637 (2015)
NEPA's procedural obligation is carried out through an agency's issuance of an environmental impact statement documenting the agency's hard look at potential environmental impacts of the proposed action and reasonable alternatives thereto; LBP-11-39, 74 NRC 868 (2011)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998)
although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action; LBP-11-7, 73 NRC 281 (2011)
although NRC does not license construction or operation of a transmission corridor, it has the authority to deny the license for a proposed nuclear plant if, for example, the total environmental costs of the new reactor and connected actions exceed the benefits; LBP-12-12, 75 NRC 779-80 (2012)
as part of NRC's NEPA analysis for licensing a nuclear power plant, the agency must balance the costs and benefits resulting from issuance of a license, but the EIS need not always contain a formal or mathematical cost-benefit analysis; LBP-11-7, 73 NRC 281-82 n.173 (2011)
court may not substitute its own judgment for that of an agency, and agencies are not constrained by NEPA to select only the most environmentally benign option; LBP-15-16, 81 NRC 688 (2015)
hard look under NEPA is intended to foster both informed agency decisionmaking and informed public participation so as to ensure that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct; LBP-15-3, 81 NRC 81 (2015)
NEPA itself does not mandate a cost-benefit analysis, but the statute is generally regarded as calling for some sort of a weighing of the environmental costs against the economic, technical, or other public benefits of a proposal; LBP-11-6, 73 NRC 218 (2010)
taking a hard look at environmental impacts fosters both informed decisionmaking and informed public participation, and thus ensures that NRC does not act on incomplete information, only to regret its decision after it is too late to correct it; LBP-11-26, 74 NRC 545 (2011); LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 82 (2012); LBP-13-13, 78 NRC 452 (2013)
when the adequacy of an EIS mitigation strategy is challenged, the determining issue is whether the agency took a sufficiently hard look at environmental consequences and ensured that its decision was supported by a completely informed record; LBP-15-16, 81 NRC 688 (2015)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88, 94 (1998)
need-for-power forecasts need not precisely identify future market conditions and energy demand, or develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power; LBP-11-7, 73 NRC 283 (2011); LBP-12-5, 75 NRC 237 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998)
adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-11-6, 74 NRC 209 (2011); CLI-15-6, 81 NRC 376 (2015); LBP-11-38, 74 NRC 832 (2011); LBP-12-5, 75 NRC 239 (2012); LBP-12-17, 76 NRC 83 (2012); LBP-13-13, 78 NRC 524, 543 (2013); LBP-14-9, 80 NRC 67 (2014); LBP-15-16, 81 NRC 638, 694 n.490, 707 (2015)

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- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 97 (1998)
the extent of the no-action discussion is governed by a rule of reason, and discussion in the environmental documents need not be exhaustive or inordinately detailed; LBP-12-8, 75 NRC 569 (2012)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 100 (1998)
NRC's environmental justice goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities; LBP-13-13, 78 NRC 541 (2013)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 102-03 (1998)
NEPA does not require NRC Staff to examine every conceivable aspect of federally licensed projects in preparing its environmental impact statement; LBP-15-3, 81 NRC 82 (2015)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 103 (1998)
agencies are given broad discretion to keep their NEPA inquiries within appropriate and manageable boundaries; LBP-15-3, 81 NRC 82 (2015)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 104 (1998)
environmental impact statements are to include a detailed statement by the responsible official on alternatives to the proposed action; LBP-12-17, 76 NRC 82 (2012); LBP-14-9, 80 NRC 43 (2014)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113 (1998)
controversy often ends during the pendency of appeals before the Commission or the Appeal Board; CLI-13-9, 78 NRC 558 (2013)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114 (1998)
Commission decision to vacate an unreviewed board decision does not intimate any opinion on the soundness of the board's decision; CLI-13-9, 78 NRC 559 n.31 (2013)
stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558 (2013)
unreviewed board decisions are not binding on future boards; CLI-13-10, 78 NRC 569 n.42 (2013)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114-15 (1998)
with license's withdrawal of license amendment request, the proceeding is moot; CLI-13-10, 78 NRC 568 (2013)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 339 (1991)
although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 670, 674 (2011)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 338-39 (1996)
although environmental contentions ultimately challenge NRC's compliance with the National Environmental Policy Act, applicant may advocate for a particular challenged position set forth in the environmental impact statement; LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 81 (2012)
applicant may bear the burden of proof on contentions asserting deficiencies in its environmental report and where the applicant becomes a proponent of a particular challenged position set forth in the environmental impact statement; LBP-11-38, 74 NRC 830 (2011)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 339 (1996)
although environmental contentions ultimately challenge the NRC's compliance with NEPA, applicant is free to support positions set forth in the environmental impact statement that are under challenge; LBP-14-7, 79 NRC 459 (2014)
because NRC Staff relies heavily on the applicant's environmental report in preparing the environmental impact statement, should the applicant become a proponent of a particular challenged position set forth in the EIS, the applicant, as such a proponent, also has the burden on that matter; LBP-15-3, 81 NRC 85 (2015); LBP-15-16, 81 NRC 642 (2015)
- Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 341 (1996)
environmental impact statements serve as an environmental full disclosure law providing agency decisionmakers, as well as the President, the Congress, the Council on Environmental Quality, and the public with the environmental cost-benefit information that Congress thought they should have about each qualifying federal action; LBP-13-13, 78 NRC 285 n.175 (2013)

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- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004)
reply briefs cannot be used to present entirely new facts or arguments in an attempt to reinvigorate thinly supported contentions; LBP-11-34, 74 NRC 694 (2011); LBP-15-5, 81 NRC 284, 285, 304 (2015)
right to reply is intended to provide an opportunity to legitimately amplify arguments made in the intervention petition in response to applicant and NRC Staff answers; LBP-15-5, 81 NRC 284, 285, 304 (2015); LBP-15-13, 81 NRC 461 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004)
petitioner may respond to the legal or logical arguments presented in the answers to its hearing request, but may not use its reply to raise new issues for the first time; CLI-15-18, 82 NRC 146 (2015); CLI-15-20, 82 NRC 230 n.124 (2015)
reply briefs may not be used to introduce new arguments to reinvigorate thinly supported contentions; CLI-12-5, 75 NRC 334 n.197 (2012); LBP-15-4, 81 NRC 174 n.103 (2015)
there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements; LBP-14-4, 79 NRC 373 n.67 (2014)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004)
new arguments may not be raised for the first time in a reply brief; CLI-15-20, 82 NRC 224 n.89 (2015); CLI-15-22, 82 NRC 319 (2016); LBP-13-12, 78 NRC 243 (2013); LBP-15-13, 81 NRC 461 (2015); LBP-15-17, 81 NRC 792 (2015)
petitioner's reply must be narrowly focused on the legal or logical arguments presented in applicant's or NRC Staff's answer; LBP-11-6, 73 NRC 229 n.93 (2010)
replies may not contain new information that was not raised in either the petition or answers, but arguments that respond to the petition or answers are not precluded, whether they are offered in rebuttal or in support; CLI-11-14, 74 NRC 809 n.45 (2011)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004)
allowing use of reply briefs to provide, for the first time, the necessary threshold support for contentions would effectively bypass and eviscerate rules governing timely filing; LBP-11-6, 73 NRC 237 n.105 (2010); LBP-12-7, 75 NRC 517 n.16 (2012); LBP-15-26, 82 NRC 182 n.36 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-5, 61 NRC 22, 34 (2005)
low-level radioactive waste traditionally has been defined by what it is not; LBP-12-21, 76 NRC 243 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-5, 61 NRC 22, 34-35 (2005)
depleted uranium and the other waste generated by uranium enrichment facilities are not spent fuel, transuranic waste, or 11e(2) byproduct material or specific kinds of wastes such as irradiated fuel and the liquid and solid wastes resulting from the processing of irradiated fuel, and thus are classified as low-level waste; LBP-12-21, 76 NRC 243 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-5, 61 NRC 22, 36 (2005)
this decision may be relied upon as precedent for licensing of a uranium enrichment facility; LBP-12-21, 76 NRC 233 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5 (2005)
this decision may be relied upon as precedent for licensing of a uranium enrichment facility; LBP-12-21, 76 NRC 233 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 34 (2005)
giving appropriate deference to NRC Staff technical expertise, boards are to probe the logic and evidence supporting NRC Staff findings and decide whether those findings are sufficient to support license issuance; LBP-12-21, 76 NRC 235 (2012)
licensing boards conducting mandatory hearings on uncontested issues are expected to take an independent hard look at NRC Staff safety and environmental findings but are not to replicate NRC Staff work; LBP-12-21, 76 NRC 224 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 39 (2005)
licensing boards conducting mandatory hearings on uncontested issues should conduct a simple sufficiency review of uncontested issues, not a de novo review; LBP-12-21, 76 NRC 224, 235 (2012)

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- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 39-40 (2005)
licensing board role in a mandatory hearing on uranium enrichment licensing is to examine the sufficiency of NRC Staff's findings and to confirm that those findings have reasonable support in logic and fact; LBP-12-21, 76 NRC 236 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 41 (2005)
licensing boards have an important but limited role in mandatory proceedings; LBP-12-21, 76 NRC 224 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 42-43 (2005)
Atomic Energy Act does not prescribe a specific structure for the mandatory hearing requirement, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case; LBP-12-21, 76 NRC 243 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 44 (2005)
licensing boards are to ensure that the demands of NEPA and NRC regulations are met through independent environmental judgments by the boards; LBP-12-21, 76 NRC 236 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-17, 62 NRC 5, 45 (2005)
in reaching independent judgment on NEPA baseline issues, licensing board role is not to second-guess underlying technical or factual findings by the NRC Staff unless the board finds Staff review to be incomplete or Staff findings to be insufficiently explained in the record; LBP-12-21, 76 NRC 236 n.88 (2012)
licensing board's NEPA review must not be so intrusive or detailed as to involve the board in independent basic research or a duplication of the analysis previously performed by the Staff; LBP-12-21, 76 NRC 236 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005)
NEPA also does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-12-5, 75 NRC 243 n.104 (2012); LBP-12-9, 75 NRC 623 (2012); LBP-12-18, 76 NRC 142 n.68 (2012); LBP-13-13, 78 NRC 505 (2013); LBP-15-3, 81 NRC 82 (2015); LBP-15-16, 81 NRC 637 n.99 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-21, 62 NRC 538, 539 (2005)
routine contention admissibility determinations generally are not appropriate for interlocutory review; CLI-12-12, 75 NRC 608 (2012)
timeliness of late-filed contentions turns on fact-specific considerations, such as when new documents or information first became available and how promptly intervenors reacted; LBP-15-24, 82 NRC 98 n.194 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 724 (2005)
nuclear nonproliferation issues span a host of factors far removed from and far afield from the NRC's decision whether to license a uranium enrichment facility; LBP-12-21, 76 NRC 241 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 724-25 (2005)
the Commission has determined that there is no relationship between NRC licensing actions and terrorism; LBP-12-21, 76 NRC 241 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 727-28 (2005)
NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-10, 75 NRC 483 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 729 (2005)
NEPA does not require agencies to analyze impacts of alternatives that are speculative, remote, impractical, or unviable; CLI-12-5, 75 NRC 342 n.243 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 731 (2005)
adjudicatory records, board decisions, and any Commission decisions become effectively part of the environmental review document; CLI-12-1, 75 NRC 61 (2012)
board may incorporate material from another agency's environmental impact statement, which was submitted in the hearing record, as part of the record of decision; CLI-15-6, 81 NRC 388 n.255 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-15, 63 NRC 687, 697 (2006)
Commission defers to board's factual findings unless they are clearly erroneous and generally steps in only to correct factual findings not even plausible in light of the record reviewed in its entirety, e.g.,

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- where it appears that the board has overlooked or misunderstood important evidence; CLI-15-6, 81 NRC 351 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-15, 63 NRC 687, 700 (2006)
final environmental impact statement as amplified by both board and Commission decisions provides adequate consideration of environmental impacts of near-surface waste disposal; CLI-15-6, 81 NRC 388 n.255 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-22, 64 NRC 37, 46 (2006)
new material is outside the proper scope of a reply; CLI-11-14, 74 NRC 809 n.45 (2011)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-06-22, 64 NRC 37, 49 n.48 (2006)
governmental officials, acting in their official capacities, are presumed to have properly discharged their duties and, to rebut this presumption, petitioner's burden of proof involves presentation of clear evidence to the contrary; LBP-14-2, 79 NRC 150 (2014)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 404 (2005), *aff'd*, CLI-06-22, 64 NRC 37 (2006)
board's ultimate NEPA judgments are made on the basis of the entire adjudicatory record in addition to NRC Staff's final supplemental environmental impact statement; LBP-15-3, 81 NRC 82 (2015); LBP-15-16, 81 NRC 638, 708 (2015)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 410-11, 424-26, *aff'd*, CLI-05-28, 62 NRC 721, 723 (2005)
resolution of a mooted contention requires no more than a finding by the presiding officer that the matter has become moot; LBP-12-5, 75 NRC 238-39 n.64 (2012)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 443, *petition for review denied*, CLI-05-28, 62 NRC 721, 726 (2005)
previously recognized availability policy for domestic enrichment services supports a NEPA finding of a need for the construction and operation of uranium enrichment facilities; LBP-11-26, 74 NRC 533 (2011)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 444-45, *petition for review denied*, CLI-05-28, 62 NRC 721, 726 (2005)
evidence of significant actual utility commitments provides a compelling showing in support of the need for uranium enrichment facility; LBP-11-26, 74 NRC 535 (2011)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006)
NEPA's "hard look" requirement is tempered by a rule of reason; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 82 (2012); LBP-13-13, 78 NRC 452 (2013)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 259 (2006)
NRC Staff's reference to, and reliance in its DEIS on, state issuance of a site certification order and associated certificate of compliance on groundwater use does not dispense with NRC's duty under NEPA to conduct an independent hard look at environmental impacts related to active dewatering during operations at a nuclear plant; LBP-11-1, 73 NRC 25 (2011)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 260 (2006)
adjudicatory record, board decision, and any Commission appellate decisions become, in effect, part of the final environmental impact statement; LBP-13-13, 78 NRC 543 (2013)
hard look at the environmental justice aspects of relicensing having been taken, the Commission, without additional Staff action, can now with respect to the EJ issue, make an informed decision whether to grant the requested license; LBP-13-13, 78 NRC 544 n.2107 (2013)
NRC Staff typically prepares the record of decision but when a hearing is held, the board's initial decision constitutes the record of decision as to those issues that were litigated during the hearing; LBP-13-13, 78 NRC 525 (2013)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-17, 63 NRC 747 (2006)
mandatory proceedings for licensing of proposed uranium enrichment facility sites were conducted; LBP-11-11, 73 NRC 475 (2011)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 n.18 (1983)
NRC Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 243 (2014)

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- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1093 (1983)
moving party properly bears the burden of meeting the reopening standards and applicant retains the burden of proof on the question whether the license should be issued; CLI-15-19, 82 NRC 157 n.29 (2015)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1111-12 (1983)
licensing boards must judiciously exercise sua sponte authority when faced with a serious, and unraised, issue; LBP-14-9, 80 NRC 66 n.223 (2014)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 4-5 (1986)
licensing boards are discouraged from adding material to bolster a petitioner's or party's arguments or pleadings; CLI-11-11, 74 NRC 447 n.113 (2011)
- Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986)
burden of satisfying the reopening requirements is a heavy one, and it rests with the party moving to reopen; CLI-11-2, 73 NRC 346 (2011); CLI-15-19, 82 NRC 155-56 (2015); LBP-11-20, 74 NRC 81 (2011)
- Loving v. U.S. Department of Defense*, 550 F.3d 32, 38 (D.C. Cir. 2008)
deliberative process privilege does not protect documents in their entirety and if the government can segregate and disclose nonprivileged factual information within a document, it must; LBP-13-5, 77 NRC 240 (2013)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)
contemporaneous judicial concepts of standing require a petitioner to allege an injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; CLI-15-25, 82 NRC 394 (2015); LBP-11-2, 73 NRC 40 (2011); LBP-11-6, 73 NRC 168-69 (2010); LBP-11-13, 73 NRC 545-46 (2011); LBP-11-16, 73 NRC 652 (2011); LBP-14-4, 79 NRC 350-51 (2014)
- Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)
contemporaneous judicial concepts of standing are applied in NRC proceedings; LBP-15-13, 81 NRC 463 (2015); LBP-15-19, 81 NRC 819 (2015)
intervention petitioner's burden is met if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-12-3, 75 NRC 177 (2012); LBP-13-6, 77 NRC 270 (2013)
under judicial concepts of standing, petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-15-5, 81 NRC 256 (2015); LBP-15-13, 81 NRC 463 (2015); LBP-15-17, 81 NRC 770 (2015)
- Lujan v. National Wildlife Federation*, 497 U.S. 871, 883 (1990)
to be adversely affected or aggrieved within the meaning of a statute, plaintiff must establish that the injury complained of falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for the complaint; LBP-14-4, 79 NRC 354 (2014)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 236 (2011)
heavy barrier to reopening applies whenever an adjudication has been closed and not merely after a case has been terminated following a full evidentiary hearing on the merits; LBP-15-14, 81 NRC 595 (2015)
once all contentions have been decided, the contested proceeding is terminated; CLI-12-14, 75 NRC 699 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 237 (2011)
standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or abuse of discretion; CLI-12-7, 75 NRC 386 (2012)

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- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 244 (2011)
petitioner must provide a sound basis for its contention in its petition or in an expert affidavit or other supporting information that specifically corroborates the contested issues framed by the contention; LBP-13-6, 77 NRC 296 (2013)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 385 (2012)
waste confidence contention's pendency creates some uncertainty as to whether petitioner may appeal the board's ruling on a proposed contention, or whether it must await resolution of the waste confidence issue; LBP-14-8, 79 NRC 528 (2014)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 388 (2012)
Fukushima contention that petitioners did not relate to any unique characteristics of the particular site at issue was akin to the generic type of NEPA review that the Commission declared premature; LBP-12-18, 76 NRC 141 (2012)
- Luminant Generation Co. LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 388, 389, 390 (2012)
reference to Fukushima Task Force Report recommendations alone, without facts or expert opinion that explain their significance for the unique characteristics of the sites or reactors that are the subject of the petitions, does not provide sufficient support for the common contention; LBP-12-18, 76 NRC 139 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 388-89 (2012)
any contention that falls outside the specified scope of the proceeding must be rejected; LBP-12-15, 76 NRC 26 (2012)
to warrant supplementation of the final environmental impact statement, new information must paint a seriously different picture of the environmental landscape; CLI-15-10, 81 NRC 543 n.32 (2015)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 388-91 (2012)
board determined that petitioners had failed to articulate factual basis for Fukushima-based NEPA dispute with specific application; CLI-12-15, 75 NRC 727 n.122 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 389 (2012)
as tangible Fukushima lessons emerge, Fukushima-related contentions in individual adjudications may become more plausible, except insofar as the NRC is taking generic steps to address them; LBP-12-18, 76 NRC 139, 145 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 390 & n.43 (2012)
petitioner who fails to provide sufficient factual or expert support for the claims in its contention in contravention of section 2.309(f)(1)(v) also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-12-15, 76 NRC 27 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391 (2012)
general and unparticularized references to health and safety significance and material deficiencies in the environmental report would not satisfy the rule that contentions be pled with specificity; CLI-15-18, 82 NRC 146 n.53 (2015)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391 & n.47 (2012)
petitioners' proposed Fukushima contention was too vague for hearing under contention-admissibility rules and, as pleaded, lacked the kind of significance and potential for a different result that under the reopening rule would justify restarting already-closed hearings; CLI-12-11, 75 NRC 533 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391-92 (2012)
an application-specific NEPA review represents a snapshot in time, and while NEPA requires that NRC conduct its environmental review with the best information available at the time, it does not

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- require that NRC wait until inchoate information matures into something that later might affect its review; CLI-12-11, 75 NRC 533 (2012)
- final supplemental environmental impact statement is a snapshot in time of expected environmental consequences; CLI-15-6, 81 NRC 378 (2015)
- NEPA requires that NRC Staff conduct its environmental review with the best information available when the review is undertaken; LBP-12-8, 75 NRC 554 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 392 (2012)
- contention in a license renewal proceeding based on applicant's failure to consider alleged new and significant information arising from NRC's Fukushima Task Force Report was rejected; LBP-12-8, 75 NRC 558 (2012)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-4, 73 NRC 91, 128 (2011)
- the licensing board chose to terminate the adjudications when faced with no pending contentions, but did not state that it was compelled to do so by Commission precedent or agency regulation; LBP-11-22, 74 NRC 285 (2011)
- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-36, 74 NRC 768, 771-72 (2011)
- Fukushima-related contention based on a Staff Requirements Memorandum are inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 784 n.7 (2011)
- Mackey v. Lanier Collection Agency*, 486 U.S. 825, 837 (1988)
- court is hesitant to adopt an interpretation of a congressional enactment that renders superfluous another portion of that same law; LBP-12-19, 76 NRC 196 n.68 (2012)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1007 (1973)
- unless the safety findings prescribed by the Atomic Energy Act and the regulations can be made, the reactor does not obtain a license, no matter how badly it is needed; CLI-15-4, 81 NRC 232 (2015)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52 (2004)
- measures intended to strengthen an enforcement order issued under 10 C.F.R. 2.202 are not within the limited scope of the proceedings; CLI-13-2, 77 NRC 43 (2013)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 58 (2004)
- if petitioner could avoid the Commission's limitation on the scope of an enforcement order simply by characterizing its petition as opposing the order unless additional measures are granted, the Commission would never be able to limit its proceedings; LBP-12-14, 76 NRC 6 (2012)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-01-27, 54 NRC 219, 219 (2001), *review declined*, SECY Memorandum to Board and Parties on Order Approving Settlement and Terminating Proceeding (Nov. 19, 2001)
- licensing boards are to approve settlements when they are fair and reasonable and comport with the public interest; LBP-15-30, 82 NRC 345 (2015)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-03-23, 58 NRC 372, 378 (2003)
- petitioners who are proceeding pro se should be shown greater leeway on the question of whether they have demonstrated good cause for lateness than petitioners represented by counsel; LBP-11-13, 73 NRC 543 (2011)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-03-26, 58 NRC 396, 401, 402 (2003), *aff'd*, CLI-04-5, 59 NRC 52 (2004)
- petitioner argued against an enforcement order unless it were modified to clarify various points, including the costs of state and local law enforcement resources that would be needed to implement the order, but the board based its analysis on whether petitioner had shown that the requirements, as stated in the order, would make the facility less safe; CLI-13-2, 77 NRC 48 (2013)

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- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-03-26, 58 NRC 396, 402 (2003), *aff'd*, CLI-04-5, 59 NRC 52 (2004)
whether and to what extent measures a state sought were needed to make the facility safer was essentially irrelevant because those additional measures were outside the scope of the enforcement order; CLI-13-2, 77 NRC 48 (2013)
- Marriott International Resorts, L.P. v. United States*, 61 Fed. Cl. 411, 417 (2004)
NRC Staff must supply the board with precise and certain reasons for maintaining the confidentiality of requested documents; LBP-13-5, 77 NRC 242 (2013)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989)
although petitioner's participation may broaden or delay the proceeding, this factor may not be relied on to exclude a contention, because NRC has a duty to consider new and significant information that arises before it makes its licensing decisions; LBP-11-35, 74 NRC 738 (2011)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 370 (1989)
subject of postdecision supplemental environmental impact statements is not expressly addressed in NEPA; LBP-12-18, 76 NRC 161 (2012)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 370-71 (1989)
to reopen a record, petitioners must reveal a seriously different picture of the environmental impact of a proposed project; LBP-12-16, 76 NRC 57 (2012)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)
federal agencies must consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-17, 76 NRC 81 (2012)
hard look under NEPA is intended to foster both informed agency decisionmaking and informed public participation so as to ensure that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct; LBP-11-26, 74 NRC 545 (2011); LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 82 (2012); LBP-13-13, 78 NRC 452 (2013); LBP-15-3, 81 NRC 81 (2015)
it would be incongruous with NEPA's action-forcing purpose to allow an agency to put on blinders to adverse environmental effects, just because the EIS has been completed; LBP-12-1, 75 NRC 36 n.48 (2012); LBP-12-10, 75 NRC 680 n.69 (2012); LBP-15-13, 81 NRC 471 (2015)
NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-18, 76 NRC 159 (2012); LBP-14-9, 80 NRC 40 (2014)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 n.14 (1989)
environmental implications of new and significant information must be considered under NEPA before NRC may grant renewed operating licenses; LBP-11-32, 74 NRC 663 (2011)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371-72 (1989)
NEPA cases have generally required agencies to file environmental impact statements when the remaining governmental action would be environmentally significant; LBP-12-1, 75 NRC 37 n.48 (2012)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372 n.15 (1989)
continued construction was barred pending the filing of an adequate environmental impact statement, notwithstanding the fact that the project was initially approved and construction commenced prior to the effective date of NEPA; LBP-12-1, 75 NRC 37 n.48 (2012)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372-73, 374 (1989)
even if severe accidents are not yet all conclusively understood, the environmental impacts of relicensing may affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-11-23, 74 NRC 351 (2011)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989)
agencies need not supplement an EIS every time new information comes to light after the EIS is finalized because it would render agency decisionmaking intractable; CLI-12-6, 75 NRC 376 n.146 (2012); LBP-11-28, 74 NRC 610 (2011); LBP-12-18, 76 NRC 162 (2012)
if, as part of its consideration of a rulemaking petition, NRC determines that there is new and significant information associated with the expedited-transfer issue that requires supplementation under NEPA, it can address any affected environmental analyses as needed and appropriately move forward with these proceedings in the meantime; CLI-14-7, 80 NRC 8 (2014)

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requirement that NRC suspend its licensing decisions upon receipt of a claim of new and significant information would render its decisionmaking intractable; CLI-14-7, 80 NRC 8 (2014)
supplementing an environmental impact statement is not necessary unless new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-11-5, 74 NRC 168 (2011); CLI-12-7, 75 NRC 388-89, 390-91 (2012); LBP-12-18, 76 NRC 141-42 (2012)

Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 373-74 (1989)

agency decisions regarding the need to supplement an environmental impact statement based on new and significant information are subject to the rule of reason; LBP-11-26, 74 NRC 536 n.13 (2011)
agency that has prepared an EIS cannot simply rest on the original document but must be alert to new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned action, even after a proposal has received initial approval; LBP-12-18, 76 NRC 166 (2012)

NEPA does not require that NRC suspend its licensing decisions upon receipt of a claim of new and significant information; CLI-14-7, 80 NRC 8 (2014)

NEPA does not require that NRC wait until inchoate information matures into something that might affect its review; CLI-12-6, 75 NRC 376 (2012); CLI-12-15, 75 NRC 727 (2012)

NRC is required under NEPA to consider new and significant information in its environmental analyses; CLI-13-7, 78 NRC 210 (2013)

NRC rules enable it to supplement an EIS if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts; CLI-12-6, 75 NRC 376 n.147 (2012); CLI-12-7, 75 NRC 392 n.49 (2012)

the Fukushima accident does not significantly alter the overall environmental picture for severe reactor accidents at the site; CLI-12-15, 75 NRC 727 (2012)

Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 373-77 (1989)

agencies have discretion on the manner in which they determine whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-3, 75 NRC 140 n.42 (2012)

federal courts leave to an agency's discretion the manner in which the agency determines whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-6, 75 NRC 364 n.57 (2012)

Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 374 (1989)

boards must consider environmental impacts that may affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-12-1, 75 NRC 7 n.22 (2012)

if after preparation of the EIS, the agency is presented with new information or changed circumstances and there remains major federal action to occur, and if the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared; CLI-13-7, 78 NRC 211 n.59 (2013); LBP-12-18, 76 NRC 161-62 (2012); LBP-15-16, 81 NRC 704 (2015)

NEPA does not require that the agency wait until inchoate information matures into something that later might affect its review; CLI-12-7, 75 NRC 392 (2012)

NEPA requires NRC to reevaluate any prior analysis if it is presented with any new and significant information that would cast doubt on a previous environmental analysis; LBP-12-8, 75 NRC 549-50 (2012)

NEPA requires that agencies take a hard look at the environmental effects of actions even after a proposal has received initial approval; LBP-15-16, 81 NRC 657 (2015)

NEPA requires that the agency take a hard look at environmental consequences of each agency action; LBP-13-4, 77 NRC 120 (2013)

NRC has a continuing duty to take a hard look at new and significant information for each major federal action to be taken; CLI-13-7, 78 NRC 216 (2013)

NRC Staff will incorporate any new SAMA-related information that it finds to be significant in the final supplemental EIS; CLI-13-7, 78 NRC 217 (2013)

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- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 376 (1989)
agencies need not supplement an EIS every time new information comes to light after the EIS is finalized; CLI-12-7, 75 NRC 392 n.48 (2012)
NEPA requires that NRC conduct its review with the best information available at the time of the review; CLI-12-15, 75 NRC 727 (2012)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378-85 (1989)
NEPA hard look must emerge from an engagement in informed and reasoned decisionmaking, as the agency obtains opinions from its own experts and experts outside the agency and gives careful scientific scrutiny and responds to all legitimate concerns that are raised; LBP-15-16, 81 NRC 637 n.98 (2015)
- Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 385 (1989)
the fundamental purpose of the National Environmental Policy Act is to help public officials make decisions that are based on understanding of environmental consequences, and make decisions that protect, restore, and enhance the environment; LBP-11-23, 74 NRC 329 (2011)
- Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 520-23 (2007)
risk of future harm as an injury must be both actual and imminent; LBP-14-4, 79 NRC 351 n.28 (2014)
- Massachusetts v. NRC*, 522 F.3d 115, 130 (1st Cir. 2008)
NEPA does not mandate how an agency must fulfill its obligations under the statute; LBP-11-23, 74 NRC 331 (2011)
- Massachusetts v. NRC*, 708 F.3d 63, 74 (1st Cir. 2013)
NRC will consider all comments on the draft supplemental EIS regardless of whether the comment is directed to impacts in Category 1 or 2; CLI-13-7, 78 NRC 216 n.96 (2013)
- Massachusetts v. NRC*, 708 F.3d 63, 75 n.18 (1st Cir. 2013)
agencies are permitted to impose requirements or thresholds for parties seeking to reopen a closed record; CLI-15-19, 82 NRC 156 (2015)
- Massachusetts v. NRC*, 708 F.3d 63, 78 (1st Cir. 2013)
NRC rules provide a mechanism for supplementing an original NEPA analysis, but the rules do not guarantee a hearing nor is a hearing necessary to satisfy NRC's NEPA obligations; CLI-13-7, 78 NRC 211 n.62 (2013)
- Massachusetts v. NRC*, 708 F.3d 63, 81-82 (1st Cir. 2013)
requirement that NRC suspend its licensing decisions upon receipt of a claim of new and significant information would render its decisionmaking intractable; CLI-14-7, 80 NRC 8 (2014)
- Massachusetts v. NRC*, 878 F.2d 1516 (1st Cir. 1989)
Congress intentionally limited the opportunity for a hearing to certain designated agency actions which do not include exemptions; LBP-15-18, 81 NRC 797 n.20 (2015)
NRC approvals of plant restart and lifting suspensions did not trigger AEA § 189a hearing rights; CLI-15-14, 81 NRC 734 n.21 (2015)
- Massachusetts v. NRC*, 878 F.2d 1516, 1519, 1521 (1st Cir. 1989)
exemptions do not actually modify the regulations because the ability to request an exemption is part of the regulations themselves; LBP-15-24, 82 NRC 103 n.227 (2015)
- Massachusetts v. NRC*, 878 F.2d 1516, 1520 (1st Cir. 1989)
for contentions that fall within the facility's current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 134 n.115 (2011)
- Massachusetts v. NRC*, 878 F.2d 1516, 1520-21 (1st Cir. 1989)
NRC's actions constitute de facto license amendment when they authorize licensee to engage in activities beyond the ambit of its original license; LBP-13-7, 77 NRC 332-33 n.39 (2013)
- Massachusetts v. NRC*, 878 F.2d 1516, 1521 (1st Cir. 1989)
NRC authorization to restart a plant following NRC Staff's review of forty-seven ordered modifications is not a license amendment; LBP-15-27, 82 NRC 191 n.41 (2015)
- Massachusetts v. NRC*, 878 F.2d 1516, 1521-22 (1st Cir. 1989)
where NRC has temporarily exempted the licensee, on the basis of an existing rule, from one of many rules made generally applicable by the license does not amount to a license amendment; CLI-14-11, 80 NRC 174 n.35 (2014)

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- Massachusetts v. NRC*, 924 F.2d 311, 333-36 (D.C. Cir. 1991)
parties were not permitted to raise issues or there was no opportunity for hearing on a particular issue; LBP-11-20, 74 NRC 91 n.3 (2011)
- Massachusetts v. NRC*, 924 F.2d 311, 334 (D.C. Cir. 1990)
unfettered ability to file a late contention may significantly undermine the efficiency of a proceeding even if the contention is based on newly discovered information; CLI-12-14, 75 NRC 700 (2012)
- Massachusetts v. United States*, 522 F.3d 115 (1st Cir. 2008)
severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; LBP-12-8, 75 NRC 551 (2012)
- Massachusetts v. United States*, 522 F.3d 115, 129 (1st Cir. 2008)
there are places in NRC rules where “party” is used not as a term of art, but rather as a substitute for “participant”; CLI-12-19, 76 NRC 387 n.55 (2012)
- Massachusetts v. United States*, 522 F.3d 115, 129-30 (1st Cir. 2008)
it makes more sense for NRC to study whether, as a technical matter, the agency should modify its requirements relating to spent fuel storage for all plants than to litigate the issue in particular adjudications; CLI-12-6, 75 NRC 365 (2012)
- Massachusetts v. United States*, 522 F.3d 115, 130 (1st Cir. 2008)
a brief stay of the close of a licensing proceeding was ordered to allow a state the opportunity to request status as an interested governmental entity; CLI-12-6, 75 NRC 357 (2012)
federal courts leave to an agency’s discretion the manner in which the agency determines whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-6, 75 NRC 364 (2012)
- Massachusetts v. U.S. Environmental Protection Agency*, 549 U.S. 497, 526 (2007)
remedy that makes even a small contribution to resolving a larger, more complex injury can still support a standing claim; LBP-15-13, 81 NRC 466 (2015)
- McClelland v. Andrus*, 606 F.2d 1278 (D.C. Cir. 1979)
deliberative process privilege has been extended to draft documents, proposals, suggestions, instructions to work deletions and alterations into drafts, instructions to conduct an investigation, documents reflecting personal and advisory opinions, and rejections of recommendations; LBP-13-5, 77 NRC 239-40 (2013)
- McIntyre-Handy v. West Telemarketing Corp.*, 97 F. Supp. 2d 718, 727 (E.D. Va. 2000)
public officials are afforded a presumption of regularity in the discharge of their duties; LBP-14-2, 79 NRC 151 (2014)
- McKinney v. Dole*, 765 F.2d 1129, 1135 (D.C. Cir. 1985)
although it is risky for a nonmoving party to fail to proffer evidence in response to the summary judgment movant’s showing, such a failure does not automatically mandate granting of the motion; LBP-11-4, 73 NRC 100 n.16 (2011)
if summary judgment movant does not meet its burden, the nonmoving party is, without making any showing, entitled to a denial of the motion; LBP-11-4, 73 NRC 100 n.16 (2011)
in assessing whether a summary judgment movant has met his or her burden, a court must view all inferences to be drawn from underlying facts in the light most favorable to the party opposing the motion; LBP-11-4, 73 NRC 99-100 n.16 (2011)
only when the summary judgment movant meets its burden is the nonmoving party required to proffer evidence that contradicts the moving party’s showing and that proves the existence of a genuine issue of material fact; LBP-11-4, 73 NRC 100 n.16 (2011)
summary judgment should be awarded only when the truth is quite clear; LBP-11-4, 73 NRC 100 n.16 (2011)
the record must show movant’s right to summary judgment with such clarity as to leave no room for controversy, and must demonstrate that his opponent would not be entitled to prevail under any discernible circumstances; LBP-11-4, 73 NRC 100 n.16 (2011)
- McSpadden v. Mullins*, 456 F.2d 428, 430 (8th Cir. 1972)
summary disposition, like summary judgment, is an extreme remedy that should be granted with caution; LBP-11-7, 73 NRC 263 (2011)

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- Menges v. Dentler*, 33 Pa. 495, 500 (1859)
men naturally trust in their government, and ought to do so, and they ought not to suffer for it;
LBP-13-3, 77 NRC 96 n.68 (2013)
- Meredith v. Fair*, 305 F.2d 343, 344-45 (5th Cir. 1962)
to determine whether the record facts before it established the position being advocated, the court
looked beyond the record by indicating that what everybody knows, the court must know; LBP-14-1,
79 NRC 125 (2014)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-697, 16 NRC 1265, 1271
(1982)
applicant has the burden of providing reasonable assurance that the current licensing basis will be
maintained throughout the renewal period; LBP-15-5, 81 NRC 294 (2015)
licensee generally bears the ultimate burden of proof, but intervenors must give some basis for further
inquiry; LBP-15-5, 81 NRC 295 n.308 (2015)
regardless of the issuance of the license, the burden at hearing remains on applicant and, with respect
to NEPA compliance, on NRC Staff; CLI-15-17, 82 NRC 41 (2015)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 197 n.39
(1983), *rev'd in part on other grounds*, CLI-85-2, 21 NRC 282 (1985)
all parties, including NRC Staff, are obligated to bring any significant new information to the board's
attention; LBP-14-2, 79 NRC 243 (2014)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674, 675 (1980)
NRC case law has given meaning to the "special circumstances" requirement for rule waiver;
CLI-13-7, 78 NRC 207 (2013)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983)
traditional judicial standing concepts require a showing that the individual has suffered or might suffer
a concrete and particularized injury that is fairly traceable to the challenged action, likely redressible
by a favorable decision, and arguably within the zone of interests protected by the governing
statutes; LBP-11-2, 73 NRC 40 (2011)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1122 (1985)
even if a site would not be totally evacuated, a fission product release from one unit would likely
contaminate the entire site, with the result that both units could be out of operation for years;
LBP-15-5, 81 NRC 276 (2015)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), LBP-83-76, 18 NRC 1266, 1273
(1983), *aff'd on other grounds*, CLI-09-22, 70 NRC 932, 933 (2009)
when an NRC regulation permits use of a particular analysis, a contention asserting that a different
analysis or technique should be used is inadmissible because it indirectly attacks NRC's regulations;
LBP-15-17, 81 NRC 782 (2015); LBP-15-20, 81 NRC 845 (2015)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983)
psychological fears or stigma effects are not cognizable NEPA claims; CLI-12-5, 75 NRC 336 n.207
(2012)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772, 775 (1983)
agencies are responsible for taking a hard look at the project's effect on safety as well as the
environment; LBP-12-18, 76 NRC 160-61 (2012)
impact of a proposed action on public safety is an issue that must be considered under National
Environmental Policy Act as well as the Atomic Energy Act; LBP-12-18, 76 NRC 138 (2012)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)
relationship between the uranium enrichment facility's product and production of high-level waste is
too attenuated to show the requirement of a reasonably close causal relationship required by NEPA;
LBP-12-21, 76 NRC 243 (2012)
- Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 775-79 (1983)
NEPA is not intended to encompass every possible impact, and does not encompass potential losses
due to individuals' perception of a risk; CLI-12-15, 75 NRC 725 (2012)
petitioner's assertion that continued operation of an independent spent fuel storage installation causes
fear and anxiety among its members is not a valid claim under NEPA; LBP-12-24, 76 NRC 523
(2012)

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- Minnesota v. NRC*, 602 F.2d 412, 418 (D.C. Cir. 1979)
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- Montclair Township v. Ramsdell*, 107 U.S. 147, 152 (1883)
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- Montgomery v. Ellis*, 364 F. Supp. 517, 528 (N.D. Ala. 1973)
- NEPA requires each agency to undertake research needed to adequately expose environmental harms; LBP-14-9, 80 NRC 62 n.207 (2014)
- Moore v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 47, 48 (1971) (*per curiam*)
- when petitioner obtains the relief it is seeking before the admissibility of its contention is resolved, the admissibility *vel non* of the contention is no longer justiciable, because it no longer presents a live controversy involving a true clash of interests that is susceptible to meaningful adjudicative relief; LBP-13-7, 77 NRC 345 n.59 (2013)
- Moore v. Jackson*, 123 F.3d 1082, 1086 (8th Cir. 1997)
- summary disposition, like summary judgment, is an extreme remedy; LBP-11-7, 73 NRC 263 (2011)
- Moreland v. United States*, 270 F.2d 887, 890 (10th Cir. 1959)
- in absence of objection, hearsay evidence is treated as being properly admitted and may be given such probative effect and value to which it is entitled; LBP-15-20, 81 NRC 859 n.184 (2015)
- Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 574 (9th Cir. 1998)
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- National Credit Union Administration v. First National Bank & Trust Co.*, 522 U.S. 479, 489 (1998) courts should not inquire whether there has been a congressional intent to benefit the would-be plaintiff; LBP-14-4, 79 NRC 355 (2014)
- National Federation of Federal Employees v. Federal Labor Relations Authority*, 412 F.3d 119 (D.C. Cir. 2005) licensing boards may not disregard binding Commission case law; CLI-13-7, 78 NRC 205 n.19 (2013)
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- Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 92-93 (2d Cir. 1975)
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- Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 93-94 (2d Cir. 1975)
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- Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 464 F.3d 1, 6 (D.C. Cir. 2006)
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- Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 643 F.3d 311 (D.C. Cir. 2011)
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- Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988)
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- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834, 837, 838 (D.C. Cir. 1972)
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- Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834, 837-38 (D.C. Cir. 1972)
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- Natural Resources Defense Council, Inc. v. NRC*, 582 F.2d 166, 170-71 (2d Cir. 1978)
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- Natural Resources Defense Council, Inc. v. NRC*, 582 F.2d 166, 174 (2d Cir. 1978)
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- Natural Resources Defense Council, Inc. v. NRC*, 582 F.2d 166, 175 (2d Cir. 1978)
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- Natural Resources Defense Council, Inc. v. Thomas*, 838 F.2d 1224, 1242 (D.C. Cir. 1988)
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- Natural Resources Defense Council, Inc. v. U.S. Forest Service*, 421 F.3d 797, 810-12 (9th Cir. 2005)
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- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 136 (3d Cir. 2009)
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- New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 138-39 (3d Cir. 2009)
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- New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 232-33 (3d Cir. 2011)
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- New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 233 (3d Cir. 2011)
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- New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 234 (3d Cir. 2011)
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- New Jersey Environmental Federation v. NRC*, No. 09-2567, 2011 WL 1878642, at *7 (3d Cir. May 18, 2011)
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- New Jersey Environmental Federation v. NRC*, No. 09-2567, 2011 WL 1878642, at *9-10 (3d Cir. May 18, 2011)
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- New Jersey v. NRC*, 526 F.3d 98, 102 (3d Cir. 2008)
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- New York State Department of Social Services v. Dublino*, 413 U.S. 405, 419-20 (1973)
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- New York v. NRC*, 589 F.3d 551, 553 (2d Cir. 2009)
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- New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)
Commission directed that licensing boards hold waste disposal contentions in abeyance pending further Commission order, which would be issued in conjunction with a then to-be-determined agency response to the District of Columbia Circuit's ruling; LBP-14-12, 80 NRC 139 (2014)
contention concerning need under NEPA to include a discussion of the environmental impacts of spent fuel pool leakage, SFP fires, and the lack of a spent fuel repository is held in abeyance; LBP-12-26, 76 NRC 581 n.124 (2012)
contentions based on the Waste Confidence Decision and Temporary Storage Rule are being held in abeyance; LBP-12-24, 76 NRC 506 (2012); LBP-14-8, 79 NRC 522 (2014)
NRC failed to comply with the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-12-16, 76 NRC 66 (2012); CLI-14-8, 80 NRC 74 (2014)
portions of NRC's NEPA regulations under 10 C.F.R. Part 51 were invalidated; LBP-13-8, 78 NRC 15 (2013)
Waste Confidence Decision and Temporary Storage Rule were vacated and remanded; CLI-14-7, 80 NRC 9 (2014); CLI-15-11, 81 NRC 547 (2015); CLI-15-12, 81 NRC 551 (2015); CLI-15-13, 81 NRC 562 (2015)
- New York v. NRC*, 681 F.3d 471, 473 (D.C. Cir. 2012)
regarding waste confidence, NRC failed to comply with the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-14-3, 79 NRC 33 (2014)
- New York v. NRC*, 681 F.3d 471, 473, 481-82 (D.C. Cir. 2012)
in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 229-30 (2015)
- New York v. NRC*, 681 F.3d 471, 473-74 (D.C. Cir. 2012)
NRC's Waste Confidence Decision Update and Temporary Storage Rule were invalidated because there was not even a prospective site for a repository, let alone progress toward the actual construction of one; LBP-14-16, 80 NRC 189 (2014)
- New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012)
alternatively to preparing an environmental impact statement, NRC can conduct an environmental assessment and make a finding of no significant impact; LBP-13-13, 78 NRC 272 n.79 (2013)
NEPA requires federal agencies such as NRC to examine and report on the environmental consequences of their actions; LBP-13-13, 78 NRC 272 (2013)
- New York v. NRC*, 681 F.3d 471, 478 (D.C. Cir. 2012)
in light of the dim prospects for moving forward with a geologic repository in the contemporary political environment, NRC must consider the environmental effects of storing waste in spent fuel pools or casks for extended periods; LBP-12-24, 76 NRC 509 n.22 (2012)
- New York v. NRC*, 681 F.3d 471, 478, 481-82 (D.C. Cir. 2012)
NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 76 n.14 (2014)
- New York v. NRC*, 681 F.3d 471, 478, 483 (D.C. Cir. 2012)
NRC's Waste Confidence Rule concerning storage and disposal of high-level waste is vacated and the issue remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to the support the Commission's conclusions or a site-specific environmental impact statement in all relevant proceedings; LBP-13-13, 78 NRC 270 (2013)
- New York v. NRC*, 681 F.3d 471, 480 (D.C. Cir. 2012)
comprehensive generic analysis may be used to evaluate onsite risks that are essentially common to all plants, as long as NRC provides the opportunity for concerned parties to raise site-specific differences at the time of a specific site's licensing; LBP-12-18, 76 NRC 177 (2012)
generic analyses of the environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 238 (2015); LBP-14-16, 80 NRC 197 n.90 (2014)
NRC's longstanding practice of considering environmental issues through general rulemaking in appropriate circumstances has been endorsed by higher courts; LBP-12-18, 76 NRC 177 (2012)

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- New York v. NRC*, 681 F.3d 471, 480-81 (D.C. Cir. 2012)
whether the NEPA analysis is generic or site-by-site, it must be thorough and comprehensive;
LBP-12-18, 76 NRC 178 (2012)
- New York v. NRC*, 681 F.3d 471, 481 (D.C. Cir. 2012)
merely pointing to a government compliance program is insufficient to demonstrate compliance with
NEPA's requirement that agencies take a hard look at the environmental consequences of their
proposed actions; LBP-12-23, 76 NRC 468 (2012)
merely pointing to the compliance program is in no way sufficient to support a scientific finding that
spent fuel pools will not cause a significant environmental impact during the extended storage
period; LBP-13-4, 77 NRC 217 n.94, 221 n.101 (2013); LBP-14-9, 80 NRC 64 (2014)
NRC Staff's reliance in an environmental impact statement on predicted future monitoring and
regulatory compliance program to prevent environmental impacts is not permitted; LBP-14-9, 80
NRC 64 (2014)
- New York v. NRC*, 681 F.3d 471, 482 (D.C. Cir. 2012)
agency conducting a NEPA analysis must examine both the probability of a given harm occurring and
the consequences of that harm if it does occur; CLI-15-6, 81 NRC 379 (2015)
only if the harm in question is so remote and speculative as to reduce the effective probability of its
occurrence to zero may the agency dispense with the consequences portion of its environmental
analysis; CLI-15-6, 81 NRC 379 (2015); LBP-13-13, 78 NRC 541-42 (2013)
primary responsibility for compliance with NEPA lies with NRC; LBP-12-12, 75 NRC 780 (2012);
LBP-14-9, 80 NRC 69 (2014)
- New York v. NRC*, 681 F.3d 471, 483 (D.C. Cir. 2012)
NRC's current rule concerning the storage and disposal of high-level waste was remanded to the
Commission to generate either a generic analysis that is forward looking and has enough breadth to
support the Commission's conclusions or site-specific environmental impact statements in all relevant
proceedings; LBP-12-21, 76 NRC 242 (2012)
remand was based solely on the court's finding that NRC did not satisfy its obligations under NEPA;
CLI-15-4, 81 NRC 236 (2015)
Temporary Storage Rule governing the storage and disposal of spent nuclear fuel was vacated;
LBP-14-15, 80 NRC 154 (2014) ; LBP-15-1, 81 NRC 21 (2015)
- Newton County Wildlife Association v. Rogers*, 141 F.3d 803, 810-11 (8th Cir. 1998)
if an agency determines that a particular action will have no effect on an endangered or threatened
species, the consultation requirements are not triggered; LBP-12-10, 75 NRC 671 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 307 (2012), *petition for
review denied sub nom. Beyond Nuclear v. NRC*, 704 F.3d 12 (1st Cir. 2013)
absence of a prohibition is not sufficient justification to admit a contention; CLI-15-23, 82 NRC 326
(2015)
Commission generally defers to board contention admissibility rulings in the absence of an error of
law or abuse of discretion; CLI-12-19, 76 NRC 379-80 (2012)
contentions shall not be admitted if at the outset they are not supported by some alleged fact or facts
demonstrating a genuine material dispute; LBP-12-8, 75 NRC 561 (2012)
in 1989, NRC revised its rules to prevent the admission of poorly defined or supported contentions;
CLI-12-8, 75 NRC 396 (2012)
NRC deliberately raised the admission standards for contentions to obviate serious hearing delays
caused in the past by poorly defined or poorly supported contentions; LBP-15-1, 81 NRC 38 (2015)
NRC's hearing process is reserved for genuine, material controversies between knowledgeable litigants;
CLI-12-8, 75 NRC 416 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 309-11 (2012)
later revisions to license renewal application that bring the plant into compliance with GALL-2 have
generally been deemed acceptable; LBP-13-13, 78 NRC 284 (2013)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 310-11 (2012), *petition
for review denied sub nom. Beyond Nuclear v. NRC*, 704 F.3d 12 (1st Cir. 2013)
intervenor's requests for more testing, more methods of testing, and more information, without an
explanation of why the current program is inadequate, are not sufficient to create a genuine dispute
with a license renewal application; LBP-15-1, 81 NRC 41 n.150 (2015)

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- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315 (2012)
contentions calling for requirements in excess of those imposed by NRC regulations will be rejected as a collateral attack on the regulations; LBP-15-4, 81 NRC 167 n.64 (2015)
NRC Staff guidance is entitled to special weight in a decision on the merits; LBP-15-20, 81 NRC 847 (2015)
reference to an aging management plan in the GALL Report does not insulate that program from challenge in litigation; LBP-13-13, 78 NRC 283 n.165 (2013)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315 & n.88 (2012)
contention that seeks to impose a requirement beyond those imposed by a Commission regulation is inadmissible; LBP-15-26, 82 NRC 175 n.22 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315-22 (2012)
thinly supported contention is inadmissible; CLI-15-6, 81 NRC 355 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 318-19 & n.108 (2012)
contention is inadmissible where arguments and expert testimony are copied, largely without change, from another proceeding and fail to offer information specific to the challenged license renewal application; CLI-15-6, 81 NRC 355-56 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 320 (2012)
applicability of a guidance document may be challenged in an individual proceeding; LBP-15-20, 81 NRC 847 n.100 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 322 (2012)
severe accident mitigation alternatives analyses are conducted for the purposes of the NRC's environmental review under NEPA and are not safety analyses; CLI-15-18, 82 NRC 139 n.16 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 322-24 (2012)
it must be genuinely plausible that revising the severe accident mitigation alternatives analysis would change the outcome so that one or more of the SAMA candidates that applicant evaluated and rejected would become cost-beneficial; LBP-15-5, 81 NRC 270, 276 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 322-37 (2012)
petitioner may raise a SAMA-related contention in a license renewal adjudication if it satisfies the general contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 211 (2013)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012)
contentions admitted for litigation must point to a deficiency in the application, and not merely suggest other ways an analysis could have been done or other details that could have been included; CLI-13-7, 78 NRC 216 n.93 (2013); CLI-15-18, 82 NRC 143 n.42 (2015)
given the quantitative nature of the severe accident mitigation alternatives analysis, where the analysis rests largely on selected inputs, it may always be possible to conceive of alternative and more conservative inputs whose use in the analysis could result in greater estimated accident consequences; LBP-13-13, 78 NRC 453-54 (2013)
proper question is not whether there are plausible alternative choices for use in a severe accident mitigation alternatives analysis, but whether the analysis that was done is reasonable under NEPA; CLI-12-8, 75 NRC 406 (2012); CLI-13-7, 78 NRC 216 n.93 (2013); LBP-13-13, 78 NRC 287, 454, 474, 486 (2013); LBP-15-29, 82 NRC 250 (2015)
severe accident mitigation alternatives analysis issues can present difficult judgment calls at the contention admissibility stage; LBP-15-5, 81 NRC 261 (2015)
simply because alternative inputs could be used does not demonstrate that the original inputs to the severe accident mitigation alternatives analysis were unreasonable; LBP-13-13, 78 NRC 454 (2013)
to be successful, intervenor must point to a deficiency that renders the severe accident mitigation alternatives analysis unreasonable under NEPA; LBP-13-13, 78 NRC 454 (2013)
unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions and models may change the cost-benefit conclusions for the severe accident mitigation alternatives candidates evaluated, no purpose would be served to further refine the SAMA analysis; LBP-15-5, 81 NRC 261 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323-24 (2012)
contention proposing alternative inputs or methodologies for severe accident mitigation alternatives analysis must present some factual or expert basis for why the proposed changes in the analysis are warranted; CLI-12-8, 75 NRC 407 (2012); LBP-12-26, 76 NRC 565 (2012)

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- generalized reference to the potential human and economic costs from an accident falls short of the support necessary for a severe accident mitigation alternatives contention; CLI-15-18, 82 NRC 143 (2015)
- petitioners must provide a nexus between its concerns and any deficiencies in applicant's SAMA analysis, which would be necessary to establish a genuine dispute for an admissible contention; CLI-15-18, 82 NRC 141 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323-24, 329 (2012)
petitioner need not rerun applicant's own cost-benefit calculations, but must do more than merely suggest that additional factors be evaluated or that different analytical techniques be used; LBP-15-5, 81 NRC 261 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 324 (2012)
contention that environmental report fails to accurately and thoroughly conduct severe accident mitigation alternatives analysis to design vulnerability of GE Mark I boiling water reactor pressure suppression containment system and environmental consequences of a to-be-anticipated severe accident post-Fukushima Daiichi fails to present a genuine material dispute; LBP-15-5, 81 NRC 265 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 324-27 (2012)
because the board is the appropriate arbiter of fact-specific questions of contention admissibility, the Commission defers to the board; CLI-12-8, 75 NRC 409 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 326-27 (2012)
board is the appropriate arbiter of fact-specific questions of contention admissibility, and the Commission will not second-guess the board's evaluation of factual support for the contention, absent an error of law or abuse of discretion, even if support for the contention is weak; CLI-15-25, 82 NRC 397 & n.52 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 326-27, 329 (2012)
deference to board rulings on contention admissibility is appropriate even where the Commission may consider that the support for the contention is weak, or where the claim's materiality presents a close question; CLI-14-2, 79 NRC 26 n.89 (2014)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 329 (2012)
boards make threshold decisions on materiality on a case-by-case basis, given the nature of the issue and the record presented before the board; LBP-15-24, 82 NRC 85 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 332 (2012)
it is not sufficient to incorporate by reference large portions of material where doing so would force one to sift through it in search of asserted factual support that is not otherwise specified; LBP-12-24, 76 NRC 515, 535 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 334 n.199 (2012),
petition for review denied sub nom. Beyond Nuclear v. NRC, 704 F.3d 12 (1st Cir. 2013)
generalized economic cost arguments, unsupported by asserted facts or expert opinion, are insufficient to show a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 42 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 335 (2012), *petition for review denied sub nom. Beyond Nuclear v. NRC*, 704 F.3d 12 (1st Cir. 2013)
petitioner that fails to provide sufficient factual or expert support for the claims in its contention in contravention of section 2.309(f)(1)(v), also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-15-1, 81 NRC 38 n.124 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012)
although a standard review plan lacks the legal force of regulations, it is to be given special weight as a guidance document that has been approved by the Commission but is nonbinding guidance; LBP-14-3, 79 NRC 279, 307 (2014)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338-43 (2012), *petition for review filed sub nom. Beyond Nuclear v. NRC*, No. 12-1561 (1st Cir. May 7, 2012)
for an electrical generation alternative to qualify for in-depth review, the alternative must be able to provide 1190 MWe of baseload power during the license renewal term; LBP-12-15, 76 NRC 38 (2012)

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- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 339 (2012)
final environmental impact statements need not discuss remote and speculative alternatives, but must consider only alternatives that bring about the ends of the proposed project; LBP-12-17, 76 NRC 113 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 339 n.223 (2012),
petition for review filed sub nom. Beyond Nuclear v. NRC, No. 12-1561 (1st Cir. May 7, 2012)
“baseload power” is defined as power generating energy intended to continuously produce electricity at or near full capacity, with high availability; LBP-12-15, 76 NRC 37 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 340-42 (2012)
scope of the energy alternatives analysis is discussed; CLI-12-8, 75 NRC 397 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 341 (2012), *petition for review filed sub nom. Beyond Nuclear v. NRC*, No. 12-1561 (1st Cir. May 7, 2012)
admissible contention challenging consideration of alternatives must show that a particular alternative was not discussed in the draft environmental impact statement and provide some support that the alternative is reasonable; LBP-13-9, 78 NRC 89 (2013)
environmental reports for license renewal must address environmental impacts of the proposed action and compare those impacts to the impacts of alternative actions, but need only consider those alternatives that are reasonable; LBP-12-15, 76 NRC 36-37 (2012)
NEPA requires a hard look at the environmental effects of the planned action, not a circular restatement of NRC Staff’s own conclusions; LBP-15-11, 81 NRC 422-23 (2015)
to be successful, intervenors must demonstrate with adequate support that NRC Staff failed to take a hard look at important environmental questions or failed to provide a reasonable analysis; LBP-13-13, 78 NRC 286 (2013)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 342 (2012), *petition for review filed sub nom. Beyond Nuclear v. NRC*, No. 12-1561 (1st Cir. May 7, 2012)
a reasonable energy alternative is one that is currently commercially viable, or will become so in the near term; CLI-12-8, 75 NRC 397 (2012)
discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 combined license proceeding; LBP-12-15, 76 NRC 39 n.10 (2012)
NEPA requires that the agency take a hard look at environmental consequences of each agency action; LBP-13-4, 77 NRC 120 (2013)
to challenge an energy alternatives analysis, petitioner ordinarily must provide alleged facts or expert opinion sufficient to raise a genuine dispute as to whether the best information available today suggests that a commercially viable alternative technology (or combination of technologies) is available now, or will become so in the near future, to supply baseload power; CLI-12-8, 75 NRC 397 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 342 & n.245 (2012),
petition for review filed sub nom. Beyond Nuclear v. NRC, No. 12-1561 (1st Cir. May 7, 2012)
demonstration that an alternative energy technology, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation has not been made; LBP-12-15, 76 NRC 39 n.10 (2012)
possibility of an energy alternatives contention with respect to a technology that is likely to be available during the period of extended operation is not excluded; CLI-12-8, 75 NRC 398 n.27 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 342-43 (2012), *petition for review denied sub nom. Beyond Nuclear v. NRC*, 704 F.3d 12 (1st Cir. 2013)
intervenors fail to specify what other alternatives to the license renewal application should be discussed in the draft supplemental environmental impact statement, much less show that any proposed alternative would satisfy the purpose of the applicant’s proposed action; LBP-15-1, 81 NRC 42 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 342-44 (2012), *petition for review filed sub nom. Beyond Nuclear v. NRC*, No. 12-1561 (1st Cir. May 7, 2012)
any contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed; LBP-12-15, 76 NRC 27 (2012)

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- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 348 (2012)
board may not supply its own bases for a contention; CLI-15-17, 82 NRC 46-47 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-13-3, 77 NRC 51, 54-55 (2013)
rejection of contention, where petitioner has other contentions pending for hearing does not constitute serious and irreparable harm or affect the structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 37 n.24, 44 (2015)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28, 41 n.54 (2011)
boards have an independent obligation to determine whether petitioners meet the threshold criterion for intervention even if their standing is uncontested; LBP-12-24, 76 NRC 507 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28, 47, 53 (2011)
at the contention admission stage, it is sufficient for petitioners to proffer some minimal factual support for their contention; LBP-11-13, 73 NRC 564 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28, 47, 62 (2011)
the materiality standard requires only that petitioners provide sufficient information to show that, if their proposed refinements were incorporated, it is genuinely plausible that cost-benefit conclusions might change; LBP-11-13, 73 NRC 580 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28, 51 (2011)
NEPA requires that alternatives be considered as they exist and are likely to exist, not merely as they exist at the present time; LBP-12-17, 76 NRC 115 (2012)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28, 53-56 (2011)
affidavit supporting motion to reopen renders contention admissible; LBP-11-20, 74 NRC 102 n.59 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604 (2011)
Fukushima-related contentions were dismissed as premature; LBP-11-39, 74 NRC 870 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 606-07 (2011)
admissibility of Fukushima-related contentions is determined; LBP-11-37, 74 NRC 779 n.3 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 609 (2011)
petitioner has not provided a potentially plausible case that the Task Force findings and recommendations on the Fukushima accident will paint a seriously different picture of the environmental impacts; LBP-11-32, 74 NRC 671 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 609-10 (2011)
intervenor's challenge to NRC's compliance with NEPA in light of the NRC's Fukushima Task Force Report is premature; LBP-11-33, 74 NRC 681-82 (2011)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 610 & n.35 (2011)
in the future the Commission might provide relevant guidance regarding the proper time frame for adjudicating Fukushima-related contentions; LBP-11-39, 74 NRC 871 n.42 (2011)
- Nguyen v. Immigration and Naturalization Service*, 533 U.S. 53, 63 (2001)
equal protection principles require that all persons similarly situated shall be treated alike; LBP-11-15, 73 NRC 639 n.20 (2011)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 365 (1975)
inherent in any forecast of future electric power demands is a substantial margin of uncertainty; LBP-11-6, 73 NRC 219-20 (2010)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 365-66 (1975)
forecasting of need for power is inherently uncertain; LBP-11-6, 73 NRC 222 (2010)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 365-68 (1975)
because a need-for-power assessment necessarily entails forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, need-for-power assessments are properly conservative; LBP-11-7, 73 NRC 283 (2011); LBP-12-5, 75 NRC 238 (2012)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 366-67 (1975)
need-for-power forecasts are required only to be reasonable; LBP-12-5, 75 NRC 237 (2012)

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- regardless of whether NRC itself conducts the need-for-power assessment or relies on another agency's forecasts and studies, that assessment need only be reasonable; LBP-11-7, 73 NRC 283 (2011)
- Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 345 (1999)
- any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 260 n.31 (2014)
- when promulgating Subpart M, the Commission was well aware that most license transfer issues would be financial in nature; CLI-14-5, 79 NRC 260 n.32 (2014)
- Nixon v. United States*, 506 U.S. 224, 232 (1993)
- plain language of enacted text is the best indicator of intent; LBP-14-4, 79 NRC 348 (2014)
- Norfolk Southern Corp. v. Oberly*, 632 F. Supp. 1225, 1243 (D. Del. 1986), *aff'd on other grounds*, 822 F.2d 3888 (3d Cir. 1987)
- summary disposition is particularly inappropriate when a licensing board is presented with conflicting expert testimony, for at that stage of a proceeding it is not the role of licensing boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-7, 73 NRC 263 (2011); LBP-11-14, 73 NRC 595 (2011)
- North Alabama Express, Inc. v. United States*, 585 F.2d 783, 786 (5th Cir. 1978)
- boards may not rely on a *Federal Register* notice to put petitioner on constructive notice of a requirement that the board itself cannot discern in the regulations; LBP-13-3, 77 NRC 97 (2013)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-98-24, 48 NRC 267, 268-69 (1998)
- with license's withdrawal of license amendment request, the proceeding is moot; CLI-13-10, 78 NRC 568 (2013)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-98-24, 48 NRC 267, 269 (1998)
- stare decisis* is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n.8 (1999)
- intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 527-28 n.98 (2015)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999)
- at the contention pleading stage, parties must come forward with sufficiently detailed grievances to allow a board to conclude that genuine disputes exist justifying a commitment of adjudicatory resources; LBP-11-21, 74 NRC 133 (2011)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 223 (1999)
- petitioner lacked good cause for a hearing request filed 7 days after the filing deadline when the argument relied on a misimpression of due dates; LBP-11-9, 73 NRC 403, 409 n.107 (2011)
- North Cascades Conservation Council v. U.S. Forest Service*, 98 F. Supp. 2d 1193, 1198-99 (W.D. Wash. 1999)
- projects that are not connected actions, but are physically related to the system, are cumulative actions and are subject to an examination of cumulative impacts; LBP-14-6, 79 NRC 422 (2014)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 2), LBP-92-28, 36 NRC 202, 213 (1992)
- even if an import or export license authorized possession and/or use of the low-level radioactive waste, the petition does not assert how the LLRW is a significant source of radioactivity or provide any scenario in which the import or export of the LLRW would result in an accident that could produce obvious offsite consequences; CLI-11-3, 73 NRC 622 n.46 (2011)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-00-25, 52 NRC 355, 357 (2000)
- boards are in a better position than the Commission to consider any expert affidavit or affidavits that petitioner submits to support its motion to reopen; CLI-12-14, 75 NRC 702 n.64 (2012)

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- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-00-25, 52 NRC 355, 357 n.3 (2000)
after a petition to review a final order has been filed with the Commission, the board no longer has jurisdiction to consider a motion to reopen and the motion is properly filed with the Commission; CLI-12-14, 75 NRC 701 n.60 (2012)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-10, 53 NRC 353, 361 (2001)
interpretation of regulations, like interpretation of a statute, begins with the language and structure of the provisions, and the entirety of each provision must be given effect; LBP-14-7, 79 NRC 473 (2014)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 NRC 149, 155, *aff'd*, CLI-98-20, 48 NRC 183, 184 (1998)
licensing board declined to apply proximity presumption in a license amendment proceeding where there was no obvious potential for offsite consequences; LBP-15-17, 81 NRC 773, 774 (2015)
- Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 NRC 149, 155-56 (1998)
intervention petition was not sufficiently specific when it merely repeated the contents of petitioner's earlier petition concerning a prior license amendment; LBP-15-17, 81 NRC 774 (2015)
- Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006)
under NEPA, an agency need not discuss alternatives that are infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area; LBP-13-9, 78 NRC 88 (2013)
- Northern California Power Agency v. Federal Energy Regulatory Commission*, 37 F.3d 1517, 1522 (D.C. Cir. 1994)
to avoid a finding of arbitrary and capricious agency action, NRC Staff may not depart from its established policies, procedures, and practices without a reasonable explanation for the change; LBP-14-2, 79 NRC 150 n.87 (2014)
- Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 250 (1974)
if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 14 n.10 (2014)
- Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978), *aff'd*, *Porter County Chapter of Izaak Walton League v. NRC*, 606 F.2d 1363 (D.C. Cir. 1979)
abuse of discretion standard of review is applicable to discretionary Staff actions not subject to a hearing opportunity; CLI-13-1, 77 NRC 29 n.158 (2013)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-12-24, 76 NRC 503, 507-08 (2012)
proximity presumption is limited to reactor licensing proceedings and to other cases where there is an obvious potential for offsite radiological consequences; LBP-14-4, 79 NRC 332 (2014)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-252, 8 AEC 1175, 1177-78 (1975)
party may seek reconsideration of an earlier ruling whereby the party was not actually prejudiced, where the ruling could well have an impact upon the course of many licensing hearings; CLI-15-6, 81 NRC 369 n.151 (2015)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 44 (1978)
in determining whether a license amendment, construction permit, or early site permit will be issued to applicant, common standards of 10 C.F.R. 50.40 are applied; LBP-15-20, 81 NRC 841 n.65 (2015)
section 50.40 requires that NRC be persuaded that applicant will comply with all applicable regulations, that health and safety of the public will not be endangered, and that issuance of the amendment will not be inimical to the health and safety of the public; LBP-15-17, 81 NRC 778 (2015); LBP-15-20, 81 NRC 847 n.104 (2015)

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- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 54 (1978)
issuance of advisory opinions is generally disfavored; CLI-13-4, 77 NRC 105 (2013)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 484 (2010)
board admission of a contention charging that a licensee's poor safety culture could undermine its ability to manage aging during the period of extended operations was reversed as not within the scope of license renewal; LBP-13-8, 78 NRC 13 (2013)
board erred in admitting a contention pertaining to a plant's safety culture; CLI-11-11, 74 NRC 435 (2011)
claims of past and current mismanagement are outside the scope of the license renewal proceedings; LBP-15-5, 81 NRC 300 (2015)
contentions alleging that applicants' handling of past safety issues at the plants demonstrated that applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term are inadmissible; LBP-13-8, 78 NRC 21 (2013)
safety culture issues are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 300 (2015)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 484-85, 494 (2010)
contention challenging applicant's safety culture and claiming to rely on NRC Staff's Safety Evaluation Report is inadmissible because the SER did not discuss safety culture as a general matter and could not serve as a reasonably apparent foundation for a safety culture contention; LBP-15-11, 81 NRC 409 (2015)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 490 (2010)
license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to ongoing compliance oversight activity; CLI-11-11, 74 NRC 435 (2011)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 490-92 (2010)
safety culture arguments are outside the scope of license renewal because they raise issues that are relevant to current plant operation; LBP-12-27, 76 NRC 603 (2012)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 491 (2010)
broad-based issues akin to safety culture, such as operational history, quality assurance, quality control, management competence, and human factors, are beyond the bounds of a license renewal proceedings; CLI-11-11, 74 NRC 435 (2011); LBP-11-21, 74 NRC 129-30 (2011); LBP-12-27, 76 NRC 608, 611 n.171 n.154 (2012); LBP-15-5, 81 NRC 300, 301 (2015)
contention that licensee's history of managing whistleblower complaints regarding safety issues demonstrates that the plant will not be operated safely during the license renewal term is inadmissible; LBP-13-8, 78 NRC 32 (2013)
operating license renewal applicants must make a detailed assessment, conducted on passive, safety-related physical systems, structures, and components of the plant; LBP-11-21, 74 NRC 129 (2011)
safety-related review in license renewal review focuses on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 435 (2011)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 492 (2010)
contentions that relate to current operations at a plant, as opposed to how it might operate during the period of extended operation, are inadmissible; LBP-13-8, 78 NRC 33 (2013)
if a stakeholder is of the view that immediate action is needed to remedy an ailing safety culture at any facility, then that matter should be brought immediately to the attention of the agency via section 2.206; LBP-13-8, 78 NRC 33 (2013)
NRC's license renewal process concerns a particularized and limited inquiry into the potential impacts of an additional 20 years of nuclear power plant operation, not day-to-day operational issues; LBP-11-21, 74 NRC 129 (2011)

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- to the extent petitioner believes there are existing management competence questions that merit immediate action, then its remedy is to direct Staff's attention to those matters by filing a request for action under 10 C.F.R. 2.206; CLI-11-11, 74 NRC 437 (2011)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493 n.56 (2010)
- although sufficiency of the application and NRC Staff's environmental review of that application are proper targets of contentions, sufficiency of Staff's safety review of the application is not; LBP-11-29, 74 NRC 620 n.37 (2011)
- intervention petitioners may not challenge the adequacy of the safety evaluation report, but may file contentions challenging the combined license application based on new information in the SER; LBP-11-22, 74 NRC 273 n.72 (2011)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493-94 (2010)
- a safety evaluation report did not add a last piece of information, but merely compiled and organized preexisting information; CLI-11-8, 74 NRC 225 (2011)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 494 (2010)
- NRC generally considers approximately 30-60 days as the limit for timely filings based on new information; CLI-11-2, 73 NRC 342 n.43 (2011)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 494-95 (2010)
- intervenor's reliance on long-available documents regarding leakages and notices of violation made a contention untimely as filed; LBP-15-11, 81 NRC 409 (2015)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010)
- adoption of building code rules by a state presents new and materially different information not previously available, upon which intervenors may rest their proposed contention; LBP-11-7, 73 NRC 290 n.233 (2011)
- intervenor has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as a foundation for a specific contention; CLI-11-2, 73 NRC 339 n.22 (2011); LBP-12-13, 75 NRC 789-90 n.17 (2012)
- petitioners are not allowed to postpone filing a contention challenging publicly available information or analysis until NRC Staff issues some document that collects, summarizes, and places into context the facts supporting that contention; CLI-15-17, 82 NRC 44-45 (2015); LBP-12-1, 75 NRC 13 n.50 (2012); LBP-15-11, 81 NRC 409 (2015)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 912-14 (2008)
- when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual or nongovernmental organization, whether via a proximity presumption or otherwise; LBP-13-6, 77 NRC 272 n.7 (2013)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 931 (2008)
- petitioner must challenge the environmental report, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-12-8, 75 NRC 553 (2012)
- Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 938-42 (2008)
- contention that applicant had inadequately described aging management plan by relying on a promise of compliance with NRC orders instead of describing the plan was admissible; LBP-15-24, 82 NRC 83 n.92 (2015)
- Northrop Grumman Information Technology, Inc. v. United States*, 535 F.3d 1339, 1345 (Fed. Cir. 2008)
- language used to incorporate extrinsic material by reference must explicitly, or at least precisely, identify the written material being incorporated; LBP-12-24, 76 NRC 515 n.60 (2012)

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- Northside Sanitary Landfill, Inc. v. Thomas*, 849 F.2d 1516, 1520 (D.C. Cir. 1988)
dialogue between administrative agencies and the public is a two-way street; CLI-11-12, 74 NRC 488 (2011)
- Northwest Resource Information Center, Inc. v. National Marine Fisheries Service*, 56 F.3d 1060, 1067-69 (9th Cir. 1995)
a new transmission corridor is a connected action and must be fully evaluated in the final environmental impact statement; LBP-12-12, 75 NRC 779 (2012)
action lacks independent utility when it would be irrational or unwise to pursue the action without the presence of the EIS-generating central action; LBP-15-16, 81 NRC 697 (2015)
“connected actions” are those that lack independent utility; LBP-12-12, 75 NRC 779 (2012); LBP-14-6, 79 NRC 421 (2014); LBP-14-9, 80 NRC 41 (2014)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004)
the Commission will defer to board rulings on standing absent an error of law or abuse of discretion; CLI-12-12, 75 NRC 608 (2012)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 193 n.10, *aff’d*, CLI-04-13, 59 NRC 244 (2004)
petitioner could not rely on caretakers maintaining and farming the property in petitioner’s absence as grounds for proximity-based standing; LBP-15-17, 81 NRC 775 n.139 (2015)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 195 (2004), *aff’d*, CLI-04-13, 59 NRC 244 (2004)
mere potential exposure to minute doses of radiation within regulatory limits does not constitute a distinct and palpable injury on which standing can be founded; CLI-11-3, 73 NRC 623 n.51 (2011)
petitioners have offered conclusory statements of harm, but no plausible explanation for why emissions from incinerating imported low-level radioactive waste would reach any of its members or prove harmful 10, 17, or 25 miles away from the site; CLI-11-3, 73 NRC 622-23 n.48 (2011)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-05-8, 61 NRC 202, 207 (2005)
NEPA imposes a procedural requirement on an agency’s decisionmaking process by mandating that an agency consider the environmental impacts of a proposed action and inform the public that it has taken those impacts into account in making its decision; LBP-11-17, 74 NRC 22 n.52 (2011)
- Nuclear Fuel Services, Inc.* (Special Nuclear Facility), LBP-07-16, 66 NRC 277, 284-85 (2007)
section 2.309 standing and contention admissibility criteria are the relevant legal standards for evaluating third-party requests for hearing on a confirmatory order; LBP-14-4, 79 NRC 327 n.40 (2014)
- Nuclear Information and Resource Service v. NRC*, 918 F.2d 189, 195 (1990), *aff’d and rev’d on reh’g on other grounds*, 969 F.2d 1169 (D.C. Cir. 1992)
although the Commission retains broad authority to define standards and thresholds for determining when new information raises a material issue of a plant’s conformity with the Atomic Energy Act, if such information is presented, it must provide a hearing upon request; LBP-11-22, 74 NRC 282 (2011)
arbitrary and unreasonable restrictions on the right to a hearing would violate AEA § 189a; LBP-11-22, 74 NRC 282 (2011)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4) CLI-11-6, 74 NRC 203, 208-09 (2011)
adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-15-6, 81 NRC 376, 388 n.255 (2015); LBP-11-38, 74 NRC 832 (2011); LBP-12-5, 75 NRC 239 (2012); LBP-12-17, 76 NRC 83 (2012); LBP-14-9, 80 NRC 67 (2014)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 209 (2011)
both the content of the draft environmental impact statement and the additional material submitted by the parties form part of the adjudicatory record; LBP-12-23, 76 NRC 453 (2012)

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- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 209-10 (2011)
incorrect legal ruling typically does not warrant interlocutory review because such rulings can be reviewed on appeal from partial initial decisions or a final decision; CLI-15-17, 82 NRC 37 (2015); CLI-15-24, 82 NRC 335 (2015)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 210-11 (2011)
Fukushima-related petitions for suspension of proceeding and rescission of regulations that make generic conclusions about environmental impacts of severe reactor and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings are denied; LBP-11-39, 74 NRC 865 n.5 (2011)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-11-7, 73 NRC 254, 263 (2011)
when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper; LBP-12-23, 76 NRC 478 (2012)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-11-7, 73 NRC 254, 277-80 (2011)
new contentions may be admitted as long as they meet the timeliness criteria in 10 C.F.R. 2.309(f)(2) or the nontimely contention criteria in section 2.309(c)(1) and fulfill the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-11-39, 74 NRC 866 (2011)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-11-7, 73 NRC 254, 290 n.233, *petition for review denied as premature*, CLI-11-6, 74 NRC 203 (2011)
intervenor were correct to file contentions on a newly adopted rule because, unlike a proposed rule, it now has indisputable legal effect; LBP-15-15, 81 NRC 611-12 n.96 (2015)
proposed rule or proposed law may not support an admissible contention because its ultimate effect is at best speculative; LBP-15-15, 81 NRC 610 (2015)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-11-7, 73 NRC 254, 292-93 (2011)
at the contention admissibility stage, petitioners need not marshal their evidence as though preparing for an evidentiary hearing; LBP-11-21, 74 NRC 125 n.46 (2011)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-11-25, 74 NRC 380, 397 (2011)
at the contention admissibility stage of a proceeding, intervenors need not marshal their evidence as though preparing for an evidentiary hearing; LBP-15-20, 81 NRC 858 n.155 (2015)
- Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), LBP-12-5, 75 NRC 227, 248 (2012)
contentions migrate because the underlying issue and concern raised in response to the draft supplemental environmental impact statement remains, and because a motion for summary disposition has not been filed; LBP-14-5, 79 NRC 395 n.100 (2014)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 163 (2006)
claims of interest-based organizational standing were denied; LBP-13-6, 77 NRC 282-83 n.23 (2013)
in determining whether an individual member of an organization qualifies for standing in his or her own right, NRC generally applies traditional judicial standing concepts; LBP-11-13, 73 NRC 545 (2011)
judicial concepts of standing are generally followed in NRC proceedings; LBP-11-21, 74 NRC 121 (2011)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 164 (2006)
mere existence of comments and questions generated by NRC Staff do not, in and of themselves, demonstrate a material deficiency in applicant's combined license application; LBP-11-6, 73 NRC 178 n.26 (2010)
- Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 753 (2005)
applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 553 (2011)

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- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 728 (2006)
the board is the agency's expert body on matters of contention admissibility, and the Commission generally defers to its judgment on such matters; CLI-12-14, 75 NRC 702 (2012)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)
allowing new claims in a reply not only would defeat the contention-filing deadline, but would unfairly deprive other participants of an opportunity to rebut the new claims; LBP-15-26, 82 NRC 182 n.36 (2015)
argument is untimely when it is raised for the first time at oral argument; LBP-15-23, 82 NRC 63 n.21 (2015)
if a contention as originally pleaded did not satisfy 10 C.F.R. 2.309(f)(1), a reply cannot remediate the deficiency by introducing, for the first time, references to a genuine dispute with the license application at issue; LBP-11-34, 74 NRC 694 n.62 (2011)
petitioner may respond to the legal or logical arguments presented in the answers to its hearing request, but may not use its reply to raise new issues for the first time; CLI-15-18, 82 NRC 146 (2015)
reply briefs must focus narrowly on the legal or factual arguments first presented in the original motion or petition or raised in the answers to it; LBP-11-34, 74 NRC 694 (2011) LBP-14-4, 79 NRC 330 (2014)
reply cannot expand the scope of the arguments set forth in the original hearing request; LBP-14-4, 79 NRC 330 (2014)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 329 (2006)
parties may not raise new arguments that are outside the scope of their contentions, but may legitimately amplify arguments presented in support of the contention in order to fairly respond to arguments raised by the opposing party; LBP-12-23, 76 NRC 463 (2012)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 352 (2006)
petitioner's assertion that recriticality is demonstrated by the relative quantities of radionuclides released is not self-evident and is clearly of the class of statements that must be supported by expert opinion; LBP-11-23, 74 NRC 306 (2011)
- Nuclear Management Co.* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)
petitioner may not remediate deficient contentions by introducing, in the reply, documents that were available to it during the time frame for initially filing contentions; LBP-12-7, 75 NRC 517 n.16 (2012)
- Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18, 27 (1st Cir. 2007)
individual tribal member's assertion of an interest based on cultural resource concerns must show that there is a concrete or particularized injury to herself as an individual; LBP-13-6, 77 NRC 277 n.12 (2013)
- Office of Disciplinary Counsel v. Burse*, 919 N.E.2d 198, 204-06 (Ohio 2009)
an attorney whose violations of the Rules of Professional Conduct included negotiating a settlement for a client that had never given him settlement authority, forging client's name on settlement check, and depositing it into attorney's bank account was disbarred permanently; LBP-11-13, 73 NRC 549 (2011)
- Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 249 n.61 (1991)
economic interest generally is not sufficient to afford standing in NRC licensing proceedings regarding health and safety; LBP-14-4, 79 NRC 352 (2014)
- Ohio Valley Environmental Coalition v. Hurst*, 604 F. Supp. 2d 860, 888 (S.D. W. Va. 2009)
agency's reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation constitutes an adequate buffer against the negative impacts that result from the authorized activity to render such impacts so minor as to not warrant an environmental impact statement; LBP-12-23, 76 NRC 467 (2012)
agency's reliance on mitigation in making a finding of no significant impact must be justified; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 457, 461 (2014)
proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-12-23, 76 NRC 467-48 (2012); LBP-14-7, 79 NRC 461-62 (2014)

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- reliance on mitigation is justified if the proposed mitigation underlying the finding of no significant impact must be more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-14-7, 79 NRC 461 (2014)
- there must be some assurance that mitigation measures constitute an adequate buffer against the negative impacts that result from the authorized activity to render such impacts so minor as to not warrant an environmental impact statement; LBP-14-7, 79 NRC 461 (2014)
- when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
- Ohio Valley Environmental Coalition v. Hurst*, 604 F. Supp. 2d 860, 888, 890 (S.D. W. Va. 2009)
agency's reliance on mitigation in making a finding of no significant impact is justified if it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 469 (2012)
- Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000)
mitigation plan in final supplemental environmental impact statement need not be in final form to comply with NEPA's procedural requirements; LBP-15-16, 81 NRC 694 (2015)
- Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 476 (9th Cir. 2000)
courts decide whether a mitigation plan was adequately or inadequately discussed, but the line between these two options is not well defined; LBP-15-16, 81 NRC 688 (2015)
merely listing possible mitigation options does not satisfy NEPA; LBP-15-16, 81 NRC 687 (2015)
- Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 479-80 (9th Cir. 2000)
NEPA requires acknowledgment of tribal hunting and fishing rights, as well as an analysis of how the project will affect those rights; LBP-15-5, 81 NRC 282, 286 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329 (2015)
direction is given on what licensee actions do and do not constitute a de facto license amendment triggering hearing rights; CLI-15-14, 81 NRC 734 n.21 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 333 (2015)
board need not address the issue of standing where petitioner has failed to demonstrate the existence of a licensing action subject to AEA hearing rights; LBP-15-27, 82 NRC 189 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 333 n.19 (2015)
Commission exercises its discretionary authority to consider amicus brief; CLI-15-10, 81 NRC 537-38 n.5 (2015); CLI-15-23, 82 NRC 324 n.16 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 334 (2015)
NRC Staff's ongoing enforcement of regulations and license conditions does not trigger hearing rights; LBP-15-24, 82 NRC 82 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 336-37 (2015)
NRC inspection reports, even those documenting violations, are not de facto license amendments; LBP-15-27, 82 NRC 197 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 337 (2015)
actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA; LBP-15-27, 82 NRC 195-96 (2015)
hearing rights do not attach to licensee changes made under section 50.59 because those changes do not require NRC approval but are instead subject to normal NRC oversight through the inspection process; CLI-15-14, 81 NRC 747 n.41 (2015)
mere possibility of a future license amendment does not trigger a hearing opportunity today; LBP-15-27, 82 NRC 198 (2015)
- Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 338 (2015)
Commission declined to interpret the AEA to require hearings based on the possibility that a licensee may request an amendment to make unspecified modifications at some uncertain time in the future; CLI-15-14, 81 NRC 741-42, 743 (2015)
- Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 49 (1993)
stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)

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- One Beacon Insurance Co. v. Crowley Marine Services, Inc.*, 648 F.3d 258, 268 (5th Cir. 2011)
notice of incorporated terms is reasonable where, under the particular facts of the case, a reasonably prudent person should have seen them; LBP-12-24, 76 NRC 515 n.57 (2012)
- O'Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 231 (5th Cir. 2007)
when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
- O'Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 236 n.10 (5th Cir. 2007)
cumulative effects and improper segmentation issues raise separate-but-similar questions; LBP-14-6, 79 NRC 419-20 n.76 (2014)
federal agencies may plan a number of related actions but may decide to prepare impact statements on each action individually rather than prepare an impact statement on the entire group, creating a segmentation or piecemealing problem; LBP-14-6, 79 NRC 419-20 n.76 (2014)
- Owens v. Brock*, 860 F.2d 1363, 1366 (6th Cir. 1988)
an agency's discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether the Equal Access to Justice Act applies to a particular proceeding; LBP-11-8, 73 NRC 360 (2011)
- Oystershell Alliance v. NRC*, 800 F.2d 1201, 1207 (D.C. Cir. 1986)
in examining petitioners' plea to reopen the record, court relied on the same court-sanctioned test applied by NRC; CLI-15-19, 82 NRC 156 n.21 (2015)
- Oystershell Alliance v. NRC*, 800 F.2d 1201, 1207-08 (D.C. Cir. 1986)
courts of appeals have repeatedly approved NRC practice of closing the hearing record after resolution of the last live contention, and of holding new contentions to the higher reopening standard; CLI-12-14, 75 NRC 700 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1405 (1977)
expert witnesses must have the requisite education, training, skill, or experience in operation of a nuclear power plant or in probabilistic risk assessment to support a contention; LBP-11-35, 74 NRC 737 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 913 (1981)
seismology is an evolving science; LBP-15-27, 82 NRC 186 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1981)
prima facie evidence must be legally sufficient to establish a fact or case unless disproved; LBP-14-16, 80 NRC 194 n.64 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807, review denied, CLI-83-32, 18 NRC 1309 (1983)
license applications, not Staff's review, are to be the focus of a licensing adjudication; LBP-13-6, 77 NRC 298 n.31 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983)
proponents of motions to reopen the record bear a heavy burden; LBP-11-22, 74 NRC 270 (2011)
reopening motions must show that a different result would have been reached initially if the material had been considered; LBP-11-20, 74 NRC 84 n.108 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1345 (1983)
perfection in plant construction and the facility construction quality assurance program is not a precondition for a license under either the Atomic Energy Act or the Commission's regulations; LBP-14-7, 79 NRC 471 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 576 (1984)
effect of a pattern of quality assurance violations is not necessarily to show that particular safety-related information is false, but to erode confidence that NRC can reasonably have in, and

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- create substantial uncertainty about the quality of, work that is tainted by the alleged QA violations; LBP-12-23, 76 NRC 479 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577 & n.22, rev. declined, CLI-84-14, 20 NRC 285 (1984)
- relative to factual matters, to carry burden of proof, NRC Staff and/or applicant must establish that its position is supported by a preponderance of the evidence; LBP-15-3, 81 NRC 85 (2015); LBP-15-16, 81 NRC 642 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1365-66 (1984)
- reopening motions must show that a different result would have been reached initially if the material had been considered; LBP-11-20, 74 NRC 84 n.108 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366 (1984)
- for a reopening motion to be timely presented, movant must show that the issue sought to be raised could not have been raised earlier; LBP-11-20, 74 NRC 85 n.110 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-880, 26 NRC 449, 460-61 (1987)
- information may be unavoidably incomplete or unavailable, and under those circumstances, a final environmental impact statement can overcome this deficiency if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-11-11, 74 NRC 444 n.94 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 364-65 (1981)
- in the post-TMI time frame, the Commission, although providing for some modified procedures, continued to apply existing rules for filing new contentions and motions to reopen the record; CLI-11-5, 74 NRC 170 (2011)
- where initial decisions have been issued, the record should not be reopened to take evidence on some accident-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision; CLI-11-5, 74 NRC 154 n.43 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1715 (1982)
- the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-2, 73 NRC 338 n.20 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 6 n.3 (1986)
- no significant hazards consideration determination is a procedural device to determine when, not whether, petitioners' right to a hearing under the Atomic Energy Act will occur; LBP-15-26, 82 NRC 172 n.14 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 334-35 (2002)
- any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 260 n.31 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 344 (2002)
- if petitioner can provide a sound basis to dispute compliance-related statements in a license amendment request, then the contention is within the scope of the proceeding; LBP-15-24, 82 NRC 83 n.87, 87 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 345 (2002)
- one type of litigant found repeatedly to present economic interests not cognizable in an NRC license transfer proceeding is a utility ratepayer; LBP-14-4, 79 NRC 352 (2014)

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- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 26-27 (2003)
organizational standing in an agency adjudicatory proceeding could be based on an organizational interest that has well-recognized institutional underpinnings; LBP-13-6, 77 NRC 283 n.23 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003)
absent information to the contrary, NRC may properly assume that an applicant or licensee will comply with concrete and enforceable conditions and requirements imposed by statutes, regulations, licenses, or permits issued by competent federal, state, or local governmental entities; LBP-13-4, 77 NRC 218 n.95 (2013); LBP-15-16, 81 NRC 695 n.494 (2015)
Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; CLI-14-11, 80 NRC 178 n.53 (2014); LBP-15-4, 81 NRC 175 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-08-1, 67 NRC 1, 4-5 (2008)
within the geographic boundary of the Ninth Circuit, NRC may not categorically exclude NEPA terrorism contentions; CLI-11-11, 74 NRC 456 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 431 (2011)
Commission's standard of review is highly deferential, and it will not overturn a board's ruling on threshold issues such as intervention absent error of law or abuse of discretion; CLI-15-21, 82 NRC 301 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 432 (2011)
board admission of a contention alleging that licensee had a repeated pattern of violations that could undermine licensee's ability to manage aging during the period of extended operations was reversed as not within the scope of license renewal; LBP-13-8, 78 NRC 13 (2013)
contentions alleging that applicants' handling of past safety issues at the plants demonstrated that the applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term are inadmissible; LBP-13-8, 78 NRC 21 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435 (2011)
any contention that falls outside the specified scope of the proceeding must be rejected; LBP-13-6, 77 NRC 285 (2013)
contention that licensee's history of managing whistleblower complaints regarding safety issues demonstrates that the plant will not be operated safely during the license renewal term is inadmissible; LBP-13-8, 78 NRC 32 (2013)
license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to ongoing compliance oversight activity; LBP-13-8, 78 NRC 13 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-36 (2011)
any contention that falls outside the specified scope of the proceeding must be rejected; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 25-26 (2012); LBP-12-27, 76 NRC 594 (2012)
claims of past and current mismanagement are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 300, 301 (2015)
ongoing compliance oversight activities are not within the scope of license renewal proceedings; LBP-15-5, 81 NRC 300 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-37 (2011)
safety culture arguments are outside the scope of license renewal because they raise issues that are relevant to current plant operation; LBP-12-27, 76 NRC 603 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 436 (2011)
contention that offers no explanation how its assertions are directly relevant to applicant's ability to manage the effects of aging during the renewal term is inadmissible; LBP-13-8, 78 NRC 32 (2013)

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- genuine dispute prong of 10 C.F.R. 2.309(f)(1)(vi) requires a nexus between alleged deficiencies and a material consequence; LBP-15-1, 81 NRC 37 n.121 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 436 n.47 (2011)
- management integrity contentions are admissible in license renewal proceedings only if they rely on specific supporting information, including references to a serious incident involving shutdown where management responsible for the incident remained in place, a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert in support of the contention; LBP-13-8, 78 NRC 33 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 436-37 (2011)
- contention that does not dispute any specific portion of Entergy's fuel handling accident analysis is inadmissible for lack of a genuine dispute; LBP-15-18, 81 NRC 801 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 437 (2011)
- petitioners can raise compliance issues only under 10 C.F.R. 2.206, which would allow them to petition NRC to take enforcement action; LBP-15-5, 81 NRC 264 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 437 & n.49 (2011)
- boards should not supply new information not otherwise present in the adjudicatory record in order to cure deficiencies in a petition; CLI-12-12, 75 NRC 611 n.39 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 440-43 (2011)
- inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 298 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 441-42 (2011)
- the required level of demonstration by petitioners of cost-effectiveness of other severe accident mitigation alternatives is case and issue specific; LBP-11-35, 74 NRC 752 n.223 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 442 (2011)
- at the contention filing stage, factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion; LBP-15-11, 81 NRC 442 n.271 (2015)
- whether a contention should properly be characterized as a contention of omission or a contention of adequacy and the ramifications of such a designation regarding contention admissibility are discussed; LBP-13-9, 78 NRC 47 n.30 (2013); LBP-14-5, 79 NRC 384 n.33 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 442 n.81 (2011)
- at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion; LBP-15-1, 81 NRC 39 (2015); LBP-15-11, 81 NRC 426 n.157 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 442-43 (2011)
- board admitted a contention without deciding if it was a contention of omission or a contention of inadequacy; LBP-15-5, 81 NRC 284 n.220 (2015)
- contention that applicant had failed to discuss a report on a recently identified seismic fault near the plant is admissible; LBP-15-20, 81 NRC 858-59 & n.181 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443 (2011)
- board merits determination is inappropriate at the contention admissibility stage; LBP-13-6, 77 NRC 288, 290 (2013)

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- merits determinations cannot be made at the contention admissibility stage; LBP-14-6, 79 NRC 432 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 444 (2011)
- NRC, as an independent regulatory agency, is not bound by those portions of Council on Environmental Quality NEPA regulations that have a substantive impact on the way in which the Commission performs its regulatory functions; LBP-11-35, 74 NRC 750 n.214 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 444-45 (2011)
- petitioners, not just parties, may request a rule waiver in NRC adjudicatory proceedings; CLI-12-19, 76 NRC 387 n.55 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 449 (2011)
- rule waiver petitioner must satisfy a four-factor test; CLI-12-6, 75 NRC 364 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 452 (2011)
- contentions that challenge an agency rule or regulation without a waiver, in addition to being expressly prohibited, are outside the scope of the proceeding; CLI-15-21, 82 NRC 302 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 452 n.139 (2011)
- bare assertions are insufficient to support admission of a contention; LBP-12-27, 76 NRC 603, 608 (2012)
- neither speculation nor conclusory assertions, even by an expert, alleging that a matter fails to satisfy the AEA or NEPA will suffice to allow admission of a proffered contention; LBP-12-15, 76 NRC 26 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 453 (2011)
- any evaluation of the Fukushima events will include consideration of lessons learned that may apply to spent fuel pools; LBP-12-1, 75 NRC 22 n.82 (2012)
- NRC will evaluate all technical and policy issues related to the Fukushima event to identify potential research, generic issues, changes to the reactor oversight process, rulemakings, and adjustments to the regulatory framework that should be conducted by NRC; LBP-11-35, 74 NRC 761 n.241 (2011)
- NRC's comprehensive evaluation of the Fukushima event includes consideration of those facilities that may be subject to seismic activity or tsunamis and of lessons learned that may apply to spent fuel pools that are part of the U.S. nuclear fleet; LBP-11-35, 74 NRC 761 n.241 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 457 (2011)
- boards should not have to guess what aspects of the severe accident mitigation alternatives analysis the petitioner is challenging; LBP-12-1, 75 NRC 20 n.77 (2012)
- even assuming that petitioner intended to challenge the discussion of mitigation measures in applicant's environmental report, petitioner's unsupported statement falls short of the information required to show the existence of a genuine dispute; LBP-11-35, 74 NRC 758-59 n.237 (2011)
- it is petitioner's responsibility to put others on notice as to the issues it seeks to litigate in the proceeding; LBP-11-35, 74 NRC 758-59 n.237 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 457-58 (2011)
- NRC can and will make appropriate adjustments to regulatory requirements if necessary; LBP-11-35, 74 NRC 750 n.212 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 685 (2012)
- sua sponte review authority is to be used only in extraordinary circumstances; CLI-15-1, 81 NRC 9 n.39 (2015)

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- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 (2012)
prior to its revision, 10 C.F.R. 2.341(f)(1) required that a referred ruling raise a significant and novel legal or policy issue and necessitate resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 206 n.25 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 n.30 (2012)
by participating in NRC proceedings, intervenors accept the obligation of uncovering relevant, publicly available information; CLI-12-21, 76 NRC 499 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 687 n.32 (2012)
agency directs NRC Staff to review issues outside the adjudicatory context and recommend whether the Commission should consider modifications to agency guidance or practice; CLI-13-4, 77 NRC 105 n.13 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 687 n.32 (2012)
NRC Staff was asked to review generically an applicant's duty to supplement or correct its environmental report; CLI-12-19, 76 NRC 386 n.54 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-15-14, 81 NRC 729, 730, 734-35 (2015)
NRC is required to provide an opportunity to request a hearing under the Atomic Energy Act on a license amendment; CLI-15-21, 82 NRC 299 n.12 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-15-14, 81 NRC 729, 735 (2015)
NRC Staff's ongoing enforcement of regulations and license conditions does not trigger hearing rights; LBP-15-24, 82 NRC 82 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), DD-90-3, 31 NRC 595 (1990)
the record before the board falls far short of rebutting the presumption that a petition for license modification, suspension, or revocation is a meaningful avenue for seeking administrative relief; LBP-12-14, 76 NRC 10 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993)
contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-13-6, 77 NRC 284 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 279 (2010), *aff'd in part and rev'd in part*, CLI-11-11, 74 NRC 427 (2011)
Millstone test for rule waiver establishes an appreciably higher burden for would-be waiver seekers than does 10 C.F.R. 2.335(b); LBP-14-16, 80 NRC 195 n.72 (2014)
prima facie showing on a rule waiver request is not a final determination on the merits, but merely requires presentation of enough information to allow the board to infer (absent disproof) that special circumstances exist; LBP-14-16, 80 NRC 193-94 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 288 (2010)
the NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-11-17, 74 NRC 21 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 305 n.56 (2010), *aff'd in part and rev'd in part*, CLI-11-11, 74 NRC 427 (2011)
rule waiver test applies equally to safety and significant environmental concerns; LBP-14-16, 80 NRC 195 n.70 (2014)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-5, 73 NRC 131 (2011)
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- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654 (2011)
Fukushima-related contentions were dismissed as premature; LBP-11-39, 74 NRC 870 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 658-60 (2011)
admissibility of Fukushima-related contentions is determined; LBP-11-37, 74 NRC 779 n.3 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 665 (2011)
intervenor's challenge to NRC's compliance with NEPA in light of the NRC's Fukushima Task Force Report is premature; LBP-11-33, 74 NRC 681-82 (2011)
nothing in NEPA, which applies to agencies of the federal government, can be read to require an applicant to update its environmental report; LBP-11-34, 74 NRC 697 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 665-68 (2011)
petitioner's assertion that applicant's environmental report must be supplemented to take account of allegedly new and significant information is, as a procedural matter, unfounded and must be rejected; LBP-11-33, 74 NRC 681 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 665-70 (2011)
absent voluntary action by applicant to amend its environmental report, intervenor wishing to raise new or revised post-ER environmental concerns must await issuance of Staff's draft environmental impact statement; LBP-11-37, 74 NRC 784 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 668 n.31 (2011)
incorrect information in a license amendment application is prohibited by NRC regulations; LBP-15-24, 82 NRC 99 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 671 (2011)
contention is inadmissible for failure to show that a genuine dispute exists with applicant on a material issue of law or fact; LBP-11-33, 74 NRC 683 (2011)
Fukushima-related contention based on a Staff Requirements Memorandum is inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 784 n.7 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC 654, 672-73 (2011)
issuance of a Staff Requirements Memorandum directing Staff to implement "without delay" the recommendations of the Fukushima Task Force does not render contentions admissible; LBP-11-36, 74 NRC 772 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-12-13, 75 NRC 784, 786-87 (2012)
applicant had no legal duty to update its environmental report to encompass matters that occurred after that report was filed with the agency; LBP-12-15, 76 NRC 43 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-15-27, 82 NRC 184, 186 (2015)
petitioner failed to demonstrate the existence of a licensing action subject to hearing rights under section 189a of the Atomic Energy Act; CLI-15-21, 82 NRC 299 n.12 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230 (2002)
bearing in mind the history of Commission actions following the TMI accident, the Commission looks to the more recent post-9/11 suspension-of-proceedings cases for the framework under which it considers Fukushima-related petitions; CLI-11-5, 74 NRC 157 (2011)
petitions to suspend multiple license renewal proceedings in view of an Inspector General's report on the agency's license renewal process were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)

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- requests to suspend or hold proceedings in abeyance following the September 11 terrorist attacks, as well as more recently, were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002)
- although NRC rules require that motions be addressed to the presiding officer when a proceeding is pending, suspension motions are best addressed to the Commission; CLI-11-5, 74 NRC 158 (2011)
- Commission has inherent authority to supervise both NRC Staff's work and adjudicatory proceedings relating to license applications; CLI-14-1, 79 NRC 2 (2014)
- when a matter is not strictly adjudicatory in nature or otherwise does not fit cleanly within the procedures described in NRC rules of practice, the Commission undertakes a decision as an exercise of its inherent supervisory authority over agency proceedings; CLI-13-8, 78 NRC 224 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 239 (2002)
- post-9/11 request for suspension of proceeding was denied because no danger to public health and safety would result from mere continuation of the adjudicatory proceeding; CLI-11-5, 74 NRC 161 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-4, 57 NRC 273, 277 (2003)
- the Commission declined to stay dry cask storage proceedings pending requested rule changes; CLI-11-1, 73 NRC 5 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 5-8 (2008)
- if good cause for late filing is not shown, boards may still permit the filing, but petitioner or intervenor must make a strong showing on the other factors of 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 401 (2011); LBP-11-32, 74 NRC 662 (2011)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008)
- release of NRC Staff's environmental review document may be the first opportunity for a petitioner to question the accuracy of the Staff's environmental analysis; CLI-15-17, 82 NRC 45 (2015); LBP-15-11, 81 NRC 408, 426 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 13 (2008)
- policies set forth by NEPA prevent NRC Staff from segmenting the disposal issues from the inquiry into whether applicant will be allowed to create 11e(2) byproduct material in the first instance; LBP-13-9, 78 NRC 70 (2013)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-8, 67 NRC 193, 201 (2008)
- where intervenors had submitted an earlier version of a contention several years ago in their petition to intervene, it is difficult to see how they can now make the required showing of good cause for their failure to file in a timely manner; LBP-12-12, 75 NRC 756 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 521 (2008)
- on safety issues, license applicants have the burden of establishing entitlement to the applied-for license by a preponderance of the evidence; LBP-11-38, 74 NRC 829 n.77 (2011); LBP-12-5, 75 NRC 235 n.42 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 526 (2008), *petition for review denied on other grounds, San Luis Obispo Mothers for Peace v. NRC*, 635 F.3d 1109 (9th Cir. 2011)
- NRC Staff's final environmental impact statement and the adjudicatory record become part of the environmental record of the decision; CLI-11-6, 74 NRC 209 (2011); CLI-15-6, 81 NRC 376 (2015); LBP-11-38, 74 NRC 832 (2011); LBP-12-5, 75 NRC 239 (2012); LBP-12-17, 76 NRC 83 (2012); LBP-14-9, 80 NRC 67 (2014)

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- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426-27 (2002)
proximity presumption applies where there is an obvious potential for offsite consequences; LBP-15-17, 81 NRC 772 (2015)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 432 (2002), *aff'd*, CLI-03-1, 57 NRC 1 (2003)
generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing; LBP-12-3, 75 NRC 184 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185, 191 (2003)
materiality requirement for contention admission often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-12-15, 76 NRC 26 (2012); LBP-12-27, 76 NRC 594 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-08-7, 67 NRC 361, 372 (2008)
where a nonmoving party declines to oppose a motion for summary disposition, the board shall accept as admitted the moving party's prima facie showing of material facts, but boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 219 (2012)
- Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-08-7, 67 NRC 361, 372 n.7 (2008)
presiding officers may make a determination about the validity of a deliberative process privilege claim without reviewing a document *in camera* if the affidavit outlining the reasons for nondisclosure is sufficiently detailed; LBP-13-5, 77 NRC 245 n.64 (2013)
- Pacific Gas and Electric Co. v. Federal Power Commission*, 506 F.2d 33, 38-39 (D.C. Cir. 1974)
agencies cannot escape their responsibility to present evidence and reasoning supporting their substantive rules by announcing binding precedent in the form of a general statement of policy; LBP-13-13, 78 NRC 528 n.1994 (2013)
- Pacific Gas and Electric Co. v. State Energy Resource Conservation & Development Commission*, 461 U.S. 190, 209 (1983)
the 1959 amendments to the Atomic Energy Act were intended generally to increase the states' role in regulation of nuclear materials; CLI-11-12, 74 NRC 473-74 (2011)
- Pacific Gas and Electric Co. v. United States*, 70 Fed. Cl. 128, 140 (2006)
vague, general, and conclusory statements, all purporting to apply to many documents but not connected to any particular document, fail to meet the requirement that defendant supply the court with precise and certain reasons for maintaining the confidentiality of requested documents; LBP-13-5, 77 NRC 243 (2013)
- Pacific Gas and Electric Co. v. United States*, 70 Fed. Cl. 128, 140-41 (2006)
without indicating any specific, policy-oriented communication or proffering any cogent reason for protecting it, the bare assertion that internal agency discussions will be "chilled" is nothing but a legal platitude asserted in the abstract; LBP-13-5, 77 NRC 243-44 (2013)
- Pacific Gas and Electric Co. v. United States*, 71 Fed. Cl. 205, 209 (2006)
explanation of reasons for asserting deliberative process privilege need not reveal the contents of the documents, but it must identify, with respect to a specific document or type of document, why that document should be protected from discovery and what specific harm would result from its disclosure; LBP-13-5, 77 NRC 242 (2013)
- Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1054 n.8 (9th Cir. 1994)
if an agency determines that a particular action will have no effect on an endangered or threatened species, the consultation requirements are not triggered, and the finding of no effect obviates the need for formal consultation under the Endangered Species Act; LBP-12-10, 75 NRC 657 n.153, 671-72 (2012)
- Pa'ina Hawaii, LLC*, CLI-06-13, 63 NRC 508, 509 (2006)
applicant may file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-12-12, 75 NRC 607 (2012)

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- Pa'ina Hawaii, LLC*, CLI-08-3, 67 NRC 151, 163 n.46 (2008)
NRC often refers to the Statement of Considerations as an aid in interpreting the agency's regulations; LBP-14-9, 80 NRC 52 (2014)
- Pa'ina Hawaii, LLC*, CLI-08-3, 67 NRC 151, 168 n.73 (2008)
adequacy of NRC Staff's review is not a litigable issue in a licensing case; CLI-15-9, 81 NRC 531 (2015)
contention fails because it contests NRC Staff's safety review rather than the license renewal application; LBP-15-15, 81 NRC 614 n.111 (2015)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 74 (2010)
because NEPA is premised on a rule of reason, NRC need only consider reasonable alternatives to a proposed action; LBP-11-26, 74 NRC 545 (2011)
general statements by an agency about possible effects and some risk do not constitute the hard look required by NEPA absent a justification of why more definitive information could not be provided; LBP-12-5, 75 NRC 236 (2012)
in assessing greenhouse gas impacts, NRC must devote its resources to taking a hard look at the issue; LBP-11-26, 74 NRC 545 (2011)
NEPA's hard-look requirement does not allow sweeping generalities about possible effects and risk without a justification as to why more definitive information was not provided; LBP-13-13, 78 NRC 286, 452 (2013)
NRC must rigorously explore and objectively analyze environmental impacts, so that merely offering general statements about possible effects and some risk does not constitute a hard look absent a justification regarding why more definitive information could not be provided; LBP-11-26, 74 NRC 545 (2011); LBP-11-38, 74 NRC 830-31 (2011)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 75 (2010)
considering the reasonable alternatives analysis, it is only in the depth of the consideration and in the level of detail provided in the corresponding environmental documents that an environmental assessment and an environmental impact statement will differ; LBP-15-11, 81 NRC 439 n.249 (2015)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 81 (2010)
if the board's findings after the evidentiary hearing affect NRC Staff's conclusions in the environmental assessment, then those conclusions would have to be revisited; CLI-15-17, 82 NRC 40 n.48 (2015)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 82 (2010)
primary responsibility for compliance with NEPA lies with NRC; LBP-12-12, 75 NRC 780 (2012); LBP-12-18, 76 NRC 166 (2012); LBP-14-9, 80 NRC 69 (2014)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 87 (2010)
within 30 days after new information becomes available is a reasonable amount of time for filing a new contention; LBP-15-24, 82 NRC 98 n.195 (2015)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 87-88 (2010)
contention that relies on testimony marking the first time NRC Staff has addressed an impact at the site is timely; LBP-15-24, 82 NRC 97 n.192 (2015)
material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 7 (2015)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 89 (2010)
NEPA only requires that the environmental impact statement address those environmental impacts that are reasonably foreseeable; LBP-13-4, 77 NRC 120 (2013)
- Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 93 (2010)
public comment will be afforded in advance on any generic waste confidence document that NRC issues on remand, be it a fresh rule, a policy statement, an environmental assessment, or an environmental impact statement; CLI-12-16, 76 NRC 67 (2012)
- Pa'ina Hawaii, LLC*, LBP-06-4, 63 NRC 99, 108, 112 (2006)
licensing board admitted contentions when petitioner raised a timely argument affirmatively asserting that special circumstances existed under section 51.22(b) that precluded application of the categorical exclusion; LBP-15-26, 82 NRC 182 n.37 (2015)

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- Pa'ina Hawaii, LLC*, LBP-06-4, 63 NRC 99, 109 n.38 (2006)
any interested person may challenge the use of a categorical exclusion by presenting special circumstances; LBP-15-26, 82 NRC 181-82 (2015)
- Pa'ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 414 (2006)
contention that challenges the legal sufficiency of the final environmental impact statement is within the scope of the proceeding; LBP-12-18, 76 NRC 157 (2012)
if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-15-5, 81 NRC 259 (2015)
petitioners' contention challenges the sufficiency of the equivalent margins analysis to provide reasonable assurance of reactor safety and is therefore within the scope of the proceeding; LBP-15-20, 81 NRC 849 (2015)
pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-15-5, 81 NRC 258 (2015)
- PaineWebber, Inc. v. Bybyk*, 81 F.3d 1193, 1201 (2d Cir.1996)
paper to be incorporated into a written instrument by reference must be so referred to and described in the instrument that the paper may be identified beyond all reasonable doubt; LBP-12-24, 76 NRC 515 n.60 (2012)
- Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995)
the federal trust responsibility to Indian tribes extends not just to the Interior Department, but attaches to the federal government as a whole; LBP-12-24, 76 NRC 520 n.79 (2012)
the federal trust responsibility to Indian tribes rests solely with the federal government and cannot be discharged by applicants; LBP-12-24, 76 NRC 519-20 (2012)
- Pennsylvania Power & Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 955-56 (1982)
conclusory language is not sufficient to support an appeal; CLI-11-8, 74 NRC 225 (2011)
- Pennsylvania Power & Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 295-96 (1979)
although a licensing board is not required to recast contentions to make them acceptable, it is also not precluded from doing so; LBP-11-13, 73 NRC 565 n.199 (2011)
boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; LBP-12-18, 76 NRC 145 n.76 (2012); LBP-15-5, 81 NRC 262, 270 n.116, 273 (2015)
- Pennzoil Co. v. Federal Energy Regulatory Commission*, 645 F.2d 360, 371 (5th Cir. 1981)
requirement for a notice of proposed rulemaking is to sufficiently and fairly apprise interested parties of the issues involved, rather than to specify every precise proposal that the agency may ultimately adopt; LBP-15-15, 81 NRC 611 n.94 (2015)
- Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 982 (9th Cir. 2011)
where claimant has not shown a sufficient causal connection between the alleged irreparable harm and the underlying claim, relief will be denied; CLI-12-11, 75 NRC 531 n.39 (2012)
- Petition for Rulemaking to Amend 10 C.F.R. § 54.17(c)*, CLI-11-1, 73 NRC 1, 3 n.5 (2011)
the Commission may consider the rulemaking request of a nonparty as an exercise of its inherent supervisory powers over proceedings; CLI-11-5, 74 NRC 174 n.132 (2011)
- Petition for Rulemaking to Amend 10 C.F.R. § 54.17(c)*, CLI-11-1, 73 NRC 1, 4 (2011)
Commission rarely grants an indefinite or very lengthy stay on the mere possibility of change; CLI-14-6, 79 NRC 449 (2014)
- Petition for Rulemaking to Amend 10 C.F.R. § 54.17(c)*, CLI-11-1, 73 NRC 1, 5-6 (2011)
the ordinary burden to parties pursuing litigation pending the rulemaking do not justify disrupting ongoing reviews; CLI-11-5, 74 NRC 175 (2011)

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- Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 978-79 (1981)
when a motion to withdraw an application is unopposed and the withdrawal causes no apparent harm to the public or any party, it is appropriate to grant the motion without prejudice or imposition of additional terms; LBP-12-20, 76 NRC 216 (2012)
- Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 978-79 & n.14 (1981)
conditions set by boards on voluntary withdrawals are set on a case-by-case basis, with any conditions tailored to address the particular circumstances of that proceeding; LBP-15-28, 82 NRC 241 (2015)
- Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 979 (1981)
standard for dismissal with prejudice is not met because the prospect of future litigation is not unusual, being inherent in any dismissal without prejudice; LBP-15-28, 82 NRC 241 (2015)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 193 (1975)
in analyzing predictions of water availability in a report, NRC Staff consulted with the other government agencies to determine whether data from either of those agencies could be obtained to prepare a new water availability prediction; LBP-13-4, 77 NRC 213 n.91 (2013)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755, 758-59 (1983)
quick resubmission of specific license amendment request without any change in circumstances would create the appearance of forum shopping; LBP-15-28, 82 NRC 241 n.59 (2015)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 868 (1984)
NRC Staff and the NRC must exercise independent judgment with regard to its ultimate conclusions about the environmental impacts of the project; LBP-13-4, 77 NRC 213 n.91 (2013)
NRC Staff need not perform a wholly independent analysis from scratch, but may rely on the scientific data and inferences drawn by another federal agency; LBP-13-4, 77 NRC 213 n.91 (2013)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 868 n.65 (1984)
NRC Staff may rely on the scientific data and inferences drawn by another government agency but need not slavishly defer to that agency's findings or its conclusions about water quality; LBP-13-4, 77 NRC 213-14 (2013)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-814, 22 NRC 191, 196 (1985)
party seeking a stay must specifically and reasonably demonstrate an injury, not merely allege generalized harm; LBP-15-2, 81 NRC 57 (2015)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681 (1985)
hard look at the environmental justice aspects of relicensing having been taken, the Commission, without additional Staff action, can now with respect to the EJ issue, make an informed decision whether to grant the requested license; LBP-13-13, 78 NRC 544 n.2107 (2013)
hearings can provide the public venting that the circulation of an amended environmental impact statement would otherwise provide; LBP-13-13, 78 NRC 525 (2013)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985)
adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-11-6, 74 NRC 209 (2011); LBP-11-38, 74 NRC 832 (2011); LBP-12-5, 75 NRC 239 (2012); LBP-12-17, 76 NRC 83 (2012); LBP-14-9, 80 NRC 67 (2014)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 706 (1985), *aff'd in part*, CLI-86-5, 23 NRC 125 (1986), *remanded in part on other grounds sub nom.*
- Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (1989)
section 51.102(c) merges the final supplemental environmental impact statement with any relevant licensing board decision; CLI-15-6, 81 NRC 387 (2015)
section 51.102(c) replaced a previous version that expressly permitted licensing boards to modify the content of an environmental impact statement; CLI-15-6, 81 NRC 388 (2015)

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- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 707 (1985)
environmental impact statement may be deemed modified by the hearing record because hearing procedures allow for additional and a more rigorous public scrutiny of the FSEIS than does the usual circulation for comment; CLI-15-6, 81 NRC 388 (2015)
licensing board's hearing arguably allows for additional and more rigorous public scrutiny of the final environmental impact statement than does the usual circulation for comment; LBP-14-9, 80 NRC 68-69 (2014)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)
adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-13-6, 77 NRC 284 (2013)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974)
a contention is inadmissible if it fails to raise a material issue in dispute or raises an issue that is not susceptible to resolution; LBP-11-23, 74 NRC 345 (2011)
a contention must be rejected if it attacks applicable statutory requirements or regulations, challenges the basic structure of the regulatory process, merely expresses petitioner's view of policy, seeks to raise an issue improper for adjudication in the proceeding or not applicable to the facility in question, or raises an issue that is not concrete or is otherwise not litigable; LBP-11-6, 73 NRC 170 n.16 (2010)
challenges to the basic regulatory structure of NRC's design basis and generic environmental impacts already assessed through rulemaking are inadmissible; LBP-11-32, 74 NRC 663 (2011)
contention admissibility criteria are strict by design but should not be turned into a fortress to deny intervention; LBP-15-20, 81 NRC 855-56 (2015)
intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 527-28 n.98 (2015)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)
contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-13-6, 77 NRC 284 (2013)
- Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 (1974)
that the contention admissibility rule is designedly strict is not to say that it should serve as a fortress to deny intervention; LBP-11-6, 73 NRC 171 (2010)
- Phillips v. Cohen*, 400 F.3d 388, 399 (6th Cir. 2005)
when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper; LBP-11-7, 73 NRC 263 (2011); LBP-12-23, 76 NRC 478 (2012)
- Piedmont Heights Social Club, Inc. v. Moreland*, 637 F.2d 430, 436 (5th Cir. 1981)
discussion of the no-action alternation need only include feasible, nonspeculative alternatives; LBP-12-8, 75 NRC 569 (2012)
- Pierce v. Underwood*, 487 U.S. 552, 565-66 (1988)
justification "in substance or in the main" is equated with the "reasonable basis both in law and fact" standard that has been applied by a majority of federal appellate courts; LBP-11-8, 73 NRC 368 n.95 (2011)
- Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988)
for the purposes of the Equal Access to Justice Act, the government's position should be considered substantially justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact; LBP-11-8, 73 NRC 368 (2011)
- Pierce v. Underwood*, 487 U.S. 552, 569 (1988)
the fact that one other court agreed or disagreed with the government does not establish whether its position was substantially justified; LBP-11-8, 73 NRC 368 n.100 (2011)
- Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996)
lenient treatment generally accorded to pro se litigants has limits; CLI-15-18, 82 NRC 146 n.53 (2015)

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- Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467 (1962)
summary judgment should be granted only where the truth is clear; LBP-11-14, 73 NRC 595 (2011); LBP-12-23, 76 NRC 450, 466 (2012)
- Poller v. Columbia Broadcasting Systems, Inc.*, 368 U.S. 464, 473 (1962)
boards must view the record in the light most favorable to the summary disposition opponent; LBP-12-19, 76 NRC 190 (2012)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976)
in determining whether intervention petitioner has alleged an interest that may be affected by the proceeding within the meaning of section 189a of the Atomic Energy Act, contemporaneous judicial concepts of standing should be used; LBP-14-4, 79 NRC 350 (2014)
- Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 617 (1976)
six criteria for discretionary intervention were first articulated in this case; LBP-14-4, 79 NRC 333 n.70 (2014)
- Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979)
contentions that fall outside the specified scope of the proceeding are inadmissible; LBP-12-18, 76 NRC 157 (2012); LBP-15-20, 81 NRC 849 (2015)
- Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-796, 21 NRC 4, 5 (1985)
adjudicatory proceedings terminate if intervenor either settles or abandons all of its contentions; LBP-11-22, 74 NRC 271 n.64 (2011)
if parties settle their dispute after a hearing, the board should dismiss the adjudication; LBP-11-22, 74 NRC 283 (2011)
- Potential Implications of Chernobyl Accident for All NRC-Licensed Facilities*, DD-87-21, 26 NRC 520 (1987)
post-accident request for suspension of proceeding was denied because no danger to public health and safety would result from mere continuation of the adjudicatory proceeding; CLI-11-5, 74 NRC 161 (2011)
- Potomac Alliance v. NRC*, 682 F.2d 1030, 1035 (D.C. Cir. 1982)
duty to prepare an environmental impact statement and to identify and consider every significant environmental impact is tempered by the rule of reason; LBP-13-4, 77 NRC 120 (2013)
legal adequacy of a final environmental impact statement is assessed under the rule of reason; LBP-13-4, 77 NRC 210 (2013)
NEPA only requires that the environmental impact statement address those impacts that are reasonably foreseeable; LBP-13-4, 77 NRC 120 (2013)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 84 (1974)
administrative agencies are allowed to address issues of general applicability through rulemaking instead of individual adjudications, and the choice made between proceeding by general rule or by individual, ad hoc, litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-14-16, 80 NRC 193 (2014)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)
challenges to NRC rules and regulations are generally prohibited with limited exceptions in view of expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis on rulemaking proceedings as the appropriate forum for settling basic policy issues; CLI-13-7, 78 NRC 207 n.32 (2013)
consideration in adjudicatory proceedings of issues presently to be taken up by the Commission in rulemaking would be a wasteful duplication of effort; LBP-14-1, 79 NRC 95 n.293 (2014)
licensing boards should not accept in individual license proceedings contentions that are or are about to become the subject of general rulemaking by the Commission; CLI-12-16, 76 NRC 67 n.9 (2012); CLI-14-8, 80 NRC 79 n.27 (2014); CLI-15-9, 81 NRC 534 n.3 (2015); CLI-15-11, 81 NRC 547 n.5 (2015); CLI-15-12, 81 NRC 552 n.5 (2015); LBP-14-16, 80 NRC 193 (2014)
licensing proceedings are not the appropriate venue for generic rulemaking issues; CLI-15-9, 81 NRC 530 (2015)

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- to the extent that NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-12-16, 76 NRC 67 (2012)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974)
- contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-13-6, 77 NRC 284 (2013)
- no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-11-8, 74 NRC 229 (2011)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974)
- boards should not accept in individual license proceedings contentions that are, or are about to become, the subject of rulemaking by the Commission; LBP-12-24, 76 NRC 510 (2012)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 290-91 (2000)
- any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 260 n.31 (2014)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 290-91 & nn.10-11 (2000)
- Subpart M logically applies to all license transfer hearing requests, regardless of who files them, because the types of issues litigated (e.g., financial assurance, technical qualifications, foreign ownership, and staffing levels) are likely to be similar regardless of whether they are initiated by intervention petitions or by challenges to a Staff action; CLI-14-5, 79 NRC 260 (2014)
- when promulgating Subpart M, the Commission was well aware that most license transfer issues would be financial in nature; CLI-14-5, 79 NRC 260 n.32 (2014)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 291 (2000)
- separate hearings have been shown to be appropriate for cases governed by different procedural rules; CLI-14-5, 79 NRC 261 n.38 (2014)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293 (2000)
- an organization that seeks to intervene in a representative capacity must show that the interests it seeks to protect are germane to its own purpose, and identify, by name and address at least one member who qualifies for standing in his or her own right; LBP-11-13, 73 NRC 545 (2011)
- Power Authority of the State of New York* (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000)
- Commission grants standing to a governmental body within close proximity to a proposed nuclear reactor under the proximity presumption, effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability; LBP-15-19, 81 NRC 819 n.17 (2015)
- mere notice pleading is insufficient, but requirement for contention specificity and factual support rather than vague or conclusory statements is not intended to prevent intervention when material and concrete issues exist; LBP-15-20, 81 NRC 853 n.140 (2015)
- where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality's boundaries, it can, for purposes of establishing standing, rely on the 50-mile proximity presumption to the same extent as an individual or an organization; LBP-11-6, 73 NRC 170 n.14 (2010)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 308 n.52 (2000)
- decommissioning trusts are reserved for decommissioning as defined in 10 C.F.R. 50.2; LBP-15-24, 82 NRC 80 n.69 (2015)

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- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 514 (2001)
motion to strike may be granted where a pleading or other submission contains information that is irrelevant; LBP-14-6, 79 NRC 432-33 (2014)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), LBP-01-4, 53 NRC 121, 127 (2001)
intervenor are not permitted to wait until information reappears in the draft environmental impact statement to file their contentions; LBP-13-9, 78 NRC 60 (2013)
- Power Reactor Development Co. v. International Union of Electrical, Radio & Machine Workers*, 367 U.S. 396, 409 (1961)
it is fair to read the AEC and NRC history as a de facto acquiescence in and ratification of the Commission's licensing procedure by Congress; CLI-15-4, 81 NRC 227 (2015)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 378-80 (2010)
the in situ recovery process, which is also referred to as the in situ leach process, is described; LBP-12-3, 75 NRC 176 n.3 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 384-85 (2010)
as distance increases from the in situ recovery facility, petitioner with an upgradient water source must expect to provide the board with some analysis as to how any contamination will affect any wells alleged to be impacted by the facility; LBP-12-3, 75 NRC 182 n.13 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 386 (2010)
for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 181 n.11 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 386-88 (2010)
where an ore zone and petitioner's water source existed in separate aquifers, the circumstances involved did not support a determination that the petitioners had established their right to intervene; LBP-12-3, 75 NRC 181-82 n.11 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 388 (2010)
when petitioners considerably upgradient of the mining area fail to explain how contaminated material from the in situ recovery site might plausibly enter their drinking water, they fail to demonstrate they fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 182 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 389 (2010)
organizational interest in protecting natural resources with a focus on groundwater contamination from uranium mining is insufficient to establish organizational standing; LBP-13-6, 77 NRC 280 (2013)
organizational standing is footed in the capacity of an organization to show a discrete injury to its organizational interests; LBP-13-6, 77 NRC 279-80 (2013)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 390 (2010)
an individual may not intervene in his or her own right while simultaneously being represented by another petitioner in the same proceeding; LBP-11-13, 73 NRC 550 n.90 (2011)
representational standing granted in a different proceeding on the basis of the showing of an individual member's standing cannot be the supporting basis for the organization's representational standing in another proceeding where that member does not provide the basis for standing; LBP-13-6, 77 NRC 279 n.16 (2013)

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- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 398 (2010)
boards will not hunt for information that the agency's procedural rules require be explicitly identified and fully explained; CLI-11-8, 74 NRC 222 (2011)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 421-22 (2010)
tribal consultation contentions have been dismissed as prematurely filed, albeit without prejudice to their renewal following issuance of the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 287 (2013)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 424 (2010)
contention asserting that NEPA requires a groundwater baseline characterization for an in situ recovery site is admissible; LBP-12-3, 75 NRC 193 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 427-28 (2010)
environmental contention regarding cumulative impact on groundwater quantity of the in situ recovery project and the planned expansion satisfies admissibility requirements; LBP-12-3, 75 NRC 200 (2012)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 435-38 (2010)
contentions that raise matters that impermissibly challenge a Commission rule are outside the scope of the proceeding; LBP-13-6, 77 NRC 297-98 (2013)
- Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 438-40 (2010)
any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 299-300 (2013)
- Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 46 (2013)
admitted contentions challenging applicant's environmental report may function as challenges to similar portions of NRC Staff's NEPA document; LBP-15-11, 81 NRC 409-10 (2015)
- Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 46-47 (2013)
contentions of adequacy may migrate into contentions of omission; LBP-13-10, 78 NRC 133 (2013)
- Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 47-48 (2013)
general discussion about contentions of omission and contentions of adequacy is provided; LBP-13-10, 78 NRC 132 n.6 (2013)
- Powertech USA, Inc.* (Dewey-Burdock in Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 49 (2013)
it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 280 n.178 (2015)
- Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 67 (2013)
it is not clear NRC Staff relied upon the generic environmental impact statement when preparing the draft supplemental EIS because it was not incorporated by reference or mentioned in any other manner; LBP-15-11, 81 NRC 440 n.258 (2015)
- Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 67-68 n.181 (2013)
principle of *expressio unis est exclusio alterius* is discussed; LBP-15-11, 81 NRC 440 n.258 (2015)

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- Powertech USA, Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 86-88 (2013)
purpose of the timeliness rules is not to trap petitioners into a no-win situation where a contention is called premature if filed in the original petition and untimely if petitioners wait for a potential event to actually transpire; LBP-15-24, 82 NRC 97-98 n.193 (2015)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010)
the proximity presumption applies when an individual or organization, or an individual authorizing an organization to represent his or her interests seeks to establish its representational standing, resides within 50 miles of the proposed facility, or has frequent contacts with the area affected by the proposed facility; LBP-11-6, 73 NRC 169 (2010); LBP-11-16, 73 NRC 653 (2011)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 & n.27 (2010)
standing in each agency proceeding depends on the factual circumstances associated with that case; LBP-13-6, 77 NRC 276 (2013)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010)
if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether standing has been satisfied; LBP-12-3, 75 NRC 177 (2012); LBP-13-6, 77 NRC 270 (2013)
intervention petitioner bears the burden of providing facts sufficient to establish its standing; LBP-11-21, 74 NRC 122 (2011); LBP-12-3, 75 NRC 177 (2012); LBP-13-6, 77 NRC 270 (2013)
proximity-based standing based on frequent contacts is a determination to be made by a licensing board after weighing all the information provided; LBP-15-17, 81 NRC 775 n.140 (2015)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139-40 (2010)
intervenor is entitled to cure deficiencies with regard to standing when it files its reply; LBP-14-4, 79 NRC 361 (2014); LBP-15-5, 81 NRC 285 n.224 (2015); LBP-15-13, 81 NRC 461 (2015)
petitioner may correct or supplement its showing on standing; LBP-11-21, 74 NRC 123 (2011)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 140 (2010)
petitioning member's affidavit must be sufficiently specific to show frequent contact within 50 miles of the plant; LBP-15-17, 81 NRC 775 (2015)
statement that petitioner lives, recreates, and conducts business within the vicinity of the plant is too vague to demonstrate a substantial or regular presence within 50 miles of the plant; LBP-15-17, 81 NRC 775-76 (2015)
to demonstrate frequent contacts within the 50-mile site radius under the proximity presumption, petitioner must show that his/her contacts are substantial and regular, and must describe them with specificity; LBP-15-17, 81 NRC 775 (2015)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 396 (2009)
NRC is lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-11-13, 73 NRC 549 (2011)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 396-97 (2009), *aff'd on other grounds*, CLI-10-7, 71 NRC 133, 141 (2010)
in assessing whether petitioner has demonstrated its standing, licensing boards are to construe petitions in favor of petitioners; LBP-12-3, 75 NRC 177 (2012)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC 591 (2011)
Fukushima-related contentions were dismissed as premature; CLI-12-2, 75 NRC 70 (2012); LBP-11-39, 74 NRC 870 (2011)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC 591, 594 (2011), *motion to reinstate contention denied, Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-36, 74 NRC 768 (2011)
admissibility of Fukushima-related contentions is determined; LBP-11-37, 74 NRC 779 n.3 (2011)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC 591, 599-602 (2011)
claims for relief from Fukushima-related events are premature; LBP-11-37, 74 NRC 783-84 (2011)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC 591, 601-02 (2011)
Fukushima-related contention was found inadmissible because it was premature; LBP-11-34, 74 NRC 699 (2011)

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- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC 591, 602 n.54 (2011)
petitioner's attempt to tie NEPA environmental justice claim to Fukushima Task Force report is an improper effort to interpose concerns that could have been raised at the outset of the proceeding; LBP-11-37, 74 NRC 785 (2011)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104-07 (2007)
alleged violations of state law are outside the scope of, and not material to, an adjudicatory proceeding; LBP-15-24, 82 NRC 84 n.93 (2015)
matters within the purview of the state public service board are outside the jurisdiction of the licensing board, which is limited to considering only the license amendment request and NRC regulations; LBP-15-24, 82 NRC 84 (2015)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 105 (2007)
NRC's adjudicatory process is not the proper forum for investigating alleged violations that are primarily the responsibility of other federal, state, or local agencies; LBP-11-6, 73 NRC 249 n.115 (2010)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 299-302 (2007)
reply brief may not be used to present entirely new arguments in support of an existing contention or to propose a new contention, but board may consider information in a reply that legitimately amplifies an issue presented in the original petition; LBP-15-5, 81 NRC 285 n.223 (2015)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 303-04 (2007)
bare assertions in a contention run afoul of NRC's intention to focus the hearing process and provide notice to the other parties; LBP-11-21, 74 NRC 128 (2011)
contention rule is strict by design and does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; LBP-13-9, 78 NRC 48 n.35 (2013)
generalized grievances with sufficiency of NRC Staff's analysis or the adequacy of included documentation are not enough to raise a proposed contention to the level of admissibility; LBP-14-5, 79 NRC 385 n.38 (2014)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units, 1 and 2), LBP-07-10, 66 NRC 1, 11 (2007)
even if undisputed, the jurisdictional nature of standing in NRC proceedings requires independent examination by presiding officer; LBP-11-16, 73 NRC 653-54 (2011)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18, *aff'd on other grounds*, 66 NRC 101 (2007)
extended power uprate proceedings trigger application of the 50-mile proximity presumption, given that such license applications entail an obvious increase in the potential for offsite consequences; LBP-11-29, 74 NRC 619 (2011)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 23 (2007)
generalized grievances with sufficiency of NRC Staff's analysis or the adequacy of included documentation are not enough to raise a proposed contention to the level of admissibility; LBP-13-9, 78 NRC 48 n.35 (2013); LBP-14-5, 79 NRC 385 (2014)
- Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851, 859 (9th Cir. 1982)
compliance with the National Historic Preservation Act does not relieve a federal agency of the duty of complying with the environmental impact statement requirement to the fullest extent possible; LBP-15-16, 81 NRC 654-55 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26 (1998)
organizational standing requirements are outlined; CLI-11-3, 73 NRC 621 n.39 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30-31 (1998)

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- organization seeking standing as a party must show either a discrete injury to its own institutional interests or authorization to represent an individual who would have standing in his or her own right; LBP-12-24, 76 NRC 508 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 32 (1998)
- the interests a municipality seeks to represent on behalf of its residents are germane to its own purposes in the context or standing; LBP-11-6, 73 NRC 170 n.15 (2010)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33 (1998)
- as a sovereign body, Native American tribes maintain a strong interest in its members' welfare such that its organizational purpose is germane to the interests it seeks to represent in proceeding; LBP-13-6, 77 NRC 272 n.7 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33-34 (1998)
- a governmental body's interest in protecting the individuals and territory that fall under that body's authority establishes an organizational interest for standing purposes; LBP-11-6, 73 NRC 170 n.15 (2010)
- Commission grants standing to a governmental body within close proximity of a proposed nuclear reactor under the proximity presumption, effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability; LBP-15-19, 81 NRC 819 n.17 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 322-25 (1999)
- potential harm necessary to demonstrate standing in NRC proceedings need not relate to physical or bodily injury; CLI-12-12, 75 NRC 613 n.49 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999)
- interests that an organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; LBP-11-6, 73 NRC 169 (2010)
- when an organization seeks to intervene on behalf of its members, it may establish standing by showing that one or more of its members would individually meet the standing requirements, the member has authorized the organization to represent its interest, and the interest represented is germane to the organization's purpose; LBP-15-13, 81 NRC 463 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999)
- the Commission will defer to board rulings on standing absent an error of law or abuse of discretion; CLI-12-12, 75 NRC 608 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)
- failure to comply with any of the contention pleading requirements precludes admission of a contention; LBP-11-7, 73 NRC 280 (2011); LBP-11-21, 74 NRC 125 (2011); LBP-14-8, 79 NRC 524 (2014); LBP-15-13, 81 NRC 468 (2015); LBP-15-19, 81 NRC 820 (2015); LBP-15-23, 82 NRC 59 (2015); LBP-15-26, 82 NRC 174 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 79-80 (2000)
- routine contention admissibility decisions do not affect the basic structure of a proceeding in a pervasive or unusual manner; CLI-12-13, 75 NRC 688 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-2, 51 NRC 77, 80 (2000)
- contention admissibility decisions generally are not considered to be extraordinary for purposes of interlocutory appellate review, particularly where petitioner has been admitted as a party and has other contentions pending; CLI-13-3, 77 NRC 55 (2013)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 29 (2000)
license conditions can be an acceptable method for providing reasonable assurance of financial qualifications; LBP-14-3, 79 NRC 311 (2014)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 29-31 (2000)
licensing board imposes a license condition directing implementation of a surveillance program for explosively actuated valves prior to fuel load; CLI-12-2, 75 NRC 93 (2012)
the Commission may formulate and impose a license condition in an adjudicatory order; CLI-12-9, 75 NRC 461 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 33 (2000)
to be an acceptable method for providing reasonable assurance of financial qualifications, a proposed license condition must be ministerial and by its very nature require and be readily susceptible to post-licensing verification such that the NRC Staff is not deferring its safety finding through the use of the license condition; LBP-14-3, 79 NRC 311 (2014)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 34 (2000)
NRC Staff verification of Fukushima-related license conditions should be a straightforward matter of applying a defined set of requirements; CLI-12-2, 75 NRC 129 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 34-35 (2000)
when contentions in contested hearings are purportedly resolved by license conditions, the Commission has stated that such conditions must be drawn very precisely; LBP-12-21, 76 NRC 240 n.122 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-24, 52 NRC 351, 353 (2000)
to the extent that the board's admissibility decisions regarding contentions are appealable at the end of the case, it makes sense for the board to consider all related arguments at the same time; CLI-11-6, 74 NRC 210 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1 (2001)
challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 385-86 n.17 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 3 (2001)
when a petition for review is filed with the Commission at the same time as a motion for reconsideration is filed with the board, the Commission will delay considering the petition for review until after the board has ruled; CLI-12-5, 75 NRC 306 n.23 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 5 (2001)
incorrect legal ruling typically does not warrant interlocutory review because such rulings can be reviewed on appeal from partial initial decisions or a final decision; CLI-11-6, 74 NRC 208 n.31 (2011); CLI-15-17, 82 NRC 37, 44 (2015); CLI-15-24, 82 NRC 335 (2015)
interlocutory review of a board decision that denied reconsideration of a contention admissibility determination was declined; CLI-15-24, 82 NRC 335 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001)
in the absence of some showing of substantial prior misdeeds, an applicant/licensee will be presumed to follow the agency's regulatory requirements, including the directives in its license; LBP-15-3, 81 NRC 140-41 (2015)
it is presumed that applicants intend to comply with state law; LBP-11-16, 73 NRC 678 n.185 (2011)
petitioner impermissibly assumes that applicant will violate applicable state law regarding its treatment of wells at the site; LBP-11-16, 73 NRC 676 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235-36 (2001)
not all license commitments must be converted into license conditions in order to be enforceable; LBP-14-3, 79 NRC 308 n.258 (2014)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 461 (2001)
review of a board's certified question that raises a significant and novel issue whose early resolution will materially advance the orderly disposition of the proceeding is granted; CLI-11-4, 74 NRC 2 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 463 (2001)
exemption requests ordinarily do not trigger hearing rights when an already-licensed facility is asking for relief from performing a duty imposed by NRC regulations; LBP-15-24, 82 NRC 93-94 & n.163 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 465-67 (2001)
because resolution of a rule exemption request directly affects licensability of the proposed facility, the exemption raises material questions directly connected to an agency licensing action and thus comes within the hearing rights of interested parties; CLI-13-1, 77 NRC 10 n.37 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 466-67 (2001)
exemptions are the sort of directly related and dependent exemption-related issues that are within the scope of a license amendment proceeding; LBP-15-24, 82 NRC 82 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001)
exemption cannot remove a matter germane to a licensing proceeding from consideration in a hearing, assuming an interested party raises an admissible contention thereon; LBP-15-24, 82 NRC 76 (2015)
exemptions ordinarily do not trigger hearing rights when an already-licensed facility is asking for relief from performing a duty imposed by NRC regulations; LBP-15-18, 81 NRC 797 (2015)
hearing on exemption-related matters is necessary insofar as resolution of the exemption request directly affects the licensability of a proposed fuel storage site and the exemption raises material questions directly connected to an agency licensing action; LBP-15-18, 81 NRC 797 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 n.3 (2001)
exemption request is subject to a hearing where the plant already has a license and is seeking an exemption from the decommissioning financial assurance requirements based on an earlier exemption that it had received during its license renewal; LBP-15-24, 82 NRC 76 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 474 (2001)
the choice between rulemaking and adjudication (i.e., issuing orders or other license revisions) is within the agency's discretion; LBP-11-11, 73 NRC 505-06 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001), *pet. for review held in abeyance, Ohngo Gaudadeh Devia v. NRC*, 492 F.3d 421 (D.C. Cir. 2007)
although NUREGs are not legally binding, they are guidance documents, and applicant's failure to comply with such documents could give rise to an admissible contention; LBP-11-6, 73 NRC 221 n.81 (2010)
guidance documents that are developed to assist in compliance with applicable regulations are entitled to special weight; CLI-12-5, 75 NRC 314 n.78 (2012); CLI-15-6, 81 NRC 356 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 & n.37 (2001)
NUREGs are merely guidance documents and thus not legally binding; LBP-13-6, 77 NRC 291 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264-65 (2001)
where no Staff guidance was available for the particular type of facility undergoing license review, the board reasonably selected a standard for a facility most like the facility under review; CLI-15-6, 81 NRC 358 n.86 (2015)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376 (2001)
petitions to suspend multiple license renewal proceedings in view of an Inspector General's report on the agency's license renewal process were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)
requests to suspend or hold proceedings in abeyance following the September 11 terrorist attacks, as well as more recently, were considered pursuant to the Commission's inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 158 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 378 (2001)
post-9/11 suspension was neither necessary nor appropriate where shipments of spent fuel to the facility were at least 2 years down the road; CLI-11-5, 74 NRC 161 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 380 (2001)
for suspension of licensing proceedings, petitioners must show that continuation of proceedings, pending consideration of a rulemaking petition, would jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge from NRC's continued evaluation of the impacts of the Fukushima accident; CLI-11-1, 73 NRC 5 (2011); CLI-11-5, 74 NRC 158, 174 (2011); LBP-11-33, 74 NRC 679 n.5 (2011); LBP-11-34, 74 NRC 691 (2011)
petitioners asserted that NRC actions following the events of September 11, 2001, and the accident at Fukushima Dai-ichi were insufficient to satisfy NRC's general obligation under the Atomic Energy Act to protect public health and safety; CLI-15-4, 81 NRC 231 (2015)
three criteria are applied to determine whether to suspend an adjudication; CLI-12-6, 75 NRC 373 (2012); CLI-14-7, 80 NRC 7 (2014)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 380-81 (2001)
petition for suspension of proceeding following 9/11 attack was denied because even if the licensing, construction, and shipping processes went forward as planned, no radiological materials would be present onsite for at least 2 years, so there was no immediate threat to public safety; CLI-11-5, 74 NRC 156 (2011)
the Commission declined to stay dry cask storage proceedings pending requested rule changes; CLI-11-1, 73 NRC 5 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 381 (2001)
longstanding NRC practice has been to limit orders delaying proceedings to the duration and scope necessary to promote the Commission's dual goals of public safety and timely adjudication; CLI-11-1, 73 NRC 3-4 (2011)
NRC has a responsibility to go forward with other regulatory and enforcement activities even while the agency conducts its review of the Fukushima accident; CLI-11-5, 74 NRC 163-64 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 381-83 (2001)
petition for suspension of proceeding following 9/11 attack was denied because the interest in efficient adjudication would best be served if the proceeding went forward to resolve the numerous safety and environmental issues, many with no link to terrorism at issue; CLI-11-5, 74 NRC 157 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 383 (2001)
because the Commission will have an opportunity to take a fresh look at concerns petitioners have expressed once the particulars of their rulemaking petition have been scrutinized by public comment and agency review, holding up proceedings is not necessary to ensure that the public will realize the full benefit of ongoing regulatory review; CLI-11-1, 73 NRC 5 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 383-84 (2001)
for licenses that NRC issues before completing its Fukushima review, any new Fukushima-driven requirements can be imposed later, if necessary to protect the public health and safety; CLI-11-5, 74 NRC 166 (2011); CLI-15-19, 82 NRC 158 n.39 (2015)

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- petition for suspension of proceeding following 9/11 attack was denied because continuing the proceeding would not thwart regulatory review and suspending the proceeding was not necessary to guarantee that the full benefit of the agency's post-September 11 review would be realized at the proposed facility; CLI-11-5, 74 NRC 157 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 154 (2002)
- significant, high, and adverse disparate impacts are necessary to form a valid environmental justice contention; LBP-12-24, 76 NRC 522 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 156 (2002)
- environmental justice, as applied to the NRC, means that the agency will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities; LBP-13-13, 78 NRC 523 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 347 (2002)
- purpose of the final supplemental environmental impact statement is to inform the decisionmaking agency and the public of a broad range of environmental impacts that will result, with a fair degree of likelihood, from a proposed project, rather than to speculate about worst-case scenarios and how to prevent them; CLI-15-6, 81 NRC 386 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 (2002)
- consideration of impacts with either a low probability of occurrence, or where the link between the agency action and the claimed impact is too attenuated to find the proposed federal action to be the proximate cause of that impact are excluded under NEPA; LBP-13-4, 77 NRC 211 (2013)
- NEPA demands a discussion of the environmental impact of any proposed major federal action significantly affecting the quality of the human environment; LBP-11-6, 73 NRC 198 (2010)
- NEPA does not call for examination of every conceivable aspect of federally licensed projects, but requires only a discussion of reasonably foreseeable impacts; LBP-13-4, 77 NRC 211 (2013)
- NEPA exists in part to ensure that important environmental effects will not be overlooked; LBP-12-10, 75 NRC 679-80 (2012)
- NEPA has a dual purpose of ensuring that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions, and informing the public, Congress, and other agencies of those consequences; LBP-11-35, 74 NRC 766 n.13 (2011); LBP-12-1, 75 NRC 34 (2012)
- NEPA's rule of reason excludes consideration of remote and speculative impacts or worst-case scenarios; LBP-13-4, 77 NRC 211 (2013)
- NRC must fully take into account the environmental consequences of renewing an operating license; LBP-12-1, 75 NRC 38 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002)
- although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 670, 674 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002)
- an environmental report need only consider environmental impacts that are reasonably foreseeable; LBP-11-6, 73 NRC 239 (2010)
- environmental reports must discuss reasonably foreseeable environmental impacts of the proposed action in proportion to their significance, as well as adverse environmental effects that cannot be avoided if the proposed plan is implemented; LBP-12-9, 75 NRC 630 (2012)
- NEPA documents need consider only those environmental impacts that are reasonably foreseeable, not those that are remote and speculative possibilities; LBP-12-7, 75 NRC 516, 517 (2012); LBP-12-9, 75 NRC 623 (2012)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 349 (2002)
NEPA does not require NRC Staff to examine every conceivable aspect of federally licensed projects in preparing its environmental impact statement; LBP-15-3, 81 NRC 82 (2015); LBP-15-16, 81 NRC 638 n.101 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 352 (2002), *rev'd in part on other grounds, San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006)
NEPA's mandate to federal agencies is to consider a broad range of environmental effects that are reasonably likely to ensue as a result of a major federal action; CLI-15-6, 81 NRC 386 n.247 (2015) to require worst-case analyses can easily lead to limitless NEPA analyses because it is always possible to introduce yet another additional variable to a hypothetical scenario to conjure up a worse worst case; CLI-12-1, 75 NRC 57 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 21 (2003)
applicant's negation action plan is part of its final safety analysis report and therefore is part of the licensing basis of the facility; LBP-14-3, 79 NRC 308 (2014)
if applicant subsequently wished to change its commitments to any significant extent, it would need to file a license amendment request, which could then be challenged by seeking a hearing; LBP-14-3, 79 NRC 308 (2014)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 25-27 (2003)
grant of discretionary review requires a showing that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-13-1, 77 NRC 18 n.102 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 26 (2003)
Commission gives substantial deference to licensing board findings of fact, and it will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-14-10, 80 NRC 162 (2014); CLI-15-9, 81 NRC 522 (2015)
deference to a board's factual determinations is particularly high when they are based in significant part on its assessment of expert testimony and credibility of the witnesses offering that testimony; CLI-13-1, 77 NRC 18 n.104 (2013)
question before the Commission is not whether it would have made different factual findings than those of the board but whether the board's findings of fact are so lacking in record support as to be clearly erroneous; CLI-13-1, 77 NRC 19 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-4, 59 NRC 31, 39 (2004), *pet. for review held in abeyance, Ohngo Gaudadeh Devia v. NRC*, 492 F.3d 421 (D.C. Cir. 2007)
contentions calling for requirements in excess of those imposed by regulations will be rejected as a collateral attack on regulations; CLI-12-5, 75 NRC 315 n.88 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-4, 59 NRC 31, 45 (2004)
intervenor is expected to file contentions on the basis of applicant's environmental report and not delay their contentions until after NRC Staff issues its environmental analysis; CLI-12-13, 75 NRC 687 n.31 (2012)
regardless of whether there is an affirmative duty to supplement an environmental report, applicants still face a continuing possibility of contentions in adjudicatory proceedings based upon omissions or deficiencies in their environmental report because NRC rules require the filing of contentions as early as possible; CLI-12-13, 75 NRC 687 n.31 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 130 (2004)
if the environmental impact statement addresses the concerns alleged in the contention, the original contention becomes moot and the intervenor must raise a new contention if it claims the EIS discussion is still inaccurate or incomplete; LBP-14-6, 79 NRC 438 (2014)
the draft environmental impact statement might cure alleged omissions or deficiencies in the environmental report by including additional analysis that addresses such omissions or deficiencies; LBP-11-7, 73 NRC 276 n.150 (2011)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 138 (2004)
although intervenors disagree with applicant's opportunistic inspection strategy for managing rebar corrosion, they merely assert, and do not plausibly explain, how applicant's approach will lead to a material safety impact; LBP-15-1, 81 NRC 42 n.156 (2015)
intervenors' allegations do not plausibly indicate that the shield building would lose its functionality under the proposed aging management plan; LBP-15-1, 81 NRC 40-41 & n.146 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 138-39 (2004)
facts put forward by intervenor should plausibly indicate why a program is inadequate; LBP-15-20, 81 NRC 853 n.144 (2015)
in explaining why there is a genuine material dispute, contention must give the board a reason to believe that the alleged deficiency will lead to a material safety or environmental outcome, based on factual or expert support; LBP-15-1, 81 NRC 37-38 n.122 (2015)
intervenors do not point to any recitation of the factors underlying the contention or references to documents and texts that give the board reason to believe applicant's inspection program may lead to a material negative impact on public safety, or that an improved program will lead to any positive impact; LBP-15-1, 81 NRC 40 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004)
mere notice pleading is insufficient for contention admission, but petitioner does not have to prove its contentions at the admissibility stage; LBP-11-21, 74 NRC 125 (2011); LBP-12-8, 75 NRC 548 (2012)
petitioner does not have to prove its contentions at the admissibility stage; LBP-11-2, 73 NRC 45 (2011); LBP-11-13, 73 NRC 551 (2011); LBP-11-16, 73 NRC 655 (2011); LBP-13-8, 78 NRC 14 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 145 (2004)
quibbling over details of an economic analysis would effectively stand NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-11-7, 73 NRC 283 (2011); LBP-12-5, 75 NRC 238 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 146 (2004)
considering alternatives under NEPA, agencies should take into account the needs and goals of the parties involved in the application; LBP-12-17, 76 NRC 113-14 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160 (2005)
if the Commission determines on appeal that information withheld under a protective order should have been publicly disclosed, it will direct that such information and the transcript of the related *in camera* session be made publicly available; CLI-15-24, 82 NRC 338 n.40 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 348 (2005)
parties seeking to reopen a closed record to introduce a new issue must back their claim with enough evidence to withstand summary disposition when measured against their opponent's contravening evidence; LBP-11-35, 74 NRC 732 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005)
a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim; LBP-11-20, 74 NRC 84 n.108 (2011)
no reopening of the evidentiary hearing will be required if the documents submitted in response to the motion demonstrate that there is no genuine unresolved issue of fact; LBP-11-35, 74 NRC 732 (2011)
the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-2, 73 NRC 338 n.20 (2011); CLI-11-8, 74 NRC 222 (2011); LBP-11-20, 74 NRC 77 n.75 (2011); LBP-11-22, 74 NRC 269 (2011)

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- to justify granting a motion to reopen, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition; CLI-11-2, 73 NRC 346 (2011); CLI-11-8, 74 NRC 222-23 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 n.18 (2005)
- NRC generally disfavors the filing of new contentions at the eleventh hour of an adjudication, a policy that is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; CLI-11-2, 73 NRC 337-38 n.15 (2011); LBP-11-20, 74 NRC 77 (2011)
- section 2.326 reflects the importance of finality in adjudicatory proceedings; CLI-15-19, 82 NRC 155 (2015)
- there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; LBP-15-14, 81 NRC 595 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 355 (2005)
- petitioner's appellate argument must pass regulatory muster under the rigorous standards of 10 C.F.R. 2.326(a)(3); CLI-11-2, 73 NRC 347 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 406 (2005)
- requirements for reopening a closed record were applied to a proposed new contention submitted after the licensing board had conducted a lengthy evidentiary hearing and both the board and the Commission had issued their decisions on the merits; LBP-11-22, 74 NRC 270 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 409 (2005)
- lateness is a sufficient ground on which to deny a motion for reconsideration; CLI-12-17, 76 NRC 209 n.7 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 410 (2005)
- reconsideration motions should be based on an elaboration of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification; CLI-12-17, 76 NRC 209-10 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 411 (2005)
- Commission defers to board's factual findings unless they are clearly erroneous and generally steps in only to correct factual findings not even plausible in light of the record reviewed in its entirety, e.g., where it appears that the board has overlooked or misunderstood important evidence; CLI-15-6, 81 NRC 351 (2015)
- Commission expects its licensing boards to review testimony, exhibits, and other evidence carefully and to resolve factual disputes; CLI-13-9, 78 NRC 560 n.36 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-22, 62 NRC 542, 544 (2005)
- stare decisis* is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558 (2013)
- unreviewed board decisions do not create binding legal precedent; CLI-13-9, 78 NRC 558 (2013); CLI-13-10, 78 NRC 569 n.42 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 21-22 (2006)
- parties may move to reopen the case to allow litigation of a new version of a previously rejected contention, even if the licensing board has closed the evidentiary record and the Commission had issued its final decision authorizing Staff to issue the license for the proposed facility; LBP-11-22, 74 NRC 268 n.43 (2011)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 21-23 (2006)
requirements for reopening a closed record were applied to a proposed new contention submitted after the licensing board had conducted a lengthy evidentiary hearing and both the board and the Commission had issued their decisions on the merits; LBP-11-22, 74 NRC 270 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 24 (2006)
parties that have successfully intervened in a licensing proceeding may propose new contentions for litigation until the license is issued; LBP-11-22, 74 NRC 267-68 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 28 (2006)
for new information to be sufficiently significant to merit the preparation of a supplemental final environmental impact statement, the information must paint a seriously different picture of the environmental landscape; CLI-12-7, 75 NRC 388-89 (2012); CLI-12-11, 75 NRC 533 n.53 (2012); LBP-11-23, 74 NRC 301 (2011); LBP-11-35, 74 NRC 729 (2011); LBP-12-1, 75 NRC 14 (2012); LBP-15-16, 81 NRC 704 (2015)
however “significance” is defined, the Fukushima accident and its aftermath have (as any such severe accident would do) clearly painted a seriously different picture of the environmental landscape; LBP-11-23, 74 NRC 329 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 29 (2006)
claimed additional environmental impacts were not so significant or central to the FEIS’s discussion of environmental impacts that a supplement (and consequent reopening of the adjudicatory record) was reasonable or necessary; LBP-12-1, 75 NRC 14-15 n.57 (2012)
environmental impact statements must be supplemented when there is new and significant information that will paint a seriously different picture of the environmental landscape; LBP-11-35, 74 NRC 751 n.217 (2011)
new contentions must paint a seriously different picture of the environmental landscape that would require supplementation of an environmental impact statement; LBP-12-10, 75 NRC 656 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 170-71, *aff’d*, 48 NRC 26, 31-32 (1998)
individual tribal member who does not reside on a tribal reservation where a facility is proposed to be located must show injury in fact relative to that member’s activities on the reservation even when the reservation is asserted to be on aboriginal tribal lands; LBP-13-6, 77 NRC 277 n.12 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179, *aff’d*, CLI-98-13, 48 NRC 26 (1998)
contentions that are the subject of general rulemaking by the Commission may not be litigated in individual licensing proceedings; LBP-14-16, 80 NRC 193 (2014)
“materiality” requires petitioner to show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-15-20, 81 NRC 850 (2015); LBP-15-24, 82 NRC 85 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179-80 (1998), *aff’d as to other matters*, CLI-98-13, 48 NRC 26 (1998)
subject matter of contentions must impact the grant or denial of a pending license application; LBP-12-18, 76 NRC 158 (2012); LBP-15-20, 81 NRC 850 (2015)
under 10 C.F.R. 2.309(f)(1), petitioner need only properly allege a defect in meeting the materiality requirement; LBP-11-7, 73 NRC 292 n.250 (2011)
where a contention alleges a deficiency or error in the application, the deficiency or error must have some independent health and safety significance; LBP-11-23, 74 NRC 336 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180, *aff’d as to other matters*, CLI-98-13, 48 NRC 26 (1998)
there must be some significant link between a claimed deficiency and NRC’s ultimate determination whether the license applicant will adequately protect the health and safety of the public and the environment; LBP-15-20, 81 NRC 850 (2015); LBP-15-24, 82 NRC 85 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *reconsideration granted in part and denied in part on other grounds*, LBP-98-10, 47 NRC 288, *aff’d on other grounds*, CLI-98-13, 48 NRC 26 (1998)
expert opinion that merely states a conclusion, e.g., the application is “deficient,” “inadequate,” or “wrong,” without providing a reasoned basis or explanation for that conclusion is inadequate because

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- it deprives the board of the ability to make the necessary, reflective assessment of the opinion;
CLI-12-5, 75 NRC 320 n.117 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-23, 49 NRC 485, 493 (1999)
- when omissions are cured by the subsequent issuance of licensing-related documents, intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information; LBP-12-5, 75 NRC 238 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-32, 50 NRC 155, 158 (1999)
- summary disposition movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law; LBP-12-23, 76 NRC 450, 466 (2012)
- summary judgment should be granted only where the truth is clear; LBP-11-14, 73 NRC 595 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 223 (2000)
- contentions that address an important security issue regarding Part 74's strict requirements for the proposed facility, which applicant previously admitted it failed to satisfy, are admissible; LBP-11-9, 73 NRC 412 n.119 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226 (2000)
- even if contentions are based on NRC Staff's FSEIS, intervenor still bears the responsibility of demonstrating that a new contention merits admission and meets all six requirements of 10 C.F.R. 2.309; LBP-15-16, 81 NRC 703 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-22, 54 NRC 155, 161 (2001)
- where the information in the DEIS is so different from the information in the environmental report that the DEIS dispenses with and moots the issues raised in the original contention, intervenor must file a new or amended contention against the DEIS; LBP-11-1, 73 NRC 26 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 172 n.3 (2001)
- a contention contesting applicant's environmental report may be viewed as a challenge to the Staff's subsequently issued DEIS/EIS, but this "migration" tenet does not change the basic form of the contention, i.e., whether it challenges the soundness of the information provided or claims that necessary information has been omitted (or some combination of the two); LBP-11-1, 73 NRC 26 n.13 (2011)
- admitted contentions challenging an applicant's environmental report may, in appropriate circumstances, function as challenges to similar portions of the Staff's environmental impact statement; LBP-13-9, 78 NRC 46 (2013); LBP-14-5, 79 NRC 383 (2014); LBP-15-11, 81 NRC 409-10 (2015)
- safety matters generally need to be raised, relative to an admitted safety contention, in the context of the merits disposition of the already-admitted safety contention or, in the case of a new issue, as a wholly new safety contention; LBP-13-10, 78 NRC 132 (2013)
- under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final environmental impact statement without the necessity for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 768 n.140 (2012); LBP-12-23, 76 NRC 471 n.159 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-30, 54 NRC 231, 235 (2001)
- if summary disposition movant meets its burden, the nonmoving party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation and cannot rely on mere allegations or denials, or the facts in controversy will be deemed admitted; LBP-11-14, 73 NRC 595 (2011)
- if summary disposition proponent meets its burden, opponent must counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation and cannot rely on mere allegations or denials, or the facts in controversy will be deemed admitted; LBP-12-23, 76 NRC 450 (2012)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-37, 54 NRC 476, 483-87 (2001), *aff'd*, CLI-02-25, 56 NRC 340, 357 (2002)
the board applied the late-filing standards to a post-9/11 contention related to the risk of a terrorist attack on the ISFSI and found the contention timely but denied admission of both its safety and environmental aspects; CLI-11-5, 74 NRC 170 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 509 (2001)
during summary disposition, it is not appropriate for boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-7, 73 NRC 263 (2011)
summary disposition is not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-11-14, 73 NRC 595 (2011); LBP-12-23, 76 NRC 480 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 510 (2001)
regardless of the level of the dispute, at the summary disposition stage, it is not proper for a board to choose which expert has the better of the argument; LBP-12-23, 76 NRC 478 (2012)
summary disposition is particularly inappropriate when a licensing board is presented with conflicting expert testimony, for at that stage of a proceeding it is not the role of licensing boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-14, 73 NRC 595 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-2, 55 NRC 20, 30 (2002)
a significant change in the nature of the purported NEPA imperfection, from one focusing on comprehensive information omission to one centered on a deficient analysis of subsequently supplied information, warrants issue modification by the complaining party because otherwise, absent any new pleading, the other parties would be left to speculate whether the concerns first expressed had been satisfied by the new information; LBP-12-5, 75 NRC 247 n.124 (2012)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-8, 57 NRC 293, 319-20, *review denied*, CLI-03-8, 58 NRC 11 (2003)
regulatory guidance is not binding on applicants; LBP-11-16, 73 NRC 661 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-8, 57 NRC 293, 320, *review denied* CLI-03-8, 58 NRC 11 (2003)
although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 670, 674 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-8, 57 NRC 293, 544, *petition for review denied*, CLI-03-8, 58 NRC 11, 33 (2003)
abuse of discretion standard of review is applicable to discretionary Staff actions not subject to a hearing opportunity; CLI-13-1, 77 NRC 29 n.158 (2013)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454, 479 (2003)
although there are many possible combinations of wind and solar power, storage, and natural gas, it is not necessary to examine every possible combination; LBP-11-4, 73 NRC 104 (2011)
reasonable alternatives under NEPA do not include alternatives that are impractical, present unique problems, or cause extraordinary costs; LBP-15-3, 81 NRC 104 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-12, 61 NRC 319, 326, *aff'd*, CLI-05-19, 62 NRC 403 (2005)
although an applicant has the ultimate burden of proof on any issues on which a hearing is held, hearings are held on only those issues that an intervenor brings to the fore; LBP-11-4, 73 NRC 100 n.16 (2011)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-12, 61 NRC 319, 331-31 (2005)
directing NRC Staff to investigate a safety issue that the board could not reach through the adjudicatory process may put the Commission in a position, after receiving views of applicant if it desired, to assure itself about the significance, or lack thereof, of the shield building cracking issues

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- raised by intervenors, and to direct such follow-up proceedings, if any, as it might deem appropriate; LBP-15-1, 81 NRC 45 n.181 (2015)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-20, 62 NRC 187, 228 (2005)
- motion to strike may be granted where a pleading or other submission contains information that is irrelevant; LBP-14-6, 79 NRC 432-33 (2014)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 710 & n.12 (2005)
- if NRC Staff detects deficiencies in an application before or after a notice of hearing opportunity is issued, the applicant will freely be given (outside the adjudicatory process) ample opportunity to amend it; LBP-11-9, 73 NRC 412 n.118 (2011)
- the public interest can well be served by revisions to an application that end up “getting it right” and by the Staff’s expected thorough analysis of such revisions; LBP-11-9, 73 NRC 412 (2011)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1 (2008)
- the Commission refused to suspend the combined license proceeding pending completion of the design certification review of the AP1000 reactor; CLI-11-1, 73 NRC 4 (2011)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3-4 (2008)
- combined license applicant may reference an as-yet-uncertified design at its own risk; CLI-12-9, 75 NRC 429-30 (2012)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 4 (2008)
- challenging features of the AP1000 standard design is a matter for a design certification rulemaking, not a combined license proceeding; CLI-11-8, 74 NRC 230 (2011)
- lack of finality in the design certification process is anticipated in the rulemaking, and hearing procedures can be adjusted to account for any new or amended contentions based on information relating to design certification; CLI-11-1, 73 NRC 4 (2011)
- there is no basis to hold a notice of hearing in abeyance pending completion of the design certification rulemaking; CLI-11-1, 73 NRC 4-5 (2011)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 323-27 (2009)
- board decisions that have revised inadmissible contentions to render them admissible have been overturned; CLI-14-2, 79 NRC 28 (2014)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 251 (2010)
- appellants seeking oral argument must show how oral argument will assist the Commission in reaching a decision; CLI-11-8, 74 NRC 220 (2011)
- the Commission generally declines to hold oral argument on appeals, absent a specific showing that oral argument will assist it in reaching a decision; CLI-12-12, 75 NRC 614 (2012)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 252 (2010)
- motion for reconsideration is procedurally defective, out of time, and fails to assert compelling circumstances justifying reconsideration; CLI-13-7, 78 NRC 204 n.14 (2013)
- petitions for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision and that procedural deficiency is reason enough to deny the request; CLI-12-17, 76 NRC 209 n.7 (2012)
- when intervenors renewed a request to hold a proceeding in abeyance pending completion of the design certification rulemaking, the Commission found no new justification for reconsideration or any changed circumstances that could not previously have been brought; CLI-11-1, 73 NRC 5 n.12 (2011)

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- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 270 (2010)
intervenor must point to the specific ways in which the shield building monitoring aging management plan is wrong or inadequate to raise a genuine dispute with applicant's license renewal application; LBP-12-27, 76 NRC 608 (2012)
intervenor's challenge to the aging management plan must consist of more than allegations that the AMP is deficient, but rather must point to specific ways the AMP is inadequate or wrong; LBP-12-27, 76 NRC 602 (2012)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 278 n.205 (2010)
although the entire record is considered on appeal, including pleadings that appellants ask to be adopted by reference, the Commission's decision responds to the arguments made explicitly in the appellate brief; CLI-11-8, 74 NRC 219 (2011)
briefs on appeal are to be comprehensive, concise, and self-contained and incorporation of pleadings or arguments by reference is discouraged; CLI-12-3, 75 NRC 139 n.41 (2012)
- Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-08-21, 68 NRC 554, 559 (2008)
in the standing analysis, boards construe the petition in favor of the petitioner; CLI-14-2, 79 NRC 19 n.45 (2014)
licensing boards are obliged to independently assess petitioners' standing; LBP-15-5, 81 NRC 256 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 29 (2010)
standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or abuse of discretion; CLI-12-7, 75 NRC 386 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 29, 46-48 (2010)
absent error of law or abuse of discretion, the Commission defers to licensing board rulings on contention admissibility; CLI-11-9, 74 NRC 237 (2011)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 34 (2010)
an environmental report's adequacy is examined under NEPA as well as under Part 51 because the ER is the basis upon which the NRC's environmental impact statement will be prepared; LBP-11-13, 73 NRC 552 n.110 (2011); LBP-11-14, 73 NRC 598 (2011)
Part 51, not NEPA, is the source of the legal requirements applicable to the applicant's environmental report; LBP-11-32, 74 NRC 666 (2011)
when NEPA contentions are involved, the burden of proof shifts to NRC Staff; LBP-15-3, 81 NRC 84-85 (2015); LBP-15-16, 81 NRC 641 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 40-41 (2010)
expert witness must have enough knowledge in the subject area to allow him to proffer an expert opinion for the purposes of determining contention admissibility; LBP-15-20, 81 NRC 851 n.129 (2015); LBP-15-24, 82 NRC 89 n.129 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 45 (2010)
evidentiary objections made for the first time after briefing has been completed unfairly deprive the petitioners of the opportunity to file the response expressly provided in the NRC's procedural rules; LBP-15-20, 81 NRC 859 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 46 (2010)
absent a licensed low-level radioactive waste disposal facility that will accept waste from a combined license applicant's facility, it is reasonably foreseeable that LLRW generated by normal operations

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- will be stored at the site for a longer term than is currently envisioned in that COL application; LBP-11-6, 73 NRC 239 (2010); LBP-12-4, 75 NRC 218 (2012)
- an environmental report need only discuss reasonably foreseeable environmental impacts of a proposed action; LBP-11-6, 73 NRC 217 n.78 (2010)
- level of low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to the combined license applicant's particular plans for compliance through design, operational organization, and procedures; LBP-12-4, 75 NRC 218 (2012)
- NEPA and 10 C.F.R. Part 52 requirements do not apply in the license transfer context; CLI-15-8, 81 NRC 511 n.81 (2015)
- NEPA only mandates examination of reasonably foreseeable environmental impacts of a proposed project; LBP-11-33, 74 NRC 683 (2011)
- the environmental impact statement's hard look must examine reasonably foreseeable environmental impacts emanating from the proposed action; LBP-11-39, 74 NRC 868 (2011)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 46-47 (2010)
- contentions challenging the ability of combined license applicants to handle onsite storage of Classes B and C low-level radioactive waste, as well as the attendant potential environmental impacts of such storage in the wake of the closure of the Barnwell facility in South Carolina to states outside of the Atlantic Compact are admissible; LBP-11-6, 73 NRC 239 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 47 (2010)
- level of low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to how that applicant intends to handle an accumulation of LLRW; LBP-12-4, 75 NRC 218 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-2, 71 NRC 27, 47-48 (2010)
- challenges to a combined license applicant's failure to provide information on long-term storage of Greater-Than-Class-C radioactive waste are outside the scope of a combined license proceeding; LBP-11-6, 73 NRC 240 n.109 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251, 254-56 (2011)
- resolution of one contention where there are other contentions pending does not constitute disposition of a major segment of the case, because the outcome of a decision on the license renewal application is undetermined; CLI-11-14, 74 NRC 811 (2011)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251, 255 (2011)
- parties may file a petition for review of licensing board full or partial initial decisions, both of which are considered to be final; CLI-11-14, 74 NRC 810 (2011)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251, 256 (2011)
- expansion of issues for litigation from the board's denial of a motion for summary disposition had neither a pervasive and unusual effect on the litigation nor a serious and irreparable impact on movant; CLI-15-24, 82 NRC 337 n.35 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251, 256 n.24 (2011)
- board's assertedly erroneous ruling does not constitute a pervasive and unusual effect on the proceeding; CLI-15-17, 82 NRC 47 (2015)
- expansion of issues for litigation that results from admission of a contention or denial of motion for summary disposition does not have a pervasive and unusual effect on the litigation; CLI-15-17, 82 NRC 37 n.25, 44 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 86 (2009), *rev'd in part on other grounds*, CLI-10-2, 71 NRC 27, 29 (2010)
- when a contention alleges the need for further study of an alternative, from an environmental perspective, such reasonableness determinations are the merits, and should only be decided after the contention is admitted; LBP-11-2, 73 NRC 50 (2011); LBP-11-13, 73 NRC 564 (2011)

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- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 86-87 (2009)
at the contention admissibility stage, boards merely decide whether a contention satisfies the six pleading criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-11-16, 73 NRC 690 (2011)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 88 (2009), *aff'd in part and rev'd in part on other grounds*, CLI-10-2, 71 NRC 27 (2010)
challenging the environmental report preserves petitioner's right to challenge the environmental impact statement at a later stage of the proceedings; LBP-12-8, 75 NRC 553 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 99-100 (2009)
brief explanation of the rationale underlying the contention is sufficient to satisfy 10 C.F.R. 2.309(f)(1)(ii); LBP-15-20, 81 NRC 849 (2015); LBP-15-24, 82 NRC 79 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 101 (2009)
once challenged, there is no presumption that an environmental report is correct or accurate, with applicant, as the proponent of the license, bearing the burden of proof; LBP-15-2, 81 NRC 57 n.63 (2015)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 102 (2009), *aff'd in part and rev'd in part on other grounds*, CLI-10-2, 71 NRC 27 (2010)
contention that raises a genuine dispute with the sufficiency of the cumulative impacts analysis, or the lack thereof, in the environmental report is admissible; LBP-12-3, 75 NRC 202 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 147 n.89 (2009)
NRC Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 374 n.69 (2014)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC 571 (2010)
if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 194 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC 571, 590 (2010)
applicant has described the kinds and quantities of radioactive materials expected to be produced in the operation to the extent its combined license application references a standardized design; LBP-11-6, 73 NRC 245 n.112 (2010)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC 571, 603 (2010)
consistency of this decision with the *Vogtle* decision on construction of section 52.79(a)(3) is discussed; LBP-12-4, 75 NRC 223-24 n.15 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-23, 72 NRC 692, 703-04 (2010)
"document" means any medium (electronic, paper, or of any other kind) that contains or stores any information, including text, data, audio, video, computer software, or computer modeling information; LBP-11-5, 73 NRC 137 (2011)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 25-26 (2011)
under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 768 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 26 (2011)
contentions of adequacy may migrate into contentions of omission; LBP-13-10, 78 NRC 133 (2013)

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- in certain instances, contentions challenging an environmental report are deemed to migrate from challenging applicant's environmental report to challenging NRC Staff's environmental assessment; LBP-14-6, 79 NRC 416 n.67 (2014)
- migration tenet applies when information in the draft environmental impact statement is sufficiently similar to information in applicant's environmental report, and allows previously admitted contentions challenging the environmental report to apply to relevant portions of the DSEIS; LBP-15-16, 81 NRC 631 n.39 (2015)
- migration tenet applies when the information in the final supplemental environmental impact statement is sufficiently similar to the information in the draft SEIS; LBP-13-9, 78 NRC 46-47 (2013); LBP-14-5, 79 NRC 383 (2014)
- migration tenet helps to expedite hearings by obviating the need to file and litigate the same contention up to three times and applies when the information contained in a subsequently released document is sufficiently similar to the information contained in the original document upon which the original contention was filed; LBP-12-12, 75 NRC 768 (2012); LBP-12-23, 76 NRC 471 (2012)
- under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-23, 76 NRC 471 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 26 n.13 (2011)
- challenges to only the draft environmental impact statement apply equally to the final environmental impact statement under the migration tenet; LBP-12-5, 75 NRC 232 n.17, 238 n.63 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-31, 74 NRC 643, 648 (2011)
- boards apply a two-part test in determining whether to grant summary disposition; LBP-12-26, 76 NRC 564 (2012)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-13-4, 77 NRC 107, 175 n.77 (2013)
- any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 299-300 (2013)
- Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-13-4, 77 NRC 107, 217 (2013)
- environmental protection is part of NRC's core mission statement; LBP-14-9, 80 NRC 49 (2014)
- NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 49 (2014)
- Public Citizen Health Research Group v. Commissioner, Food and Drug Administration*, 740 F.2d 21, 31 (D.C. Cir. 1984)
- courts decline to review tentative agency positions because doing so severely compromises the interests that the ripeness doctrine protects; LBP-15-15, 81 NRC 610 n.83 (2015)
- Public Citizen Health Research Group v. Commissioner, Food and Drug Administration*, 740 F.2d 21, 32 (D.C. Cir. 1984)
- tentative conclusion articulated in a nonfinal, proposed rule does not command deference from the court nor is it binding on the agency; LBP-15-15, 81 NRC 610 n.83 (2015)
- Public Citizen, Inc. v. National Highway Traffic Safety Administration*, 513 F.3d 234, 237 (D.C. Cir. 2008)
- mere potential exposure to minute doses of radiation within regulatory limits does not constitute a distinct and palpable injury on which standing can be founded; CLI-11-3, 73 NRC 623 n.51 (2011)
- Public Citizen, Inc. v. NRC*, 573 F.3d 916, 926 (9th Cir. 2009)
- protecting against the threat of air attacks is not within licensees' responsibilities because a private security force cannot reasonably be expected to defend against such attacks and adequate protection is ensured through the actions of other federal agencies with defense capabilities and air-safety expertise; CLI-11-4, 74 NRC 6 n.26 (2011)
- Public Citizen, Inc. v. Shalala*, 932 F. Supp. 13, 18 n.6 (D.D.C. 1996)
- tentative conclusion articulated in a nonfinal, proposed rule does not command deference from the court nor is it binding on the agency; LBP-15-15, 81 NRC 610 n.83 (2015)

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- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-393, 5 NRC 767, 768 (1977)
whether the board erred in its treatment of evidence is a matter that can be addressed following an initial decision; CLI-15-24, 82 NRC 336 (2015)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 270 (1978)
stay movant has the burden of persuasion on the four factors of 10 C.F.R. 2.1213(d); LBP-15-2, 81 NRC 53 (2015)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980)
third-party requests for a hearing on an enforcement order have been treated as a petition for intervention under the Commission's generally applicable rules; LBP-14-4, 79 NRC 327 n.37 (2014)
- Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 441 (1980)
NRC has long preferred concentrating its resources on actual field inspections and related scientific and engineering work, as opposed to the conduct of legal proceedings; LBP-14-4, 79 NRC 333 (2014)
settlements may become illusory if licensees consent to confirmatory orders and are nonetheless subjected to formal proceedings, possibly leading to different or more severe enforcement actions; LBP-14-4, 79 NRC 333 (2014)
terms of section 2.202 orders often have been negotiated with the affected licensees, who would have little incentive to negotiate if doing so would expose them to formal litigation over additional terms or requirements that third-party petitioners would like to see imposed; CLI-13-2, 77 NRC 45-46 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984)
economic interest generally is not sufficient to afford standing in NRC licensing proceedings regarding health and safety; LBP-14-4, 79 NRC 352 (2014)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 68 (1977)
Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation, or order, such additional requirements and conditions with respect to licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary in order to protect health or to minimize danger to life or property; LBP-15-16, 81 NRC 638 n.104 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 82-90 (1977), *aff'd*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir. 1978)
although NRC Staff's argument against contention admission appears to have some weight, the board need not resolve it, because the contention is inadmissible for failing to raise a genuine dispute of material fact or law with the environmental report; LBP-11-6, 73 NRC 207 n.63 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 83 (1977), *aff'd*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir. 1978)
NRC authority to review offsite impacts of transmission lines goes beyond merely factoring them into a final cost-benefit balance and includes as well the authority where necessary to impose license conditions to minimize those impacts; LBP-11-6, 73 NRC 250 n.116 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 90 (1977), *aff'd*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87 (1st Cir. 1978)
need for power is a shorthand expression for the benefit side of the cost-benefit balance that NEPA mandates for a proceeding considering the licensing of a nuclear power plant; LBP-11-6, 73 NRC 218 (2010)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 111 (1977)
boards' authority to seek to trigger review in extraordinary circumstances remains and has been put to good use; LBP-11-9, 73 NRC 418-19 n.13 (2011)

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- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 489 n.8 (1978)), *rev'd on other grounds*, CLI-97-15, 46 NRC 294 (1997)
although environmental contentions ultimately challenge NRC's compliance with the National Environmental Policy Act, applicant may advocate for a particular challenged position set forth in the environmental impact statement; LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 81 (2012); LBP-14-7, 79 NRC 459 (2014)
applicant may bear the burden of proof on contentions asserting deficiencies in its environmental report and where the applicant becomes a proponent of a particular challenged position set forth in the environmental impact statement; LBP-11-38, 74 NRC 830 (2011)
because NRC Staff relies heavily on applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant, as such a proponent, also has the burden on that matter; LBP-15-3, 81 NRC 85 (2015); LBP-15-16, 81 NRC 642 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 504-08 (1978)
aesthetic impacts of energy sources may vary according to individual location; LBP-11-4, 73 NRC 112 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074-75 (1983)
a board order is appealable when it disposes of a major segment of the case or terminates a party's right to participate; CLI-11-10, 74 NRC 255 (2011)
the basis for allowing immediate appellate review of partial initial decisions rests on prior appeal board decisions permitting review of a licensing board ruling that disposes of a major segment of the case or terminates a party's right to participate; CLI-11-14, 74 NRC 810-11 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74, 78 (1988)
when a motion to reopen is untimely, the section 2.326(a)(1) "exceptionally grave" test supplants the section 2.326(a)(2) "significant safety or environmental issue" test; CLI-11-8, 74 NRC 225 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 22 (1988)
prima facie showing within the meaning of 10 C.F.R. 2.758(d) is one that is legally sufficient to establish a fact or case unless disproved; LBP-14-16, 80 NRC 194 n.64 (2014)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991)
reach of a contention necessarily hinges upon its terms coupled with its stated bases; LBP-13-6, 77 NRC 298-99 (2013); LBP-13-10, 78 NRC 138 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 & n.11 (1988), *aff'd in part and remanded in part on other matters, Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.) (1991), *cert. denied*, 502 U.S. 899 (1991)
intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses; LBP-11-38, 74 NRC 833 (2011); LBP-12-5, 75 NRC 239 n.68 (2012)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-915, 29 NRC 427, 432 (1989)
licensing boards are discouraged from adding material to bolster a petitioner's or party's arguments or pleadings; CLI-11-11, 74 NRC 447 n.113 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-940, 32 NRC 225, 234-38 (1990)
NRC Staff oversight activities normally conducted for the purpose of ensuring that licensees comply with existing NRC requirements and license conditions do not typically trigger the opportunity for a hearing under the AEA; CLI-15-5, 81 NRC 334 (2015)
where NRC has temporarily exempted the licensee, on the basis of an existing rule, from one of many rules made generally applicable by the license does not amount to a license amendment, and thus provide no hearing rights; CLI-14-11, 80 NRC 174 n.35 (2014)

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- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-940, 32 NRC 225, 243 (1990)
to demonstrate a significant safety issue, petitioners must establish either that uncorrected errors endanger safe plant operation or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely; LBP-11-35, 74 NRC 730, 750-51 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 408-09 (1990)
failure to offer factual support for the proposition that applicant's inputs for evacuation times are flawed or unreasonable or that its sensitivity analysis of these inputs was incorrect renders a contention inadmissible; LBP-15-5, 81 NRC 299 n.338 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 428 (1990)
lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 113-14 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 527 (1977)
deference can be given to a state permit's findings as to the acceptability of environmental impacts; LBP-15-11, 81 NRC 439 n.253 (2015)
it is appropriate for NRC Staff to give substantial weight to state agency's decision that issuing the NPDES permit would be environmentally acceptable; LBP-15-11, 81 NRC 436 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 530 (1977)
in granting a proposed license, board may condition it upon some precautionary measures required at the chosen site; LBP-15-16, 81 NRC 638 n.104 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-27, 6 NRC 715, 716 (1977)
stay of an NRC license is an extraordinary remedy, and a rare occurrence in NRC practice; LBP-15-2, 81 NRC 53 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 596 (1988)
to challenge generic application of a rule, petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply; CLI-13-7, 78 NRC 207 (2013)
when engaging in rulemaking, the Commission is carving out issues from adjudication for generic resolution; CLI-13-7, 78 NRC 207 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 596-97 (1988)
NRC case law has given meaning to the "special circumstances" requirement for rule waiver; CLI-13-7, 78 NRC 207 (2013)
rule waivers are not granted where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities; LBP-11-16, 73 NRC 702 n.351 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 597 (1988)
it would not be consistent with NRC's statutorily mandated responsibilities to spend time and resources on matters that are of no substantive regulatory significance; CLI-13-7, 78 NRC 208-09 (2013); LBP-14-16, 80 NRC 194 (2014)
rule waiver should not be granted unless the petition relates to a significant safety problem; LBP-14-16, 80 NRC 194 (2014)
special circumstances for rule waiver are present only if the petition properly pleads one or more facts, not common to a large class of applicants or facilities, that were not considered either explicitly or by necessary implication in the proceeding leading to the rule sought to be waived; LBP-14-16, 80 NRC 194 (2014)
where the rules in question, as well as the contention itself, address compliance with NEPA and not safety issues under the Atomic Energy Act, the rule waiver is needed to address a significant environmental issue instead of a significant safety issue; LBP-14-16, 80 NRC 195 (2014)

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- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 597-98 (1988)
showing of uniqueness is necessary to justify setting aside a regulation for the purposes of a specific proceeding; CLI-13-7, 78 NRC 208 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 599-600 (1988)
rather than assuming that a rule's purpose is simply to achieve its stated effect, one must look further by examining the underlying purpose of the requirement; CLI-13-7, 78 NRC 209 n.49 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 235 (1989)
NRC case law has given meaning to the "special circumstances" requirement for rule waiver; CLI-13-7, 78 NRC 207 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989)
parties are expected to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point; LBP-11-6, 73 NRC 220 n.80 (2010)
wholesale incorporation by reference does not serve the purposes of a pleading; LBP-15-5, 81 NRC 290 n.263 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-8, 29 NRC 399, 412 (1989)
without a showing of irreparable injury, petitioners seeking a stay of effectiveness must make an overwhelming showing of likely success on the merits; CLI-12-11, 75 NRC 529 (2012)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 232 (1990)
arrangements for requesting and effectively using assistance resources should be identified and supported by appropriate letters of agreement; LBP-15-18, 81 NRC 800 n.40 (2015)
lack of detail for emergency sheltering option is not significant because size of sheltering population is very small; LBP-15-18, 81 NRC 800 n.42 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 221 (1990)
burden of satisfying the reopening requirements is a heavy one, and it rests with the party moving to reopen; CLI-15-19, 82 NRC 155-56 (2015)
proponents of reopening must meet all requirements; LBP-11-20, 74 NRC 81 (2011)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 154 (1992)
to avoid summary disposition, intervenors must present contrary evidence so significantly probative that it creates a material factual issue; LBP-12-19, 76 NRC 191 n.29 (2012)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-6, 16 NRC 1649, 1656 (1982)
contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-13-6, 77 NRC 284 (2013)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-89-4, 29 NRC 62, 73 (1989)
in assessing whether applicant/licensee adequately carries out a licensing directive, boards are to assume that NRC Staff will be fair and judge the matter of an applicant/licensee's compliance on the merits; LBP-15-3, 81 NRC 141 n.66 (2015)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-89-28, 30 NRC 271 (1989), *aff'd*, ALAB-940, 32 NRC 225 (1990)
board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 441 (2012)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-89-32, 30 NRC 375, 554 n.56 (1989), *rev'd in part on other grounds and remanded*, ALAB-937, 32 NRC 135 (1990), *aff'd in*

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- part and rev'd in part on other grounds*, ALAB-941, 32 NRC 337 (1990), *and aff'd on other grounds*, ALAB-947, 33 NRC 299 (1991)
board considered evidence submitted with petitioner's reply to which opposing parties didn't object; LBP-15-5, 81 NRC 289 n.252 (2015)
- Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 80 (1st Cir. 1978)
approval of permits to a nuclear power plant was conditioned on the rerouting of two offsite transmission lines to avoid environmental impacts on marshlands, tree species, and migratory waterfowl; LBP-14-9, 80 NRC 48-49 (2014)
- Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 81 (1st Cir. 1978)
NEPA requires NRC to construe its existing statutory authority consistently with NEPA's goals; LBP-14-9, 80 NRC 54 (2014)
- Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 82 (1st Cir. 1978)
agency's interpretation of what is properly within its jurisdictional scope is entitled to great deference, and will not be overturned if reasonably related to the language and purposes of the statute; LBP-14-9, 80 NRC 55 (2014)
court found no inevitable clash between NRC's broad regulatory authority under the Atomic Energy Act and the action-forcing provisions of the National Environmental Policy Act; LBP-14-9, 80 NRC 54-55 (2014)
NRC has long interpreted its statutory authority under the Atomic Energy Act to include conditioning approval of nuclear power plant licenses on environmentally acceptable routing of transmission lines; LBP-14-9, 80 NRC 48 (2014)
- Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 82-83 (1st Cir. 1978)
NRC's decision to include transmission lines that serve a nuclear power plant within the definition of "utilization facility" in 42 U.S.C. § 2014(cc) was upheld; LBP-14-9, 80 NRC 55 (2014)
- Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 86 (1st Cir. 1978)
NRC can, consistent with its authority under the Atomic Energy Act, impose permit conditions on the routing of the transmission lines in order to further NEPA's mandate; LBP-14-9, 80 NRC 55 (2014)
- Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 787 (1979)
conclusory language is not sufficient to support an appeal; CLI-11-8, 74 NRC 225 (2011)
- Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979)
demand for electricity is of course the justification for building any power plant, and satisfaction of that demand is the principal beneficial factor weighed against the environmental costs in striking the balance that NEPA requires; LBP-11-7, 73 NRC 282 n.174, 291 n.242 (2011)
inasmuch as NRC Staff relies on the benefits of proposed units to satisfy an otherwise unmet need for power, the adequacy of the need-for-power assessment is material to granting the proposed combined license; LBP-11-7, 73 NRC 291 (2011)
- Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), LBP-78-28, 8 NRC 281, 282 (1978)
NRC Staff need not replicate the work completed by another entity, but rather must independently review and find relevant and scientifically reasonable any outside reports or analyses on which it intends to rely in its environmental impact statement; LBP-11-1, 73 NRC 25 n.9 (2011)
- Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973)
burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 394 (2015); LBP-15-13, 81 NRC 468 n.65 (2015)
- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1133 (1981)
when a motion to withdraw an application is unopposed and the withdrawal causes no apparent harm to the public or any party, it is appropriate to grant the motion without prejudice or imposition of additional terms; LBP-12-20, 76 NRC 216 (2012)
- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1133-34 (1981)
dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the license amendment request; LBP-15-28, 82 NRC 241 (2015)

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- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1135 & n.11 (1981)
opposing party's litigation expenses do not provide a basis for departing from the usual rule that a dismissal should be without prejudice; CLI-13-10, 78 NRC 567 n.27 (2013)
- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1145 (1981)
standard for dismissal with prejudice is not met because the prospect of future litigation is not unusual, being inherent in any dismissal without prejudice; LBP-15-28, 82 NRC 241 (2015)
- Puget Sound Power and Light Co.* (Skagit Nuclear Power Project, Units 1 and 2), CLI-80-34, 12 NRC 407, 408 (1980)
stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- Quechan Tribe v. U.S. Department of the Interior*, 755 F. Supp. 2d 1104, 1106-07 (S.D. Cal. Dec. 15, 2010)
preliminary injunction halting a solar energy project was granted based on a tribal claim that the project would not avoid most of the 459 cultural sites identified, and that the NEPA and NHPA process had been insufficient; LBP-15-2, 81 NRC 55-56 (2015)
- Quechan Tribe v. U.S. Department of the Interior*, 755 F. Supp. 2d 1104, 1120 (S.D. Cal. Dec. 15, 2010)
irreparable harm element of the test for issuance of injunctive relief was met where the tribe's evidence showed that a phase of the project would involve damage to at least one known site, and virtually ensure some loss or damage; LBP-15-2, 81 NRC 56 (2015)
- Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 12 (1998)
NRC is to look to federal law in applying the zone-of-interests test; LBP-14-4, 79 NRC 353 (2014)
where plaintiff is not itself the subject of the contested regulatory action, the zone-of-interests test denies a right of review if plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit; LBP-14-4, 79 NRC 328 n.44, 354 (2014)
- RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012)
specific regulations control over general regulations; CLI-15-10, 81 NRC 540 (2015)
- Ralph L. Tetrick* (Denial of Application for Reactor Operator License), CLI-97-10, 46 NRC 26, 31-32 (1997)
because agency practice is one indicator of how the agency interprets regulations, a consistently held NRC Staff view on an operator testing policy matter will not be disturbed; LBP-14-2, 79 NRC 150-51 n.88 (2014)
- Ramadan v. Chase Manhattan Corp.*, 229 F.3d 194, 201 (3d Cir. 2000)
regulations cannot trump statutory mandates; LBP-12-8, 75 NRC 553 (2012)
- Randall L. Herring* (Senior Reactor Operator License for Catawba Nuclear Station), LBP-98-30, 48 NRC 355, 357 (1998)
NRC issued NUREG-1021 to set forth consistent standards for operator and senior reactor operator examinations at various facilities; LBP-14-2, 79 NRC 150 (2014)
- Randall L. Herring* (Senior Reactor Operator License for Catawba Nuclear Station), LBP-98-30, 48 NRC 355, 358 (1998)
licensing boards have limited their review of NRC Staff reactor operator licensing decisions to those issues that were resolved against the license applicant in the Staff's informal review; LBP-14-2, 79 NRC 148 (2014)
- Ratzlaf v. United States*, 510 U.S. 135, 143 (1994)
equivalent words have equivalent meaning when repeated in the same statute; LBP-13-3, 77 NRC 91-92 (2013)
- Reino de Espana v. American Bureau of Shipping*, No. 03CIV3573LTSRLE, 2005 WL 1813017, at *13 (S.D.N.Y. 2005)
although the privilege log identifies and describes the documents sought to be protected, it fails to give precise and certain reasons for asserting confidentiality over the documents; LBP-13-5, 77 NRC 247 n.76 (2013)

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- Renegotiation Board v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 183 (1975)
the FOIA exemption for inter- or intra-agency materials incorporates the deliberative process privilege, which protects documents that are prepared to assist an agency, board, or official to arrive at a decision; LBP-13-5, 77 NRC 239 (2013)
- Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57 n.18 (1993)
ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction; LBP-12-19, 76 NRC 198 (2012)
- Resolution Trust Corp. v. Diamond*, 773 F. Supp. 597, 604-05 (S.D.N.Y. 1991)
although the privilege log identifies and describes the documents sought to be protected, it fails to give precise and certain reasons for asserting confidentiality over the documents; LBP-13-5, 77 NRC 247 (2013)
- Reyes-Gaona v. North Carolina Growers Association*, 250 F.3d 851, 865 (4th Cir. 2001)
doctrine of *expressio unis est exclusio alterius* instructs that where a law expressly describes a particular situation to which it shall apply, what was omitted or excluded was intended to be omitted or excluded; LBP-13-9, 78 NRC 67-68 (2013)
- Richard E. Dow*, CLI-91-9, 33 NRC 473, 478 (1991)
NRC has authority to conduct any investigations it deems necessary and proper to the administration or enforcement of its authority, which includes any regulations or orders issued pursuant to the AEA; CLI-13-5, 77 NRC 227 (2013)
- Richard E. Dow*, CLI-91-9, 33 NRC 473, 479 (1991)
agencies are required to use alternative means for obtaining information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 230 (2013)
NRC subpoenas have been quashed or limited when the subpoena was not closely drawn or NRC did not consider alternative means for obtaining the requested information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 227 (2013)
under appropriate circumstances First Amendment rights give way to the compelling government interest in nuclear safety; CLI-13-5, 77 NRC 227 (2013)
- Riverkeeper, Inc. v. Collins*, 359 F.3d 156, 158 (2d Cir. 2004)
for contentions that fall within the facility's current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 134 n.115 (2011)
- Roanoke River Basin Association v. Hudson*, 991 F.2d 132, 139 (4th Cir. 1993)
in determining whether the government's position was substantially justified, courts must look to the totality of the circumstances; LBP-11-8, 73 NRC 368 (2011)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 (1989)
NEPA's requirements, like publication of the environmental impact statement, implement NEPA's sweeping policy goals by ensuring that agencies will take a hard look at environmental consequences; LBP-13-13, 78 NRC 286 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 334, 355-56 (1989)
although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 670, 674 (2011)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 347 (1989)
environmental impact statement issued by a federal agency may rely on mitigation measures that are yet to be developed; LBP-13-4, 77 NRC 219 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989)
National Environmental Policy Act declares a broad national commitment to protecting and promoting environmental quality; LBP-11-7, 73 NRC 264 (2011); LBP-13-13, 78 NRC 284 (2013)
to ensure that NEPA's broad national commitment to protecting and promoting environmental quality is infused in the actions of the federal government, NEPA establishes certain action-forcing procedures on each federal agency; LBP-13-4, 77 NRC 119 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)
environmental impact statement ensures that decisionmakers will have available and will carefully consider detailed information concerning significant environmental impacts; CLI-15-10, 81 NRC 540 (2015)

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environmental impact statement guarantees that the relevant information will be made available to the larger audience, such as petitioners and state and local governments, that may also play a role in the decisionmaking process; CLI-15-10, 81 NRC 540-41 (2015)

environmental impact statements cannot fulfill their role of providing a springboard for public comment if they fail to evaluate significant issues such as measures that the agency's experts recommend to mitigate the consequences of a severe accident; LBP-12-18, 76 NRC 179 (2012); LBP-14-9, 80 NRC 58 (2014)

final environmental impact statements must be supplemented to provide complete, accurate, and up-to-date sources of information for members of the public and state and local governments; CLI-15-10, 81 NRC 538 n.7 (2015)

focusing government and public attention on the environmental effects of proposed agency action ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct; LBP-12-1, 75 NRC 36-37 n.48 (2012)

goals of NEPA are to ensure that agency decisionmakers will have detailed information concerning significant environmental impacts of proposed projects when they make their decisions and to guarantee that such information will be available to the larger audience that may also play a role in the decisionmaking process; LBP-12-17, 76 NRC 81 (2012); LBP-13-4, 77 NRC 119-20, 209-10 (2013); LBP-13-13, 78 NRC 451, 508, 534 (2013)

NEPA exists in part to ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast; LBP-11-23, 74 NRC 351 (2011); LBP-12-1, 75 NRC 36 (2012); LBP-12-10, 75 NRC 679-80 (2012); LBP-13-4, 77 NRC 120, 210 (2013); LBP-14-9, 80 NRC 56 (2014)

NEPA has a dual purpose of ensuring that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions, and informing the public, Congress, and other agencies of those consequences; LBP-11-35, 74 NRC 766 n.13 (2011); LBP-12-1, 75 NRC 34 (2012)

statutory requirement to prepare an environmental impact statement serves two purposes; CLI-15-10, 81 NRC 540 (2015)

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349-50 (1989)

although NEPA does not mandate particular results, its purposes include ensuring that NRC, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts and will make available the relevant information to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision; LBP-11-23, 74 NRC 330 (2011)

NEPA has twin goals of forcing agencies to take a hard look at the environmental consequences of a proposed project, and, making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-11-14, 73 NRC 598 (2011); LBP-12-18, 76 NRC 179 (2012); LBP-14-9, 80 NRC 57 (2014); LBP-15-16, 81 NRC 697 n.511 (2015)

NEPA is intended to require federal agencies to consider the environmental consequences of their actions and to foster informed public participation in the decisionmaking process; LBP-12-12, 75 NRC 750 (2012); LBP-12-17, 76 NRC 120-21 (2012)

without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an environmental impact statement to inform agency deliberation and facilitate public involvement would be greatly degraded; LBP-11-23, 74 NRC 331 (2011)

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349-52 (1989)

NEPA's intent is that the FEIS should provide the public with detailed information concerning significant environmental impacts of the proposed federal action and alternatives available to mitigate those impacts; LBP-12-18, 76 NRC 179 (2012)

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)

although NEPA does not direct any particular substantive result, all environmental consequences of the proposed action, including connected actions, must be fully evaluated in the FEIS; LBP-12-12, 75 NRC 780 (2012)

although NEPA mandates that an agency prepare an environmental impact statement and take a hard look at the environmental impacts of a proposed agency action, NEPA itself does not mandate

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- particular results, but simply prescribes the necessary process; LBP-13-4, 77 NRC 120 (2013); LBP-13-13, 78 NRC 286 n.184 (2013)
- if the adverse environmental impacts of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-14, 73 NRC 605 (2011); LBP-12-18, 76 NRC 158 (2012); LBP-13-4, 77 NRC 120-21, 216 (2013)
- NEPA does not mandate particular decisions that an agency must reach, only the process the agency must follow while reaching decisions; LBP-11-17, 74 NRC 27 n.77 (2011); LBP-12-17, 76 NRC 81 n.49 (2012); LBP-12-18, 76 NRC 158 (2012); LBP-15-19, 81 NRC 824 (2015)
- NEPA itself does not mandate particular results, but simply prescribes the necessary process; LBP-11-7, 73 NRC 264 (2011); LBP-12-12, 75 NRC 770 n.154 (2012); LBP-15-23, 82 NRC 62 (2015)
- NEPA requires that NRC take a hard look at alternatives, including severe accident mitigation alternatives, and to provide a rational basis for rejecting alternatives that are cost-effective; LBP-12-8, 75 NRC 549 (2012)
- NEPA's requirement that federal agencies prepare an environmental impact statement when considering a major action serves the statute's action-forcing purpose in two ways; LBP-11-7, 73 NRC 264 (2011)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350, 353 (1989)
- NEPA does not mandate particular results and, accordingly, does not demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-15-23, 82 NRC 64 (2015)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989)
- if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-7, 73 NRC 281 n.168 (2011)
- NEPA imposes procedural obligations on federal agencies proposing to take actions significantly affecting the quality of the human environment; LBP-11-39, 74 NRC 867-68 (2011)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-53 (1989)
- NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 396 n.46 (2015)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989)
- although NEPA establishes a national policy in favor of protecting the human environment, NEPA does not require the agency to select the most environmentally benign alternative, but rather merely prohibits uninformed rather than unwise agency action; LBP-13-4, 77 NRC 120-21 (2013)
- discussion of steps that can be taken to mitigate adverse environmental consequences plays an important role in the environmental analysis under NEPA; LBP-12-18, 76 NRC 134 (2012)
- NEPA prohibits uninformed agency action; LBP-11-17, 74 NRC 27 (2011)
- NEPA requires each environmental impact statement to include a detailed discussion of measures that might mitigate the adverse environmental consequences of the proposed action; LBP-11-7, 73 NRC 264 (2011); LBP-13-4, 77 NRC 216 (2013); LBP-15-23, 82 NRC 63, 64 (2015)
- requirement that an environmental impact statement contain a detailed discussion of possible mitigation measures flows both from the language of NEPA and, more expressly, from the Council on Environmental Quality's implementing regulations; LBP-13-4, 77 NRC 216 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351, 353 & n.16 (1989)
- NEPA does not impose a substantive obligation for a reviewing agency to require or enforce mitigation measures discussed in an environmental assessment; LBP-14-6, 79 NRC 415 (2014)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989)
- environmental impact statements must discuss any adverse environmental effects that cannot be avoided should the proposal be implemented and must provide a reasonably complete discussion of possible mitigation measures; LBP-12-23, 76 NRC 486 n.259 (2012)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989)
- agency's procedural obligation to discuss mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated is distinguished from any substantive requirement to actually develop and adopt a detailed mitigation plan; LBP-14-7, 79 NRC 460 (2014)

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by identifying new accident mitigation measures that are not evaluated in the FEIS, recommending that those measures be considered in pending COL reviews, and explaining why those measures are necessary for protection of public health and safety, the Fukushima Task Force Report provides sufficient support for intervenors' argument that the FEIS fails to include a sufficient discussion of steps that can be taken to mitigate adverse environmental consequences; LBP-12-18, 76 NRC 164 (2012)

CEQ regulations require that agencies discuss possible mitigation measures in defining the scope of the EIS, in discussing alternatives to the proposed action and consequences of that action, and in explaining its ultimate decision; LBP-12-18, 76 NRC 160 (2012)

discussion of mitigation measures in an environmental impact statement is an important part of an agency's hard look at the environmental consequences of proposed federal action; LBP-13-4, 77 NRC 216 (2013); LBP-14-7, 79 NRC 460 (2014)

environmental impact statements must include a reasonably complete discussion of possible mitigation measures; LBP-12-18, 76 NRC 159 (2012)

final supplemental environmental impact statement need not contain a complete mitigation plan; LBP-15-16, 81 NRC 694 (2015)

implicit in NEPA's demand that an agency prepare a detailed environmental impact statement is an understanding that the EIS will discuss the extent to which adverse effects can be avoided; LBP-12-18, 76 NRC 160 (2012)

mitigation must be discussed in sufficient detail in an environmental impact statement to ensure that environmental consequences have been fairly evaluated; LBP-11-2, 73 NRC 64 (2011); LBP-11-7, 73 NRC 265 (2011); LBP-11-13, 73 NRC 566 (2011); LBP-12-18, 76 NRC 134, 159 (2012); LBP-13-4, 77 NRC 216 (2013); LBP-14-9, 80 NRC 64-65 (2014); LBP-15-11, 81 NRC 430 (2015)

NEPA does not require that a complete mitigation plan be formulated and adopted before the agency makes its decision; LBP-13-4, 77 NRC 216 (2013)

numerous Council on Environmental Quality regulations require an agency to discuss possible mitigation measures, including 40 C.F.R. §§ 1508.25(b), 1502.14(f), 1502.16(h), and 1508.20; LBP-13-4, 77 NRC 216 (2013)

sufficiency of NRC's hard look at the benefits of severe accident mitigation alternatives in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 21 (2011) there is a fundamental distinction between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan actually be formulated and adopted, on the other; LBP-11-14, 73 NRC 607 n.104 (2011)

where the agency has found mitigation strategies necessary to alleviate a potential impact, the associated discussion should be reasonably complete to properly evaluate the severity of the adverse effects; LBP-15-11, 81 NRC 431, 437 (2015); LBP-15-16, 81 NRC 687 n.436 (2015)

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352-53 (1989)

NEPA does not demand the presence of a fully developed plan or a detailed explanation of specific measures that will be employed to mitigate the adverse impacts of a proposed action; LBP-11-7, 73 NRC 265 (2011)

to the extent a board would have NRC Staff elaborate on its analysis, the board's decision does not appear patently unreasonable; CLI-11-14, 74 NRC 813 (2011)

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 353 (1989)

because NEPA imposes no substantive requirement that mitigation measures actually be taken, it should not be read to require agencies to obtain an assurance that third parties will implement particular measures; CLI-11-14, 74 NRC 813 n.68 (2011); LBP-11-23, 74 NRC 330 (2011); LBP-14-7, 79 NRC 460-61 (2014)

it would be inconsistent with NEPA's reliance on procedural mechanisms, as opposed to substantive, result-based standards, to demand the presence in an environmental impact statement of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-13-4, 77 NRC 216 (2013); LBP-15-16, 81 NRC 688 (2015)

NEPA does not require the draft environmental impact statement to include a fully formulated or adopted mitigation plan, but its discussion must provide sufficient detail to ensure that environmental

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- consequences have been fairly evaluated; LBP-13-13, 78 NRC 453 (2013); LBP-15-23, 82 NRC 63 (2015)
- NEPA generally does not mandate that identified mitigation measures be implemented; CLI-12-10, 75 NRC 488 (2012); LBP-11-14, 73 NRC 607 (2011); LBP-13-4, 77 NRC 216 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354 (1989)
- as a mitigation analysis, a severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis; LBP-11-7, 73 NRC 265 (2011)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354-55, 359 (1989)
- NEPA does not require a worst-case analysis; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 237 (2012); LBP-13-13, 78 NRC 286, 452 n.1419 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354-56 (1989)
- a NEPA mitigation alternatives analysis need not reflect the most conservative, or worst-case, analysis; CLI-12-1, 75 NRC 57 (2012); CLI-12-10, 75 NRC 487 (2012)
- the severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis; LBP-11-18, 74 NRC 37-38 (2011)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 355-56 (1989)
- Council on Environmental Quality regulations receive substantial deference from federal courts; LBP-12-17, 76 NRC 82 n.57 (2012)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356, 358 (1989)
- environmental impact statements must cover all cumulative environmental impacts even if they occur offsite (e.g., beyond the licensee's property line); LBP-13-4, 77 NRC 120 (2013)
- Council on Environmental Quality regulation requiring an environmental impact statement to consider reasonably foreseeable impacts rather than a worst-case analysis is entitled to substantial deference and NEPA does not require a worst-case analysis in an EIS; LBP-13-4, 77 NRC 120 n.25, 210 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989)
- courts give controlling weight to an agency's interpretation of its own regulation unless it is plainly erroneous or inconsistent with the regulation; LBP-12-19, 76 NRC 196 n.65 (2012)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 371 (1989)
- NEPA does not require that a complete mitigation plan be actually formulated and adopted before the federal agency can issue an environmental impact statement and render its decision; LBP-13-4, 77 NRC 219 (2013)
- Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 371-72 (1989)
- where state and local governmental bodies that have jurisdiction over the area in which adverse effects need to be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that a federal agency has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary; LBP-13-4, 77 NRC 219 (2013)
- Rochester Gas and Electric Corp. (Sterling Power Project, Nuclear Unit No. 1)*, ALAB-596, 11 NRC 867, 869 (1980)
- stare decisis* is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- Rock Island, Arkansas, & Louisiana Railway Co. v. United States*, 254 U.S. 141, 143 (1920)
- those dealing with their government must turn square corners; LBP-15-24, 82 NRC 101 (2015)
- Rockwell International Corp. (Rocketdyne Division)*, CLI-90-5, 31 NRC 337, 340 (1990)
- Commission, like other adjudicatory bodies, looks with favor upon settlements; LBP-14-4, 79 NRC 333 (2014)
- Rodriguez v. Taylor*, 569 F.2d 1231, 1245 (3d Cir. 1977)
- the presence of an attorney-client relationship suffices to entitle prevailing litigants to receive fee awards; LBP-11-8, 73 NRC 366 (2011)
- Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 967 (D.C. Cir. 2004)
- the government must demonstrate the reasonableness not only of its litigation position, but also of the agency's actions; LBP-11-8, 73 NRC 368 n.97 (2011)

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- Roosevelt Campobello International Park Commission v. Environmental Protection Agency*, 684 F.2d 1041, 1047 (1st Cir. 1982)
for siting alternatives, an agency's duty under NEPA is to study all alternatives that appear reasonable and appropriate for study at the time of drafting the environmental impact statement; CLI-12-5, 75 NRC 342 n.244 (2012)
- Roviaro v. United States*, 353 U.S. 53, 59 (1957)
government may withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of the law; CLI-13-5, 77 NRC 229 (2013)
- Sackett v. Environmental Protection Agency*, 132 S. Ct. 1367 (2012)
person does not need to wait until being charged with a crime and in the dock before he can challenge an order that imposes new burdens and liabilities on him; LBP-14-4, 79 NRC 370 n.52 (2014)
when the police power of the federal government is deployed to order a person to perform certain actions, under pain of losing his or her livelihood, liberty, and/or property, then that person has a right to challenge the order, and have a hearing to determine what the order means and whether it comports with the law; LBP-14-4, 79 NRC 370-71 (2014)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981)
licensing proceedings are not the appropriate venue for generic rulemaking issues; CLI-15-9, 81 NRC 530 (2015)
matters that are or are about to become the subject of a general rulemaking are not appropriate subjects for contentions before individual licensing boards; LBP-14-1, 79 NRC 95 n.293 (2014)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992)
in determining whether an individual member of an organization qualifies for standing in his or her own right, NRC generally applies traditional judicial standing concepts; LBP-11-13, 73 NRC 545 (2011)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 144-45 (1993)
NRC Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 339 (2012)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 147 (1993)
intervenor has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as a foundation for a specific contention; CLI-11-2, 73 NRC 339 n.22 (2011); LBP-12-13, 75 NRC 789-90 n.17 (2012)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 152-53 n.46 (1993)
all parties, including NRC Staff, are obligated to bring any significant new information to the board's attention; LBP-14-2, 79 NRC 243 (2014)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91, 93 (1994)
Commission generally disfavors interlocutory review; CLI-15-17, 82 NRC 36 (2015)
possibility of board error in admitting a contention does not warrant interlocutory review; CLI-15-17, 82 NRC 44, 47 (2015)
rejection of contention, where petitioner has other contentions pending for hearing does not constitute serious and irreparable harm or affect the structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 37 n.23, 44 (2015)
- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91, 94 (1994)
routine contention admissibility decisions do not affect the basic structure of a proceeding in a pervasive or unusual manner; CLI-12-13, 75 NRC 688 (2012)

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- Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994)
petitions that lack alleged facts or expert opinions to support the contention are inadmissible; LBP-11-29, 74 NRC 621 (2011)
- Safety Light Corp.* (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 NRC 79, 89 (1992)
related proceedings may be consolidated based on similarity of issues in the proceedings, commonality of litigants, and convenience and saving of time or expense; CLI-14-5, 79 NRC 261 (2014)
- San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959)
labor-related disputes are within the exclusive competence of the National Labor Relations Board; LBP-14-4, 79 NRC 331 (2014)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006)
impacts of attacks on reactors are cognizable under NEPA, an evaluation of mitigation measures is required by NEPA and NRC regulations, and an evaluation of measures to mitigate attacks on nuclear reactors cannot be found in the license renewal generic environmental impact statement; CLI-11-11, 74 NRC 454 (2011)
NRC is required to analyze potential terrorist attacks as part of its NEPA review with regard to facilities located in the Ninth Circuit; LBP-12-21, 76 NRC 241 n.128 (2012)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1031 (9th Cir. 2006)
only those NRC-regulated facilities located within the Ninth Circuit's jurisdictional boundaries are required to conduct environmental analyses of possible terrorist acts; LBP-14-6, 79 NRC 428 (2014)
- San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287 (D.C. Cir. 1984)
factors material to determining whether NRC actions constitute a de facto license amendment are described; LBP-13-7, 77 NRC 332 (2013)
- San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1314 (D.C. Cir. 1984), *reh'g en banc on other grounds*, 789 F.2d 26 (D.C. Cir.), *cert. denied*, 479 U.S. 923 (1986)
lifting a license suspension is not a license amendment; LBP-15-27, 82 NRC 191 n.41 (2015)
- San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1316-17 (D.C. Cir. 1984), *vacated in part*, 760 F.2d 1320 (D.C. Cir. 1985) (en banc), *and aff'd*, 789 F.2d 26 (D.C. Cir. 1985) (en banc), *cert. denied*, 479 U.S. 923 (1986)
parties were not permitted to raise issues or there was no opportunity for hearing on a particular issue; LBP-11-20, 74 NRC 91 n.3 (2011)
- San Luis Obispo Mothers for Peace v. NRC*, 799 F.2d 1268, 1270 (9th Cir. 1986)
NRC regulations appropriately require a hearing before the proposed license amendment becomes effective whenever the amendment creates the possibility of a new or different kind of accident; LBP-15-20, 81 NRC 859 n.181 (2015)
- Sanders v. United States*, 373 U.S. 1, 17 (1963)
denial of vacatur is merely one application of the principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks; CLI-13-9, 78 NRC 562 n.4 (2013)
- Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1249 (9th Cir. 1984)
agency is required to acquire the information that is lacking in an environmental impact statement if it is essential to a reasoned choice and costs of obtaining it are not exorbitant; LBP-14-9, 80 NRC 62 n.207 (2014)
almost every EIS contains some original research, and almost every time an environmental impact statement is ruled inadequate by a court, it is because more data or research is needed; LBP-14-9, 80 NRC 62 n.207 (2014)
- Save Our Sonoran v. Flowers*, 408 F.3d at 1113, 1121-23 (9th Cir. 2005)
Corps of Engineers improperly constrained NEPA analysis; LBP-14-6, 79 NRC 422 (2014)
- Save the Bay, Inc. v. U.S. Corps of Engineers*, 610 F.2d 322, 326 (5th Cir. 1980)
NEPA applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-11-32, 74 NRC 666 (2011)
- Scarborough v. Principi*, 541 U.S. 401, 414 (2004)
under the Equal Access to Justice Act, the government bears the burden of establishing that its position was substantially justified; LBP-11-8, 73 NRC 368 (2011)

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- Scarborough v. Principi*, 541 U.S. 401, 415 (2004)
Congress did not want the “substantially justified” standard to be read to raise a presumption that the government position was not substantially justified simply because it lost the case; LBP-11-8, 73 NRC 368 n.100 (2011)
- Schweiker v. Wilson*, 450 U.S. 221, 226 & n.6 (1981)
the equal protection component of the Fifth Amendment’s Due Process Clause applies to federal action, and the Equal Protection Clause of the Fourteenth Amendment applies to state action; LBP-11-15, 73 NRC 639 n.20 (2011)
- Scientists’ Institute for Public Information, Inc. v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)
NEPA only requires reasonable forecasting of need for power; LBP-11-38, 74 NRC 831 (2011); LBP-12-5, 75 NRC 237 (2012)
NEPA’s rule of reason is a judicial device to ensure that common sense and reason are not lost in the rubric of regulation and thus requires only reasonable forecasting; LBP-13-13, 78 NRC 452 (2013)
- Seacoast Anti-Pollution League v. NRC*, 598 F.2d 1221, 1230 (1st Cir. 1979)
for siting alternatives, an agency must consider alternatives that appear reasonable at the time of the NEPA review; CLI-12-5, 75 NRC 342 n.244 (2012)
- Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80 (1943)
a court cannot defer to interpretive proposals offered by counsel at oral argument and affirm on the basis of that reading when the statute does not plainly compel the reading being proposed; CLI-11-12, 74 NRC 470 (2011)
- Securities and Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 203 (1947)
choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency; CLI-15-11, 81 NRC 549 n.19 (2015); LBP-14-16, 80 NRC 193 (2014)
- Securities and Exchange Commission v. Comserv Corp.*, 908 F.2d 1407, 1409-10, 1413 (8th Cir. 1990)
neither the Equal Access to Justice Act nor the legislative history provides a definition of the word “incur”; LBP-11-8, 73 NRC 363-64 (2011)
- Securities and Exchange Commission v. Comserv Corp.*, 908 F.2d 1407, 1409-10, 1415 (8th Cir. 1990)
where a pro bono attorney forgives a fee to a client unable to afford legal expenses, that client is eligible for an Equal Access to Justice Act award on the basis of that arrangement with the attorney; LBP-11-8, 73 NRC 365 n.74 (2011)
- Securities and Exchange Commission v. Comserv Corp.*, 908 F.2d 1407, 1409-10, 1416 (8th Cir. 1990)
the fee-deterrent-removal purpose of the Equal Access to Justice Act would not be served by an award of fees to an individual whose fees are fully paid by a ineligible organization; LBP-11-8, 73 NRC 363 (2011)
- Securities and Exchange Commission v. Sloan*, 436 U.S. 103, 109 (1978)
exception to the mootness doctrine occurs if the challenged action is too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again; CLI-13-9, 78 NRC 558 n.26 (2013)
exception to the mootness doctrine occurs when a case is capable of repetition, yet evading review; CLI-13-10, 78 NRC 568 n.35 (2013)
- Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942)
applicant owes no duty to address the federal government’s trust responsibility in its environmental report; LBP-14-6, 79 NRC 428 (2014)
the federal government bears a trust responsibility to Native American tribes, and the NRC, as a federal agency, owes a fiduciary duty to tribes and their members; LBP-11-30, 74 NRC 632 (2011); LBP-12-24, 76 NRC 519 (2012)
- Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)
government’s trust responsibility is at its apex when it comes to managing tribal resources and preventing confiscation or environmental degradation of those resources; LBP-14-16, 80 NRC 191 (2014)
- Sequoyah Fuels Corp.*, CLI-94-4, 39 NRC 187, 189 n.1 (1994)
replies may not contain new information that was not raised in either the petition or answers, but arguments that respond to the petition or answers are not precluded, whether they are offered in rebuttal or in support; CLI-11-14, 74 NRC 809 (2011)

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- Sequoyah Fuels Corp.*, LBP-93-25, 38 NRC 304, 315 (1993), *aff'd*, CLI-95-2, 41 NRC 179 (1995)
purpose of the rule to dismiss proceedings on conditions is primarily to prevent voluntary dismissals that unfairly affect the other side, and to permit the imposition of curative conditions; LBP-15-28, 82 NRC 242 n.67 (2015)
- Sequoyah Fuels Corp.*, LBP-93-25, 38 NRC 304, 315-16 (1993)
conditions set by boards on voluntary withdrawals are set on a case-by-case basis, with any conditions tailored to address the particular circumstances of that proceeding; LBP-15-28, 82 NRC 241 (2015)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001)
standing requires petitioner to show a concrete and particularized harm, stemming from the challenged action, and redressable by a favorable decision; CLI-13-2, 77 NRC 49 (2013)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001)
standard of review of a board's determination on standing is deferential and the Commission will uphold the decision absent a clear misapplication of facts or law; CLI-15-25, 82 NRC 394 (2015)
the Commission will defer to board rulings on standing absent an error of law or abuse of discretion; CLI-12-12, 75 NRC 608 (2012)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 19 (2001)
the Commission declined to take review of board rulings that were not inextricably linked to appealable issues, and the resolution of which did not have the potential to dispose of the entire litigation; CLI-12-12, 75 NRC 607 n.13 (2012)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 20 (2001)
the Commission declines to take pendent jurisdiction of contention admissibility determinations, to avoid encouraging interlocutory appeals riding on the coattails of appealable issues; CLI-12-12, 75 NRC 607 (2012)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-03-15, 58 NRC 349 (2003)
section 11e(2) byproduct material is tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-12-3, 75 NRC 174 n.1 (2012)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-03-15, 58 NRC 349, 353-54 (2003)
the byproduct material category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites; LBP-12-3, 75 NRC 174 n.1 (2012)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), LBP-99-46, 50 NRC 386 (1999)
"synergistic" refers to the joint action of different parts or sites which, acting together, enhance the effects of one or more individual sites; LBP-15-5, 81 NRC 274 n.135 (2015)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site), LBP-03-24, 58 NRC 383 (2003), *aff'd*, CLI-04-2, 59 NRC 5 (2004)
hearing requests were dismissed as untimely and referred to the Executive Director for Operations for consideration under section 2.206; CLI-12-20, 76 NRC 440 n.13 (2012)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 7 (1994)
without a showing of irreparable injury, petitioners seeking a stay of effectiveness must make an overwhelming showing of likely success on the merits; CLI-12-11, 75 NRC 529 (2012)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 59 n.2 (1994)
although the Appeal Panel was abolished in 1991, the Commission explicitly directed that the decisions of its boards were still to carry precedential weight; LBP-11-8, 73 NRC 358 (2011)
although the Atomic Safety and Licensing Appeal Panel is no longer in existence, the decisions of its appeals boards continue to be binding to the degree they concern a regulation or regulatory matter that has not been revised or otherwise materially altered; LBP-11-34, 74 NRC 696 n.70 (2011)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61 (1994)
possibility that a board may have made an incorrect legal ruling can be reviewed, if necessary, on appeal from a partial initial decision or other final appealable order; CLI-15-17, 82 NRC 37, 44 (2015); CLI-15-24, 82 NRC 335 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 61-62 (1994)
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- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 62-63 (1994)
board's assertedly erroneous ruling does not constitute a pervasive and unusual effect on the proceeding; CLI-15-17, 82 NRC 47 (2015)
expansion of issues for litigation that results from a board action does not have a pervasive and unusual effect on the litigation; CLI-11-10, 74 NRC 256 n.24 (2011); CLI-15-17, 82 NRC 37 n.25, 44 n.71 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore Oklahoma Site), CLI-94-12, 40 NRC 64 (1994)
intervention has been granted to a third party seeking a hearing on an enforcement order on the basis of generally applicable standing and contention admissibility requirements; LBP-14-4, 79 NRC 327 n.38 (2014)
oversight activities at times involve enforcement actions, including orders and civil penalties, to which a hearing right or opportunity attaches; CLI-15-5, 81 NRC 338 n.52 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)
contemporaneous judicial concepts of standing are applied in NRC proceedings; CLI-15-25, 82 NRC 394 (2015)
intervention petitioner must allege such a personal stake in the outcome of the controversy as to demonstrate that a concrete adverseness exists that will sharpen the presentation of issues; CLI-15-25, 82 NRC 394 (2015)
presiding officer's approval of settlement is a matter that must give due consideration to the public interest; LBP-15-21, 82 NRC 8 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994)
intervention petitioner must allege an injury in fact that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; CLI-15-25, 82 NRC 394 (2015); LBP-11-6, 73 NRC 168-69 (2010); LBP-11-16, 73 NRC 652 (2011)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994)
organization seeking representational standing on behalf of its members may meet the injury-in-fact requirement by demonstrating that at least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding; LBP-15-5, 81 NRC 256, 257 (2015); LBP-15-17, 81 NRC 771 n.104, 776 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 74 (1994)
petitioners are not required to demonstrate their asserted injury with certainty at the contention admissibility stage of the proceeding; CLI-12-12, 75 NRC 613 (2012); CLI-15-25, 82 NRC 397 & n.49 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994)
cause of injury to intervention petitioner need not flow directly from the challenged action, but the chain of causation must be plausible; CLI-15-25, 82 NRC 394 (2015)
living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto; LBP-15-20, 81 NRC 837 n.30 (2015)
proximity presumption applies to persons who have frequent contacts in the area near a nuclear power plant; LBP-15-17, 81 NRC 77 n.97 (2015)
to show standing, petitioner must demonstrate that the asserted injury is plausibly linked to the challenged action; CLI-15-25, 82 NRC 395 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)
in lieu of the injury and causation showings for standing, petitioner has been able to establish proximity-plus by showing that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; LBP-12-3, 75 NRC 179 (2012); LBP-13-6, 77 NRC 271 n.5 (2013)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 205 (1997)
Commission, like other adjudicatory bodies, looks with favor upon settlements; LBP-14-4, 79 NRC 333 (2014)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997)
NRC Staff's position in an enforcement proceeding is not itself dispositive of whether an enforcement agreement should be approved, but regulatory instruction to accord that position due weight is dispositive proof of the importance of Staff's views; LBP-15-21, 82 NRC 8 (2015)

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- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 209 (1997)
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LBP-15-21, 82 NRC 8, 15 (2015)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 222-23 (1997)
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- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning
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CLI-13-2, 77 NRC 46 n.27 (2013)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning
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interested stakeholders who stand to benefit from a confirmatory order's safety measures may
intervene in a contested enforcement proceeding to protect its interest in ensuring that the order is
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- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning
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and thus a demand for a hearing is not to be treated as a mere request for a hearing; LBP-13-3, 77
NRC 90 (2013)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning
Funding), LBP-94-5, 39 NRC 54, 73 n.19 (1994)
application of the precept that different language is intended to mean different things may be
suspended if the purpose or regulatory history behind the language shows that no difference was
intended; LBP-13-3, 77 NRC 90 (2013)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 63
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n.70 (2011)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 63 n.33
(2009)
although the Appeal Panel was abolished in 1991, the Commission explicitly directed that the
decisions of its boards were still to carry precedential weight; LBP-11-8, 73 NRC 358 (2011)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65
(2009)
if intervenors file a new or amended contention, with supporting materials, within 60 days after
pertinent information first becomes available, then the contention will be deemed timely filed and
intervenors will not have to satisfy the late-filing requirements of 10 C.F.R. 2.309(c) or the
requirements for reopening the record; LBP-11-22, 74 NRC 281 (2011)
in unusual circumstances, where fairness dictates, the Commission has been willing to soften or waive
its reopening requirements; CLI-12-14, 75 NRC 700 n.56 (2012)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65 n.47
(2009)
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pertaining to the facility in question with sufficient care to uncover any information that could serve
as the foundation for a specific contention; LBP-11-9, 73 NRC 403 n.73 (2011)
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their challenges on its contents; CLI-12-5, 75 NRC 312 n.67 (2012)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65-66
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 66 (2009)
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 183 (2007)
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 210 n.95 (2007)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 138 (2012)
- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 482 (2008)
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 503-05 (2008)
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-11-9, 73 NRC 391, 396 (2011)
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-11-9, 73 NRC 391, 422 (2011)
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- Shaw AREVA MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-12-2, 75 NRC 159 (2012)
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- Sheppard v. Maxwell*, 384 U.S. 333, 349 (1966)
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- Shieldalloy Metallurgical Corp.* (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 NRC 341, 352 (2007)
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contention rule is strict by design and does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; LBP-14-5, 79 NRC 385 n.38 (2014)
- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Facility), CLI-09-1, 69 NRC 1, 5 (2009)
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- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 147 & n.25 (2010)
NRC traditionally has entertained motions to stay agency action pending judicial review; CLI-12-11, 75 NRC 528 (2012)
- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 150-51 (2010)
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- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 151 (2010)
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- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 154 (2010)
even if a party moving for a stay fails to show irreparable injury, a board may still grant a stay if movant has made an overwhelming showing or a demonstration of virtual certainty that it will prevail on the merits; CLI-12-11, 75 NRC 529 (2012); LBP-15-2, 81 NRC 54, 58 (2015)
- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-8, 71 NRC 142, 163 (2010)
if motions for stay of effectiveness demonstrate neither irreparable injury nor that reversal of the licensing board is a virtual certainty, then the remaining factors need not be considered; CLI-12-11, 75 NRC 529 n.32 (2012)
- Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-13-6, 78 NRC 155 (2013)
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when a matter is not strictly adjudicatory in nature or otherwise does not fit cleanly within the procedures described in NRC rules of practice, the Commission undertakes a decision as an exercise of its inherent supervisory authority over agency proceedings; CLI-13-8, 78 NRC 224 (2013)
- Shieldalloy Metallurgical Corp. v. NRC*, 624 F.3d 489, 492-93 (D.C. Cir. 2010)
federal agencies would be acting arbitrarily and capriciously if they did not look at relevant data and sufficiently explain a rational nexus between the facts found in their review and the choice they make as a result of that review; LBP-11-17, 74 NRC 22-23 (2011)
- Shieldalloy Metallurgical Corp. v. NRC*, 624 F.3d 489, 494 (D.C. Cir. 2010)
state requests for limited agreements will be considered by NRC only if the state can identify discrete categories of material or classes of licensed activity that can be reserved to NRC authority without undue confusion to the regulated community or burden to NRC resources and can be applied logically and consistently to existing and future licensees over time; CLI-11-12, 74 NRC 469-70 (2011)
- Shieldalloy Metallurgical Corp. v. NRC*, 624 F.3d 489, 495 (D.C. Cir. 2010)
NRC has discretion to negotiate the terms of an agreement with a state requesting authority over nuclear materials; CLI-11-12, 74 NRC 474 (2011)
- Shinseki v. Sanders*, 556 U.S. 396, 410 (2009)
burden of proving prejudicial error by a federal agency rests with the party challenging the agency's action, but this is not a particularly onerous requirement; LBP-14-2, 79 NRC 166 (2014)
- Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1482 (D.C. Cir. 1995)
NRC's trust responsibility does not impose a duty on the NRC to take action beyond complying with generally applicable statutes and regulations; LBP-14-6, 79 NRC 429 (2014)
- Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968)
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- court found no inevitable clash between NRC's broad regulatory authority under the Atomic Energy Act and the action-forcing provisions of the National Environmental Policy Act; LBP-14-9, 80 NRC 54-55 (2014)
- Siegel v. AEC*, 400 F.2d 778, 785-86 (D.C. Cir. 1968)
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- Sierra Club v. Department of Transportation*, 753 F.2d 120, 127 (D.C. Cir. 1985)
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- Sierra Club v. Environmental Protection Agency*, 995 F.2d 1478, 1485 (9th Cir. 1993)
NEPA applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-11-32, 74 NRC 666 (2011)
- Sierra Club v. Froehlike*, 816 F.2d 205, 210 (5th Cir. 1987)
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supplementing an environmental impact statement is not necessary unless new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-11-5, 74 NRC 168 (2011); CLI-12-7, 75 NRC 388-89, 390-91 (2012); LBP-12-18, 76 NRC 141-42 (2012); LBP-13-9, 78 NRC 64 (2013)
- Sierra Club v. Georgia Power Co.*, 443 F.3d 1346, 1348 (11th Cir. 2006)
a source permit is an operating permit that the Clean Air Act requires major stationary sources of air pollution to obtain; LBP-11-13, 73 NRC 583 n.356 (2011)
- Sierra Club v. Lynn*, 502 F.2d 43, 61 (5th Cir. 1974), *cert. denied*, 422 U.S. 1049 (1975)
NEPA does not demand that every federal decision be verified by reduction to mathematical absolutes for insertion into a precise formula; LBP-11-7, 73 NRC 282 n.173 (2011)
- Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 105 (D.D.C. 2006)
agency NEPA responsibilities in situations where an agency has no ability because of lack of statutory authority to address the impact is distinguished from situations where an agency is only constrained by its own regulation from considering impacts; LBP-14-9, 80 NRC 49 n.141 (2014)
- Sierra Club v. Marsh*, 769 F.2d 868, 878 (1st Cir. 1985)
NEPA requires that NRC consider the reasonably foreseeable environmental impacts of the proposed licensing action, but the agency need not consider remote and speculative impacts, particularly if the impact cannot easily be estimated at the current time, and an appropriate future opportunity will exist for the agency to analyze the impact; LBP-12-3, 75 NRC 197 (2012)
- Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1989) (Breyer, J.)
when a decision is made without the information that NEPA seeks to put before the decision maker, the harm that NEPA seeks to prevent occurs; LBP-13-6, 77 NRC 296-97 (2013); LBP-14-9, 80 NRC 56 (2014)
- Sierra Club v. Marsh*, 976 F.2d 763 (1st Cir. 1992)
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- Sierra Club v. Morton*, 405 U.S. 727 (1972)
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- Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972)
aesthetic harms may amount to an injury in fact sufficient for standing; CLI-12-12, 75 NRC 613 n.49 (2012)
- Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)
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- organizational interest that is cognizable for the purpose of establishing organizational standing is one that is more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-13-6, 77 NRC 281 (2013)
- Sierra Club v. Norton*, 207 F. Supp. 2d 1310, 1334-35 (S.D. Ala. 2002)
- determination of minimal environmental impact would make little sense when an agency lacks essential information and has not sought to compile it through independent research; LBP-14-9, 80 NRC 62 (2014)
- Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983)
- there can be no “hard look” at the costs and benefits of a proposed action unless all costs are disclosed; LBP-12-18, 76 NRC 136 n.47 (2012)
- Sierra Club v. U.S. Army Corps of Engineers*, 464 F. Supp. 2d 1171, 1224 (M.D. Fla. 2006), *aff’d*, 508 F.3d 1332 (11th Cir. 2007)
- agency’s reliance on mitigation in making a finding of no significant impact must be justified; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
- when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
- Sierra Club v. U.S. Army Corps of Engineers*, 464 F. Supp. 2d 1171, 1225 (M.D. Fla. 2006), *aff’d*, 508 F.3d 1332 (11th Cir. 2007)
- agency’s reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation is more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
- Sierra Club v. U.S. Army Corps of Engineers*, 464 F. Supp. 2d 1171, 1227 (M.D. Fla. 2006), *aff’d*, 508 F.3d 1332 (11th Cir. 2007)
- level of analysis required by NEPA in an environmental impact statement is more rigorous than is required when the agency has determined on the basis of its environmental assessment that the project as proposed will not result in significant environmental impact; LBP-14-7, 79 NRC 461 (2014)
- Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 987-88 (8th Cir. 2011)
- standing can be based on diminishment of recreational enjoyment of wildlife area due to, among other factors, an increase in dust due to traffic on adjacent highway; CLI-12-12, 75 NRC 613 n.49 (2012)
- Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 991 (8th Cir. 2011)
- because the future expansion of a power plant was reasonably foreseeable, it should have been included in the cumulative impacts analysis for the plant; LBP-14-6, 79 NRC 422 (2014)
- district court did not abuse its discretion in balancing the harms in favor of an injunction related to an electric utility’s Clean Water Act permit for the construction of a new power plant; LBP-14-6, 79 NRC 425 n.112 (2014)
- failure to have made any effort to evaluate the cumulative impact of the ISFSI expansion on archaeological sites has been held to be one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 425 n.112 (2014)
- Sierra Club v. Van Antwerp*, 661 F.3d 1147, 1155 (D.C. Cir. 2011)
- federal agency is required to consult if an action may affect listed species or designated critical habitat, even if the effects are expected to be beneficial; LBP-15-11, 81 NRC 445 n.297 (2015)
- Sikorsky Aircraft Corp. v. United States*, 106 Fed. Cl. 571, 577 (2012)
- claims of deliberative process privilege, even when properly established, are not absolute; LBP-13-5, 77 NRC 248 (2013)
- deliberative process privilege is qualified, requiring the court to balance the interests of the parties for and against disclosures; LBP-13-5, 77 NRC 248 (2013)
- deliberative process privilege may be defeated by a showing of evidentiary need by a plaintiff that outweighs the harm that disclosure of such information may cause to the defendant; LBP-13-5, 77 NRC 248 (2013)
- Sikorsky Aircraft Corp. v. United States*, 106 Fed. Cl. 571, 580 (2012)
- courts disfavor government efforts to place a portion of privileged material at issue while self-servingly retaining the rest; LBP-13-5, 77 NRC 250 (2013)

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- when an agency waives the deliberative process privilege for a document when it discloses the same document or one containing equivalent text, the question necessarily arises whether the agency has waived any deliberative process privilege that might otherwise apply; LBP-13-5, 77 NRC 244 (2013)
- Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 249 (1984)
- the Atomic Energy Act is designed to regulate the radiological safety aspects involved in the construction and operation of a nuclear plant; LBP-11-6, 73 NRC 233 (2010)
- Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973)
- conclusory statement in an environmental impact statement unsupported by explanatory information of any kind not only fails to crystallize issues, but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives; LBP-14-9, 80 NRC 62 (2014)
- Silva v. Lynn*, 482 F.2d 1282, 1286-67 (1st Cir. 1973)
- role of the final environmental impact statement is to expose the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government; LBP-12-18, 76 NRC 179 (2012)
- Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997)
- blindly adopting applicant's statement of the purpose of the action is a losing position because it does not allow for the full consideration of alternatives required by NEPA; LBP-12-17, 76 NRC 114 (2012)
- NEPA requires agencies to exercise a degree of skepticism in dealing with self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives preferred by the applicant; LBP-12-17, 76 NRC 114 (2012)
- Skokomish v. Federal Energy Regulatory Commission*, 121 F.3d 1303 (9th Cir. 1997)
- NRC exercises its fiduciary duty in the context of its authorizing statutes, including the Atomic Energy Act, and implements any fiduciary responsibility by ensuring that tribal members receive the same protections under implementing regulations that are available to other persons; LBP-14-16, 80 NRC 200 n.104 (2014)
- Stockish v. U.S. Federal Highway Administration*, 682 F. Supp. 2d 1178, 1193 (D. Or. 2010)
- National Historic Preservation Act and its implementing regulations do not require that the agency implement any mitigation measures, let alone that those measures meet a certain standard of protection for historic properties; LBP-12-23, 76 NRC 489 n.289 (2012)
- Small Refiner Lead Phase-Down Task Force v. Environmental Protection Agency*, 705 F.2d 506, 545 (D.C. Cir. 1983)
- where the reviewing court vacates a rule without reinstating the old rule, failure to reinstate the old rule creates a temporary regulatory vacuum; CLI-14-8, 80 NRC 76 n.14 (2014)
- Smeldberg Machine & Tool, Inc. v. Donovan*, 730 F.2d 1089, 1092-93 (7th Cir. 1984)
- an agency's discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether the Equal Access to Justice Act applies to a particular proceeding; LBP-11-8, 73 NRC 360 (2011)
- SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006)
- it is not the function of a licensing board to comb through the record searching for arguments in support of a proffered contention; LBP-11-6, 73 NRC 244 n.111 (2010); LBP-11-13, 73 NRC 575 n.287 (2011)
- Society for Animal Rights, Inc. v. Schlesinger*, 512 F.2d 915, 917-18 (D.C. Cir. 1975)
- mitigation must be discussed in sufficient detail in an environmental impact statement to ensure that environmental consequences have been fairly evaluated; LBP-12-18, 76 NRC 159 (2012)
- Society Hill Towers Owners' Ass'n v. Rendell*, 210 F.3d 168, 181 (3d Cir. 2000)
- a new transmission corridor is a connected action and must be fully evaluated in the final environmental impact statement; LBP-12-12, 75 NRC 779 (2012)
- action lacks independent utility when it would be irrational or unwise to pursue the action without the presence of the EIS-generating central action; LBP-15-16, 81 NRC 697 (2015)
- "connected actions" are defined as those that lack independent utility; LBP-12-12, 75 NRC 779 (2012); LBP-14-6, 79 NRC 421 (2014); LBP-14-9, 80 NRC 41 (2014)

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- Solite Corp. v. Environmental Protection Agency*, 952 F.2d 473, 484-85 (D.C. Cir. 1991)
preamble to notice of proposed rulemaking addresses agency's duty to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules; LBP-15-15, 81 NRC 612-13 (2015)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981)
predecessor regulation to section 2.311 (10 C.F.R. 2.714a) was applied to Commission review of an initial intervention petition filed over 4 years after the deadline; CLI-12-7, 75 NRC 386 n.20 (2012)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981)
contentions that address an important security issue regarding Part 74's strict requirements for the proposed facility, which applicant previously admitted it failed to satisfy, are admissible; LBP-11-9, 73 NRC 412 n.119 (2011)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 5 n.20 (2010)
arguments made for the first time on appeal will not be considered; CLI-12-3, 75 NRC 146 n.87 (2012)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 6 (2010)
although boards may appropriately view petitioner's support for its contention in a light favorable to petitioner, they cannot do so by ignoring the contention admissibility requirements; CLI-15-18, 82 NRC 145-46 & n.53 (2015)
although pro se litigants are expected to comply with procedural rules, they are generally extended some latitude; LBP-11-2, 73 NRC 38 (2011); LBP-11-13, 73 NRC 543 (2011)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 6-7 (2010)
petitioner was allowed to clarify standing declarations by submitting revised declarations with reply; LBP-11-13, 73 NRC 549 (2011)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010)
petitioner has some latitude to supplement or cure a standing showing in its reply pleading, but any additional arguments should be supported by either the declaration that accompanied the original hearing request or a supplemental affidavit; LBP-12-3, 75 NRC 186 (2012)
petitioners may use reply briefs to cure the affidavits used to establish standing; LBP-11-21, 74 NRC 123 (2011); LBP-13-8, 78 NRC 8 n.10 (2013); LBP-14-4, 79 NRC 361 (2014); LBP-15-5, 81 NRC 285 n.224 (2015); LBP-15-13, 81 NRC 461 (2015)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 & n.33 (2010)
failure to comply with any of the six pleading requirements of 10 C.F.R. 2.309(f)(1) is grounds for dismissal of a contention; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 25 (2012); LBP-12-27, 76 NRC 592 (2012)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 17 (2010)
discussion of need for power is required in an environmental report, but applicant need not precisely identify future market conditions and energy demand or develop other detailed analyses in order to establish with certainty that construction and operation of a nuclear power plant is the most economical alternative; LBP-11-6, 73 NRC 218 (2010)
need-for-power assessments must be only at a level of detail sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-11-7, 73 NRC 283 n.181 (2011); LBP-12-5, 75 NRC 237-38 (2012)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 18-19 & n.84 (2010)
proposed need-for-power contention based on merely conclusory statements, without supporting facts or detail, is inadmissible; LBP-11-7, 73 NRC 298 n.296 (2011)

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- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 20-21 (2010)
applicant who is a state-regulated utility is in a position to implement and promote programs such as energy conservation, efficiency, and load management such that the need for additional generation capacity may be reduced; LBP-11-6, 73 NRC 224 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 21 (2010)
NEPA's rule of reason would not exclude consideration of demand-side management as part of an alternatives analysis when applicant is a state-regulated utility; LBP-11-6, 73 NRC 224 (2010)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 23-24 (2010)
the extent to which operation and maintenance costs of a solar facility may present a comparative benefit is immaterial since the four-part combination of alternative energy sources is not environmentally preferable to two new nuclear units; LBP-11-4, 73 NRC 111 (2011)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-21, 72 NRC 197, 200 (2010)
absent error of law or abuse of discretion, the Commission generally defers to board rulings on contention admissibility; CLI-12-5, 75 NRC 307 (2012); CLI-12-10, 75 NRC 484 (2012); CLI-12-8, 75 NRC 397 (2012); CLI-12-15, 75 NRC 710 (2012)
NRC's position is that it need not compare the costs of alternatives to a proposed action if its FEIS does not identify an environmentally preferable alternative; LBP-12-18, 76 NRC 182 (2012)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-9, 75 NRC 421 (2012)
plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face general criticism that the passage of time between original licensing and renewal has rendered their SAMA analysis out of date upon application for a subsequent renewal term; CLI-13-7, 78 NRC 214-15 n.83 (2013)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-9, 75 NRC 421, 428 (2012)
Commission does not review combined license application de novo, but rather considers the sufficiency of NRC Staff's review of the application; CLI-15-13, 81 NRC 560-61 (2015)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-9, 75 NRC 421, 460-64 (2012)
inservice testing and inspection program for squib valves in combined license applications is discussed; CLI-15-13, 81 NRC 578 (2015)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-9, 75 NRC 421, 461 (2012)
in the event of a severe accident in an API1000, squib valves, which are explosively activated, reduce pressure and inject water as needed into the reactor vessel; CLI-15-13, 81 NRC 578 (2015)
purpose of the testing program for squib valves is to ensure that the valves operate as intended under design conditions; CLI-15-13, 81 NRC 578 (2015)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-9, 75 NRC 421, 461-63 (2012)
although the Commission found NRC Staff's review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 578 (2015)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 100 (2009), *aff'd in part and rev'd and remanded on other grounds*, CLI-10-1, 71 NRC 1 (2010)
a combined license applicant will have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-11-10, 73 NRC 450 (2011)
each combined license applicant will have to determine whether it will adopt in toto the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-11-10, 73 NRC 450 (2011)

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- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 110 (2009)
NRC generally defers to an applicant's stated purpose as long as that purpose is not so narrow as to eliminate alternatives; LBP-11-13, 73 NRC 553 (2011)
- South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-10-6, 71 NRC 350, 357-58, 385-86 (2010), *aff'd*, CLI-10-21, 72 NRC 197 (2010)
the licensing board terminated the proceeding on remand from the Commission when it found that petitioners had proffered no admissible contentions; LBP-11-22, 74 NRC 283 (2011)
- South Carolina v. O'Leary*, 64 F.3d 892, 899 (4th Cir. 1995)
for an environmental impact statement, separate actions may be considered connected if, among other things, they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-11-10, 73 NRC 441 (2011)
- South Fork Band Council v. U.S. Department of Interior*, 588 F.3d 718, 726 (9th Cir. 2009)
final supplemental environmental impact statement cannot rely on non-NEPA documents; LBP-15-16, 81 NRC 682 n.390, 699 (2015)
non-NEPA document, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 430 n.187, 439 (2015)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-09-18, 70 NRC 859, 860 (2009)
limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, that is, when it has admitted or rejected all proposed contentions; CLI-14-3, 79 NRC 36 n.30 (2014)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-09-18, 70 NRC 859, 862 (2009)
boards must rule on all pending contentions before an appeal may be lodged pursuant to section 2.311(c) or (d)(1); CLI-14-3, 79 NRC 36 n.31 (2014)
challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 385 n.17 (2012)
contentions filed after the initial petition generally are not subject to appeal pursuant to 10 C.F.R. 2.311; CLI-12-3, 75 NRC 138 n.26 (2012); CLI-12-6, 75 NRC 361 n.38 (2012); CLI-12-7, 75 NRC 385 n.15 (2012)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-16, 71 NRC 486, 489 (2010)
appeals of contention admissibility rulings are available only upon denial of a petition to intervene and/or request for hearing on the question of whether it should have been granted or upon the grant of a petition to intervene and/or request for hearing on the question of whether it should have been wholly denied; CLI-13-3, 77 NRC 54 (2013)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-16, 71 NRC 486, 489-90 (2010)
piecemeal appeals during ongoing licensing board proceedings are generally disfavored; CLI-11-6, 74 NRC 210 (2011)
the Commission will address licensing board rulings after a licensing board has issued a final decision in a case, barring extraordinary circumstances; CLI-13-3, 77 NRC 55 (2013)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-16, 71 NRC 486, 490 (2010)
where an admitted contention is pending before the board, appeals do not lie under section 2.311, but rather under section 2.341(f)(2), which governs petitions for interlocutory review, including board rulings on new contentions; CLI-13-3, 77 NRC 54 (2013)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-16, 71 NRC 486, 491 (2010)
following issuance of the board's final dispositive decision on contentions held in abeyance, and consistent with NRC procedural rules, applicant and intervenor will have the opportunity to appeal the board's decisions; CLI-14-3, 79 NRC 37 (2014)
intervenor normally is not allowed to challenge a board's rejection of contentions where the board has granted a hearing on any contention; CLI-12-12, 75 NRC 607 n.12 (2012)

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- routine contention admissibility determinations generally are not appropriate for interlocutory review; CLI-12-12, 75 NRC 608 (2012)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 453-55 (2010)
- lack of clarity in the terms and application of the agency's newly established SUNSI policy contributed to Intervenor's misapprehension that they were required to demonstrate a need for the information in order to request SUNSI documents; LBP-11-9, 73 NRC 410 (2011)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 454 (2010)
- the SUNSI policy does not change any of the statutory, regulatory, or other obligations of the agency with respect to the handling of information; LBP-11-5, 73 NRC 140 (2011)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 454-55 (2010)
- rules governing access to SUNSI apply only to potential parties, whereas party access to SUNSI is governed by protective orders and nondisclosure agreements; LBP-11-9, 73 NRC 410 (2011)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 465-68 (2010)
- NRC Staff was admonished for having imposed a stricter-than-necessary standard of "need" for access to SUNSI; LBP-11-9, 73 NRC 410 (2011)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 467 (2010)
- guidance documents do not create binding legal requirements; LBP-15-20, 81 NRC 847 n.100 (2015)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 468 n.99 (2010)
- agency directs NRC Staff to review issues outside the adjudicatory context and recommend whether the Commission should consider modifications to agency guidance or practice; CLI-13-4, 77 NRC 105 n.13 (2013)
- any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-11-5, 73 NRC 139 n.14 (2011)
- board requests that applicant and NRC Staff review the nonpublic appendix within 7 days of the date of issuance of the decision and provide the board with a joint report indicating whether all, or any portion, of the appendix can be publicly released, and in the event portions of the appendix can be made publicly available, indicate what redactions are appropriate; LBP-11-11, 73 NRC 525 n.36 (2011)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-21, 70 NRC 581, 617, 618, 619 (2009), *review denied, Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), CLI-11-6, 74 NRC 203, 210 (2011)
- petitioners' assertion that applicant must address the potential impacts of a radiological incident on the operations of the other units establishes an admissible contention of omission; LBP-15-5, 81 NRC 275 (2015)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-25, 70 NRC 867, 889 & n.138 (2009)
- scope of an adjudicatory hearing is limited to the notice of hearing, which in licensing matters normally extends only to the application at issue; CLI-14-11, 80 NRC 178 n.55 (2014)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-10-2, 71 NRC 190, 205-09 (2010), *rev'd on other grounds*, CLI-10-24, 72 NRC 451, 461-64 (2010)
- the principle that justice cannot survive behind walls of silence has long been reflected in the Anglo-American distrust for secret trials; LBP-11-5, 73 NRC 134 n.6 (2011)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-10-2, 71 NRC 190, 209-10 (2010)
- standards for admission of new contentions are reviewed; LBP-11-25, 74 NRC 389 (2011)

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- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-10-14, 72 NRC 101, 107-09 (2010)
new contentions may be admitted as long as they meet the timeliness criteria in 10 C.F.R. 2.309(f)(2) or the nontimely contention criteria in section 2.309(c)(1) and fulfill the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1); LBP-11-39, 74 NRC 866 (2011)
standards for admission of new contentions are reviewed; LBP-11-25, 74 NRC 389 (2011)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 1 and 2), CLI-12-20, 76 NRC 437, 440 (2012)
Commission referred request to licensing board, directing the board to consider whether a Confirmatory Action Letter issued to licensee constituted a de facto license amendment; CLI-15-14, 81 NRC 749 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 1 and 2), LBP-13-7, 77 NRC 307, 327, *vacated as moot*, CLI-13-9, 78 NRC 551 (2013)
board examined whether any aspect of the larger Confirmatory Action Letter process constituted a de facto license amendment; CLI-15-14, 81 NRC 749 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 1 and 2), LBP-13-7, 77 NRC 307, 333-34, *vacated as moot*, CLI-13-9, 78 NRC 551 (2013)
board erred in determining that it could review unilateral, unapproved, licensee actions under section 50.59(c)(2) to determine whether they also constituted de facto license amendments; CLI-15-14, 81 NRC 749-50 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-212, 7 AEC 986, 991 (1974)
licensing board may modify or waive the provisions of its scheduling orders as it deems appropriate in the interest of sound case management; LBP-15-29, 82 NRC 254 (2015)
licensing boards must be vested with considerable latitude in determining the course of the proceedings that they are called upon to conduct, and the Commission will enter that arena only to the extent necessary to insure that no party has been denied a fair opportunity to advance its cause; LBP-15-29, 82 NRC 254 n.39 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-268, 1 NRC 383, 399 (1975)
NRC Staff is but one of the parties to a licensing proceeding, and the positions that it may take are in no way binding upon the licensing board; LBP-12-23, 76 NRC 479 (2012)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 365 n.32 (1983)
Federal Rules of Evidence are not directly applicable to NRC proceedings, but NRC adjudicatory boards often look to those rules for guidance; LBP-12-21, 76 NRC 248 n.171 (2012); LBP-15-20, 81 NRC 859 n.184 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-12-20, 76 NRC 437, 439 n.10 (2012)
actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA but rather are monitored by NRC Staff's inspections and oversight, which may be challenged only by a petition for enforcement; LBP-15-27, 82 NRC 196 (2015)
claim that a facility is improperly operating outside its licensing basis is appropriately raised in a petition to initiate an enforcement proceeding rather than by a request for a hearing under AEA § 189a; LBP-15-27, 82 NRC 192 (2015)
member of the public may challenge an action taken under 10 C.F.R. 50.59 only by means of a petition under 10 C.F.R. 2.206; LBP-15-27, 82 NRC 192 n.43 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-12-20, 76 NRC 437, 439-40 (2012)
appropriate means of challenging licensee actions undertaken in accordance with 10 C.F.R. 50.59 is through a petition under 10 C.F.R. 2.206; LBP-13-11, 78 NRC 180 (2013); CLI-14-11, 80 NRC 175 (2014)
NRC's 2.206 process affords a meaningful opportunity to seek review of and action on safety-related concerns; CLI-15-5, 81 NRC 339 (2015); CLI-15-14, 81 NRC 736 n.32 (2015)

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- section 2.206 process provides stakeholders a forum to advance concerns and obtain full or partial relief, or written reasons why the requested relief is not warranted; CLI-13-2, 77 NRC 50 n.57 (2013); CLI-14-11, 80 NRC 179 (2014)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 556 n.17 (2013)
- although NRC rules do not provide for the filing of amicus curiae briefs on motions filed pursuant to 10 C.F.R. 2.323, as a matter of discretion the Commission has reviewed both an amicus brief and the opposition to it; CLI-14-11, 80 NRC 171 n.20 (2014)
- amicus curiae filings are allowed at the Commission's discretion or sua sponte; CLI-15-4, 81 NRC 225 n.8 (2015); CLI-15-5, 81 NRC 333 n.19 (2015); CLI-15-10, 81 NRC 537-38 n.5 (2015); CLI-15-23, 82 NRC 324 n.16 (2015)
- Commission exercises its discretion to consider briefs that were not filed via the agency's E-Filing system; LBP-15-4, 81 NRC 163 n.38 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 557 n.23 (2013)
- exception to the mootness doctrine is recognized when the same litigants are likely to be subject to similar future action; CLI-13-10, 78 NRC 568 (2013)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 557-58 (2013)
- possibility that an issue may arise in the future is not grounds to continue with an appeal in a proceeding where no live controversy remains between the litigants; CLI-13-10, 78 NRC 568 (2013)
- soundness of relocating certain surveillance frequencies from operating license technical specifications to licensee-controlled documents is better resolved in the context of a concrete dispute, where all of the parties have a stake in the outcome of the litigation; CLI-13-10, 78 NRC 569 (2013)
- unreviewed board decisions are not binding on future boards; CLI-13-10, 78 NRC 569 n.42 (2013)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 558-59 (2013)
- it is the Commission's customary practice to vacate a challenged licensing board decision when, during the pendency of an appeal, the proceeding becomes moot; CLI-13-10, 78 NRC 569 (2013)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 559 & n.31 (2013)
- Commission decision to vacate a board's decision does not intimate any opinion on its soundness; CLI-13-10, 78 NRC 569 (2013)
- unreviewed board decisions may be cited by future litigants as persuasive authority; CLI-13-10, 78 NRC 569 n.42 (2013)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 560 & n.36 (2013)
- licensing boards are the appropriate finders of fact in most circumstances, and referral of a matter for a fact-specific dispute occurs in the ordinary course of business; CLI-15-14, 81 NRC 735 n.27, 751 n.62 (2015)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-77-35, 5 NRC 1290, 1291 (1977)
- licensing boards have authority to adjudicate exemption issues, but NRC Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 273 n.101 (2012)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-13-7, 77 NRC 307, *vacated as moot*, CLI-13-9, 78 NRC 551 (2013)
- criteria of 10 C.F.R. 50.59 was used as an analytical tool to address the question of whether a confirmatory action letter issued to the licensee by the NRC Staff constituted a de facto license amendment that would be subject to a hearing opportunity; LBP-13-11, 78 NRC 181 (2013)
- no petition or other request for review of or hearing on the NRC Staff's significant hazards determination will be entertained by the Commission; LBP-13-11, 78 NRC 181 (2013)
- NRC Staff's inspection and oversight of licensee's actions are part of an ongoing de facto license amendment; CLI-14-11, 80 NRC 174 n.33 (2014)

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- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-13-7, 77 NRC 307, 316, 324-25 *vacated as moot*, CLI-13-9, 78 NRC 551, 552 (2013)
confirmatory action letter is an enforcement process that does not allow for public intervention;
LBP-14-1, 79 NRC 123 (2014)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-13-7, 77 NRC 307, 325-26, 338-39 *vacated as moot*, CLI-13-9, 78 NRC 551 (2013)
unilateral licensee activities can constitute de facto license amendments; CLI-14-11, 80 NRC 174 n.33 (2014)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-13-7, 77 NRC 307, 326 *vacated as moot*, CLI-13-9, 78 NRC 551 (2013)
board refused to let a matter turn on attempts by NRC Staff and applicant to label a controversial matter in a way that would avoid adjudication; LBP-14-1, 79 NRC 123 (2014)
- Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-13-7, 77 NRC 307, 344 *vacated as moot*, CLI-13-9, 78 NRC 551 (2013)
board determined that confirmatory action letter was a de facto license amendment, which allows for public intervention; LBP-14-1, 79 NRC 123 (2014)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-17, 65 NRC 392, 394 (2007)
completion of NRC Staff's final environmental review document always must precede the conduct of hearings on environmental issues; LBP-11-30, 74 NRC 631 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-07-17, 65 NRC 392, 395 (2007)
boards may not commence a hearing on environmental issues before the final environmental impact statement is issued, and may only commence a hearing with respect to safety issues prior to issuance of the final safety evaluation report if it will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner; LBP-11-22, 74 NRC 272 n.69 (2011)
NRC hearings on NEPA issues focus entirely on the adequacy of NRC Staff's work; LBP-15-3, 81 NRC 84-85 (2015); LBP-15-16, 81 NRC 641-41 n.126 (2015)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 98-99 (2010)
where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-12-1, 75 NRC 46 (2012)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100 (2010)
the scope of a contention is limited to the issues of law and fact pleaded with particularity in the contention and any factual and legal material in support thereof; LBP-11-38, 74 NRC 833 (2011); LBP-12-5, 75 NRC 239 (2012)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100-01 (2010)
contention claims must be set forth with particularity; CLI-12-1, 75 NRC 55 (2012)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 102 n.60 (2010)
cumulative impact analysis is required for reasonably foreseeable future actions, and test for connected actions in CEQ regulation 40 C.F.R. 1508.25 need not be satisfied; LBP-14-6, 79 NRC 423 (2014)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 102 n.63 (2010)
NRC Staff has conducted cumulative impact analyses of covered actions that were not interdependent with the proposed action; LBP-14-6, 79 NRC 423 (2014)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 247 (2007)
an ESP essentially allows an entity to bank a site for the possible future construction of a specified number of new nuclear power generation facilities; LBP-11-16, 73 NRC 650-51 (2011)

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- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 249-50 (2007)
in cases involving the possible construction or operation of a nuclear power reactor, NRC considers proximity to the proposed facility to be sufficient to establish standing; LBP-11-16, 73 NRC 653 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 250 (2007)
an organization that seeks to establish representational standing must show that at least one of its members would be affected by the proceeding and must identify that member by name and address, show that the member would have standing to intervene in his or her own right, and that the identified members have authorized the organization to request a hearing on their behalf; LBP-11-16, 73 NRC 653 (2011)
to determine whether the elements for standing are met, boards are to construe the petition in favor of the petitioner; LBP-11-16, 73 NRC 653 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 255 (2007)
boards have authority under 10 C.F.R. 2.316, 2.319, 2.329 to further define petitioners' admitted contentions when redrafting would clarify the scope of the contentions; LBP-11-13, 73 NRC 565 n.199 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 258-59 (2007)
contention that raises a genuine dispute with the sufficiency of the cumulative impacts analysis, or the lack thereof, in the environmental report is admissible; LBP-12-3, 75 NRC 202 (2012)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 264-65 (2007)
keeping radionuclides below the EPA limit is necessary to maintain public safety at a decommissioning facility; LBP-15-24, 82 NRC 89 (2015)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 63-64 (2008)
contentions of adequacy may migrate into contentions of omission; LBP-13-10, 78 NRC 133 (2013)
intervenor attempting to litigate an issue based on expressed concerns about the draft environmental impact statement may need to amend the admitted contention or submit a new contention if the information in the DEIS is sufficiently different from the information in the environmental report that supported the original contention's admission; LBP-13-9, 78 NRC 47 (2013); LBP-14-5, 79 NRC 383 (2014)
migration of a contention is appropriate only where the environmental analysis or discussion at issue is essentially in pari materia with applicant's analysis or discussion that is the focus of the contention; LBP-12-12, 75 NRC 768 (2012); LBP-15-11, 81 NRC 410 (2015)
migration tenet applies when the information in the final supplemental environmental impact statement is sufficiently similar to the information in the draft SEIS; LBP-14-5, 79 NRC 383 (2014)
migration tenet for admitted contentions applies when information in the draft environmental impact statement is sufficiently similar to the information in the environmental report; LBP-11-1, 73 NRC 26 n.14 (2011); LBP-13-9, 78 NRC 46-47 (2013)
post-environmental report, intervenor would need to file a motion to amend an already-admitted contention or to admit a new contention if the information in the Staff's NEPA statement is sufficiently different from the information in the ER that supported the original contention's admission; LBP-13-10, 78 NRC 133 (2013)
where the information in the DEIS is so different from the information in the environmental report that the DEIS dispenses with and moots the issues raised in the original contention, intervenor must file a new or amended contention against the DEIS; LBP-11-1, 73 NRC 26 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 64 (2008)
although a contention contesting applicant's environmental report generally may be viewed as a challenge to the NRC Staff's subsequent draft environmental impact statement, new claims must be raised in a new or amended contention; LBP-13-10, 78 NRC 134 (2013); LBP-14-5, 79 NRC 384 n.32 (2014)

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- if the portion of the environmental report that an admitted contention challenges is not sufficiently similar to the draft environmental impact statement, intervenor may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the ER, submit a new contention; LBP-12-12, 75 NRC 768 (2012); LBP-13-9, 78 NRC 47 n.29 (2013)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 66-67 (2008)
- the proper method for raising an issue addressed in a motion to strike is to seek leave to file a reply in support of the summary disposition motion; LBP-11-14, 73 NRC 608 n.108 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 67-68 n.9 (2008)
- if summary disposition movant discusses a matter in its statement of undisputed facts, the board may view with skepticism any later argument by that movant that a response regarding that issue is outside the scope of the contention, particularly given the onus that is placed upon an opposing party to respond to such a statement; LBP-11-4, 73 NRC 123 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 78 (2008)
- the board refused to consider new bases that were included in an answer to a summary disposition motion and were outside the scope of the original contention; LBP-11-4, 73 NRC 123 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 631-32 (2009)
- environmental impact statements are subject to a rule of reason that grants the agency a degree of deference exempting it from examining impacts that it in good faith deems to be remote and speculative or inconsequentially small; LBP-11-39, 74 NRC 868 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 632 (2009)
- board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to NRC Staff's final environmental impact statement; LBP-15-3, 81 NRC 82 (2015)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 648-50, 662, 671-74, 681-82 (2009)
- NEPA does not require that the final environmental impact statement be a Ph.D. dissertation on specific topics; LBP-13-4, 77 NRC 212 (2013)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 696-702 (2009), *review denied*, CLI-10-5, 71 NRC 90 (2010)
- ruling that supplements the record should state clearly what evidence the board found credible, whether the evidence supports or alters NRC Staff's conclusions in the environmental impact statement, and what the impact of the proposed action for the specific issue is expected to be; CLI-15-6, 81 NRC 389 n.258 (2015)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 719 (2009)
- NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-11-16, 73 NRC 690-91 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 733 (2009), *petition for review denied*, CLI-10-5, 71 NRC 90 (2010)
- board's ultimate NEPA judgments are made on the basis of the entire adjudicatory record in addition to NRC Staff's final supplemental environmental impact statement; LBP-15-16, 81 NRC 638 (2015)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC 433 (2009)
- guidance on the role of licensing boards in mandatory proceedings is provided; LBP-12-21, 76 NRC 233-34 (2012)
- mandatory hearings have been conducted by licensing boards in 10 C.F.R. Part 52 early site permit proceedings; LBP-11-11, 73 NRC 475 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC 433, 503-04 (2009)
- there is no agency requirement that applicant submit a redress plan relative to preconstruction activities or, absent state or local requirements, take any remediation action regarding preconstruction

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- activities if it decides not to complete the project or is denied agency authorization to construct and operate the facility; LBP-11-11, 73 NRC 507 (2011); LBP-11-26, 74 NRC 539 (2011)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC 433, 540 (2009)
- license conditions imposed on an applicant as a result of the Staff's review process and applicant-requested exemptions from agency regulatory requirements that are granted by the Staff have a strong potential to fall into a "non-routine matter" category; LBP-11-11, 73 NRC 494-95 (2011)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 35 (2009)
- Commission defers to a board's contention admissibility rulings unless the appeal points to an error of law or abuse of discretion; CLI-14-2, 79 NRC 13-14 (2014)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 36 (2009)
- section 52.79(a)(3) specifies no quantity or time restrictions relative to onsite storage of low-level radioactive waste; LBP-12-4, 75 NRC 218 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 36-37 (2009)
- section 52.79(a)(3) requires that a combined license application contain information pertaining to how applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 223 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 37 (2009)
- applicant's FSAR must identify particular plans pertaining to design, operational organization, and procedures that demonstrate how it intends to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 223 (2012)
- level of low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to the combined license applicant's particular plans for compliance through design, operational organization, and procedures; LBP-12-4, 75 NRC 218 (2012)
- Part 20 outlines a number of radiation protection requirements with which licensees must comply, such as procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable; LBP-12-4, 75 NRC 217 (2012)
- scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that is tied to applicant's particular plans for compliance through, but not necessarily the details of, design, operational organization, and procedures associated with any contingent long-term LLRW facility; LBP-12-4, 75 NRC 223 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 217 n.1 (2011)
- heavy barrier to reopening applies whenever an adjudication has been closed and not merely after a case has been terminated following a full evidentiary hearing on the merits; LBP-15-14, 81 NRC 595 (2015)
- once all contentions have been decided, the contested proceeding is terminated; CLI-12-14, 75 NRC 699-700 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 218 & n.8 (2011)
- although NRC regulations do not provide a precise definition of "timely," licensing boards have often found a new contention to be timely if it has been filed within 30 days of the availability of information on which the contention is based; LBP-12-11, 75 NRC 737 (2012)
- both the reopening and contention admissibility criteria require that new contentions be timely presented, generally within 30 days of the availability of the information on which the contention is based; CLI-12-21, 76 NRC 496 (2012)
- new contentions are considered timely when filed within 30 days of the date that asserted foundational information became available; LBP-12-1, 75 NRC 14 (2012); LBP-12-10, 75 NRC 653-54 (2012)

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- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 219 (2011)
briefs on appeal must be comprehensive, concise, and self-contained, and incorporation of pleadings or arguments by reference is discouraged; CLI-12-3, 75 NRC 139 n.41 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 219-20 (2011)
the Commission generally declines to hold oral argument on appeals, absent a specific showing that oral argument will assist it in reaching a decision; CLI-12-12, 75 NRC 614 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 220 (2011)
boards are in a better position than the Commission to consider any expert affidavit or affidavits that petitioner submits to support its motion to reopen; CLI-12-14, 75 NRC 702 n.64 (2012)
decisions on the admissibility of contentions will be affirmed where no error of law or abuse of discretion is found; CLI-12-3, 75 NRC 138 (2012); CLI-12-6, 75 NRC 361 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 221 (2011)
at the contention admissibility stage, a board evaluates whether a petitioner has provided sufficient support to justify admitting the contention for further litigation; LBP-15-24, 82 NRC 102 n.223 (2015)
evaluation of a contention that is performed at the contention admissibility stage should not be confused with the evaluation that is later conducted at the merits stage of a proceeding; LBP-15-24, 82 NRC 102 n.223 (2015)
facts and issues raised in a contention are not in controversy and subject to a full evidentiary hearing unless the proposed contention is admitted; LBP-15-24, 82 NRC 102 n.223 (2015)
merits questions cannot be resolved at the contention admission stage of the proceeding; LBP-15-20, 81 NRC 855 n.158 (2015)
petitioners are not required at the contention admissibility stage to prove their case on the merits or even to provide expert or factual support as strong as that necessary to withstand a summary disposition motion; LBP-15-20, 81 NRC 851, 855 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 221-22 (2011)
failure to address the reopening criteria is enough to reject contentions that are filed after a record has closed; CLI-12-3, 75 NRC 143 n.72 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 222 (2011)
boards should not have to hunt for information that the agency's procedural rules require be explicitly identified and fully explained; CLI-12-3, 75 NRC 145 n.86 (2012); LBP-12-10, 75 NRC 652 n.127 (2012)
litigants seeking to reopen a record must comply fully with section 2.326(b); CLI-12-3, 75 NRC 145 n.86 (2012)
motions to reopen could be rejected solely on the basis of the appellants' failure to address the reopening standards in the supporting affidavit; LBP-12-10, 75 NRC 639 n.33 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 225 n.44 (2011)
where a motion to reopen is untimely, the section 2.326(a)(1) "exceptionally grave" test supplants the section 2.326(a)(2) "significant safety or environmental issue" test; LBP-12-1, 75 NRC 16 n.62 (2012); LBP-12-10, 75 NRC 655-56 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 228 (2011)
introduction of a new contention, long after the evidentiary record has otherwise closed, would broaden and delay the proceeding and therefore tends to weigh against admission of a new contention; CLI-12-15, 75 NRC 723-24 n.96 (2012)

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- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 79 NRC 214, 228-29 (2011)
contention that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-14-1, 79 NRC 95 n.293 (2014)
licensing proceedings are not the appropriate venue for generic issues, especially those that are about to become the subject of rulemaking; LBP-14-1, 79 NRC 95 n.293 (2014)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-2, 75 NRC 63 (2012)
departing from NRC's stable, predictable licensing process could unintentionally impact NRC Staff's disciplined work; CLI-12-9, 75 NRC 445 (2012)
plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face general criticism that the passage of time between original licensing and renewal has rendered their SAMA analysis out of date upon application for a subsequent renewal term; CLI-13-7, 78 NRC 214-15 n.83 (2013)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-2, 75 NRC 63, 74 (2012)
Commission does not review combined license application de novo, but rather considers the sufficiency of NRC Staff's review of the application; CLI-15-13, 81 NRC 560-61 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-2, 75 NRC 63, 90 (2012)
in the event of a severe accident in an AP1000, squib valves, which are explosively activated, reduce pressure and inject water as needed into the reactor vessel; CLI-15-13, 81 NRC 578 (2015)
purpose of the testing program for squib valves is to ensure that the valves operate as intended under design conditions; CLI-15-13, 81 NRC 578 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-2, 75 NRC 63, 90-96 (2012)
inservice testing and inspection program for squib valves in combined license applications is discussed; CLI-15-13, 81 NRC 578 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-2, 75 NRC 63, 93-95 (2012)
although the Commission found NRC Staff's review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 578 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391-92 (2012)
an application-specific NEPA review represents a snapshot in time, and although NEPA requires that NRC conduct its environmental review with the best information available at that time, it does not require that NRC wait until inchoate information matures into something that later might affect its review; LBP-12-10, 75 NRC 659 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-11, 75 NRC 523, 529 (2012)
absent a showing of irreparable injury, stay standards can only be met if movant can demonstrate a virtual certainty of success on the merits; CLI-15-17, 82 NRC 39 (2015)
even if stay movant fails to show irreparable injury, a board may still grant a stay if movant has made an overwhelming showing or a demonstration of virtual certainty that it will prevail on the merits; LBP-15-2, 81 NRC 54, 58 (2015)
for a potential injury to be irreparable, it must be shown to be imminent, certain, and great; LBP-15-2, 81 NRC 54 (2015)
irreparable injury is the most important of the factors for grant or denial of a stay; LBP-15-2, 81 NRC 53-54 (2015)
where movant cannot show either irreparable injury or a likelihood of prevailing on the merits, a board need not consider the remaining factors; LBP-15-2, 81 NRC 54 (2015)

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- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-11, 75 NRC 523, 530-31 (2012)
to qualify as irreparable injury, the potential harm cited by stay movant first must be related to the underlying claim that is the focus of the adjudication; LBP-15-2, 81 NRC 54, 55 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-11, 75 NRC 523, 533 n.53 (2012)
party offering a new contention on the need to supplement an issued final EIS must explain why the new information is sufficiently significant to present a seriously different picture of the environmental landscape; LBP-15-16, 81 NRC 704 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-11, 75 NRC 523, 534 (2012)
results of review by NRC Staff and Indian tribe of applicant's newly disclosed well log data did not paint a seriously different picture of the environmental landscape; LBP-15-16, 81 NRC 705 (2015)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 154 (2009)
petitions that lack alleged facts or expert opinions to support the contention are inadmissible;
LBP-11-29, 74 NRC 621 (2011)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-1, 71 NRC 165, 177 n.3 (2010)
boards have an independent obligation to determine whether petitioners meet the threshold criterion for intervention even if their standing is uncontested; LBP-12-24, 76 NRC 507 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433 (2010)
the low-level radioactive waste plan outlined in applicant's final safety analysis report complies with 10 C.F.R. 52.97(a)(3); CLI-11-10, 74 NRC 256-57 (2011)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433, 439 (2010)
Subpart L provides for motions for summary disposition, and such motions are governed by the same standards as those in Subpart G proceedings; LBP-12-2, 75 NRC 163 n.18 (2012)
summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-12-2, 75 NRC 163 n.18 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433, 444 (2010)
scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that is tied to applicant's particular plans for compliance through, but not necessarily the details of, design, operational organization, and procedures associated with any contingent long-term LLRW facility; LBP-12-4, 75 NRC 223 (2012)
there is a longstanding agency recognition of the availability of the mechanisms under 10 C.F.R. 50.59 or 50.90 for obtaining authorization to construct additional onsite LLRW storage facilities; LBP-12-4, 75 NRC 225 n.17 (2012)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-8, 71 NRC 433, 447 (2010)
the licensing board chose to terminate the adjudications when faced with no pending contentions, but did not state that it was compelled to do so by Commission precedent or agency regulation;
LBP-11-22, 74 NRC 285 (2011)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-21, 72 NRC 616, 630, 631-32, 644-47, 648-58 (2010)
the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel appointed a new board (consisting of the same members as the old board), which held that the new contention submitted after termination of the proceeding did not meet the reopening standard, deemed that contention untimely and inadmissible, and again terminated the adjudicatory proceeding; LBP-11-22, 74 NRC 285 n.136 (2011)

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- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-21, 72 NRC 616, 631-32, 644-47 (2010)
a newly constituted board applied the reopening standard to new contentions filed after the prior proceeding was terminated for want of pending or admitted contentions; LBP-11-22, 74 NRC 269 n.50 (2011)
- Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-21, 72 NRC 616, 643 (2010)
petitioner who satisfies the reopening standard must also show that its proposed new contention meets the standard for new or amended contentions in section 2.309(c) and the underlying admissibility standards of section 2.309(f)(1); LBP-14-8, 79 NRC 523 (2014)
- Southern Pacific Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918) (Holmes, J.)
general tendency of the law, when deciding which consequences give rise to actionable rights, is not to go beyond the first step; LBP-14-4, 79 NRC 333 (2014)
- Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515 (1911)
exception to the mootness doctrine occurs if the challenged action is too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again; CLI-13-9, 78 NRC 558 n.26 (2013)
exception to the mootness doctrine occurs when a case is capable of repetition, yet evading review; CLI-13-10, 78 NRC 568 n.35 (2013)
- Southern Utah Wilderness Alliance Corp. v. Norton*, 301 F.3d 1217, 1238 n.19 (10th Cir. 2002), *rev'd on other grounds*, 542 U.S. 55 (2004)
environmental assessment cannot import previous environmental analyses without consideration of subsequent developments at the site and to hold otherwise would render meaningless NEPA's requirement to supplement an environmental impact statement or environmental assessment; CLI-15-25, 82 NRC 399 (2015)
standard for preparing a supplemental environmental assessment is the same as for preparing a supplemental environmental impact statement; LBP-15-13, 81 NRC 471 n.89 (2015)
- Southwest Center for Biological Diversity v. U.S. Forest Service*, 100 F.3d 1443, 1447 (9th Cir.1996)
if an agency determines that a particular action will have no effect on an endangered or threatened species, the consultation requirements are not triggered, and the finding of no effect obviates the need for formal consultation under the Endangered Species Act; LBP-12-10, 75 NRC 657 n.153 (2012)
- Southwest Center for Biological Diversity v. U.S. Forest Service*, 100 F.3d 1443, 1447-48 (9th Cir. 1996)
if an agency determines that a particular action will have no effect on an endangered or threatened species, the consultation requirements are not triggered; LBP-12-10, 75 NRC 671-72 (2012); LBP-15-11, 81 NRC 444 n.284 (2015)
- Southwest Williamson County Community Ass'n, Inc. v. Slater*, 243 F.3d 270, 278-80 (6th Cir. 2001)
for an action such as a transmission corridor that will not be constructed by or expressly permitted by the federal agency preparing an environmental impact statement, there must be sufficient federal control and responsibility that the action qualifies as a federal action; LBP-14-9, 80 NRC 45 (2014)
only those activities that have sufficient federal involvement to qualify as federal actions need be included in the scope of the proposed action evaluated in an environmental impact statement; LBP-14-9, 80 NRC 47 (2014)
- Southwest Williamson County Community Ass'n, Inc. v. Slater*, 243 F.3d 270, 281 (6th Cir. 2001)
federal decisionmakers have authority to exercise sufficient control or responsibility over the nonfederal projects so as to influence the outcome of the project; LBP-14-9, 80 NRC 49 (2014)
test for determining when a nonfederal project should be analyzed under NEPA as a major federal action is discussed; LBP-14-9, 80 NRC 48 (2014)
- Southwest Williamson County Community Ass'n, Inc. v. Slater*, 243 F.3d 270, 281-83 (6th Cir. 2001)
to be analyzed under NEPA as a major federal action, a nonfederal project must restrict or limit the statutorily prescribed federal decisionmakers' choice of reasonable alternatives; LBP-14-9, 80 NRC 48 (2014)

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- Southwest Williamson County Community Ass'n, Inc. v. Slater*, 243 F.3d 270, 283-84 (6th Cir. 2001)
for a nonfederal project to be analyzed under NEPA as a major federal action, federal decisionmakers must have authority to exercise sufficient control or responsibility over the nonfederal project so as to influence the outcome of the project; LBP-14-9, 80 NRC 48 (2014)
- SRI International v. Matsushita Electric Corp. of America*, 775 F.2d 1107, 1116 (9th Cir. 1985)
summary disposition, like summary judgment, is an extreme remedy; LBP-11-7, 73 NRC 263 (2011)
- St. Louis Fuel and Supply Co. v. Federal Energy Regulatory Commission*, 890 F.2d 446, 448-91 (D.C. Cir. 1989)
an agency's discretionary choice to conduct a formal on-the-record hearing is irrelevant when determining whether the Equal Access to Justice Act applies to a particular proceeding; LBP-11-8, 73 NRC 360 (2011)
- St. Louis Fuel and Supply Co. v. Federal Energy Regulatory Commission*, 890 F.2d 446, 451 (D.C. Cir. 1989)
attorneys' fees may be awarded in adversary adjudications that are governed by Administrative Procedure Act § 554, but they may not be awarded in adversary adjudications that Congress did not subject to that section; LBP-11-8, 73 NRC 356 (2011)
- St. Regis Paper Co. v. United States*, 368 U.S. 208, 229 (1961) (Black, J., dissenting)
it is no less good morals and good law that the government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their government; LBP-13-3, 77 NRC 97 n.76 (2013)
the Commission justifiably expects that all applicable provisions of the Rules of Practice will be observed in adjudicatory submissions, but it also expects the Staff to turn square corners with those with whom it deals, including applicants for SRO licenses; LBP-13-3, 77 NRC 97 (2013)
- State of Alaska v. Andrus*, 580 F.2d 465, 474 (D.C. Cir. 1978), *vacated in part as moot sub nom. Western Oil & Gas Association v. Alaska*, 439 U.S. 922 (1978)
Council on Environmental Quality guidance does not bind NRC, but NRC gives it substantial deference; LBP-12-17, 76 NRC 82-83 (2012)
- State of Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978)
role of the final environmental impact statement is to expose the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government; LBP-12-18, 76 NRC 179 (2012)
- State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993)
good cause for failure to file on time is entitled to the most weight; LBP-11-7, 73 NRC 279 (2011); LBP-11-15, 73 NRC 634 (2011)
- State of North Carolina v. Federal Aviation Administration*, 957 F.2d 1125, 1129-30 (4th Cir. 1994)
duty to exercise independent judgment does not mean that NRC must reinvent every wheel or duplicate competent and professional environmental data and studies that have already been done on a proposed site; LBP-13-4, 77 NRC 213 n.91 (2013)
NEPA precludes an agency from avoiding the Act's requirements by simply relying on another agency's conclusions about a federal action's impact on the environment; LBP-13-4, 77 NRC 213 n.91 (2013)
- State of Ohio v. NRC*, 814 F.2d 258, 262-64 (6th Cir. 1987)
courts of appeals have repeatedly approved NRC practice of closing the hearing record after resolution of the last live contention, and of holding new contentions to the higher reopening standard; CLI-12-14, 75 NRC 700 (2012)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998)
NRC has a responsibility to go forward with other regulatory and enforcement activities even while the agency conducts its review of the Fukushima accident; CLI-11-5, 74 NRC 163-64 (2011)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998)
current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards, and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings; CLI-14-10, 80 NRC 164 n.39 (2014)
NRC adjudicatory rules are designed to promote fair and efficient resolution of disputes; CLI-14-7, 80 NRC 8 n.30 (2014)

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- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19, 22 (1998)
NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-21, 76 NRC 499 n.53 (2012)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998)
the Commission enforces the 10-day deadline for filing appeals strictly and excuses it only in unavoidable and extreme circumstances; LBP-12-12, 75 NRC 749 n.18 (2012)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21-22 (1998)
all parties are obliged to follow the procedures in 10 C.F.R. Part 2 and board scheduling orders; CLI-14-10, 80 NRC 164 n.36 (2014)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)
board may appropriately view petitioner's support for its contention in a light that is favorable to petitioner, but the board cannot do so by ignoring the requirements set forth in 10 C.F.R. 2.309(f)(1); CLI-15-18, 82 NRC 145-46 & n.53 (2015); LBP-15-5, 81 NRC 288 n.248 (2015)
intervention petitioner must review relevant documents and provide sufficient discussion of these documents and its concerns to demonstrate existence of a genuine material dispute with licensee on a material issue of law or fact; CLI-15-23, 82 NRC 326, 329 (2015)
proponent of a contention, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement its admission; CLI-12-5, 75 NRC 349 n.277 (2012); CLI-12-13, 75 NRC 686 n.30 (2012); CLI-15-18, 82 NRC 146 n.53 (2015)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22-23 (1998)
boards are not to proceed with sua sponte issues absent the Commission's approval; LBP-11-9, 73 NRC 419 n.13 (2011)
licensing boards should only use sua sponte review in extraordinary circumstances; CLI-15-1, 81 NRC 9 (2015); LBP-14-9, 80 NRC 38 n.65 (2014)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 23 (1998)
under 10 C.F.R. 2.311, appeal of a ruling on contentions is allowed only if the order wholly denies an intervention petition or a party other than the petitioner alleges that a petition for leave to intervene or a request for hearing should have been wholly denied; CLI-12-7, 75 NRC 385 n.16 (2012)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 453 (1981)
NRC Rules of Practice provide the board with substantial authority to regulate hearing procedures; CLI-14-10, 80 NRC 164 n.39 (2014)
NRC Rules of Practice provide the board with substantial authority to regulate hearing procedures; LBP-15-15, 81 NRC 615 n.114 (2015)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 453, 454 (1981)
every participant in NRC adjudicative proceedings has the duty to fulfill the obligations imposed by and in accordance with applicable law, and when participant fails to meet its obligations, a licensing board should consider the imposition of sanctions against the offending party; LBP-13-2, 77 NRC 75 (2003)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981)
boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance; LBP-13-2, 77 NRC 76 (2003)
in selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances; LBP-13-2, 77 NRC 76 (2003)
leniency is afforded to pro se petitioners, but parties to NRC proceedings are expected to fulfill the obligations imposed by NRC rules; CLI-15-25, 82 NRC 397 n.53 (2015)
parties' other professional obligations do not relieve them of their obligations to meet regulatory deadlines; LBP-11-34, 74 NRC 693 n.52 (2011)

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- petitioners' argument that their counsel was busy on other legal matters disregards longstanding policy that the fact that a party may have other obligations does not relieve that party of its hearing obligations; LBP-12-12, 75 NRC 749 n.18 (2012)
- regardless of a party's resources, fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and NRC regulations; CLI-14-10, 80 NRC 164 (2014); LBP-13-2, 77 NRC 78 (2003)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 456 (1981)
- Commission, like other adjudicatory bodies, looks with favor upon settlements; LBP-14-4, 79 NRC 333 (2014)
- Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses*, CLI-80-42, 12 NRC 654, 661 (1980)
- in the post-TMI time frame, the Commission, although providing for some modified procedures, continued to apply the existing rules for filing new contentions and motions to reopen the record; CLI-11-5, 74 NRC 170 (2011)
- Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 192-95 (2012)
- contention that the draft environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-13-9, 78 NRC 54 n.79 (2013)
- Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 195-98 (2012)
- contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 58 n.106 (2013)
- Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 207 (2012), *aff'd on other grounds*, CLI-12-12, 75 NRC 603 (2012)
- generic environmental impact statement for ISL mining is subject to an appropriate challenge in an adjudicatory proceeding; LBP-15-11, 81 NRC 441 (2015)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-12-12, 75 NRC 603, 607 (2012)
- piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-12-12, 75 NRC 603, 608 (2012)
- board rulings on standing are given substantial deference on appeal; CLI-14-2, 79 NRC 13 (2014)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-12-12, 75 NRC 603, 612-13 & n.49 (2012)
- nonradiological impacts can be a basis for standing; LBP-13-6, 77 NRC 271 (2013)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-12-12, 75 NRC 603, 613 (2012)
- once the board makes its determination that petitioner has articulated sufficient detail as to how the proposed action would affect its members, it would not be appropriate for the board to weigh the evidence to determine whether the harm to petitioner's members is certain; CLI-15-25, 82 NRC 397 (2015)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), LBP-12-3, 75 NRC 164, 201-02 & n.33 (2012), *aff'd as to standing ruling*, CLI-12-12, 75 NRC 603 (2012)
- scope of the term "impact" includes cumulative impacts; LBP-12-24, 76 NRC 513 (2012)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), LBP-12-3, 75 NRC 164, 203 (2012)
- reasonably foreseeable actions must be the subject of a cumulative impacts analysis; LBP-14-6, 79 NRC 416 n.67 (2014)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), LBP-15-3, 81 NRC 65, 91-92 (2015)
- prelicensing monitoring program to characterize site groundwater constituents need not be coextensive with the Criterion 7A preoperational monitoring, license condition-based program intended to provide the information needed for setting Criterion 5B groundwater protection standards and UCLs; LBP-15-16, 81 NRC 665 (2015)
- Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), LBP-15-3, 81 NRC 65, 132 (2015)
- there is nothing in the record to suggest that applicant or NRC Staff will not act in good faith to ensure that applicant's regulatory responsibilities, including its license conditions, are honored, and the board cannot assume noncompliance; LBP-15-11, 81 NRC 439 n.252 (2015)

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- Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227 (1980)
NEPA does not require agencies to elevate environmental concerns over other appropriate considerations; LBP-12-17, 76 NRC 81 n.49 (2012); LBP-12-18, 76 NRC 158 (2012); LBP-14-9, 80 NRC 40 (2014)
- Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-28 (1980) (per curiam)
although NEPA mandates that an agency prepare an environmental impact statement and take a hard look at the environmental impacts of a proposed agency action, NEPA itself does not mandate particular results, but simply prescribes the necessary process; LBP-11-7, 73 NRC 264 (2011); LBP-13-4, 77 NRC 120 (2013)
if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-7, 73 NRC 281 n.168 (2011); LBP-11-14, 73 NRC 605 (2011); LBP-13-4, 77 NRC 216 (2013)
- Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009)
doctrine of standing reflects the fundamental constitutional case or controversy limitation; LBP-14-4, 79 NRC 350 (2014)
- Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998)
project represents a NEPA success story, because the final proposal includes numerous environmental improvements that might not have been realized without the lengthy NEPA process; LBP-14-7, 79 NRC 468 n.108 (2014)
- Swint v. Chambers County Commission*, 514 U.S. 35, 49-50 (1995)
the Commission declines to take pendent jurisdiction of contention admissibility determinations, to avoid encouraging interlocutory appeals riding on the coattails of appealable issues; CLI-12-12, 75 NRC 607 (2012)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005)
boards do not sit to “flyspeck” environmental documents or to add details or nuances, but the environmental report or environmental impact statement must come to grips with all important considerations; LBP-11-16, 73 NRC 676 (2011); LBP-15-5, 81 NRC 283 (2015)
petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the environmental report; LBP-15-5, 81 NRC 282-83 (2015)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 146 (2007)
tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable; CLI-11-2, 73 NRC 344 (2011)
within the geographic boundary of the Ninth Circuit, NRC may not exclude NEPA terrorism contentions categorically; CLI-11-11, 74 NRC 456 (2011)
- System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-07-1, 65 NRC 27, *permit issuance authorized*, CLI-07-14, 65 NRC 216 (2007)
guidance on the role of licensing boards in mandatory proceedings is provided; LBP-12-21, 76 NRC 233-34 (2012)
mandatory proceedings for licensing of proposed uranium enrichment facility sites were conducted; LBP-11-11, 73 NRC 475 (2011)
- Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006)
a draft environmental impact statement does not and cannot treat identified environmental concerns in a vacuum; LBP-11-7, 73 NRC 302 (2011)
- Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987)
segmentation is to be avoided in order to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions; LBP-12-12, 75 NRC 778 n.204 (2012); LBP-14-6, 79 NRC 421 (2014); LBP-14-9, 80 NRC 41 (2014)
- Te-Moak Tribe of Western Shoshone of Nevada v. U.S. Department of Interior*, 608 F.3d 592, 603 (9th Cir. 2010)
NEPA analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment; LBP-13-9, 78 NRC 83 (2013)

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- Te-Moak Tribe of Western Shoshone of Nevada v. U.S. Department of Interior*, 608 F.3d 592, 606, 610 (9th Cir. 2010)
agency failed to take a hard look at cumulative impacts on cultural resources under NEPA even though the agency had satisfied its obligations under NHPA to consult with the tribe; LBP-15-16, 81 NRC 654 n.214 (2015)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 73 NRC 474, 476 (2010)
parties' other professional obligations do not relieve them of their obligations to meet mandatory deadlines; LBP-11-34, 74 NRC 693 n.52 (2011); LBP-12-12, 75 NRC 749 n.18 (2012)
the Commission enforces the 10-day deadline for filing appeals strictly and excuses it only in unavoidable and extreme circumstances; LBP-12-12, 75 NRC 749 n.18 (2012)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), CLI-10-26, 72 NRC 474, 478 n.23 (2010)
NRC has a strong policy in favor of openness and transparency; LBP-11-5, 73 NRC 134 (2011)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), LBP-10-7, 71 NRC 391, 413-14 (2010)
boards cannot logically infer that identified members of one organization are also members of another organization for purpose of representational standing determinations; LBP-13-8, 78 NRC 8 n.11 (2013)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 72 (2009)
boards are encouraged to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-12-13, 75 NRC 685 n.23 (2012)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 73 n.24 (2009)
board is free to decide contention admissibility on a theory different from those argued by the litigants, but only if it explained the specific basis of its ruling and gave the litigants a chance to present arguments (and, where appropriate, evidence) regarding the board's new theory; LBP-14-4, 79 NRC 362 n.44 (2014)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 75 (2009)
absent a waiver, parties are prohibited from collaterally attacking NRC regulations in an adjudication; LBP-15-4, 81 NRC 173 n.96 (2015)
contention challenging a Category 1 issue is inadmissible because petitioner has not requested a rule waiver and makes no arguments unique to this reactor; LBP-15-5, 81 NRC 302 (2015)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 75 n.38 (2009)
rule waivers are not granted where the circumstances on which the waiver's proponent relies are common to a large class of applicants or facilities; LBP-11-16, 73 NRC 702 n.351 (2011)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-3, 69 NRC 68, 76-77 (2009)
questions of safety impacts of onsite low-level waste storage are largely site- and design-specific, and appropriately decided in an individual licensing proceeding; LBP-12-4, 75 NRC 224 n.15 (2012)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 379-80 (2008)
boards cannot logically infer that identified members of one organization are also members of another organization for purpose of representational standing determinations; LBP-13-8, 78 NRC 8 n.11 (2013)
- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 410 (2008)
potential legislative action that might result in a reduction in demand is speculative and therefore does not provide a basis for admission of a contention on need for power; LBP-11-7, 73 NRC 287 n.206, 298 n.296 (2011)

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- Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-11-37, 74 NRC 774 (2011)
Fukushima-related contentions were dismissed as premature; LBP-11-39, 74 NRC 870 (2011)
- Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-664, 15 NRC 1, 15-16 (1982), *vacated and remanded on other grounds*, CLI-82-26, 16 NRC 880 (1982)
prior to license issuance NRC must find reasonable assurance that activities authorized by the amendment can be conducted without endangering the health and safety of the public, and are in compliance with Commission regulations; LBP-15-17, 81 NRC 778 n.154 (2015); LBP-15-20, 81 NRC 841 n.65 (2015)
- Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-677, 15 NRC 1387 (1982)
NRC Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 243 (2014)
- Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-677, 15 NRC 1387, 1394 (1982)
all parties, including NRC Staff, are obligated to bring any significant new information to the board's attention; LBP-14-2, 79 NRC 243 (2014)
- Tennessee Valley Authority* (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212, 213 (1976)
although a party who is not injured by a board's ruling has no right to appeal that ruling, it may file a supporting brief at the appropriate time; CLI-12-6, 75 NRC 363 n.51 (2012)
petitioner may act to vindicate its own rights, but it has no standing to assert the rights of others; CLI-12-6, 75 NRC 363 (2012)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-380, 5 NRC 572 (1977)
licensing boards may raise significant environmental and safety issues sua sponte; LBP-11-23, 74 NRC 367 (2011)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-380, 5 NRC 572, 575 (1977)
licensing board role is not confined to arbitration of those environmental controversies as may happen to have been placed before them by the litigants in the particular case; LBP-14-9, 80 NRC 66 (2014)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 362 n.90 (1978)
board considered a letter written after the original petition was filed and submitted with petitioner's reply; LBP-15-5, 81 NRC 289 n.252 (2015)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-467, 7 NRC 459, 463 (1978)
issuance of advisory opinions is generally disfavored; CLI-13-4, 77 NRC 105 (2013)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), LBP-76-44, 4 NRC 637, 648-49 (1976)
boards' authority to seek to trigger review in extraordinary circumstances remains and has been put to good use; LBP-11-9, 73 NRC 418 n.13 (2011)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 33-34, 37 (2014)
because of special circumstances presented by waste confidence, Commission directs that waste confidence contentions be held in abeyance pending its further direction; CLI-14-8, 80 NRC 78 n.23 (2014)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 34-35 (2014)
experienced litigator should have expected that NRC Staff might challenge its interpretation of an NRC regulation regarding appeals; LBP-15-28, 82 NRC 244 n.78 (2015)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 36 (2014)
appeal under 10 C.F.R. 2.311 of a licensing board order holding various contentions inadmissible was premature because a waste confidence contention had been held in abeyance, and the board had therefore not yet granted or denied the hearing request; LBP-14-8, 79 NRC 528 (2014)

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- limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, i.e., when it has admitted or rejected all proposed contentions; LBP-15-1, 81 NRC 46 (2015)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 36-37 (2014)
degree to which pendency of a new contention at the time of the board's ruling on an initial hearing petition tolled the time for filing any appeals from that decision regarding the admissibility of the contentions would be a matter for Commission determination; LBP-14-12, 80 NRC 141 n.3 (2014)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 37 (2014)
the Commission retained authority to provide ultimate direction on the waste confidence contentions being held in abeyance; LBP-14-8, 79 NRC 528 (2014)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-3, 79 NRC 31, 37 n.33 (2014)
licensing board opinion on appealability of an order does not bind the Commission, which will make its own decision whether an appeal may be filed; LBP-14-8, 79 NRC 528-29 n.52 (2014)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 23 (2002)
statutes articulating the relevant zone of interests in NRC proceedings are the Atomic Energy Act and the National Environmental Policy Act; LBP-11-29, 74 NRC 616 n.10 (2011)
- Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 25 (2002)
even if an import or export license authorized possession and/or use of the low-level radioactive waste, the petition does not assert how the LLRW is a significant source of radioactivity or provide any scenario in which the import or export of the LLRW would result in an accident that could produce obvious offsite consequences; CLI-11-3, 73 NRC 622 n.46 (2011)
- Tennessee Valley Authority v. Hill*, 437 U.S. 153, 173 (1978)
the Endangered Species Act affirmatively commands all federal agencies to ensure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of an endangered species or result in destruction or modification of habitats of such species, with no exception; LBP-12-10, 75 NRC 670 (2012)
- Tennessee Valley Authority v. Hill*, 437 U.S. 153, 180 (1978)
the Secretary of the Interior has been given extensive power to develop regulations and programs for the preservation of endangered and threatened species; LBP-12-10, 75 NRC 670 (2012)
- Tennessee Valley Authority v. Hill*, 437 U.S. 153, 181-82 (1978)
federal agencies should seek to preserve endangered species only insofar as is practicable and consistent with their primary purposes; LBP-12-10, 75 NRC 671 (2012)
- Tennessee Valley Authority v. Hill*, 437 U.S. 153, 188 n.34 (1978)
it would make sense to hold NEPA inapplicable at some point in the life of a project, because the agency would no longer have a meaningful opportunity to weigh the benefits of the project versus the detrimental effects on the environment; LBP-12-1, 75 NRC 37 n.48 (2012)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1), CLI-03-9, 58 NRC 39, 44 n.21 (2003)
filing of amicus briefs is permitted if a matter is taken up by the Commission under section 2.341 or sua sponte; CLI-15-24, 82 NRC 334 n.17 (2015)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 NRC 319, 322-23 (2010)
in weighing the timeliness factors for motions to reopen, greatest weight is accorded to good cause for failure to file on time; CLI-11-8, 74 NRC 227 (2011); CLI-12-15, 75 NRC 723 n.96 (2012)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 NRC 319, 323 (2010)
absent good cause, there must be a compelling showing on the remaining late-filing factors; CLI-12-10, 75 NRC 492 n.69 (2012); CLI-12-15, 75 NRC 723 n.96 (2012)
good cause for the late filing is the most important of the late-filing factors; CLI-12-10, 75 NRC 489 n.47, 492 n.69 (2012)
if good cause is not shown, a board may still permit the late filing, but petitioner or intervenor must make a strong showing on the other factors of 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 401 (2011)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-10-29, 72 NRC 556, 563 (2010)
NRC Staff will incorporate any new SAMA-related information that it finds to be significant in the final supplemental EIS; CLI-13-7, 78 NRC 217 (2013)

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- petitioner's rule waiver petition is referred to NRC Staff as additional comments on the draft supplemental EIS for the Staff's consideration and response; CLI-13-7, 78 NRC 216-17 (2013)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), LBP-09-26, 70 NRC 939, 33-34 (2009)
- contention where a fisheries biologist opined that applicant lacked adequate data on which to conclude that impacts on the aquatic environment were insignificant was admissible; LBP-15-20, 81 NRC 852 n.139 (2015)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), LBP-10-12, 71 NRC 656, 662 n.9 (2010)
- "prima facie" is not defined in NRC regulations, but is interpreted to mean a substantial showing; LBP-14-16, 80 NRC 194 n.64 (2014)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977)
- standing claims based on economic impacts are only cognizable in NRC proceedings with regard to NEPA-based concerns; LBP-12-3, 75 NRC 184 n.15 (2012)
- Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977)
- an organization's standing can be demonstrated through the interests of its members, but if a member acts or speaks on behalf of the organization, that member must also demonstrate authorization by that organization to represent it; LBP-11-13, 73 NRC 548-49 (2011)
- Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 707 (1978)
- absence of any reference to "cumulative impacts" in a document incorporated by reference negates any intention to incorporate any discussion of cumulative impacts from these prior documents into an environmental report, consistent with the maxim of *expressio unius est exclusio alterius*, i.e., the expression of one thing is to the exclusion of another; LBP-12-24, 76 NRC 515-16 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 924 n.42 (1987)
- an issue on appeal is not properly briefed by incorporating by reference papers filed with the licensing board; CLI-11-8, 74 NRC 219 n.13 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-2, 37 NRC 55, 59 n.4 (1993)
- appellants seeking oral argument must show how oral argument will assist the Commission in reaching a decision; CLI-11-8, 74 NRC 220 (2011); CLI-12-12, 75 NRC 614 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 165 (1993)
- failure to demonstrate good cause for a late-filed contention requires a compelling showing on the remaining factors; CLI-12-15, 75 NRC 723 n.96 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192 (1993)
- controversy often ends during the pendency of appeals before the Commission or the Appeal Board; CLI-13-9, 78 NRC 558 (2013)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 200 (1993)
- because the plant is now permanently shut down and will not restart, no live controversy remains between the litigants; CLI-13-9, 78 NRC 557 (2013)
- cases will be moot when the issues are no longer live, or the parties lack a cognizable interest in the outcome; CLI-13-9, 78 NRC 557 (2013)
- in ruling on whether a contention is moot, boards look to whether an issue is still live, such that a party still has a legal interest in the issue; LBP-11-4, 73 NRC 127 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 200 n.28 (1993)
- absent compelling reasons, the Commission adheres to the case or controversy doctrine in its adjudicatory proceedings; LBP-13-7, 77 NRC 345 n.59 (2013)

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- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 205 (1993)
 stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558-59 (2013)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-11, 37 NRC 251, 255 (1993)
 petitioner's failure to specifically address the section 2.309(c)(1) factors in its motion to reopen is a potentially fatal omission; CLI-11-8, 74 NRC 227 n.59 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-11, 37 NRC 251, 263 (1993)
 section 2.342 does not apply to requests for stays of Commission decisions pending judicial review; CLI-12-11, 75 NRC 528 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-11, 37 NRC 251, 263-65 (1993)
 the Commission traditionally has entertained motions to stay agency action pending judicial review; CLI-12-11, 75 NRC 528 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992)
 petitions that lack alleged facts or expert opinions to support the contention are inadmissible; LBP-11-29, 74 NRC 621 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 609 (1988)
 burden is on intervenors to demonstrate that a balancing of the factors of 10 C.F.R. 2.309(c)(i)-(viii) weighs in favor of granting a late-filed petition; LBP-12-27, 76 NRC 594 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-1, 35 NRC 1, 6 n.5 (1992)
 as long as license review is ongoing, the licensing proceeding is still in existence; CLI-12-14, 75 NRC 696 (2012)
 despite rulings dismissing a contention as moot and declining to admit two other contentions, the licensing proceeding remains in existence; LBP-11-22, 74 NRC 267 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 68-69 (1992)
 the Commission generally declines to hold oral argument on appeals, absent a specific showing that oral argument will assist it in reaching a decision; CLI-11-8, 74 NRC 220 (2011); CLI-12-12, 75 NRC 614 (2012)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 69-70 (1992)
 availability of new information may provide good cause for nontimely filing, but the test for good cause is not simply when the intervenor became aware of the material sought to be introduced but when the information became available and when the intervenor reasonably should have become aware of the information; LBP-11-7, 73 NRC 279 n.162 (2011)
 not only must intervenor act promptly after learning of new information, but the information itself must be new information, not information already in the public domain; LBP-11-7, 73 NRC 279-80 n.162 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 69-73 (1992)
 petitioner must act reasonably and promptly after learning of the new information on which its motion to reopen is based; LBP-11-23, 74 NRC 328 (2011)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73 (1992)
 if intervenor fails to show good cause for a late filing, its demonstration on the other late-filing factors must be particularly strong; LBP-11-7, 73 NRC 280 (2011); LBP-11-15, 73 NRC 634-35 (2011); LBP-12-7, 75 NRC 510 (2012); LBP-12-9, 75 NRC 622 (2012)

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- Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station), ALAB-714, 17 NRC 86, 94 (1983)
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- Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614 (1981)
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- Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 517 (D.C. Cir. 2010)
when the adequacy of an EIS mitigation strategy is challenged, the determining issue is whether the agency took a sufficiently hard look at environmental consequences, and ensured that its decision was supported by a completely informed record; LBP-15-16, 81 NRC 688 (2015)
- Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 519 (D.C. Cir. 2010)
NEPA does not require circulation of a draft environmental assessment in all cases; CLI-15-17, 82 NRC 41 n.53 (2015)
- Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985)
construction of a road to facilitate logging and the sale of timber from the logging are “connected actions” that have to be addressed in a single environmental impact statement; LBP-14-9, 80 NRC 41, 46 (2014)
- Thomas v. Peterson*, 753 F.2d 754, 759 (9th Cir. 1985)
to determine whether interdependence exists among the various actions at issue, courts generally have looked to see whether the first action has independent utility; LBP-13-10, 78 NRC 147 (2013)
- Thomas v. Peterson*, 753 F.2d 754, 759-60 (9th Cir. 1985)
for construction of a transmission corridor to constitute a connected action under 40 C.F.R. 1508.25, the corridor must lack independent utility, that is, its sole purpose must be serving the proposed nuclear power plant; LBP-14-9, 80 NRC 45 (2014)
- Three Mile Island Alert v. NRC*, 771 F.2d 720, 728 (3d Cir. 1985), *cert. denied sub nom. Aamodt v. NRC*, 475 U.S. 1082, *reh’g denied*, 476 U.S. 1179 (1986)
in the context of a new contention filed after the initial petition, petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-11-2, 73 NRC 339 n.22 (2011)
- Toledo Edison Co.* (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975)
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- Toledo Edison Co.* (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 761 (1975)
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- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98, 99 (1976)
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- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-378, 5 NRC 557, 561 (1977)
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- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-560, 10 NRC 265, 400 (1979)
exception to the mootness doctrine is recognized when the same litigants are likely to be subject to similar future action; CLI-13-10, 78 NRC 568 (2013)
- Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-560, 10 NRC 265, 400 & n.23 (1979)
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- Tongass Conservation Society v. Cheney*, 924 F.2d 1137, 1140 (D.C. Cir. 1991)
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- Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988)
failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-6, 79 NRC 421 (2014); LBP-14-9, 80 NRC 41 (2014)
for an environmental impact statement, separate actions may be considered connected if, among other things, they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-11-10, 73 NRC 441 (2011)
segmentation is to be avoided in order to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions; LBP-14-6, 79 NRC 421 (2014)
segmentation or piecemealing occurs when an action is divided into component parts, each involving action with less significant environmental effects; LBP-12-12, 75 NRC 778 n.204 (2012); LBP-14-6, 79 NRC 421 (2014); LBP-14-9, 80 NRC 41 (2014)
- Town of Huntington v. Marsh*, 884 F.2d 648, 651 (2d Cir. 1989)
immediate, irreparable harm is not presumed by a NEPA violation, even assuming such a violation has occurred; CLI-15-17, 82 NRC 40 n.45 (2015)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 9-13 (1st Cir. 2008)
NRC need not supplement an environmental impact statement with information in an area of research that is still developing; CLI-12-6, 75 NRC 376 n.146 (2012); CLI-12-7, 75 NRC 392 n.48 (2012)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 11 (1st Cir. 2008)
although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-13-4, 77 NRC 211 (2013)
NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-13-4, 77 NRC 211 (2013)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 11-13 (1st Cir. 2008)
environmental impact statements are not intended to be research documents, reflecting the frontiers of scientific methodology, studies, and data; CLI-12-5, 75 NRC 341 (2012); LBP-13-4, 77 NRC 211 (2013)
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NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-11-7, 73 NRC 265 (2011); LBP-13-13, 78 NRC 287 n.193, 540 (2013)
NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 396 n.46 (2015)
- Town of Winthrop v. Federal Aviation Administration*, 535 F.3d 1, 13 (1st Cir. 2008)
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NEPA allows agencies to select their own methodology as long as that methodology is reasonable; CLI-12-6, 75 NRC 369 n.96 (2012)
- Transnuclear, Inc.* (Export of 93.15% Enriched Uranium), CLI-94-1, 39 NRC 1, 3 (1994)
in assessing whether a petitioner has set forth a sufficient interest to qualify for a hearing as a matter of right in a licensing proceeding, the Commission has long applied contemporaneous judicial concepts of standing; CLI-11-3, 73 NRC 621 (2011)
- Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-99-15, 49 NRC 366, 367 (1999)
essential to establishing standing are findings of injury, causation, and redressability; CLI-11-3, 73 NRC 621 (2011)
- Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-99-15, 49 NRC 366, 368 (1999)
where petitioners do not claim to have special knowledge on any of the issues raised by an import/export application or present any significant information not already available to and considered by the Commission in assessing the applications, a discretionary hearing would impose

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- unnecessary burdens on the participants without assisting in the Commission in making the requisite findings; CLI-11-3, 73 NRC 625 (2011)
- Transnuclear, Inc.* (Export of 93.3% Enriched Uranium), CLI-00-16, 52 NRC 68, 72 (2000)
where petitioners do not claim to have special knowledge on any of the issues raised by an import/export application or present any significant information not already available to and considered by the Commission in assessing the applications, a discretionary hearing would impose unnecessary burdens on the participants without assisting in the Commission in making the requisite findings; CLI-11-3, 73 NRC 625 (2011)
- Tronsource International, Inc. v. Trinity Industries, Inc.*, 725 F.2d 274, 279 (5th Cir. 1984)
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- Treadway v. Gateway Chevrolet Oldsmobile Inc.*, 362 F.3d 971, 976 (7th Cir. 2004)
licensing boards should not interpret regulatory text in a way that would essentially negate the stated purpose of the regulation or impute to the Commission an intent to create a schizophrenic rule; LBP-14-7, 79 NRC 475-76 (2014)
- Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir. 1974)
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projects lack independent utility when it would be irrational, or at least unwise, to build one without the other; LBP-14-9, 80 NRC 41 (2014)
- Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)
NEPA requirements are subject to a rule of reason, and an environmental impact statement need not address remote and highly speculative consequences; LBP-14-9, 80 NRC 42 (2014)
NRC Staff must provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of a proposed action; LBP-15-16, 81 NRC 637 (2015)
- Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980)
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- Tucker v. Atwood*, 880 F.2d 1250, 1250 (11th Cir. 1989)
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- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 188 (2010)
whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source; LBP-13-6, 77 NRC 270 (2013); LBP-12-3, 75 NRC 179 (2012)
- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 189 (2010)
if proximity-based standing cannot be demonstrated, then standing must be established according to traditional principles of redressability, injury, and causation; LBP-12-3, 75 NRC 179 (2012)
in lieu of the injury and causation showings for standing, petitioner has been able to establish proximity-plus by showing that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; LBP-12-3, 75 NRC 179 (2012); LBP-13-6, 77 NRC 271 n.5 (2013)
where petitioner has made no effort to establish that any proximity plus presumption should be applicable in determining standing relative to the challenged licensing action, boards must look to traditional standing precepts of injury and causation, as well as redressability, to determine whether a sufficient factual and legal demonstration of standing has been made; LBP-13-6, 77 NRC 271 n.5 (2013)
- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 194 (2010)
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- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), LBP-10-4, 71 NRC 216, 229 (2010), *aff'd*, CLI-10-20, 72 NRC 185 (2010)
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- U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), LBP-10-4, 71 NRC 216, 230 & n.14 (2010)
if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether standing has been satisfied; LBP-12-3, 75 NRC 177 (2012); LBP-13-6, 77 NRC 270 (2013)
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- U.S. Army* (Jefferson Proving Ground Site), LBP-06-27, 64 NRC 438, 454 n.39 (2006)
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- U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 23-24 (1994)
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- U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25 (1994)
denial of vacatur is merely one application of the principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks; CLI-13-9, 78 NRC 562 (2013)
- U.S. Department of Energy* (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539, 544 (1983)
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- U.S. Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421, *remanded on other grounds*, *Natural Resources Defense Council, Inc. v. NRC*, 695 F.2d 623 (D.C. Cir. 1982)
for there to be any statutory right to a hearing on the granting of a rule exemption, such a grant must be part of a proceeding for the granting, suspending, revoking, or amending of any license or construction permit under the Atomic Energy Act; CLI-13-1, 77 NRC 10 n.37 (2013)
- U.S. Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 426, *remanded on other grounds*, *Natural Resources Defense Council, Inc. v. NRC*, 695 F.2d 623, 625 (D.C. Cir. 1982)
exemption from the decommissioning financial assurance requirements is considered to be an extraordinary equitable remedy to be used only sparingly; CLI-13-1, 77 NRC 9 (2013)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-04-32, 60 NRC 469, 473 (2004)
in view of the uncertainty surrounding the application at issue, the Commission is reluctant to engage in review when its opinion might constitute a mere academic exercise; CLI-13-4, 77 NRC 105 (2013)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-05-27, 62 NRC 715, 718 (2005)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-06-5, 63 NRC 143, 154 (2006)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-08-12, 67 NRC 386, 393 (2008)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-08-21, 68 NRC 351, 353 (2008)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-10-13, 71 NRC 387, 388 n.6 (2010)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-10-13, 71 NRC 387, 389 (2010)
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- U.S. Department of Energy* (High-Level Waste Repository), CLI-14-1, 79 NRC 1, 3-4 (2014)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-08-10, 67 NRC 450, 455 (2008)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 413-16 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 416 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 431 (2009), *modified*, CLI-09-14, 69 NRC 580 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 431-32 (2009), *modified*, CLI-09-14, 69 NRC 580 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 466 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 467 (2009)
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- U.S. Department of Energy* (High-Level Waste Repository), LBP-10-11, 71 NRC 609, 637 (2010)
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- U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 363 (2004)
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- U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 364-65 (2004)
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- U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 365 (2004)
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- U.S. Department of Justice v. Julian*, 486 U.S. 1, 8 (1988)
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- U.S. Department of Justice v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989)
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- U.S. Department of State v. Ray*, 502 U.S. 164, 179 (1991)
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- U.S. Department of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976)
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- U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 757 (2004)
Council on Environmental Quality regulations receive substantial deference from federal courts; LBP-12-17, 76 NRC 82 n.57 (2012)
- U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767-69 (2004)
rule of reason is inherent in NEPA and its implementing regulations; LBP-12-17, 76 NRC 82 n.52 (2012)

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- U.S. Energy Research and Development Administration* (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 77 (1976)
need-for-power forecasts are required only to be reasonable; LBP-12-5, 75 NRC 237 (2012)
- U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001)
burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 394-95 (2015)
in NRC proceedings, *pro se* litigants are generally not held to the same high standards of pleading and practice as parties with counsel; LBP-11-9, 73 NRC 408 (2011); LBP-11-20, 74 NRC 96 n.26 (2011); LBP-11-23, 74 NRC 333 n.23 (2011)
- U.S. Parole Commission v. Geraghty*, 445 U.S. 388, 403 (1980)
future cases are appropriately decided in the context of a concrete dispute, with self-interested parties vigorously advocating opposing positions; CLI-13-9, 78 NRC 557-58 (2013)
- U.S. Postal Service v. Gregory*, 534 U.S. 1, 10 (2001)
Staff's deference to the expertise of other federal and state agencies to set and monitor the financial soundness of institutions issuing letters of credit is reasonable; CLI-11-4, 74 NRC 6 n.27 (2011)
- U.S. Steel Mining Co., LLC v. Director, OWCP*, 386 F.3d 977, 985 (11th Cir. 2004)
Millstone rule waiver decision, which aggregates cases interpreting the waiver standard, is an example of a uniform, permissible interpretation of NRC regulations; CLI-13-7, 78 NRC 205 n.19 (2013)
- U.S. Student Ass'n v. Central Intelligence Agency*, 620 F. Supp. 565, 571 (D.D.C. 1985)
when an agency waives the deliberative process privilege for a document when it discloses the same document or one containing equivalent text, the question necessarily arises whether the agency has waived any deliberative process privilege that might otherwise apply; LBP-13-5, 77 NRC 244 (2013)
- Union Electric Co.* (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983)
demonstration of a pervasive failure to carry out the quality assurance program might well stand in the way of the requisite safety finding; LBP-14-7, 79 NRC 478 (2014)
- Union Electric Co.* (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1210 n.11 (1983)
all parties, including NRC Staff, are obligated to bring any significant new information to the board's attention; LBP-14-2, 79 NRC 243 (2014)
- Union Electric Co.* (Callaway Plant, Unit 1), CLI-15-11, 81 NRC 546 (2015)
contention that supplementation of the environmental impact statement is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the Continued Storage Rule and GEIS is denied; CLI-15-10, 81 NRC 538 n.7 (2015)
motion to reopen the record on claim that final environmental impact statement for combined license application violates National Environmental Policy Act by failing to consider the environmental impacts associated of continued storage of spent nuclear fuel is denied; CLI-15-12, 81 NRC 551 (2015)
placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-15, 81 NRC 805 (2015); CLI-15-27, 82 NRC 414-15 (2015)
- Union Electric Co.* (Callaway Plant, Unit 1), CLI-15-11, 81 NRC 546, 548-50 (2015)
contention that challenges an agency regulation does not raise an issue appropriately within the scope of an individual licensing proceeding and thus is not admissible absent a waiver; CLI-15-12, 81 NRC 553 (2015)
- Union Electric Co.* (Callaway Plant, Unit 1), CLI-15-11, 81 NRC 546, 549 (2015)
contention that does not engage the combined license application has not demonstrated a genuine dispute with applicant on a material issue; CLI-15-12, 81 NRC 554 (2015)
- Union Electric Co.* (Callaway Plant, Unit 1), CLI-15-11, 81 NRC 546, 549 n.17 (2015)
lack of an admissible contention necessarily precludes reopening the proceeding; CLI-15-12, 81 NRC 554 (2015)

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- Union Electric Co.* (Callaway Plant, Unit 1), LBP-12-15, 76 NRC 14, 27 (2012)
petitioner that fails to provide sufficient factual or expert support for the claims in its contention in contravention of section 2.309(f)(1)(v) also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-15-1, 81 NRC 38 (2015)
- Union Electric Co.* (Callaway Plant, Unit 1), LBP-12-15, 76 NRC 14, 34 (2012)
information request from NRC Staff is not an approval that needs to be listed in applicant's environmental report under 10 C.F.R. 51.45(d); LBP-15-27, 82 NRC 193 n.50 (2015)
- Union Electric Co.* (Callaway Plant, Unit 1), LBP-12-15, 76 NRC 14, 36 (2012)
admissible contention challenging consideration of alternatives must show that a particular alternative was not discussed in the draft environmental impact statement and provide some support that the alternative is reasonable; LBP-13-9, 78 NRC 89 (2013)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141 (2011)
motions and petitions related to the Fukushima events are denied as premature; CLI-12-7, 75 NRC 383-84 (2012)
new contentions on the safety and environmental implications of the NRC Task Force Report on the Fukushima Dai-ichi accident are premature and must be denied on that basis without regard to any other considerations; LBP-11-27, 74 NRC 595 (2011); LBP-11-37, 74 NRC 783 (2011)
NRC continues to comprehensively assess the accident at Fukushima, including carefully reviewing all recommendations outlined by NRC's Task Force studying the accident; CLI-12-10, 75 NRC 501 (2012)
petitioner does not identify how the Fukushima accident paints a seriously different picture of the environment, given the bounding severe accident scenarios assumed in the GEIS analysis and its consideration of liquid pathways; CLI-12-15, 75 NRC 726 (2012)
petitions requesting suspension of all combined license decisions regarding pending completion of actions associated with the Fukushima accident are granted in part and denied in part; CLI-12-2, 75 NRC 70 (2012); CLI-12-14, 75 NRC 696 n.31 (2012)
the Commission declined to suspend adjudications or any final licensing decisions because of the Fukushima accident, finding no imminent risk to public health and safety or to common defense and security; CLI-11-8, 74 NRC 232 (2011); CLI-11-10, 74 NRC 257 n.28 (2011); CLI-12-5, 75 NRC 349 (2012); CLI-12-11, 75 NRC 528 n.22 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 145-46 (2011)
requests to suspend ongoing adjudicatory and licensing activities pending full consideration of the safety and environmental implications of the Fukushima accident are denied; LBP-11-34, 74 NRC 689 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 146 (2011)
NRC understanding of the details of the failure modes at the Fukushima Dai-ichi site continues to evolve and NRC continues to learn more about the extent of the damage at the site; LBP-11-28, 74 NRC 607 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 146, 177-78 (2011)
request for suspension of proceedings and other relief after the Fukushima Dai-ichi accident was denied; CLI-15-13, 81 NRC 564 n.42 (2015)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 147 (2011)
the Fukushima Task Force was to review NRC processes and regulations to determine, among other things, whether the agency should make additional improvements to its regulatory system; LBP-11-27, 74 NRC 594 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 75 NRC 141, 147-48 & n.6 (2011)
any changes adopted as a result of the Fukushima accident or the Task Force Report can and will be implemented through the normal regulatory process; LBP-11-28, 74 NRC 607 (2011); LBP-11-32, 74 NRC 659 (2011)
continued operation and continued licensing activities following the Fukushima accident do not pose an imminent risk to public health and safety; CLI-13-2, 77 NRC 47 n.36 (2013)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 147-49 (2011)
in response to the Fukushima accident in Japan, NRC is conducting a comprehensive safety review of the requirements and guidance associated with accident mitigation measures; CLI-12-1, 75 NRC 57 (2012)

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- NRC continues to consider the nuclear events in Japan, and the agency is in the process of implementing and prioritizing actions to be taken in response to the Fukushima accident; CLI-11-14, 74 NRC 812 n.66 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 148 (2011)
continued operation and licensing activities post-Fukushima do not pose an imminent risk to public health and safety; LBP-12-18, 76 NRC 133 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 151 (2011)
petitioners asserted that NRC actions following the events of September 11, 2001, and the accident at Fukushima Dai-ichi were insufficient to satisfy NRC's general obligation under the Atomic Energy Act to protect public health and safety; CLI-15-4, 81 NRC 231 (2015)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 152-56 (2011)
Commission responses to requests for suspension of reactor licensing reviews and associated adjudications in the wake of the Three Mile Island accident and 9/11 terrorist attacks are discussed; LBP-11-37, 74 NRC 784 n.8 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 152-57, 161-65 (2011)
decision to suspend final licensing decisions is highly dependent upon the facts and requires a judgment that the significance of the matter raised is so substantial as to warrant suspension; CLI-15-14, 81 NRC 736-37 (2015)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158 (2011)
section 2.342(a) applies only to decisions or actions of a presiding officer or licensing board in a proceeding to which the movant is a party pending the filing and resolution of a petition for review; CLI-14-4, 79 NRC 252 (2014)
suspending a proceeding is a drastic action that will not be taken absent immediate threats to public health and safety or other compelling reason; CLI-14-7, 80 NRC 7 (2014); CLI-15-19, 82 NRC 158 (2015)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158 & n.65 (2011)
as an exercise of the Commission's inherent supervisory authority over agency proceedings, it need not address procedural issues that would merit further consideration in adjudications; CLI-12-16, 76 NRC 66 n.1 (2012)
because the Commission finds that the suspension petition and new contention fail on the merits, and it considers and takes action on the petition and motions in its supervisory capacity, it need not address procedural issues; CLI-15-4, 81 NRC 239 n.100 (2015)
three criteria are used to determine whether to suspend an adjudication; CLI-12-6, 75 NRC 373 (2012)
where petition fails on the merits, the Commission need not address procedural issues; CLI-15-10, 81 NRC 539 n.8 (2015)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158-59 (2011)
to determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes; CLI-14-7, 80 NRC 7 (2014)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 159-66 (2011)
petitioners' requests to suspend various licensing proceedings, pending completion of long-term analyses of the Fukushima events and the issuance of any resulting regulatory changes were denied; CLI-12-9, 75 NRC 437 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 161 (2011)
"imminent risk" reflects NRC's determination that, post-Fukushima, continued operation of U.S. nuclear plants and continued licensing activities pose no imminent risk to public health and safety; CLI-15-19, 82 NRC 157-58 & n.33 (2015)
in the context of NRC's post-Fukushima activities, nothing learned to date requires immediate cessation of NRC review of license applications; CLI-15-19, 82 NRC 158-59 (2015)
lack of a specific link between the relief requested and the particulars of the individual applications makes it difficult to conclude that moving forward with any individual licensing decision or proceeding will have a negative impact on public health and safety; LBP-11-35, 74 NRC 716 n.63 (2011)

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- no information that NRC has learned so far from the Fukushima accident puts into question the continued safety of currently operating regulated facilities, including reactors and spent fuel pools; CLI-12-10, 75 NRC 501 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 161-63 (2011)
- there is no imminent safety reason to halt new reactor licensing because there is sufficient time to implement new Fukushima-related requirements before operation; CLI-12-2, 75 NRC 126 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 162-63 (2011)
- NRC has in place well-established regulatory processes by which to impose any new Fukushima-related requirements or other enhancements that may be needed; CLI-12-2, 75 NRC 120 (2012); CLI-12-6, 75 NRC 375-76 (2012); CLI-12-9, 75 NRC 444 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 162-63, 166 (2011)
- NRC has in place well-established regulatory processes by which to impose any new requirements or other enhancements that may be needed following completion of regulatory actions associated with the Fukushima events; CLI-12-3, 75 NRC 151 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 163 (2011)
- for pending license renewal applications, where the period of extended operation will not begin for at least a year, there is no imminent threat to public health and safety that requires suspension of licensing proceedings or decisions; LBP-11-35, 74 NRC 710 (2011)
- no imminent risk to public health and safety or to the common defense and security post-Fukushima necessitates suspensions; LBP-12-18, 76 NRC 133 (2012)
- NRC has the authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-6, 74 NRC 211 (2011); CLI-11-8, 74 NRC 232 (2011); CLI-11-10, 74 NRC 257 n.28 (2011)
- petitioner's request that the Commission defer a decision on the license renewal applications pending disposition of its forthcoming rulemaking and other potential events is premature and is therefore denied; CLI-14-6, 79 NRC 450 n.32 (2014)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 163-64 (2011)
- it is unnecessary to cease current licensing activities because NRC has authority to, and will, address Fukushima-related matters with future rulemaking and requirements to be applied to then-operating plants if the information it obtains so warrants; LBP-11-35, 74 NRC 745 n.200 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 163-65 (2011)
- it is in the public interest for adjudications to proceed, except for contentions associated with waste confidence issues; CLI-12-16, 76 NRC 67 n.7 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 164 (2011)
- any rule or policy changes NRC may make as a result of its post-Fukushima review may be made irrespective of whether a license renewal application is pending, or whether final action on an application has been taken; CLI-12-6, 75 NRC 375 (2012)
- events of Fukushima do not present a sufficiently grave threat to public safety that reactor licensing proceedings should be suspended; LBP-12-1, 75 NRC 15 n.59 (2012)
- for license renewal safety review, it is not clear at this point whether any enhancements or changes considered by the Fukushima Task Force will bear on license renewal regulations, which are focused more narrowly on the proper management of aging; CLI-12-10, 75 NRC 501 (2012)
- NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-11-11, 74 NRC 458 (2011); CLI-12-3, 75 NRC 150 (2012); CLI-12-5, 75 NRC 349 (2012); CLI-12-6, 75 NRC 374 (2012); CLI-12-8, 75 NRC 419 (2012); LBP-11-35, 74 NRC 713 (2011)
- the Commission does not believe that an imminent risk will exist during the time period needed to apply any necessary Fukushima-related changes to operating plants, whether a license renewal application is pending or not; LBP-11-35, 74 NRC 749 n.212 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 164-65 (2011)
- speculatory support for petitioners' request that licensing decisions be put on hold until NRC has completed its Fukushima studies and developed appropriate information is insufficient; LBP-11-35, 74 NRC 749 n.211 (2011)

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- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 166 (2011)
continuing licensing processes in accordance with current regulations pending completion of long-term analyses of the Fukushima events would cause no imminent risk to public health and safety because current regulations provide for incorporating new requirements into existing licenses as they are shown to be necessary; CLI-12-9, 75 NRC 437-38 (2012)
even for licenses that NRC issues before completing its review of hazards like those at Fukushima, any new Fukushima-driven requirements can be imposed later, if necessary, to protect the public health and safety; CLI-15-19, 82 NRC 158 n.39 (2015); LBP-11-35, 74 NRC 749 n.212 (2011); LBP-12-1, 75 NRC 22 n.83, 36 (2012)
moving forward with decisions and proceedings will have no effect on NRC's ability to implement necessary rule or policy changes that might come out of its review of the Fukushima accident; LBP-11-32, 74 NRC 659 (2011); LBP-11-35, 74 NRC 710-11 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 166-67 (2011)
although the Task Force Report on the Fukushima accident did not justify initiating a generic NEPA review, the Commission acknowledged that new and significant information may come to light that must be considered in individual reactor licensing proceedings; LBP-11-32, 74 NRC 664 (2011)
Fukushima-related contentions are rejected as premature, and would not have addressed the reopening or contention admissibility standards, or the waiver petition; CLI-12-6, 75 NRC 355 n.33 (2012)
NRC need not conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as a part of the environmental review for new reactor and license renewal decisions; LBP-11-32, 74 NRC 659 (2011)
request that NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions is premature; LBP-12-1, 75 NRC 25 (2012); LBP-12-18, 76 NRC 133 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 167 (2011)
because the full implications of the Fukushima events for U.S. facilities are unknown, any generic NEPA duty is premature; CLI-12-7, 75 NRC 389 (2012); LBP-11-27, 74 NRC 600-01 (2011); LBP-11-28, 74 NRC 608 (2011); LBP-11-32, 74 NRC 659 (2011); LBP-11-33, 74 NRC 682 (2011); LBP-12-8, 75 NRC 558 (2012)
events at Fukushima, and the ensuing NRC response, are not, at this point, to be considered new and significant information under NEPA; LBP-12-8, 75 NRC 559 (2012)
for our NEPA-based evaluations, if new and significant Fukushima-related information comes to light that is relevant to ongoing application-specific NEPA documents, NRC will evaluate the information as appropriate; CLI-12-7, 75 NRC 388 (2012); CLI-12-10, 75 NRC 501 (2012); LBP-11-33, 74 NRC 682 (2011)
NRC's obligation to evaluate mitigation in an EIS for a new nuclear reactor license includes evaluating measures to mitigate the impact of severe accidents on public health and safety; LBP-12-18, 76 NRC 161 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 167, 170-71 (2011)
the Commission declined to provide guidance as to when a Fukushima contention, challenging an individual environmental impact statement, would be mature; LBP-11-32, 74 NRC 669 n.34 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 167-68 (2011)
an environmental issue is "significant" for the purposes of reopening a closed record if it will paint a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-10, 75 NRC 656 (2012)
asserted new Fukushima-related information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-12-10, 75 NRC 501 (2012); LBP-12-1, 75 NRC 15 n.57, 26 n.2 (2012); CLI-12-13, 75 NRC 688 n.39 (2012)
new information requiring NRC Staff to prepare supplemental environmental review documents must present a seriously different picture of the environmental impact of the proposed project than what was previously envisioned; CLI-12-7, 75 NRC 388-89, 390-91 (2012); LBP-11-27, 74 NRC 601 (2011); LBP-11-28, 74 NRC 609 (2011); LBP-11-39, 74 NRC 868 (2011); LBP-12-18, 76 NRC 167 (2012)

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- requests for a generic NEPA analysis were premature where the NRC evaluation of the Fukushima Dai-ichi events was still ongoing; LBP-15-24, 82 NRC 97 n.191 (2015)
- the measure of “significance” is whether the new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-11-35, 74 NRC 751 n.218 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 168 (2011)
- Fukushima-related environmental impacts are not so significant as to satisfy the Commission’s criterion for supplementing an environmental impact statement; LBP-12-18, 76 NRC 142 (2012)
- the Commission declined to conduct a generic NEPA analysis on the effects of Fukushima-related events; CLI-12-7, 75 NRC 387 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 168, 176 (2011)
- petitioners’ request for a safety analysis relative to Fukushima-related concerns was granted to the extent that the requested analyses had already been undertaken; CLI-12-9, 75 NRC 437 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 168-71 (2011)
- if case-specific challenges to the waste confidence rule are appropriate for consideration, normal procedural rules will apply; CLI-12-16, 76 NRC 69 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 169 (2011)
- bald allegations do not suffice to support contention admissibility; LBP-13-8, 78 NRC 14 (2013)
- NRC regulations and case law already provide clear and uniform standards to determine the timeliness of motions to add new contentions on the Fukushima accident; LBP-11-32, 74 NRC 660 (2011)
- NRC rules deliberately place a heavy burden on proponents of contentions, who must challenge aspects of license applications with specificity, backed up with substantive technical support, mere conclusions or speculation being insufficient; LBP-11-35, 74 NRC 718 n.70, 751 n.219 (2011)
- speculation cannot be the basis for an admissible contention; LBP-12-27, 76 NRC 608 n.154, 611 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 170 (2011)
- boards are encouraged to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-12-13, 75 NRC 685 n.23 (2012)
- boards are encouraged to seek guidance from the Commission with regard to new contentions based on the Fukushima accident; LBP-11-32, 74 NRC 671 (2011)
- individual reactor adjudications should go forward, including those that may involve proposed contentions based on issues implicated by the Fukushima events; LBP-11-32, 74 NRC 660 (2011)
- NRC procedural rules contain ample provisions through which litigants may seek admission of new or amended contentions, seek stays of licensing board decisions, appeal adverse decisions, and file motions to reopen the record, as appropriate; CLI-12-3, 75 NRC 141 (2012); CLI-12-13, 75 NRC 689 (2012); LBP-12-18, 76 NRC 133 (2012)
- raising new issues related to the Fukushima events does not warrant new procedures or a separate timetable; CLI-12-6, 75 NRC 363 n.50 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 170 & n.120 (2011)
- licensing boards applied existing procedural rules to new contentions and motions to reopen filed in response to the Three Mile Island accident and the September 11, 2001, terrorist attacks; CLI-12-13, 75 NRC 689 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 171 (2011)
- for Fukushima-related contentions the Commission will monitor its proceedings and issue additional guidance as appropriate; CLI-12-3, 75 NRC 153 (2012)
- in the future the Commission might provide relevant guidance regarding the proper time frame for adjudicating Fukushima-related contentions; LBP-11-39, 74 NRC 871 n.42 (2011)
- neither new procedures nor a separate timetable for raising new issues related to the Fukushima events are warranted; CLI-12-3, 75 NRC 141 (2012); CLI-12-13, 75 NRC 689 (2012); CLI-12-15, 75 NRC 713 n.43 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 171-72 (2011)
- request to suspend this license renewal proceedings is denied; CLI-12-6, 75 NRC 360 n.33 (2012)

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- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 173-74 (2011)
when considering stays or other forms of temporary injunctive relief, the Commission has applied the stay factors outlined in 10 C.F.R. 2.342(e), which restate commonplace principles of equity; CLI-14-6, 79 NRC 449 n.30 (2014)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 174 (2011)
for suspension of licensing proceedings, petitioners must show that continuation of proceedings, pending consideration of a rulemaking petition, would jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge from NRC's continued evaluation of the impacts of the Fukushima accident; LBP-11-33, 74 NRC 679 n.5 (2011); LBP-11-34, 74 NRC 691 (2011) if NRC determines that changes to its current environmental assessment rules are warranted, it can revisit whether an individual licensing review or adjudication should be held in abeyance pending the outcome of a relevant rulemaking; CLI-14-7, 80 NRC 9 (2014)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 174-75 (2011)
depending on the timing and outcome of the NRC Staff's resolution of Fukushima-related rulemaking petitions, the Staff itself could seek Commission permission to suspend one or more of the generic determinations in the license renewal environmental rules and include a new analysis in pending, plant-specific environmental impact statements; LBP-11-35, 74 NRC 761 n.241 (2011); LBP-12-1, 75 NRC 22 n.82 (2012)
petitioners have not shown compelling circumstances requiring NRC to suspend final licensing decisions pending completion of rulemaking; CLI-14-7, 80 NRC 9 (2014)
spent fuel storage pool matters will be addressed, if studies of implications from Fukushima warrant, through more generic regulatory reform; LBP-11-35, 74 NRC 717 (2011)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 175 (2011)
given that NRC will have the opportunity to further consider the concerns that rulemaking petitioners have expressed, and as it further considers actions related to the Fukushima events, it declines to suspend any proceeding pending resolution of the rulemaking petition; CLI-14-7, 80 NRC 8 n.31 (2014)
request to suspend licensing and rulemaking activities pending completion of the NRC Task Force's evaluation of the implications of the Fukushima accident and issuance of any proposed regulatory decisions and/or environmental analyses is denied; LBP-12-18, 76 NRC 133 (2012)
- Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 175-76 (2011)
Fukushima-related contentions were denied as premature; LBP-11-36, 74 NRC 770 (2011)
Fukushima-related petitions for suspension of proceeding and rescission of regulations that make generic conclusions about environmental impacts of severe reactor and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings are denied; LBP-11-33, 74 NRC 678 (2011); LBP-11-39, 74 NRC 865 n.5 (2011)
- Union Electric Co.* (Callaway Plant, Units 1 and 2), ALAB-348, 4 NRC 225, 229 (1976)
intervenor must show a showing for admission of a NEPA contention sufficient to require reasonable minds to inquire further; LBP-12-18, 76 NRC 165-66 (2012)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1443 (D.C. Cir. 1984)
Atomic Energy Act § 189a has been interpreted to require that hearings must encompass all material factors bearing on the licensing decision raised by the requester; LBP-11-22, 74 NRC 269, 270, 275 (2011)
- Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1444-45 (D.C. Cir. 1984)
parties were not permitted to raise issues or there was no opportunity for hearing on a particular issue; LBP-11-20, 74 NRC 91 n.3 (2011)
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- Vermont Department of Public Service v. United States*, 684 F.3d 149, 156 (D.C. Cir. 2012)
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- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 515 (1978)
NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-11-16, 73 NRC 690-91 (2011)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 547 (1978)
formal adjudicatory procedures are inappropriate in export or import licensing proceedings; CLI-11-3, 73 NRC 623-24 n.53 (2011)

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- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 548 (1978)
NEPA does not mandate how an agency must fulfill its obligations under the statute; LBP-11-23, 74 NRC 331 (2011)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978)
final environmental impact statements need not discuss remote and speculative alternatives, but must consider only alternatives that bring about the ends of the proposed project; LBP-12-17, 76 NRC 113 (2012)
if impacts are remote or speculative, the environmental impact statement need not discuss them, including greenhouse gas emissions; LBP-11-7, 73 NRC 301 n.314 (2011)
it is not necessary that every alternative device and thought conceivable by the mind of man be considered, but a hard look must be taken at the environmental consequences; LBP-12-1, 75 NRC 35 (2012)
NEPA documents need consider only those environmental impacts that are reasonably foreseeable, not those that are remote and speculative possibilities; LBP-12-9, 75 NRC 623 (2012)
remote and speculative alternatives need not be addressed in a final environmental impact statement, but NEPA requires NRC Staff to consider reasonable alternatives that are likely to be available within the time frame of the proposed action; LBP-12-17, 76 NRC 115 (2012)
remote and speculative alternatives need not be addressed in an applicant's environmental report; CLI-12-5, 75 NRC 340 (2012); LBP-11-2, 73 NRC 51 (2011)
to make an impact statement something more than an exercise in frivolous boilerplate, the concept of alternatives must be bounded by some notion of feasibility; LBP-13-4, 77 NRC 120 n.24 (2013), 210 n.84 (2013)
under the rule of reason governing NEPA, the concept of alternatives must be bounded by some notion of feasibility; CLI-12-15, 75 NRC 724 (2012)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551, 553 (1978)
the impact of Fukushima-related issues on pending applications should be analyzed at a time and in a manner that fully takes into account not every alternative device and thought conceivable by the mind of man, but every significant aspect of the environmental impact of the sought license renewal; LBP-11-35, 74 NRC 766 n.13 (2011)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978)
it is NRC Staff, not petitioners, that has the burden of complying with NEPA; LBP-15-5, 81 NRC 283 (2015)
NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action and ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process; LBP-11-7, 73 NRC 264 (2011)
NEPA requirement to prepare an environmental impact statement places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action; LBP-13-4, 77 NRC 119 (2013)
the concept of alternatives evolves, and agencies must explore alternatives as they become better known and understood; LBP-11-13, 73 NRC 562 (2011)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-55 (1978)
agencies are permitted to impose requirements or thresholds for parties seeking to reopen a closed record; CLI-15-19, 82 NRC 156 (2015)
section 2.326 reflects the importance of finality in adjudicatory proceedings; CLI-15-19, 82 NRC 155 (2015)

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- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 555 (1978), *petition for review held in abeyance sub nom. Ohngo Gaudadeh Devia v. NRC*, 492 F.3d 421 (D.C. Cir. 2007)
there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; CLI-11-2, 73 NRC 337-38 n.15 (2011); LBP-15-14, 81 NRC 595 (2015)
- Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978)
although NEPA mandates that an agency prepare an environmental impact statement and take a hard look at the environmental impacts of a proposed agency action, NEPA itself does not mandate particular results, but simply prescribes the necessary process; LBP-13-4, 77 NRC 120 (2013) as long as the adverse effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-13-4, 77 NRC 216 (2013); LBP-11-7, 73 NRC 281 n.168 (2011)
NEPA does not mandate particular results, but simply prescribes the necessary process; LBP-11-7, 73 NRC 264 (2011); LBP-12-17, 76 NRC 81 n.49 (2012)
requirement to prepare an environmental impact statement is a procedural mechanism designed to assure that agencies give proper consideration to the environmental consequences of their actions; LBP-12-18, 76 NRC 159 (2012); LBP-14-9, 80 NRC 40 (2014)
- Vermont Yankee Nuclear Power Corp. v. NRC*, 435 U.S. 519, 554 (1978)
lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 113-14 (2011)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, ALAB-138, 6 AEC 520, 523 (1973)
for a reopening motion to be timely presented, movant must show that the issue sought to be raised could not have been raised earlier; LBP-11-20, 74 NRC 85 n.110 (2011)
to justify granting a motion to reopen, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition; CLI-11-8, 74 NRC 223 (2011)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, ALAB-919, 30 NRC 29, 44 (1989)
consideration of remote and speculative impacts is not required by NEPA; LBP-11-38, 74 NRC 859 (2011); LBP-12-5, 75 NRC 243 (2012)
NRC may decline to examine remote and speculative risks or events with inconsequentially small probabilities; LBP-11-26, 74 NRC 545 (2011)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990)
although boards do not decide the merits at the contention admissibility stage, materials cited as the basis for a contention are subject to scrutiny to determine whether, on their face, they actually support the facts alleged; LBP-12-12, 75 NRC 774 (2012)
board examines the information, facts, and expert opinions provided by petitioners to confirm that they do indeed provide adequate support for the contention; LBP-15-20, 81 NRC 850-51 (2015)
boards must do more than uncritically accept a party's mere assertion that a particular document supplies the basis for its contention, without even reviewing the document itself to determine if it appears to support a litigable contention; LBP-11-6, 73 NRC 176 n.24 (2010)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, CLI-00-20, 52 NRC 151, 162 (2000)
any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 260 n.31 (2014)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, CLI-00-20, 52 NRC 151, 163 (2000)
an organization that seeks to establish representational standing must show that at least one of its members would be affected by the proceeding, identify that member by name and address, and show

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- that the member would have standing to intervene in his or her own right and that the member has authorized the organization to request a hearing; LBP-11-16, 73 NRC 653 (2011)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000)
- entity seeking representational standing must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests; LBP-11-21, 74 NRC 122 (2011); LBP-12-3, 75 NRC 177 (2012); LBP-12-15, 76 NRC 23-24 (2012); LBP-13-6, 77 NRC 269 (2013)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 169 (2000)
- license transfer proceedings do not encompass a full-scale health-and-safety review of a plant; CLI-15-8, 81 NRC 508 (2015)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000)
- the Commission refused to suspend all license transfer proceedings pending analysis of limited liability companies; CLI-11-1, 73 NRC 4 (2011)
- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987)
- radius for the proximity presumption has to be at least as large as the range where obvious offsite consequences can occur; LBP-15-17, 81 NRC 773 n.122 (2015)
- Village of Bensenville v. Federal Aviation Administration*, 457 F.3d 52, 71-72 (D.C. Cir. 2006)
- NEPA requires that NRC conduct its environmental review with the best information available at that time; CLI-12-6, 75 NRC 376 n.146 (2012); CLI-12-7, 75 NRC 391-92 n.48 (2012)
- the review method chosen by NRC in creating its models with the best information available when it began its analysis and then checking the assumptions of those models as new information becomes available is a reasonable means of balancing competing considerations, particularly given the many months required to conduct full modeling with new data; CLI-12-7, 75 NRC 391-92 n.48 (2012)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 692 (2012)
- heavy barrier to reopening applies whenever an adjudication has been closed and not merely after a case has been terminated following a full evidentiary hearing on the merits; LBP-15-14, 81 NRC 595 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 693, 699-701 (2012)
- board's jurisdiction terminates when there are no longer any contested matters pending before it; CLI-15-13, 81 NRC 564 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699 (2012)
- once all contentions have been decided, the adjudicatory proceeding is terminated; CLI-14-6, 79 NRC 449 (2014); LBP-12-19, 76 NRC 187 n.3, 202 (2012); LBP-15-30, 82 NRC 345 n.30 (2015)
- when there are no proffered or admitted contentions remaining in the adjudicatory proceeding, the board's jurisdiction terminates; LBP-15-12, 81 NRC 454 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699, 701 (2012)
- licensing board's ruling resolving the last pending contention is equivalent to a final decision under 10 C.F.R. 2.341, and a licensing board's jurisdiction ends after it has rendered a final decision; LBP-15-9, 81 NRC 397 n.10 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 700 (2012)
- courts of appeals have repeatedly approved NRC practice of closing the hearing record after resolution of the last live contention; LBP-12-19, 76 NRC 203 (2012)
- rule governing motions to reopen sets a high standard; LBP-14-4, 79 NRC 374 n.68 (2014)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 700-01 (2012)
- new or amended contentions not related to the question of foreign ownership that an interested person may wish to file during the pendency of the combined license application are subject to usual rules of practice, including rules governing reopening the record of a closed proceeding; CLI-13-4, 77 NRC 106 n.20 (2013)

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- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 303 (2008)
although neither applicant nor NRC Staff challenges petitioner's standing, the board must make its own determination whether petitioner has satisfied standing requirement; LBP-11-2, 73 NRC 41 n.54 (2011)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 317 (2008)
facts relied on to support a contention of omission need not show that the facility cannot be safely operated, but only that the application is incomplete; LBP-15-5, 81 NRC 258 (2015)
if applicant cures the omission cited in a contention, the contention will become moot unless revised by intervenors; LBP-15-5, 81 NRC 258 (2015)
pleading requirements of 10 C.F.R. 2.309(f)(1)(v), calling for a recitation of facts or expert opinion supporting the issue raised, are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-15-5, 81 NRC 258 (2015); LBP-15-11, 81 NRC 437-38 n.241 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-09-27, 70 NRC 992, 998-99 (2009)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 138 (2012)
- Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-10-17, 72 NRC 501, 507-08, 517 (2010)
licensing boards have commonly afforded intervenors the opportunity to propose new contentions to challenge new information, even though no contention is pending; LBP-11-22, 74 NRC 277 (2011)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 & n.4 (1973)
pro se petitioner is not held to the same standards of clarity and precision as a lawyer; LBP-15-5, 81 NRC 286 n.234 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 n.5 (1973)
question whether the environmental assessment is sufficient to satisfy NRC Staff's NEPA requirements must await consideration at a full evidentiary hearing; LBP-15-13, 81 NRC 476 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 107 (1976)
whether the zone-of-interests test has been satisfied does not depend on how concrete or speculative the threat of injury may be; LBP-14-4, 79 NRC 352 n.34 (2014)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978)
Commission must find that activities authorized by a license amendment can be conducted without endangering the health and safety of the public and will be in compliance with Commission regulations; LBP-15-20, 81 NRC 841 (2015)
contention about a matter not covered by a specific rule need only allege that it poses a significant safety problem; LBP-15-20, 81 NRC 847-48, 854 n.151 (2015)
petitioners' contention challenges the sufficiency of the equivalent margins analysis to provide reasonable assurance of reactor safety and is therefore within the scope of the proceeding; LBP-15-20, 81 NRC 849 (2015)
petitioners may raise issues not addressed by a specific regulation when unique features in the facility or ongoing development of a generic solution mean that there are some gaps in the regulatory scheme that must be addressed on a case-by-case basis; LBP-15-20, 81 NRC 840 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 455 (1980)
if summary disposition movant meets its burden, opponent must set forth specific facts showing that there is a genuine issue and may not rely on mere allegations or denials; LBP-12-19, 76 NRC 190-91 (2012)

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- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 491 n.11 (1976)
parties' duty to report material significant developments in a matter under adjudication arises immediately upon discovery of that information; CLI-15-16, 81 NRC 813 n.11 (2015)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), LBP-75-70, 2 NRC 879, 890 (1975), *aff'd*, ALAB-325, 3 NRC 404 (1976), *petition for rev. dismissed sub nom., Culpeper League for Protection v. NRC*, 574 F.2d 633 (D.C. Cir. 1978)
the fact that a competent and responsible state authority has approved the environmental acceptability of a site or a project after extensive and thorough environmentally sensitive hearings is properly entitled to substantial weight in the conduct of NRC's own NEPA analysis; LBP-15-11, 81 NRC 439 n.253 (2015)
- Walsky Construction Co. v. United States*, 20 Cl. Ct. 317, 320 (1990)
NRC Staff must supply the board with precise and certain reasons for maintaining the confidentiality of requested documents; LBP-13-5, 77 NRC 242 (2013)
vague, general, and conclusory statements, all purporting to apply to many documents but not connected to any particular document, fail to meet the requirement that defendant supply the court with precise and certain reasons for maintaining the confidentiality of requested documents; LBP-13-5, 77 NRC 243 (2013)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1017 (9th Cir. 1980)
to satisfy the hard look requirement, NRC must provide detailed analysis of new information and a reasonable explanation of the agency's decision concerning supplementation, not merely a conclusory assertion that the agency has reviewed the new information and concluded that no supplement is required; LBP-12-18, 76 NRC 173 (2012)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-24 (9th Cir. 1980)
mitigation must be discussed in sufficient detail in an environmental impact statement to ensure that environmental consequences have been fairly evaluated; LBP-12-18, 76 NRC 159 (2012)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir. 1980)
NRC Staff will incorporate any new SAMA-related information that it finds to be significant in the final supplemental EIS; CLI-13-7, 78 NRC 217 (2013)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir. 1980)
when new information comes to light the agency must consider it, evaluate it, and make a reasoned determination whether it is of such significance as to require implementation of formal NEPA filing procedures; LBP-12-18, 76 NRC 180 (2012)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1025 (9th Cir. 1980)
agencies violate NEPA when they fail to take a hard look at significant safety concerns raised by qualified experts to determine whether they require a supplemental EIS; LBP-12-18, 76 NRC 172 (2012)
Army Corps of Engineers' SEIS for a new dam violated NEPA because it failed to take a hard look at a new report from the U.S. Geological Survey suggesting that the dam might experience an earthquake stronger than the SEIS indicated it was designed to withstand; LBP-12-18, 76 NRC 180 (2012)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1025-26 (9th Cir. 1980)
Army Corps of Engineers had conducted an extensive 10-month study of new information to determine whether further NEPA analysis was required; LBP-12-18, 76 NRC 173 (2012)
- Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1026-27 (9th Cir. 1980)
NRC Staff must provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of a proposed action; LBP-15-16, 81 NRC 637 (2015)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 1), LBP-00-18, 52 NRC 9 (2000)
forcing a pro se intervenor to file monthly disclosures and closely follow a proceeding indefinitely solely to obtain a ruling on the merits of its claim would constitute significant unfairness and hardship; LBP-12-19, 76 NRC 200 n.91 (2012)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 1), LBP-00-18, 52 NRC 9, 13-14 (2000)
if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to

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- comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 14 n.10 (2014)
- Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), LBP-96-21, 44 NRC 134, 136 (1996)
- Part 51, not NEPA, is the source of the legal requirements applicable to the applicant's environmental report; LBP-11-32, 74 NRC 666 (2011)
- Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, 722-23 (1977)
- Commission generally prefers that licensing boards make initial factual determinations; CLI-14-2, 79 NRC 29 (2014)
- Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, 723 (1977)
- exemption from the decommissioning financial assurance requirements is considered to be an extraordinary equitable remedy to be used only sparingly; CLI-13-1, 77 NRC 9 (2013)
- Washington Toxics Coalition v. U.S. Department of Interior*, 457 F. Supp. 2d 1158, 1163 (W.D. Wash. 2006)
- no consultation is required by the Endangered Species Act for actions that have no effect on listed species; LBP-12-10, 75 NRC 671 (2012)
- Washington Toxics Coalition v. U.S. Department of Interior*, 457 F. Supp. 2d 1158, 1163, 1179-80 (W.D. Wash. 2006)
- rules permitting the Environmental Protection Agency to make "not likely to adversely affect" determinations without consultation or concurrence of the National Marine Fisheries Service or the Fish and Wildlife Service are discussed; LBP-12-10, 75 NRC 671 (2012)
- Washington Toxics Coalition v. U.S. Department of Interior*, 457 F. Supp. 2d 1158, 1179-80 (W.D. Wash. 2006)
- agencies cannot unilaterally determine that an action will not jeopardize species listed under the Endangered Species Act; LBP-12-10, 75 NRC 658 (2012)
- Water Keeper Alliance v. U.S. Department of Defense*, 271 F.3d 21, 25 (1st Cir. 2001)
- determination of possible effects on an endangered species is ultimately the acting agency's responsibility; LBP-12-10, 75 NRC 640 (2012)
- Water Keeper Alliance v. U.S. Department of Defense*, 271 F.3d 21, 31-32 (1st Cir. 2001)
- formal consultation follows only if a biological assessment shows that the action may affect listed species or critical habitat; LBP-12-10, 75 NRC 647 (2012)
- Waterford Citizens' Association v. Reilly*, 970 F.2d 1287, 1290-91 (4th Cir. 1992)
- National Historic Preservation Act and its implementing regulations do not require that the agency implement any mitigation measures, let alone that those measures meet a certain standard of protection for historic properties; LBP-12-23, 76 NRC 489 n.289 (2012)
- Webb v. Gorsuch*, 699 F.2d 157, 161 (4th Cir. 1983)
- when developing an environmental impact statement, an agency must consider the impact of other proposed projects only if the projects are so interdependent that it would be unwise or irrational to complete one without the other; LBP-13-10, 78 NRC 147 (2013)
- Webster v. U.S. Department of Agriculture*, 2011 WL 8788223, at *8 (N.D. W. Va. June 13, 2011)
- action with potential impacts subsequent to the initial federal action may not constitute a proposed action if it is insufficiently certain; LBP-14-9, 80 NRC 45-46 & n.115 (2014)
- Webster v. U.S. Department of Agriculture*, 685 F.3d 411, 433 (4th Cir. 2012)
- NEPA is not violated when an agency issues a supplemental environmental impact statement before the Corps of Engineers completes a Clean Water Act section 404 permit review; LBP-15-23, 82 NRC 63 (2015)
- Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 143 (1981)
- NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action and ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process; LBP-11-7, 73 NRC 264 (2011)

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- Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 491-93 (9th Cir. 2011)
although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final environmental impact statement stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 760 (2012)
- Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492 (9th Cir. 2011)
agency violated NEPA when it failed to address concerns raised by its own experts, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and state agencies; LBP-12-18, 76 NRC 165 n.179 (2012)
- Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492-93 (9th Cir. 2011)
agencies violate NEPA when their EIS fails to adequately respond to the critical opinions of their own experts; LBP-12-18, 76 NRC 163 (2012)
- Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 493 (9th Cir. 2011)
NRC must fulfill its obligation under NEPA to take a hard look at mitigation alternatives recommended by its own experts; LBP-12-18, 76 NRC 165 (2012)
- Westinghouse Electric Corp.* (Nuclear Fuel Export License for Czech Republic — Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 329 (1994)
although no one will represent petitioners' perspective if the hearing requests are denied, this in itself is insufficient to excuse untimeliness; LBP-12-16, 76 NRC 59 n.73 (2012)
in addressing the good cause factor for late filing, petitioner must explain not only why it failed to file within the time required, but also why it did not file as soon thereafter as possible; LBP-11-7, 73 NRC 279 n.161 (2011)
- Westinghouse Electric Corp.* (Nuclear Fuel Export License for Czech Republic — Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331 (1994)
if it is not clear that denying an import/export application would avoid the harms that petitioners assert for standing purposes, then the redressibility standard is not met; CLI-11-3, 73 NRC 623 n.51 (2011)
- Westinghouse Electric Corp.* (Nuclear Fuel Export License for Czech Republic — Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331-32 (1994)
standing is not a mere legal technicality; CLI-11-3, 73 NRC 621 n.37 (2011)
- Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105, 1121 (9th Cir. 2000)
proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-12-23, 76 NRC 467-48 (2012); LBP-14-7, 79 NRC 461-62 (2014)
there must be some assurance that mitigation measures constitute an adequate buffer against the negative impacts that result from the authorized activity to render such impacts so minor as to not warrant an environmental impact statement; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
- Wetlands Water District v. Department of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004)
if an alternative is commercially feasible and capable of bringing about the ends of the proposed project, then Staff may not dismiss it merely because it is inconsistent with the preferences of interested parties, or for other reasons inconsistent with NEPA's rule of reason; LBP-12-17, 76 NRC 113 (2012)
- Wilderness Watch v. Mainella*, 375 F.3d 1085, 1096 (11th Cir. 2004)
doctrine of harmless error has only limited application in NEPA cases, and none where the agency has failed to take the required hard look at environmental consequences and alternatives; LBP-12-17, 76 NRC 120 (2012)
permitting agencies to avoid a NEPA violation through a subsequent, conclusory statement that it would not have reached a different result even with the proper analysis would significantly undermine the statutory scheme; LBP-12-17, 76 NRC 120 (2012)
- Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950)
if a formal adjudicatory hearing is mandated by the due process clause, the absence of the on-the-record requirement will not preclude application of the Administrative Procedure Act; LBP-11-8, 73 NRC 361 n.53 (2011)

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- Wyoming Outdoor Council v. U.S. Army Corps of Engineers*, 351 F. Supp. 2d 1232, 1250 (D. Wyo. 2005)
agency's reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation is more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 467 (2012); LBP-14-7, 79 NRC 461 (2014)
mitigation measures that are a mandatory condition qualify as the type of mitigation measures that can be relied upon for a finding of no significant impact; LBP-12-23, 76 NRC 469 n.152 (2012)
proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-12-23, 76 NRC 467-48 (2012); LBP-14-7, 79 NRC 461-62 (2014)
- Wyoming v. U.S. Department of Agriculture*, 661 F.3d 1209, 1243 (10th Cir. 2011)
Council on Environmental Quality guidance does not bind NRC, but NRC gives it substantial deference; LBP-12-17, 76 NRC 82-83 (2012)
- Wyoming v. U.S. Department of Agriculture*, 661 F.3d 1209, 1244 (10th Cir. 2011)
agencies are not permitted to define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives; LBP-12-17, 76 NRC 114 (2012)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994)
actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA but rather are monitored by NRC Staff's inspections and oversight, which may be challenged only by a petition for enforcement; LBP-15-27, 82 NRC 196 (2015)
appropriate means of challenging licensee actions undertaken in accordance with 10 C.F.R. 50.59 is through a petition under 10 C.F.R. 2.206; CLI-12-20, 76 NRC 439 n.10 (2012); CLI-14-11, 80 NRC 175, 179 (2014); CLI-15-14, 81 NRC 747-48 (2015); LBP-13-7, 77 NRC 334 (2013); LBP-13-11, 78 NRC 180 (2013); LBP-15-27, 82 NRC 192 n.43 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101-02 (1994)
change to a facility that is allowed under 10 C.F.R. 50.59 without prior NRC approval is not a license amendment triggering hearing rights; LBP-15-27, 82 NRC 191-92 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994)
an organization seeking to intervene in its own right must allege that the challenged action will cause a cognizable injury to its interests or to the interests of its members; LBP-11-21, 74 NRC 122 (2011)
in a reactor decommissioning proceeding, a public interest group lacked organizational standing when its business address did not lie within 50 miles of the facility; LBP-13-6, 77 NRC 283 n.23 (2013)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996)
contemporaneous judicial standing concepts are applied in NRC proceedings; LBP-12-3, 75 NRC 177 (2012); LBP-12-15, 76 NRC 23 (2012); LBP-13-6, 77 NRC 269 (2013)
intervention petitioner must demonstrate that it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute and that the injury can fairly be traced to the challenged action and is likely to be redressed by a favorable decision; LBP-11-13, 73 NRC 546 (2011); LBP-11-21, 74 NRC 121 n.22 (2011); LBP-12-8, 75 NRC 546-47 (2012); LBP-12-15, 76 NRC 23 (2012)
once parties demonstrate standing, they will then be free to assert any contention, which, if proven, will afford them the relief they seek; LBP-11-21, 74 NRC 122 (2011); LBP-11-29, 74 NRC 616 (2011); LBP-13-8, 78 NRC 7 (2013)
there is no contention-based requirement mandating that to have standing, besides showing that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury, petitioner also must establish a link between that injury and the issues it wishes to litigate in challenging an application; LBP-12-3, 75 NRC 190 n.28 (2012)
to have standing, petitioner need only show that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury; LBP-13-6, 77 NRC 274 n.9 (2013)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 249 (1996)
at the contention admissibility stage, boards need only decide whether intervenors have presented sufficient information to show a genuine dispute concerning NRC's duty to supplement the FEIS,

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and reasonably indicating that further inquiry concerning that issue is appropriate; LBP-12-18, 76 NRC 167, 174 (2012)

boards are not to decide the merits at the contention admissibility stage; LBP-12-18, 76 NRC 166-67 (2012)

contention admissibility rules impose on petitioner the burden of going forward with a sufficient factual basis, but they do not shift the ultimate burden of proof from applicant to petitioner, nor do the rules require petitioner to prove its case at the contention admissibility stage; LBP-12-18, 76 NRC 163-64 (2012)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion; LBP-12-18, 76 NRC 163-64 (2012)

lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 111-12 (2011)

petitioners need not prove their case at the contention admission stage, but petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-12-18, 76 NRC 163-64 (2012); LBP-12-27, 76 NRC 608 (2012)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996)

contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-13-6, 77 NRC 284 (2013)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 256 (1996)

claimed deficiencies in a decommissioning plan must have health and safety significance in order to be admissible; LBP-15-24, 82 NRC 87 n.115 (2015)

state has provided sufficiently supported expert opinion to show at the contention admissibility stage why the inadvertent release of radionuclides is enough of a risk to public health and safety to warrant merits consideration as an unforeseen expense; LBP-15-24, 82 NRC 89 (2015)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 272 (1996)

cursory assertions are insufficient to raise an issue for appeal; CLI-13-1, 77 NRC 22 n.129 (2013)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998)

contemporaneous judicial concepts of standing are applied in NRC proceedings; LBP-15-13, 81 NRC 463 (2015); LBP-15-19, 81 NRC 819 (2015)

petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-15-13, 81 NRC 463 (2015); LBP-15-17, 81 NRC 770 (2015)

to establish organizational standing, petitioner must show that its interests will be harmed by the licensing action, while an organization seeking representational standing must demonstrate that the interests of at least one of its members will be harmed; LBP-12-10, 75 NRC 637 (2012)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 221-22 (1999)

dismissal of an appeal with prejudice, similar to termination of a proceeding with prejudice, generally implies that the Commission has ruled on the merits of the appeal, but such ruling is reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general; CLI-13-10, 78 NRC 568 n.29 (2013)

dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the license amendment request; LBP-15-28, 82 NRC 241 (2015)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 (1999)

Commission decision to vacate a board's decision does not intimate any opinion on its soundness; CLI-13-9, 78 NRC 559 n.31 (2013); CLI-13-10, 78 NRC 569 (2013)

no prejudice to either the intervenors or the public occurred where intervenors would have been in precisely the same position in any subsequent proceeding as if they had prevailed not only on their instant appeal but also on the subsequent merits portion of the proceeding; CLI-13-10, 78 NRC 567 n.27 (2013)

stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 558 (2013)

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- unconditional withdrawal is generally appropriate if it would cause no prejudice to either the intervenors' or the public's interest; LBP-15-28, 82 NRC 241 (2015)
- vacatur is designed to eliminate confusion and disagreement over what an unreviewed board decision may mean or what effect it may have in the resolution of safety or environmental issues in a future proceeding; CLI-13-9, 78 NRC 561 (2013)
- whether a potential future license amendment request shares those same alleged deficiencies as a previously withdrawn one would require a new analysis; LBP-15-28, 82 NRC 241 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 n.3 (1999)
- standard for dismissal with prejudice is not met because the prospect of future litigation is not unusual, being inherent in any dismissal without prejudice; LBP-15-28, 82 NRC 241 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-05-15, 61 NRC 365, 375 n.26 (2005)
- guidance documents that are developed to assist in compliance with applicable regulations are entitled to special weight; CLI-15-6, 81 NRC 356 (2015)
- standard review plans do not have the force and effect of law; CLI-15-6, 81 NRC 358 n.85 (2015)
- the GALL Report and the Standard Review Plan are guidance documents, and therefore not binding, but they do carry special weight; CLI-12-5, 75 NRC 314 n.78 (2012)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-05-15, 61 NRC 365, 381 (2005)
- contentions that neither explain how the application is inadequate nor identify which sections of the application are inadequate are inadmissible; LBP-11-21, 74 NRC 128 (2011)
- legal question about what the license amendment request actually does demonstrates a genuine dispute and shows that an inquiry in depth is warranted; LBP-15-24, 82 NRC 103-04 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-05-15, 61 NRC 365, 381-82 (2005)
- board had a sufficient basis to find that petitioner had made the showing required to indicate an inquiry in depth was warranted and admit the contention, even though this may have been a close question; LBP-15-24, 82 NRC 91-92 & n.150 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 75-76 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996)
- contention alleging a material deficiency must link the claimed deficiency to a public health and safety or an environmental impact; LBP-15-1, 81 NRC 39-40 n.137 (2015)
- materiality requirement for contention admission often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-12-15, 76 NRC 26 (2012); LBP-12-27, 76 NRC 594 (2012)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 n.30, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996)
- although boards do not decide the merits at the contention admissibility stage, materials cited as the basis for a contention are subject to scrutiny to determine whether, on their face, they actually support the facts alleged; LBP-12-12, 75 NRC 774 (2012)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 50 (1999)
- termination with prejudice bars relitigation of similar issues; LBP-15-21, 82 NRC 18 n.22 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 55 (1999)
- request that board impose additional discovery activities as a requirement of withdrawal of license amendment request is too broad because it goes beyond the scope of the admitted contentions and discovery is peculiarly related to particular proceedings and particular contentions; LBP-15-28, 82 NRC 242 (2015)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-04-27, 60 NRC 530, 542 n.3 (2004)
- even if undisputed, the jurisdictional nature of standing in NRC proceedings requires independent examination by presiding officer; LBP-11-16, 73 NRC 654 n.21 (2011)
- Ziegler v. Connecticut General Life Insurance Co.*, 916 F.2d 548, 553 (9th Cir. 1990)
- findings concerning personal knowledge are entirely factual and largely dependent on witness credibility; LBP-11-8, 73 NRC 371 (2011)

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- 10 C.F.R. 1.13
independent assessment of the safety aspects of the combined license application is required; CLI-15-13, 81 NRC 559 (2015)
- 10 C.F.R. Part 2
amended regulations apply to obligations and disputes that arise after the effective date of the regulation; LBP-15-1, 81 NRC 31 n.76 (2015)
- 10 C.F.R. 2.4
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- "presiding officer" in NRC adjudicatory proceedings is defined; LBP-11-22, 74 NRC 277 n.92 (2011)
- 10 C.F.R. 2.100-2.103
licensing boards have authority to adjudicate exemption issues, but NRC Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 273 (2012)
- 10 C.F.R. 2.101(e)(8)
before a final decision approving or disapproving a construction authorization application may be reached, not only must the Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 226 (2013)
- 10 C.F.R. 2.102(a)
Commission decision does not foreclose NRC Staff's ability to request additional information on any part of the license transfer application; CLI-15-26, 82 NRC 412 n.33 (2015)
- 10 C.F.R. 2.103(b)
contention admissibility requirements do not apply to hearing demands on reactor operator license denials; LBP-13-3, 77 NRC 88-89 (2013)
- if NRC Staff finds that an application does not comply with regulatory requirements, it must inform applicant in writing of the nature of any deficiencies or the reason for the proposed denial and the deadline for seeking a hearing; LBP-11-19, 74 NRC 63 n.8 (2011)
- 10 C.F.R. 2.103(b)(2)
because an applicant denied an operator's license (or a byproduct, source, special materials, or facility license) would be entitled to demand a hearing, rather than merely request a hearing, no more than 20 days would be required to prepare a document that would satisfy the conditions precedent to obtaining the hearing; LBP-13-3, 77 NRC 91 (2013)
- contention admissibility standards of section 2.309(f)(1) do not apply to a hearing demand on denial of a senior reactor operator license, and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 89-90, 93, 94 (2013)
- "demand" for hearing is understood to confer the right to a hearing; LBP-13-3, 77 NRC 90 (2013); LBP-14-4, 79 NRC 371 (2014)
- demand for hearing on denial of application for a senior reactor operator license is granted; LBP-13-3, 77 NRC 84 (2013)
- in denying an exemption request, Staff is required to inform applicant of the deadline for seeking a hearing; LBP-11-19, 74 NRC 62 n.7 (2011)
- senior reactor operator license applicant who does not accept a proposed license denial may, within 20 days of the date of the denial letter, demand a hearing; LBP-14-2, 79 NRC 140, 203 (2014)

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- 10 C.F.R. 2.104(a)
before a final decision approving or disapproving a construction authorization application may be reached, not only must the Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 226 (2013)
- 10 C.F.R. 2.105
license amendment requests trigger hearing rights; LBP-13-7, 77 NRC 331 (2013)
opportunity for a hearing must be provided for an amendment to an operating license, combined license, or manufacturing license; LBP-15-17, 81 NRC 770 n.93 (2015)
- 10 C.F.R. 2.107(a)
if an application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding; CLI-13-10, 78 NRC 569 n.40 (2013)
upon receipt of a motion to withdraw an application, the board may place terms and conditions on the withdrawal, deny the application, or dismiss the application with prejudice; CLI-13-10, 78 NRC 567 (2013)
when the board has issued a Notice of Hearing, withdrawal of a license amendment request shall be on such terms as the presiding officer may prescribe; LBP-15-28, 82 NRC 240-41 n.53 (2015)
- 10 C.F.R. 2.109
licensee may continue to operate reactor under an expired license if a license renew application is timely submitted; CLI-14-5, 79 NRC 256 (2014)
- 10 C.F.R. 2.109(b)
existing license will not be deemed to have expired until the license renewal application has been finally determined; CLI-15-6, 81 NRC 343 (2015)
plants may continue to operate until the operating license renewal adjudication is completed; LBP-13-13, 78 NRC 262 (2013)
power reactor licensee may preserve its license by filing a renewal application at least 5 years before its license is set to expire, affording the Staff ample time to complete the required environmental and safety reviews; LBP-11-30, 74 NRC 629 n.5 (2011)
time frame for SAMA analysis is inherent in NRC's regulatory scheme, which provides for a 40-year license term, with the possibility of license renewal for an additional 20-year period; CLI-13-7, 78 NRC 214 n.81 (2013)
- 10 C.F.R. 2.202
demands for a hearing by the subject of an enforcement order are automatic; LBP-14-4, 79 NRC 326 (2014)
discrete enforcement actions such as orders and civil penalties involve defined opportunities for participation; CLI-15-5, 81 NRC 338 n.52 (2015)
if licensee or other person to whom an order is issued consents to its issuance, or the order confirms actions agreed to by the licensee or such other person, that consent or agreement constitutes a waiver by the licensee or such other person of a right to a hearing and any associated rights; LBP-14-4, 79 NRC 326 (2014)
NRC's ability to issue orders to unlicensed persons is limited; LBP-14-4, 79 NRC 326 n.34 (2014)
orders issued under this section alter the requirements of a license and therefore fall generally under the terms of Atomic Energy Act § 189a; CLI-13-2, 77 NRC 44 (2013)
right to demand a hearing under this section is manifestly different from the opportunity to request a hearing under 10 C.F.R. 2.309; LBP-14-4, 79 NRC 371 (2014)
- 10 C.F.R. 2.202(a)
it is well within NRC's discretion to impose specific requirements that clarify or go beyond those already established by regulations; LBP-14-4, 79 NRC 335 n.82 (2014)
period allotted for the filing of challenges to enforcement orders that impose some sanction is 20 days; LBP-13-3, 77 NRC 91 (2013)
- 10 C.F.R. 2.202(a)(2)
distinction is made between the "person to whom the Commission has issued an order" and "any other person adversely affected by the order"; LBP-14-4, 79 NRC 348 n.23 (2014)

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- 10 C.F.R. 2.202(a)(3)
as de facto targets of an enforcement order, licensee employees have automatic standing if they adversely affected by an enforcement order; LBP-14-4, 79 NRC 345 (2014)
Commission did not intend to relieve third-party individuals who are not the subject of an enforcement order, but who nonetheless seek a hearing on the order, from satisfying the requirements for a petition for intervention in section 2.309; LBP-14-4, 79 NRC 325 (2014)
“demand” for a hearing is understood to confer a right to a hearing; LBP-14-4, 79 NRC 371 (2014)
demands for a hearing by the subject of an enforcement order are automatic without regard to satisfaction of section 2.309(d) and (f)(1); LBP-14-4, 79 NRC 342 (2014)
enforcement orders must inform licensee or any other person adversely affected by the order of his or her right to demand a hearing; LBP-14-4, 79 NRC 342, 371-72 (2014)
if an enforcement order blacklists a worker by name, he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 347 (2014)
importance of the phrase “any other person adversely affected” is underscored by the fact that it was intentionally added in 1991; LBP-14-4, 79 NRC 348 (2014)
individuals who are adversely affected by an order have an automatic right to demand a hearing and need not comply with section 2.309(d) and (f); LBP-14-4, 79 NRC 349 (2014)
licensee and any other person adversely affected by an enforcement order have equal rights to a hearing; LBP-14-4, 79 NRC 347, 348 (2014)
meaning of “other person adversely affected by the order” is discussed; LBP-14-4, 79 NRC 347-48 (2014)
target of an enforcement order has the right to demand and receive, not merely request, a hearing; LBP-14-11, 80 NRC 128 (2014)
union’s argument that it may demand a hearing on a confirmatory order without complying with intervention requirements of section 2.309(a) is incorrect; LBP-14-4, 79 NRC 325 (2014)
whether economic concerns relating to job loss qualify as adverse effects within the meaning of the regulation is discussed; LBP-14-4, 79 NRC 346-47 (2014)
whether licensee employees, as represented by a union, have a right to demand a hearing because they are persons adversely affected by a confirmatory order is discussed; LBP-14-4, 79 NRC 343-46 (2014)
- 10 C.F.R. 2.202(a)(3) and (c)
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- 10 C.F.R. 2.202(c)
“demand” for a hearing is understood to confer a right to a hearing; LBP-14-4, 79 NRC 371 (2014)
licensee or other person to whom the Commission has issued an immediately effective order may move the presiding officer to set aside the immediate effectiveness of the order; LBP-14-4, 79 NRC 348 n.24 (2014)
- 10 C.F.R. 2.203
NRC has a policy of encouraging settlements; LBP-14-4, 79 NRC 368 (2014)
only this section refers to a notice of hearing as part of the settlement procedure; LBP-15-30, 82 NRC 344-45 n.25 (2015)
presiding officer may order such adjudication of the issues as he may deem to be required in the public interest; LBP-14-4, 79 NRC 368 (2014)
public interest does not require additional adjudication of an enforcement matter and, given that all matters required to be adjudicated as part of this proceeding have been resolved, the proceeding is dismissed; LBP-11-3, 73 NRC 83 (2011)
settlement agreements are contingent upon approval by a licensing boards; LBP-15-21, 82 NRC 7 n.4 (2015)
- 10 C.F.R. 2.204
administrative action of issuing a demand for information is described; DD-15-11, 82 NRC 364 (2015)
NRC’s ability to issue orders to unlicensed persons is limited; LBP-14-4, 79 NRC 326 n.34 (2014)
- 10 C.F.R. 2.206
actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA but rather are monitored by NRC Staff’s inspections and oversight, which may be challenged only by a petition for enforcement; LBP-15-27, 82 NRC 196 (2015)
any member of the public may seek enforcement action associated with matters affecting plant operation, including the vitality of component maintenance programs; CLI-15-6, 81 NRC 367 n.140 (2015)

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any person may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action as may be proper; CLI-12-20, 76 NRC 439 n.10 (2012)

any person whose interests may be affected by the license renewal proceeding, and who wishes to participate as a party, must file a petition for leave to intervene within 60 days of the notice of hearing in accordance with this section; LBP-12-8, 75 NRC 544-45 (2012)

claim that a facility is improperly operating outside its licensing basis is appropriately raised in a petition to initiate an enforcement proceeding; LBP-15-27, 82 NRC 192 (2015)

Commission denies hearing request, but refers the matters raised to the Executive Director of Operations for consideration as a request for enforcement action; CLI-15-5, 81 NRC 333, 339 (2015); CLI-15-14, 81 NRC 730 (2015)

concerns about current or ongoing safety deficiencies can be raised as a petition for enforcement action; CLI-15-8, 81 NRC 508 n.62 (2015)

concerns about safety, licensee's compliance with regulatory requirements, and adequacy of NRC oversight are appropriately addressed as requests for enforcement action; CLI-15-14, 81 NRC 733 (2015)

concerns with the current design and operation of a nuclear power plant are more properly addressed through a petition for enforcement action; LBP-15-13, 81 NRC 479 (2015)

contention claiming that modifications to repair or replace inadequate structural beams and columns is more appropriately presented as a request for enforcement action; CLI-15-5, 81 NRC 337 (2015)

dissatisfaction with regulatory requirements of 10 C.F.R. 50.75 is outside an enforcement petition; DD-11-4, 73 NRC 726 (2011)

hearing request on safety concerns over steam generator replacement is referred to the Executive Director for Operations for disposition; CLI-14-11, 80 NRC 168 (2014)

if an Indian tribe is of the view that its members face imminent harm from ongoing site operations, then it may, at any time, file a petition for enforcement action; CLI-12-4, 75 NRC 156 (2012)

if petitioner believes that licensee's analysis is incomplete, inaccurate, or otherwise does not satisfy the section 50.54(q)(3) two-part test, petitioner can challenge the analysis through the enforcement process; CLI-15-20, 82 NRC 230 (2015)

if petitioner has a credible basis to question the adequacy of licensee's compliance with 10 C.F.R. 50.54(q)(3), it may petition for enforcement action; LBP-15-4, 81 NRC 175 (2015)

if petitioner is concerned about the sufficiency of the ongoing oversight of a nuclear power plant and its current evacuation plan, it has the option of requesting a modification, suspension, or revocation of its operating license; LBP-11-29, 74 NRC 623 (2011)

members of the public may challenge an action taken under 10 C.F.R. 50.59 only by means of a petition under this section; LBP-13-7, 77 NRC 334 (2013); LBP-13-11, 78 NRC 180 (2013)

narrowly tailored condition will afford petitioner an opportunity to dispute a specific decommissioning fund disbursement via a letter to the NRC or a petition for enforcement action; LBP-15-28, 82 NRC 242 (2015)

pending tax litigation would not have a significant implication for public health and safety and, to the extent the claim is viable, it would be better handled through a petition for enforcement action; LBP-15-15, 81 NRC 616 n.120 (2015)

petition requesting that the NRC not allow restart after scheduled refueling outage until completion of all environmental remediation work and relevant reports on leaking tritium at the plant is denied; DD-11-1, 73 NRC 8-17 (2011)

petition will be reviewed only where petitioner specifies the bases for taking the requested action; DD-15-6, 81 NRC 890 (2015)

petitioner may file at any time a request for action if it wishes to challenge ongoing operations; CLI-15-25, 82 NRC 399 n.66 (2015)

petitioner's concerns about tube leaks, unplanned power changes, and potential primary coolant contamination did not constitute any violations that were more than minor; DD-15-2, 81 NRC 206-11 (2015)

petitioner's request for action relating to containment structural damage is mooted by licensee's decision to shut down and defuel the facility; DD-14-3, 79 NRC 500 501-05 (2014)

petitioner's request for enforcement action on earthquake-related issues is denied in part and granted in part; DD-12-1, 75 NRC 574-602 (2012)

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petitioner's request that NRC take escalated enforcement action against licensee concerning flooding protection is being addressed by the NRC's request for information; DD-15-5, 81 NRC 877-83 (2015)

petitioners' request for cold shutdown because of tritium contamination of groundwater is denied; DD-11-3, 73 NRC 378-90 (2011)

petitioners' request that NRC issue a demand for information to compel boiling-water reactor licensees with Mark I and Mark II containment designs to describe how their individual facilities comply with 10 C.F.R. Part 50, Appendix A, GDC 44 and 10 C.F.R. 50.49; DD-15-11, 82 NRC 362-88 (2015)

record before the board falls far short of rebutting the presumption that a petition for license modification, suspension, or revocation is a meaningful avenue for seeking administrative relief; LBP-12-14, 76 NRC 8 n.36, 9-13 (2012)

referrals may be made when a petition does not satisfy the legal requirements for a hearing or intervention and it is determined that referral to the section 2.206 process is appropriate; CLI-12-20, 76 NRC 440 (2012)

request for action against reactor facilities that have projected shortfalls in their decommissioning trust funds is denied in part and granted in part; DD-11-7, 74 NRC 788-800 (2011)

request for cold shutdown because of inoperability of main steam safety relief valves is denied but petitioner's concerns about the SRVs have been resolved; DD-11-6, 74 NRC 421-25 (2011)

request for enforcement action against U.S. Army for post-license-expiration possession and release into the environment of depleted uranium from spent spotting rounds is granted in part and denied in part; DD-11-5, 74 NRC 400-419 (2011)

request for enforcement action based on support beam deficiencies, flood protection inadequacy, flood risks from upstream dams, and primary reactor containment electrical penetration seals containing Teflon is denied because petitioner's requests have been addressed through other actions; DD-15-4, 81 NRC 869-76 (2015)

request for enforcement action to address concerns about operability of the submerged and/or wetted non-environmentally qualified inaccessible cables is denied; DD-13-2, 78 NRC 186-98 (2013)

request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise technical specifications for spent fuel pool instrumentation is denied; DD-13-3, 78 NRC 573-83 (2013)

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 324-31 (2011)

request for immediate action on flaws in the control rod drive mechanisms did not meet the criteria for review; DD-15-3, 81 NRC 714 (2015)

request for immediate action on leakage from the safety injection refueling water tank did not meet the criteria for review; DD-15-3, 81 NRC 714 (2015)

request for immediate action to prevent restart because a piece of primary coolant pump impeller was lodged between the reactor vessel and the flow skirt is denied; DD-15-3, 81 NRC 713-27 (2015)

request that, following an earthquake that exceeded the operating basis, NRC suspend the operating licenses until completion of a set of activities described in the petition, is addressed; DD-15-9, 82 NRC 274-93 (2015)

request that licensee replace passive autocatalytic recombiners in the containment electrically powered thermal hydrogen recombiners is denied; DD-13-1, 77 NRC 347-55 (2013)

request that licensees should be required to maintain Emergency Response Data System capability throughout an accident will be addressed by an advance notice of proposed rulemaking; DD-14-2, 79 NRC 490-99 (2014)

request that NRC immediately shut down plants until all turbine building high-energy line break concerns are identified and those important to safety were corrected is granted in part; DD-14-5, 80 NRC 206-19 (2014)

request that NRC issue a demand for information from licensee relating to adequacy of financial assurances for decommissioning is denied; DD-11-4, 73 NRC 714-27 (2011)

request that NRC order licensee to submit a license amendment application for the design and installation of replacement steam generators and for additional enforcement action is moot; DD-15-7, 82 NRC 258-73 (2015)

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- request that NRC order licensees to comply with twelve specific recommendations in the Near-Term Task Force (NTTF) Report is addressed; DD-14-2, 79 NRC 490-99 (2014)
- request that NRC order the immediate shutdown of all nuclear power reactors that are known to be located on or near an earthquake fault line is denied; DD-15-6, 81 NRC 884-93 (2015)
- request that NRC order the immediate suspension of the operating licenses of all General Electric boiling-water reactors that use the Mark I primary containment system citing the Fukushima Dai-ichi accident in Japan as its rationale basis is resolved; DD-15-1, 81 NRC 193-204 (2015)
- request that NRC revoke license for falsification of information is addressed; DD-14-4, 79 NRC 507-17 (2014)
- request that NRC shut down or prohibit restart of nuclear power plants until a criminal investigation of a licensee contractor is complete and everything has been verified safe is denied; DD-14-1, 79 NRC 8-10 (2014)
- request that NRC suspend operations at one plant, investigate whether licensee possesses sufficient funds to cease operations and decommission another, and investigate licensee's current financial qualifications to determine whether it remains qualified to continue operating another plant is denied; DD-15-8, 82 NRC 108-34 (2015)
- request that NRC suspend the operating licenses until completion of a set of activities related to the effects of an earthquake that exceeded the plant's operating basis earthquake is granted in part and denied in part; DD-12-2, 76 NRC 392-415 (2012)
- request that NRC take enforcement action to correct alleged noncompliance with fire protection regulations is granted; DD-12-3, 76 NRC 417-35 (2012)
- request that NRC take enforcement action until the Licensee completes an independent root-cause assessment for the rise in ultimate heat sink temperature is denied; DD-15-10, 82 NRC 202-10 (2015)
- to the extent petitioner believes there are existing management competence questions that merit immediate action, then its remedy is to direct the Staff's attention to those matters by filing a request for action; CLI-11-11, 74 NRC 437 (2011)
- to the extent petitioner seeks to have applicant implement safety measures in addition to those ordered, its recourse is to petition for rulemaking or to petition for license modification, suspension, or revocation; LBP-12-14, 76 NRC 7 n.36 (2012)
- 10 C.F.R. 2.206(a)
- any person may file a request to institute a proceeding to modify, suspend, or revoke a license; CLI-15-14, 81 NRC 733 n.14 (2015); LBP-11-6, 73 NRC 217 n.78 (2010)
- if evidence subsequently indicates that the design basis of an operating nuclear power plant will not withstand a maximum flooding event, members of the public may file a request to institute a proceeding to modify, suspend, or revoke a license; LBP-11-15, 73 NRC 643 n.23 (2011)
- petitioner may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action that may be proper, if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 307-08 (2015)
- section 2.206 process provides a forum for individuals to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted, and the Commission may then review the NRC Staff's findings on its own motion; CLI-12-20, 76 NRC 440 (2012)
- 10 C.F.R. 2.206(b)
- director of NRC office with responsibility for the subject matter shall either institute the requested proceeding or advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request and the reason for the decision; DD-15-7, 82 NRC 260-61 (2015)
- section 2.206 process provides a forum for individuals to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted, and the Commission may then review the NRC Staff's findings on its own motion; CLI-12-20, 76 NRC 440 (2012)
- 10 C.F.R. 2.206(c)
- Commission on its own motion may review a decision that modifies, suspends, or revokes a license; CLI-15-14, 81 NRC 733 n.14 (2015)

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- section 2.206 process provides a forum for individuals to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted, and the Commission may then review the NRC Staff's findings on its own motion; CLI-12-20, 76 NRC 440 (2012)
- service of a filing is not complete until accompanied by a certificate of service and a request for oral argument; LBP-11-21, 74 NRC 121 n.15 (2011)
- 10 C.F.R. 2.302(d)(1)
an electronic filing is only complete when the filer performs the last act that it must perform to transmit a document in its entirety; LBP-11-13, 73 NRC 543 (2011)
- 10 C.F.R. 2.302(e)
service of a filing is not complete until accompanied by a certificate of service and a request for oral argument; LBP-11-21, 74 NRC 121 n.15 (2011)
- 10 C.F.R. 2.302(g)
failure to comply with NRC's e-filing requirements without good cause or without obtaining an exemption from the requirements under this section can result in rejection of a pleading; LBP-15-4, 81 NRC 164 (2015)
- 10 C.F.R. 2.302(g)(1)
electronic filing is required unless the presiding officer grants an exemption permitting an alternative filing method for good cause shown, or unless the filing falls within the scope of an exception; CLI-13-9, 78 NRC 556 n.17 (2013); CLI-14-3, 79 NRC 36 n.28 (2014)
- 10 C.F.R. 2.304(d)
although the better practice would be to file a notice of appearance, the signature of a person signing a pleading is a representation that the document has been subscribed in the capacity specified with full authority; LBP-13-12, 78 NRC 241 n.9 (2013)
pro se representative in licensing board proceedings, like all other representatives and/or lawyers, are required to be accurate and truthful and are subject to reprimand, censure, or suspension for failing in these duties; LBP-13-8, 78 NRC 19 n.25 (2013)
- 10 C.F.R. 2.304(d)
submitted documents must be signed; LBP-11-2, 73 NRC 43 (2011)
- 10 C.F.R. 2.304(d)(1)(ii)
persons without digital ID certificates may sign electronically by typing "Executed in Accord with 10 C.F.R. 2.304(d)" or its equivalent on the signature line and including the date of signature and the signatory's name, capacity, address, phone number, and e-mail address; LBP-11-2, 73 NRC 43 (2011)
- 10 C.F.R. 2.306(a)
holidays and weekends are excluded from the date calculation for filing new contentions; LBP-15-24, 82 NRC 98 n.195 (2015)
- 10 C.F.R. 2.307
"good cause" in this section does not share the same definition that is used for good cause in section 2.309(c); LBP-15-1, 81 NRC 30 n.73 (2015)
- health issues or an unexpected weather event are reasons that might constitute good cause for purposes of requesting an extension under this section; LBP-13-9, 78 NRC 46 (2013); LBP-14-5, 79 NRC 383 n.25 (2014)
- if intervenor cannot meet the requirements for filing a contention under the new section 2.309(c)(1), he or she can still take advantage of an extension request if unanticipated events, such as a weather event or unexpected health issues, prevented participant from filing for a reasonable period of time after the deadline; LBP-15-1, 81 NRC 30 n.73 (2015)
- if the reason a motion to admit a new or amended contention was filed after the deadline does not relate to the substance of the filing itself, the standard in this section applies in determining whether the motion can be considered timely; LBP-13-9, 78 NRC 46 (2013)
- intervention petitioner can justify missing the filing deadline by showing that the delay was caused by factors such as a weather event or unexpected health issues; LBP-12-25, 76 NRC 543 n.13 (2012); LBP-12-27, 76 NRC 593 n.55 (2012)
- time for submitting a new/amended contention motion based on information that would be newly available, materially different, and otherwise timely submitted given the information's availability can be extended if the extension request is based on good cause; LBP-13-10, 78 NRC 131 n.5 (2013)

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- to be admissible, late-filed contentions must not only meet standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of section 2.309(c) or this section; LBP-13-9, 78 NRC 46 (2013)
- 10 C.F.R. 2.307(a)
filing deadlines may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer; LBP-13-9, 78 NRC 46 (2013); LBP-14-5, 79 NRC 382 (2014)
good cause in this section does not share the same definition that is used for good cause in section 2.309(c); LBP-13-9, 78 NRC 46 (2013); LBP-14-5, 79 NRC 383 n.25 (2014)
if the reason a motion to admit a new or amended contention was filed after the initial deadline does not relate to the substance of the filing itself, the standard in this section applies in determining whether the motion can be considered timely; LBP-14-5, 79 NRC 382 (2014)
intervenor's request for extension of time is granted because it is unopposed and intervenors have shown good cause for the modest extension; CLI-14-10, 80 NRC 161 n.16 (2014)
State intervenor provided good cause for its late E-filing submission because it submitted its petition to NRC by e-mail before the deadline lapsed and the delay was purely a matter of obtaining digital credentials for the system, not an attempt to gain extra time to prepare a pleading or otherwise to flout the NRC's procedural requirements; LBP-15-4, 81 NRC 163 (2015)
- 10 C.F.R. 2.308
licensing boards are the appropriate finders of fact in most circumstances, and referral of a matter for a fact-specific dispute occurs in the ordinary course of business; CLI-13-9, 78 NRC 560 n.36 (2013)
- 10 C.F.R. 2.309
amendment of this section in 2012 was to simplify the rules, not fundamentally change the rationale boards use to admit new/amended contentions; LBP-15-11, 81 NRC 408 n.30 (2015)
board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 440 (2012)
contention that draft environmental assessment fails to adequately address potential impacts of the reasonably foreseeable expansion of an independent spent fuel storage installation on cultural and historic resources is admissible; LBP-14-6, 79 NRC 426 (2014)
contention that NRC has not fulfilled its trust responsibility in its analysis and conclusion of the cumulative impacts on historic and cultural resources from the reasonably foreseeable expansion of an independent spent fuel storage installation is admissible; LBP-14-6, 79 NRC 430 (2014)
contentions must satisfy the twin precepts of timeliness and admissibility; LBP-13-10, 78 NRC 130 (2013)
contents of licensees' responses may lead to additional regulatory actions to update plants' licensing bases, such as orders, license amendments, or rulemakings, for which the public would have participation rights; CLI-15-14, 81 NRC 743 (2015)
environmental contention regarding cumulative impact on groundwater quantity of in situ recovery project and the planned expansion satisfies admissibility requirements; LBP-12-3, 75 NRC 200 (2012)
even if contentions are based on NRC Staff's FSEIS, intervenor still bears the responsibility of demonstrating that a new contention merits admission and meets all six admission requirements; LBP-15-16, 81 NRC 703 (2015)
newly constituted board applied the reopening standard to new contentions filed after the prior proceeding was terminated for want of pending or admitted contentions; LBP-11-22, 74 NRC 269 n.50 (2011)
organizations that seek to establish standing to intervene may do so by demonstrating either organizational standing or representational standing; LBP-12-10, 75 NRC 637 (2012)
person adversely affected by an enforcement order has a legal right to demand a hearing; LBP-14-4, 79 NRC 341-43 (2014)
petition pursuant to 10 C.F.R. 2.714, which was abolished in 2004, is treated as though filed under this section; LBP-13-12, 78 NRC 240 n.1 (2013)
petitioner may file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or environmental assessment that differ significantly from data or conclusions in applicant's documents; LBP-15-11, 81 NRC 408 (2015)
referral to licensing board includes threshold issues such as standing, timeliness, and satisfaction of contention admissibility standards; CLI-15-14, 81 NRC 735 (2015)

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- standard for admission of new or amended contentions involves a balancing of eight factors; CLI-12-15, 75 NRC 723 n.96 (2012)
- to gain admission of a new or amended contention, a party must meet the requirements of both paragraphs (c) and (f) of this section; LBP-15-16, 81 NRC 703 (2015)
- 10 C.F.R. 2.309(a)
- contested hearing is not required if no petitioner has satisfied the criteria for intervention; LBP-11-22, 74 NRC 275 (2011)
- intervention petition is denied for failure to proffer an admissible contention; LBP-11-21, 74 NRC 119 (2011)
- intervention petitioner must establish standing to intervene and submit at least one admissible contention that meets the requirements of 10 C.F.R. 2.309(f); CLI-12-19, 76 NRC 380 (2012); CLI-15-21, 82 NRC 301-02 (2015); LBP-11-2, 73 NRC 37 (2011); LBP-11-6, 73 NRC 168 (2010); LBP-11-13, 73 NRC 542 (2011); LBP-11-16, 73 NRC 652, 654 (2011); LBP-11-21, 74 NRC 121 (2011); LBP-11-22, 74 NRC 278 (2011); LBP-11-29, 74 NRC 616, 617 (2011); LBP-12-8, 75 NRC 546 (2012); LBP-12-25, 76 NRC 543 (2012); LBP-13-8, 78 NRC 6, 8 (2013); LBP-13-11, 78 NRC 179 (2013); LBP-13-12, 78 NRC 241 (2013); LBP-15-5, 81 NRC 254 (2015); LBP-15-13, 81 NRC 463, 467 (2015); LBP-15-17, 81 NRC 777 (2015); LBP-15-19, 81 NRC 819 (2015); LBP-15-20, 81 NRC 832 (2015); LBP-15-26, 82 NRC 172 (2015)
- to intervene as a party, a union must establish standing and proffer at least one admissible contention; LBP-14-4, 79 NRC 325 (2014)
- 10 C.F.R. 2.309(a)-(f)
- admissible contention is required for grant of a hearing request; LBP-15-17, 81 NRC 758 (2015)
- for proceedings in which a Federal Register notice is not published, the hearing request shall be filed by the later of 60 days after publication of notice on the NRC website or 60 days after the requestor receives actual notice of a pending application, but not more than 60 days after agency action on the application; CLI-14-11, 80 NRC 172 (2014)
- to obtain a hearing, petitioner must show that its request is timely, that it has standing to obtain a hearing, and that it has proposed at least one admissible contention; CLI-14-11, 80 NRC 171 (2014); CLI-15-5, 81 NRC 333 (2015)
- 10 C.F.R. 2.309(b)
- intervenor and potential intervenors have a period of time to file new or amended contentions in response to a draft environmental impact statement; LBP-13-9, 78 NRC 60 (2013)
- intervention petitioners must demonstrate standing and proffer an admissible contention; CLI-15-23, 82 NRC 325 (2015)
- timeliness of an initial hearing petition in different situations is defined as being filed between 20 and 60 days after certain specified events; LBP-15-11, 81 NRC 408 n.28 (2015)
- timeliness requirement does not apply because no formal proceeding has commenced; LBP-15-27, 82 NRC 189 n.31 (2015)
- 10 C.F.R. 2.309(b)(3)
- in proceedings for which a Federal Register notice of agency action is published, a hearing request must be filed not later than the time specified in the notice or if no notice is specified, 60 days from the date of publication of the notice; CLI-15-5, 81 NRC 332 n.13 (2015)
- 10 C.F.R. 2.309(b)(3)(i)
- contentions must be raised at the earliest possible opportunity; CLI-15-1, 81 NRC 7 (2015)
- for proceedings for which a Federal Register notice of agency action is published, the hearing request must be filed not later than the time specified in the notice of proposed action; CLI-14-11, 80 NRC 172 (2014); LBP-15-13, 81 NRC 467 n.60 (2015)
- 10 C.F.R. 2.309(b)(3)(i)-(ii)
- intervention petitions must be filed within 60 days based on the documents then in existence, meaning that the petition must be based on the documents submitted with the application; LBP-11-22, 74 NRC 271 (2011)
- 10 C.F.R. 2.309(b)(4)
- in proceedings for which a notice of agency action is not published, a hearing request must be filed not later than the latest of 60 days after publication of notice on the NRC website or 60 days after the

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- requestor receives actual notice of a pending application but not more than 60 days after agency action on the application; CLI-15-5, 81 NRC 332 n.13 (2015)
- 10 C.F.R. 2.309(b)-(c)
intervention petitioner must either file its petition by the date specified in the *Federal Register* notice or show good cause for filing after the deadline; LBP-12-25, 76 NRC 543 n.13 (2012)
- 10 C.F.R. 2.309(c)
amended contentions must satisfy either the timeliness standards of section 2.309(f)(2) or the balancing test in this section for nontimely contentions, and the general contention admissibility criteria in section 2.309(f)(1); LBP-12-9, 75 NRC 620 (2012)
consideration of a contention under a balancing of the factors set forth in this section must weigh in favor of admitting the contention; LBP-12-11, 75 NRC 735 (2012)
contentions must be raised at the earliest possible opportunity; CLI-15-1, 81 NRC 7 (2015)
contentions that fail to satisfy timeliness standards in section 2.309(f)(2) may still be admitted pursuant to a balancing test governing nontimely filings that weighs the factors set forth in this section; LBP-12-7, 75 NRC 510 (2012)
even when a proposed new contention is not found timely, it may be admitted if it meets a balancing of the eight nontimely filing factors; LBP-11-39, 74 NRC 867 n.15 (2011)
good cause for failure to file on time is the most important factor of the late-filing criteria; LBP-11-9, 73 NRC 401 (2011); LBP-11-32, 74 NRC 662 (2011)
good cause for late filing exists when information on which the filing is based was not previously available and is materially different from information previously available and the filing has been submitted in a timely fashion based on the availability of the subsequent information; LBP-13-9, 78 NRC 46 (2013)
if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to the requirements of this section which specifically apply to nontimely filings; LBP-12-18, 76 NRC 138 (2012)
if good cause for a late filing is not shown, a board may still permit the late filing, but petitioner or intervenor must make a strong showing on the other factors; LBP-11-9, 73 NRC 401 (2011)
if intervenors file a new or amended contention, with supporting materials, within 60 days after pertinent information first becomes available, then the contention will be deemed timely filed and intervenors will be absolved of their obligation to satisfy the late-filing requirements; LBP-11-22, 74 NRC 281 (2011)
if intervenors sought to introduce new issues, then they should have filed a new or amended contention; CLI-15-9, 81 NRC 529 (2015)
if petitioner submits a proposed contention after the initial filing deadline announced in the applicable Federal Register notice for submitting a hearing petition, it will not be entertained absent a determination by the presiding officer that petitioner has demonstrated good cause; LBP-13-9, 78 NRC 45-46 (2013); LBP-14-5, 79 NRC 382 (2014); LBP-15-11, 81 NRC 407 (2015)
material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 7 (2015)
motions to reopen relating to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions and the admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-3, 75 NRC 140 (2012); LBP-12-10, 75 NRC 639 (2012); LBP-15-14, 81 NRC 595 n.29 (2015)
motions to reopen to admit a new contention must be submitted in a timely fashion, based on new information that is materially different from information previously available, or a balancing of the factors listed in this section must weigh in favor of admitting the contention; LBP-12-16, 76 NRC 47-48 (2012)
new contentions must be based upon information that was not previously available, is materially different from information previously available, and is timely filed; LBP-14-8, 79 NRC 523 (2014)
new contentions must be submitted in a timely fashion based on the availability of the information on which they are based; CLI-15-17, 82 NRC 43 (2015)
NRC frowns on intervenors seeking to introduce a new contention later than the deadline established by its regulations, and it accordingly holds them to a higher standard for the admission of such contentions; CLI-11-2, 73 NRC 338 (2011)

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petitioners who choose to wait to raise contentions that could have been raised earlier risk the possibility that there will not be a material difference between the application and the Staff's review documents, thus rendering any newly proposed contention on previously available information impermissibly late; CLI-15-1, 81 NRC 7 (2015)

petitioners who have not shown good cause for their late filing must demonstrate that the balance of the remaining factors weighs in their favor; CLI-12-21, 76 NRC 500 n.60 (2012)

proponent of a contention is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for its admission; CLI-12-13, 75 NRC 686 n.30 (2012)

request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 77 n.75 (2011)

should requirements for reopening the record be satisfied, the requirements for untimely contentions must also be satisfied, as well as the contention admissibility criteria of section 2.309(f)(1); LBP-11-35, 74 NRC 718 (2011)

balance of factors must weigh in favor of granting a motion to reopen that relates to a contention not previously in controversy; LBP-12-1, 75 NRC 5-6 (2012)

proper mechanism for raising Fukushima-related, application-specific concerns in ongoing combined license cases is to file a new contention, consistent with the procedural rules applicable to the proceeding; CLI-11-5, 74 NRC 150 n.19 (2011)

this section deals with the admission of nontimely contentions; LBP-11-9, 73 NRC 400 (2011)

to be admissible, late-filed contentions must not only meet standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of this section or section 2.307; LBP-13-9, 78 NRC 46 (2013)

to the extent that contentions raise matters other than onsite spent fuel storage, the board should assess their admissibility under generally applicable rules of practice; CLI-14-8, 80 NRC 80 (2014)

to the extent that issues appropriately within the scope of license renewal are identified, NRC procedural rules provide avenues for the submission of proposed contentions on those issues; CLI-11-5, 74 NRC 164 (2011)

untimeliness constitutes sufficient grounds on its own for denying the motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 49 (2012)

where a motion to reopen relates to a contention not previously in controversy, section 2.326(d) requires that the motion demonstrate that the balance of the nontimely filing factors favors granting the motion to reopen; LBP-11-23, 74 NRC 296 (2011)

whether and how NRC Staff fulfills its consultation obligations are issues that could form the basis for a new contention that might appropriately be made in a timely fashion after Staff issues its draft environmental impact statement; CLI-15-18, 82 NRC 147 n.56 (2015)

with respect to contentions filed after the initial petition, intervenors have the burden to show that they meet the criteria of this section; LBP-11-7, 73 NRC 286 n.203 (2011)

10 C.F.R. 2.309(c)(1)

after the section 2.309(b) deadline has passed for submitting an initial hearing petition with one or more accompanying contentions, petitioner/intervenor who wishes to amend an already submitted or admitted contention or gain admission of a new contention must file a motion for leave to file such a new or amended contention; LBP-13-10, 78 NRC 130 (2013)

although an intervention petition itself was timely filed, the board must balance the eight factors to determine whether petitioner's late-filed exhibits are admissible; LBP-11-13, 73 NRC 543 (2011)

contention submitted after the initial filing deadline for submitting a hearing request will not be entertained absent a determination by the presiding officer that petitioner has demonstrated good cause; CLI-14-11, 80 NRC 175-176 (2014); LBP-15-15, 81 NRC 601 (2015)

contention that draft EIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 824 (2015)

contention that environmental review documents fail to identify source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene in groundwater is inadmissible as untimely; LBP-15-19, 81 NRC 822 (2015)

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eight-factor test that allowed a board to consider new or amended contentions that did not meet the three requirements for admissibility of late-filed contentions under 10 C.F.R. 2.309(f)(2) is no longer available; LBP-15-1, 81 NRC 30 n.73 (2015)

good cause is the most important of the late-filing factors; CLI-12-10, 75 NRC 489 n.47 (2012); LBP-11-2, 73 NRC 38 (2011); LBP-12-12, 75 NRC 749 (2012)

if a new or amended contention is deemed untimely under section 2.309(f)(2)(iii), it will be evaluated under this section, which requires a balancing of eight factors to determine whether it is admissible; LBP-11-9, 73 NRC 401 (2011); LBP-11-10, 73 NRC 446 (2011); LBP-11-32, 74 NRC 662 (2011); LBP-12-12, 75 NRC 748 (2012); LBP-12-23, 76 NRC 484 (2012)

if any portion of a filing is untimely tendered, it must be accompanied by a motion to file out of time; LBP-11-13, 73 NRC 545 (2011)

late-filed contention shall not be considered by a licensing board unless petitioner demonstrates that a multifactor balancing test weighs in favor of consideration; LBP-11-2, 73 NRC 38 (2011); LBP-11-6, 73 NRC 246 (2010); LBP-11-7, 73 NRC 278-79 (2011)

new claim would not have met the timeliness standards because petitioner could have raised its environmental justice concerns when it filed its initial petition; CLI-15-18, 82 NRC 147 n.59 (2015)

new or amended contentions based on material information that has subsequently become available must meet three additional requirements as well as the general contention admissibility requirements of section 2.309(f)(1); LBP-14-6, 79 NRC 410 (2014)

once the deadline for filing petitions to intervene has passed, a party may file new or amended contentions if it is able to demonstrate good cause by meeting the three requirements specified in this section; LBP-15-1, 81 NRC 29 (2015); LBP-15-19, 81 NRC 819-20 (2015); LBP-15-23, 82 NRC 59 (2015)

prejudice is not a factor in the balancing test for nontimely filings; LBP-11-13, 73 NRC 543 n.37 (2011)

standard for admission of new or amended contentions involves a balancing of eight factors; CLI-12-10, 75 NRC 489 n.47 (2012)

10 C.F.R. 2.309(c)(1)(i)

contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 144 (2013)

good cause for the failure to file on time is the most important of the late-filing factors; CLI-12-15, 75 NRC 723 n.96 (2012); LBP-11-2, 73 NRC 38 (2011); LBP-11-13, 73 NRC 543 (2011)

new contentions cannot be based on previously available information; LBP-15-11, 81 NRC 418 (2015)

10 C.F.R. 2.309(c)(1)(i)-(iii)

contention that DEIS must identify the percentage of radial collector well water drawn from underneath the industrial wastewater facility is inadmissible; LBP-15-19, 81 NRC 826 (2015)

good cause for a newly proposed contention exists when information on which it is based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; CLI-15-1, 81 NRC 7 n.29 (2015); LBP-15-1, 81 NRC 29-30 (2015); LBP-15-11, 81 NRC 407-08 (2015); LBP-15-15, 81 NRC 601 (2015)

intervention petitioner can justify filing a petition after the initial deadline has expired by showing that the contention is based on new information and that the petition was filed promptly after the new information became available; LBP-12-25, 76 NRC 543 n.13 (2012); LBP-12-27, 76 NRC 593 (2012)

new/amended contentions must demonstrate good cause for post-initial-hearing petition deadline filing, based on three factors; LBP-13-10, 78 NRC 130 (2013)

persons not currently a party may file timely petitions to intervene provided that they satisfy the good-cause criteria; LBP-15-6, 81 NRC 318 (2015)

requirements for demonstrating good cause are the same as the requirements for filing late contentions previously available under section 2.309(f)(2)(i)-(iii); LBP-15-1, 81 NRC 30 n.72 (2015)

10 C.F.R. 2.309(c)(1)(i)-(viii)

contentions that fail to satisfy timeliness standards in section 2.309(f)(2) may still be admitted pursuant to a balancing of the eight criteria of this section; LBP-12-9, 75 NRC 621 (2012)

eight-factor balancing test is applied to determine whether nontimely contentions should be admitted; LBP-12-27, 76 NRC 593 n.56 (2012)

good cause for late filing is entitled to the most weight; LBP-11-15, 73 NRC 634 (2011)

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- motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions; CLI-11-8, 74 NRC 226 (2011)
- 10 C.F.R. 2.309(c)(1)(ii)
intervenor has standing based upon their proximity to the proposed facility; LBP-12-12, 75 NRC 750 (2012)
- 10 C.F.R. 2.309(c)(1)(iii)
contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 144 (2013)
contentions relying on information and findings discussed in the notice of proposed rulemaking, as opposed to tentative rules or policy determinations, are not timely filed; LBP-15-15, 81 NRC 614 (2015)
degree to which new/amended contentions will be considered timely submitted is generally defined by the presiding officer as a specific period following the triggering event that makes the previously unavailable/materially different information available so as to be the basis for the new/amended contention; LBP-13-10, 78 NRC 131 (2013)
determination as to whether requests or petitions are filed in a timely manner shall be subject to a reasonableness standard and are not subject to the 30-day deadline applicable to motions by existing parties to add or amend contentions; LBP-15-6, 81 NRC 318 (2015)
new or amended contention is considered timely if it is filed within 60 days of the date when the material information first became available to the moving party through service, publication, or any other means; LBP-15-1, 81 NRC 30 (2015)
section does not stipulate what is considered timely, and the board looks to Commission precedent; LBP-15-11, 81 NRC 408 (2015); LBP-15-15, 81 NRC 601 (2015)
- 10 C.F.R. 2.309(c)(1)(vii)
where admission of a late-filed contention would cause a material delay in the proceeding weighed against admission of the contention; CLI-12-15, 75 NRC 723 n.96 (2012)
- 10 C.F.R. 2.309(c)(2)
contention questioning the adequacy of NRC Staff's consultation efforts with Native American tribes is admissible; LBP-13-9, 78 NRC 51 (2013)
if the reason that a motion to admit a new or amended contention was filed after the deadline does not relate to the substance of the filing itself, the standard in section 2.307 applies in determining whether the motion can be considered timely; LBP-13-9, 78 NRC 46 (2013)
intervention petitioner can justify missing the filing deadline by showing that the delay was caused by factors such as a weather event or unexpected health issues; LBP-12-25, 76 NRC 543 n.13 (2012); LBP-12-27, 76 NRC 593 n.55 (2012)
new contention is inadmissible because it relies on information that is not materially different from information previously available and already in the record; LBP-15-16, 81 NRC 704-05 (2015)
persistent difficulties with the NRC electronic filing system despite petitioners' good-faith efforts is good cause for late filing; LBP-11-2, 73 NRC 38 (2011)
- 10 C.F.R. 2.309(c)(2)(i)
State intervenor provided good cause for its late E-filing submission because it submitted its petition to NRC by e-mail before the deadline lapsed and the delay was purely a matter of obtaining digital credentials for the system, not an attempt to gain extra time to prepare a pleading or otherwise to flout the NRC's procedural requirements; LBP-15-4, 81 NRC 163 (2015)
- 10 C.F.R. 2.309(c)(4)
new or amended contentions generally must meet the six admissibility factors specified in section 2.309(f)(1); LBP-13-10, 78 NRC 131 (2013)
- 10 C.F.R. 2.309(d)
individual member who qualifies an organization for standing must have suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action, likely redressable by a favorable decision, and arguably within the zone of interests protected by the governing statute; LBP-14-4, 79 NRC 328 (2014)
intervention petitioners must demonstrate standing and proffer an admissible contention; LBP-11-22, 74 NRC 278 (2011); LBP-11-29, 74 NRC 616 (2011); CLI-15-23, 82 NRC 325 (2015); LBP-15-6, 81 NRC 317 (2015)

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- to establish representational standing, organizations must show that at least one of its members may be harmed by the licensing action and would have standing to sue in his or her own right, identify that member by name and address, show that the organization is authorized to request a hearing on behalf of that member, and show that the interests that the representative organization seeks to protect are germane to its own interests; LBP-12-10, 75 NRC 638 (2012)
- 10 C.F.R. 2.309(d)(1)
- intervention petitioners must establish standing by demonstrating the nature of their right under the Atomic Energy Act to be made a party to the proceeding, nature and extent of their interest in the proceeding, and possible effect of any decision in the proceeding on their interest; LBP-12-24, 76 NRC 507 (2012); LBP-15-13, 81 NRC 463 (2015); LBP-15-19, 81 NRC 819 (2015)
- petitioners must state their name, address, and telephone number, the nature of their right to be made a party, the nature and extent of their property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on their interest; LBP-11-2, 73 NRC 41 n.49 (2011); LBP-11-6, 73 NRC 168 (2010); LBP-11-16, 73 NRC 652 (2011); LBP-11-29, 74 NRC 616 (2011)
- 10 C.F.R. 2.309(d)(1)(i)
- although NRC regulations mandate that a petition contain the name, address, and telephone number of petitioner, the Commission's hearing notice advises prospective petitioners not to include personal privacy information, such as home addresses or home phone numbers in their filings; LBP-11-21, 74 NRC 123 (2011)
- intervention petition must contain the name, address, and phone number of the requestor or petitioner; LBP-15-20, 81 NRC 837 n.40 (2015)
- 10 C.F.R. 2.309(d)(1)(i)-(iii)
- request for hearing must state name and identity of requestor, nature of requestor's right to be a party, and nature and extent of the requestor's/petitioner's property, financial, or other interests in the proceeding; LBP-14-4, 79 NRC 350 (2014)
- 10 C.F.R. 2.309(d)(1)(i)-(iv)
- intervention petitions must include petitioner's name, address, and telephone contact information, nature of petitioner's right under the Atomic Energy Act to be made a party, nature of petitioner's interest in the proceeding, and possible effect of any decision or order that might be issued on petitioner's interest; LBP-11-21, 74 NRC 121 (2011); LBP-12-3, 75 NRC 176 (2012); LBP-12-15, 76 NRC 23 (2012); LBP-13-6, 77 NRC 269 (2013)
- 10 C.F.R. 2.309(d)(1)(ii)-(iv)
- in ruling on standing and determining whether petitioner has established the necessary interest, licensing boards are directed to follow the guidance found in judicial concepts of standing; LBP-11-4, 73 NRC 125 n.147 (2011)
- NRC generally applies traditional judicial standing concepts which require a showing that the individual has suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action, likely redressible by a favorable decision, and arguably within the zone of interests protected by the governing statutes; LBP-11-13, 73 NRC 546 (2011)
- to demonstrate standing, petitioner must describe the nature of petitioner's right to be made a party, nature and extent of petitioner's property, financial, or other interest, and possible effect of any subsequent decision or order on petitioner's interest; LBP-13-8, 78 NRC 6 (2013); LBP-15-17, 81 NRC 770 (2015)
- 10 C.F.R. 2.309(d)(2)
- board is obliged to independently assess petitioners' standing, even if it is unchallenged; LBP-15-5, 81 NRC 256 (2015); LBP-15-17, 81 NRC 776 (2015)
- municipality is deemed to have standing in a reactor licensing proceeding that involves a facility located within its boundaries; LBP-11-6, 73 NRC 169 (2010)
- standing criteria for federally recognized Indian tribes are less stringent, but only where the facility at issue is within the tribe's boundaries; LBP-12-24, 76 NRC 507 n.14 (2012)
- when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual

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- or nongovernmental organization, whether via a proximity presumption or otherwise; LBP-13-6, 77 NRC 272 n.7 (2013)
- 10 C.F.R. 2.309(d)(3)
as de facto targets of an enforcement order, licensee employees have automatic standing if they adversely affected by an enforcement order; LBP-14-4, 79 NRC 345 n.16 (2014)
boards have an independent obligation to determine whether petitioners meet the threshold criteria for intervention even if their standing is uncontested; LBP-11-2, 73 NRC 41 (2011); LBP-12-24, 76 NRC 507 (2012)
- 10 C.F.R. 2.309(e)
discretionary intervention is permitted only where at least one petitioner has established standing and at least one admissible contention has been admitted; CLI-14-11, 80 NRC 179 (2014); CLI-15-14, 81 NRC 738 n.41 (2015); LBP-11-29, 74 NRC 617 (2011); LBP-14-4, 79 NRC 332-33 (2014)
individuals or groups may seek discretionary intervention if the requirements necessary to be afforded standing as of right cannot be established; LBP-13-6, 77 NRC 270 n.4 (2013)
intervention as a matter of discretion is permitted only where at least one petitioner has established standing and at least one admissible contention has been admitted, and petitioner has addressed the six factors in its initial petition; CLI-15-14, 81 NRC 738 n.41 (2015)
- 10 C.F.R. 2.309(f)
intervention petitioners must demonstrate standing and proffer an admissible contention; CLI-15-23, 82 NRC 325 (2015); LBP-11-22, 74 NRC 278 (2011); LBP-11-29, 74 NRC 616, 617 (2011); LBP-15-6, 81 NRC 317 (2015)
intervention petitions must set forth with particularity the contentions petitioner seeks to have litigated in a hearing; CLI-15-8, 81 NRC 504 (2015)
licensing boards are bound to admit for litigation contentions that are material and supported by reasonably specific factual and legal allegations; LBP-11-6, 73 NRC 171 (2010)
proper mechanism for raising Fukushima-related, application-specific concerns in ongoing combined license cases is to file a new contention, consistent with the procedural rules applicable to the proceeding; CLI-11-5, 74 NRC 150 n.19 (2011)
to be accepted for hearing, contentions must meet strict admission standards; CLI-12-15, 75 NRC 709 (2012)
to the extent that contentions raise matters other than onsite spent fuel storage, the board should assess their admissibility under generally applicable rules of practice; CLI-14-8, 80 NRC 80 (2014)
- 10 C.F.R. 2.309(f)(1)
admissibility of contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is decided; LBP-15-5, 81 NRC 273 (2015)
admissible contention is required for grant of a hearing request; LBP-15-17, 81 NRC 758 (2015)
admissible contentions must meet all six pleading requirements; CLI-15-21, 82 NRC 304 n.40 (2015); LBP-11-6, 73 NRC 170 (2010); LBP-11-16, 73 NRC 654-55 (2011); LBP-11-25, 74 NRC 390 (2011); LBP-11-39, 74 NRC 867 (2011); LBP-12-10, 75 NRC 661 (2012); LBP-12-15, 76 NRC 25 (2012); LBP-12-18, 76 NRC 156 (2012); LBP-12-23, 76 NRC 486 (2012); LBP-15-4, 81 NRC 164 (2015); LBP-15-5, 81 NRC 257 (2015); LBP-15-6, 81 NRC 320 n.36 (2015); LBP-15-13, 81 NRC 467 (2015); LBP-15-16, 81 NRC 703-04 (2015); LBP-15-17, 81 NRC 777 (2015); LBP-15-18, 81 NRC 798 (2015); LBP-15-20, 81 NRC 840 (2015); LBP-15-24, 82 NRC 78-79 (2015); LBP-15-26, 82 NRC 173 (2015); LBP-15-29, 82 NRC 252 (2015)
all contentions, regardless of when they are filed, must also satisfy admissibility requirements; LBP-12-1, 75 NRC 6 (2012)
amended contentions must satisfy general contention admissibility criteria and either the timeliness standards of section 2.309(f)(2) or the balancing test in section 2.309(c) for nontimely contentions; LBP-12-9, 75 NRC 620 (2012)
any person or organization seeking to intervene as a party in an NRC adjudicatory proceeding addressing a proposed licensing action must establish standing and proffer at least one admissible contention; LBP-11-13, 73 NRC 550 (2011)
board concludes that contention is not admissible because it fails to satisfy criteria of this section, and thus need not rule on its timeliness; LBP-15-29, 82 NRC 253 n.32 (2015)

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Commission's intent is to focus litigation on concrete issues and result in a clearer and more focused record for decision and to ensure that the Commission expends resources to support the hearing process only for issues that are appropriate for, and susceptible to, resolution in an NRC hearing; LBP-11-16, 73 NRC 655 (2011)

contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 88 (2013)

contention asserting that applicant's environmental report fails to address the reasonably foreseeable impacts of climate change on water availability is admissible; LBP-11-16, 73 NRC 692 (2011)

contention asserting that NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act is inadmissible; LBP-12-10, 75 NRC 635 (2012)

contention challenging applicant's consideration of new and significant information regarding cleanup costs is inadmissible; LBP-12-8, 75 NRC 560 (2012)

contention claims must be set forth with particularity; CLI-12-1, 75 NRC 55 (2012)

contention contesting adequacy of hydrogeologic information provided in application regarding fluid migration is admissible; LBP-13-6, 77 NRC 289 (2013)

contention questioning the adequacy of NRC Staff's consultation efforts with Native American tribes is admissible; LBP-13-9, 78 NRC 51 (2013)

contention that the draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 88 (2013)

contention that the draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 93 (2013)

contention that the environmental report is deficient in concluding that environmental impacts from proposed deep injection wells will be small because the ER fails to identify the source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene is admissible; LBP-12-9, 75 NRC 625 (2012)

failure to comply with any of the pleading requirements renders a contention inadmissible; LBP-14-8, 79 NRC 524 (2014)

hearing request is granted where petitioners have submitted a timely petition, established representational standing, and proffered an admissible contention; LBP-15-20, 81 NRC 832 (2015)

hearing requests or intervention petitions must set forth with particularity the contentions sought to be raised, meeting all six pleading standards of this section; CLI-12-5, 75 NRC 306-07 (2012); CLI-12-8, 75 NRC 396 (2012) ; CLI-15-20, 82 NRC 221 (2015); LBP-11-21, 74 NRC 124 (2011)

if intervenors reference new material in the final supplemental environmental impact statement but do not address the six elements of this section, such references to new material do not give rise to either a new or an amended contention; LBP-14-5, 79 NRC 385 (2014)

if reopening standards are inapplicable, or if reopening criteria have been satisfied, a new contention must also meet the standards for contention admissibility; LBP-11-35, 74 NRC 718, 719 (2011)

in addition to being timely, new contention must satisfy the six-factor admissibility standard; LBP-15-19, 81 NRC 820 (2015); LBP-15-23, 82 NRC 59 (2015)

in addition to satisfying the timeliness standards in 10 C.F.R. 2.309(f)(2) or the balancing test in 10 C.F.R. 2.309(c), a newly proffered contention must satisfy the admissibility criteria of this section; LBP-12-7, 75 NRC 510-11 (2012); LBP-12-9, 75 NRC 622 (2012)

intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 268 (2011)

intervention petition is denied for failure to submit an admissible contention; LBP-13-11, 78 NRC 178, 181 (2013)

intervention petitioner must base its environmental contentions on information available at the time its intervention petition is to be filed, including applicant's environmental report; CLI-14-2, 79 NRC 21 (2014)

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intervention petitioner need not discuss every portion of the application that bears any relation to the issue being contested, but only provide a brief explanation of the argument and a concise statement of the relevant facts; CLI-14-2, 79 NRC 25 (2014)

intervention petitioners must not only demonstrate standing, but must also put forward at least one admissible contention; LBP-12-8, 75 NRC 548 (2012)

intervention petitions must demonstrate that the issue raised in a contention is within the scope of the proceeding; CLI-13-2, 77 NRC 43 n.16 (2013)

motion to reopen will not be granted unless all criteria of this section are satisfied; CLI-11-8, 74 NRC 221-22 (2011); LBP-11-20, 74 NRC 91 (2011)

motions to reopen must include affidavits setting forth the factual and/or technical bases for the claim that the criteria of this section have been met; LBP-11-23, 74 NRC 293 (2011)

motions to reopen relating to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions and the admissibility requirements; LBP-12-10, 75 NRC 639 (2012)

new and amended contentions submitted after an intervenor's initial hearing request are evaluated under 10 C.F.R. 2.309(f)(2) for timeliness and, if found timely, their general admissibility is analyzed; LBP-11-10, 73 NRC 445 (2011)

new contentions filed after the record has closed must also meet the standards for contention admissibility; LBP-11-20, 74 NRC 78 (2011); LBP-11-23, 74 NRC 296 (2011)

new contentions must satisfy six pleading requirements; LBP-14-8, 79 NRC 524 (2014)

new or amended contentions based on material information that has subsequently become available must meet the general contention admissibility requirements of this section as well as the three requirements in section 2.309(f)(2); LBP-14-6, 79 NRC 410 (2014)

new or amended contentions must satisfy the substantive contention admissibility standards and failure to meet any of them renders a contention inadmissible; LBP-14-5, 79 NRC 381-82 (2014); LBP-15-11, 81 NRC 407 (2015); LBP-15-15, 81 NRC 500-01 (2015)

NRC rules provide a mechanism for supplementing an original NEPA analysis, but the rules do not guarantee a hearing; CLI-13-7, 78 NRC 211 (2013)

NRC's contention admissibility rules are intentionally strict; CLI-15-20, 82 NRC 221 (2015)

one demanding a hearing on a challenge to an enforcement order need not comply with the requirements of this section; LBP-13-3, 77 NRC 91, 94 (2013)

petitioners have not raised an issue material to findings that the NRC must make to support final decisions and they are unable to satisfy contention admissibility standards or meet the criteria to reopen a closed record; CLI-15-4, 81 NRC 231 n.47 (2015)

pleading requirements for and admissible contentions are described; LBP-13-6, 77 NRC 283-84 (2013)

post-hearing-petition contention (new or amended contention) also must satisfy the substantive contention admissibility standards; LBP-13-9, 78 NRC 45 (2013)

proponent of a contention is responsible for formulating the contention and providing the necessary support to satisfy the admissibility requirements; CLI-15-23, 82 NRC 325-26 (2015)

purpose of contention pleading requirements is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-12-25, 76 NRC 544 (2012); LBP-13-8, 78 NRC 9 (2013); LBP-15-5, 81 NRC 257-58 (2015)

regardless of when filed, all proposed contentions must comply with the general contention admissibility criteria of this section; LBP-11-7, 73 NRC 280 (2011); LBP-11-9, 73 NRC 400 n.55 (2011)

request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 77 n.75 (2011)

requirement of this section to file contentions, and thus the requirement to satisfy the contention admissibility requirements, applies only to hearing requests and petitions to intervene; LBP-13-3, 77 NRC 89-90 (2013)

requirements for an admissible contention are specified; LBP-12-3, 75 NRC 190-91 (2012)

standards for reopening the record are discussed; LBP-11-23, 74 NRC 295-96 (2011)

statement of supporting facts or expert opinion to establish how the project would impair visual resources, rather than mere speculation, is required for an admissible contention; LBP-12-3, 75 NRC 207 (2012)

to be accepted for hearing, contentions must meet strict admissibility standards; CLI-12-10, 75 NRC 482 (2012)

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- to be admissible, late-filed contentions must not only meet standards of this section, but must also satisfy the timeliness requirements of section 2.309(c) or section 2.307; LBP-13-9, 78 NRC 46 (2013)
- when omissions are cured by the subsequent issuance of licensing-related documents, intervenor must timely file a new or amended contention if it intends to challenge the sufficiency of the new information; LBP-12-5, 75 NRC 238 (2012)
- 10 C.F.R. 2.309(f)(1)-(2)
- to the extent that issues appropriately within the scope of license renewal are identified, NRC procedural rules provide avenues for the submission of proposed contentions on those issues; CLI-11-5, 74 NRC 164 (2011)
- 10 C.F.R. 2.309(f)(1)(i)
- admissibility of contention questioning whether a confirmatory order imposes reporting obligations on the licensee employees that are overly broad, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 365 (2014)
- allegations of inadequacies and omissions in NRC Staff's environmental assessment satisfy the requirement to provide a specific statement of the issue of law or fact to be raised; LBP-15-13, 81 NRC 472 (2015)
- contention that the draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 86 (2013)
- contention that the draft environmental impact statement fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 64 (2013)
- narrowed reformulation of contention regarding tribal hunting and fishing includes a specific statement of the issue of fact or law to be raised or controverted; LBP-15-5, 81 NRC 282 (2015)
- two issues in one contention are best evaluated as separate contentions; LBP-15-5, 81 NRC 268 (2015)
- 10 C.F.R. 2.309(f)(1)(i)-(ii)
- contention of omission on a matter related to the National Environmental Policy Act must describe the information that should have been included in applicant's environmental report and provide the legal basis that requires the omitted information to be included; LBP-15-5, 81 NRC 258 (2015)
- contention that population used for analysis might underestimate the exposed population in a severe accident and, in turn, underestimate the benefit achieved in implementing a severe accident mitigation alternatives analysis is admissible; LBP-15-5, 81 NRC 298 (2015)
- petitioner must state the issue of law or fact to be raised or controverted and a brief explanation of the basis for each contention; CLI-15-20, 82 NRC 221 (2015)
- 10 C.F.R. 2.309(f)(1)(i)-(iv)
- at the contention admissibility stage, boards merely decide whether a contention satisfies the six pleading criteria; LBP-11-16, 73 NRC 690 (2011)
- contention questioning the accuracy of the SAMA results, given the geographic location and variable meteorological conditions at the site and the large population base surrounding the plant, is admissible; LBP-11-2, 73 NRC 70 (2011)
- to be admitted for adjudication, a contention, regardless of when it is filed, must also satisfy the requirements of this section; LBP-11-2, 73 NRC 44-45 (2011); LBP-11-13, 73 NRC 550 (2011); LBP-11-15, 73 NRC 635 (2011)
- 10 C.F.R. 2.309(f)(1)(i)-(v)
- contention that the draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 68-69 (2013)
- 10 C.F.R. 2.309(f)(1)(i)-(vi)
- admissibility of contention asserting that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on licensee's off-duty employees not otherwise required by 10 C.F.R. 73.56(f)(1)-(3) is argued; LBP-14-4, 79 NRC 363, 365-66 (2014)
- any contention, regardless of when it is filed, must meet the requirements of this section; CLI-15-23, 82 NRC 325 (2015); LBP-11-20, 74 NRC 92 (2011); LBP-11-29, 74 NRC 617 (2011); LBP-11-32, 74 NRC 662 (2011); LBP-12-8, 75 NRC 548 (2012); LBP-13-8, 78 NRC 8-9 (2013); LBP-14-6, 79 NRC 409 (2014)
- contention that license renewal application fails to adequately address the risks of flooding from failure of upstream dams is inadmissible; LBP-13-8, 78 NRC 11 (2013)

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contentions must be set forth with particularity and must meet all six contention admissibility factors; CLI-15-18, 82 NRC 138 (2015)

failure to meet any of the contention admission criteria renders the contention inadmissible; LBP-12-24, 76 NRC 509 (2012); LBP-14-5, 79 NRC 382 (2014); LBP-14-6, 79 NRC 409 (2014); LBP-15-1, 81 NRC 28-29 (2015)

general requirements for admissibility for all contentions are set forth; LBP-12-27, 76 NRC 591-92 (2012)

intervenor must assert a sufficiently specific challenge that demonstrates that further inquiry is warranted; CLI-11-9, 74 NRC 247 (2011)

intervention petitioner must, in addition to demonstrating standing, propose at least one contention that meets the criteria of this regulation; CLI-15-21, 82 NRC 301-02 (2015)

new contention filed after the record has closed must satisfy the general contention admissibility requirements; LBP-11-34, 74 NRC 696 (2011); LBP-12-11, 75 NRC 735 (2012); LBP-12-16, 76 NRC 48 (2012)

new or amended contentions generally must meet the six admissibility factors specified in this section; LBP-13-10, 78 NRC 131-32 (2013)

NRC rules of practice are designed to avoid unfocused inquiry in contested proceedings; CLI-15-1, 81 NRC 11 (2015)

petitioners do not need to cite a specific portion of the application to support a contention of omission; LBP-15-5, 81 NRC 283 (2015)

portions of a contention relevant to the completion of the Endangered Species Act § 7 consultation process and the adequacy of the NRC Staff's impact analyses relevant to the three named species meet the admissibility standards; LBP-13-9, 78 NRC 100-01 (2013)

request for hearing or petition for leave to intervene must explain proposed contentions with particularity; CLI-11-8, 74 NRC 228 (2011)

requirements for an admissible contention are provided; CLI-15-8, 81 NRC 504 (2015)

to be admissible, contentions must satisfy the six basic requirements of specificity, brief explanation, scope, materiality, concise statement of alleged facts or expert opinion, and genuine dispute; LBP-12-24, 76 NRC 508-09 (2012); LBP-12-25, 76 NRC 544 (2012)

10 C.F.R. 2.309(f)(1)(ii)

admissibility of contention questioning whether a confirmatory order imposes reporting obligations on licensee employees that are overly broad, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 365 (2014)

admissibility of contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is decided; LBP-15-5, 81 NRC 273 (2015)

brief explanation of the basis for a contention is an explanation of the rationale or theory of the contention; LBP-15-20, 81 NRC 849 (2015)

brief explanation of the basis for a contention is required; CLI-15-25, 82 NRC 400 (2015); LBP-11-13, 73 NRC 558 (2011)

challenges to the admissibility of a contention on the ground that basis does not include sufficient facts, evidence, or supporting factual information are misguided; LBP-15-20, 81 NRC 849 (2015)

claim that NRC Staff did not engage in the consultation process relevant to issues addressed by the Migratory Bird Treaty Act and that the impacts to wildlife with respect to this Act are inadequately analyzed is inadmissible; LBP-13-9, 78 NRC 101 (2013)

contention alleging that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 472-73 (2015)

petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support petitioner's position and on which petitioner intends to rely in litigating the contention at hearing; CLI-15-8, 81 NRC 504 (2015)

providing a brief explanation of the basis for a contention is but one of the six requirements for establishing that a contention is admissible; LBP-11-34, 74 NRC 698 (2011)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceedings; LBP-13-8, 78 NRC 16 (2013)

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scope of an admitted contention depends in large part on the bases set forth in the brief explanation of the basis for the contention; LBP-12-23, 76 NRC 463 (2012)

to make additional claims in a contention, intervenor must provide a sufficient explanation of its concern and a concise statement of the alleged facts supporting its position; LBP-14-5, 79 NRC 395 (2014)

10 C.F.R. 2.309(f)(1)(iii)

admissibility of contention questioning whether a confirmatory order imposes reporting obligations on the licensee employees that are overly broad, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 366 (2014)

all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-12-3, 75 NRC 191 (2012); LBP-12-15, 76 NRC 25 (2012); LBP-12-25, 76 NRC 552 (2012); LBP-12-27, 76 NRC 594 (2012)

applicant's rule exemption request could be subject to litigation in a combined license proceeding, and thus is within the scope of the proceeding; LBP-11-10, 73 NRC 452 (2011)

assertions of a need to implement filtered vented containment are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions as defined by 10 C.F.R. 54.4(a)(1)-(3), the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 60 (2011)

challenges to applicant's compliance with the loss-of-large-areas requirements of 10 C.F.R. 50.54(hh)(2) are not admissible because they are not within the scope of a license renewal proceeding; LBP-11-21, 74 NRC 129 (2011)

challenges to extensive damage mitigation guidelines are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

challenges to NRC's assumptions about operators' capability to mitigate an accident are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

challenges to NRC's excessive secrecy regarding accident mitigation measures are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

challenges to NRC's previous rejection of petitioner's concerns regarding environmental impacts of high-density pool storage of spent fuel are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

challenges to spent fuel pools are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

contention asserting that a license renewal environmental report must include a discussion of need for power is inadmissible; LBP-11-13, 73 NRC 556-57 (2011)

contention asserting that applicant's Integrated Plant Assessment for the license renewal application fails to identify and assess safety-related incidents at the plant in its required time-limited aging analysis is a safety contention is not admissible; LBP-13-8, 78 NRC 21-22 (2013)

contention is material to the result of the proceeding because it concerns whether the LAR demonstrates equivalent margins of safety as required by regulation; LBP-15-20, 81 NRC (2015)

contention is within the scope of license renewal proceeding because NRC regulations require that the environmental report include a severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 298 (2015)

contention outside the scope of a proceeding is not admissible for hearing in that proceeding; CLI-15-21, 82 NRC 305 (2015)

contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-13-12, 78 NRC 243 (2013)

contention that challenges the entire steam generator replacement project, rather than any aspect of the proposed changes to four technical specifications identified in the license amendment request is outside the scope of a license amendment proceeding; LBP-13-11, 78 NRC 182 (2013)

contention that challenges the legal sufficiency of the final environmental impact statement for a combined license is within the scope of the proceeding; LBP-12-18, 76 NRC 157 (2012)

contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing

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licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 244 (2013)

contention that license renewal application has failed to establish that the effects of aging on relay switches and snubbers will be adequately managed for the period of extended operation is not within the scope of the proceeding; LBP-15-6, 81 NRC 324 (2015)

contention that licensee's history of managing whistleblower complaints regarding safety issues demonstrates that the plant will not be operated safely during the license renewal term is inadmissible; LBP-13-8, 78 NRC 33 (2013)

contention that operating license should not be renewed unless and until applicant establishes that the plant can withstand and be safely shut down following an earthquake is not within the scope of a license renewal proceeding; LBP-15-6, 81 NRC 321 (2015)

contention that requests a remedy that is beyond the scope of the proceeding is not admissible; LBP-14-4, 79 NRC 358 (2014)

contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 274 (2015)

contention that wastewater contains chemical contaminants that are not discussed in the environmental report, and that when the wastewater is discharged via deep injection wells, the chemicals might migrate to an aquifer is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 191 (2010)

contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to a licensing board; LBP-13-6, 77 NRC 285 (2013)

contentions must demonstrate that the issue raised in the contention is within the scope of the proceeding; LBP-14-6, 79 NRC 439 (2014)

contentions that are the subject of general rulemaking by the Commission may not be litigated in individual licensing proceedings; CLI-14-8, 80 NRC 79 n.27 (2014); LBP-14-16, 80 NRC 191-92 (2014)

contentions that challenge an agency rule or regulation without a waiver, in addition to being expressly prohibited, are outside the scope of the proceeding; CLI-15-21, 82 NRC 302 (2015); LBP-13-6, 77 NRC 297 (2013)

environmental justice is a Category 2 issue, within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 282 (2015)

given that petitioner is challenging an omission in applicant's environmental report of material that petitioner alleges is required to be there, the issue is within the scope of the proceeding; LBP-12-8, 75 NRC 556-57 (2012)

labor disputes are not within the scope of enforcement proceedings; LBP-14-4, 79 NRC 337 (2014)

licensing board lacks authority to hold a hearing on the adequacy of a different agency's regulations; LBP-15-5, 81 NRC 306 (2015)

litigability of the adequacy of applicant's efforts to address current operational issues is excluded from a license renewal proceeding; CLI-11-11, 74 NRC 435 (2011)

petitioner must demonstrate that the issue raised in a contention is within the scope of the proceeding; LBP-12-3, 75 NRC 191 (2012); LBP-15-5, 81 NRC 258 (2015)

petitioner's challenge to applicant's use of Three Mile Island data constitutes a genuine dispute on a material issue and is within the scope of the license renewal proceeding because it challenges the adequacy of the environmental report; LBP-12-8, 75 NRC 560 (2012)

petitioner's issue of NRC Staff's compliance with its NEPA obligation to undertake a full evaluation of the environmental impacts associated with a proposed federal action is within the scope of an operating license amendment proceeding and material to the findings NRC must make; LBP-15-13, 81 NRC 472 (2015)

suppositions/speculation regarding effectiveness of hydrogen control mechanisms are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 757 (2011)

to assess whether a contention is within the scope of, and material to, the proceeding, boards need to know the legal basis (safety or environmental) of the contention; LBP-13-8, 78 NRC 11 (2013)

to satisfy contention admissibility requirements, petitioner must demonstrate that the issue raised in its contention is within the scope of the proceeding; CLI-15-25, 82 NRC 398 (2015)

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- 10 C.F.R. 2.309(f)(1)(iii)-(iv)
Fukushima-related contention is denied for failure to show that the contention is within the scope of the proceeding or is material to the findings NRC must make to support the requested licensing action; LBP-11-37, 74 NRC 783 n.6 (2011)
petitioner must demonstrate that the issue raised in the contention falls within the scope of the proceeding and is material to the findings that the NRC must make; CLI-15-8, 81 NRC 504 (2015); CLI-15-20, 82 NRC 221 (2015)
- 10 C.F.R. 2.309(f)(1)(iv)
adequacy of the equivalent margins analysis is material to the agency's decision to approve or deny the license amendment request; LBP-15-20, 81 NRC 850 (2015)
admissibility of contention questioning whether a confirmatory order imposes reporting obligations on licensee employees that are overly broad, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 366 (2014)
all contentions must proffer an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-12-15, 76 NRC 26 (2012); LBP-12-18, 76 NRC 158 (2012); LBP-12-27, 76 NRC 594 (2012)
alleged deficiencies or errors in a license application must have some independent health and safety significance; LBP-11-23, 74 NRC 336 (2011)
although NRC's Fukushima lessons-learned review continues, petitioners have not pointed to concrete information that is material to the findings the NRC must make to support the actions proposed by petitioners; CLI-12-7, 75 NRC 389 (2012)
because the shield building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts and thus petitioner's contention concerns a matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 39 (2015)
contention asserting that DEIS must include the Corps of Engineers Clean Water Act section 404 permit analysis in order to satisfy NEPA fails to raise a material issue; LBP-15-23, 82 NRC 60, 63 (2015)
contention that applicant has failed to establish in its aging management plan that the effects of aging will be adequately managed for the period of extended operation does not raise an issue that is material to findings NRC must make to support the proposed licensing action; LBP-15-6, 81 NRC 324-25 (2015)
contention that DEIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 824 (2015)
contention that DEIS must identify the percentage of radial collector well water drawn from underneath the industrial wastewater facility is inadmissible; LBP-15-19, 81 NRC 826-27 (2015)
contention that does not focus at all on the technical specifications that are the subject of its request raises no issues that are material to any findings the NRC must make to approve the license amendment request; LBP-13-11, 78 NRC 182 (2013)
contention that fails to raise a material issue is inadmissible; LBP-12-25, 76 NRC 548 (2012); LBP-15-26, 82 NRC 177 (2015)
contention that final environmental assessment fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-15-11, 81 NRC 427 (2015)
contention that license renewal application has failed to establish that the effects of aging on relay switches and snubbers will be adequately managed for the period of extended operation is not material to findings NRC must make; LBP-15-6, 81 NRC 324 (2015)
contention that operating license should not be renewed unless and until applicant establishes that the plant can withstand and be safely shut down following an earthquake is not material a license renewal proceeding; LBP-15-6, 81 NRC 321-22 (2015)
contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is material to the license renewal proceeding; LBP-15-5, 81 NRC 274 (2015)
failure to show the final supplemental EIS's air emissions data represent new or materially different information renders a new contention inadmissible; LBP-14-5, 79 NRC 399 (2014)

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- if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-15-5, 81 NRC 259 (2015)
- inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 298 (2015)
- intentional malevolent acts, such as sabotage and terrorism, are not material to the SAMA findings the NRC must make in deciding whether to extend an operating license; LBP-11-13, 73 NRC 571 (2011)
- intervenor need only demonstrate that the issue raised in the contention is material to a licensing decision, i.e., would make a difference in the licensing decision; LBP-11-7, 73 NRC 292 (2011)
- labor disputes are not within the scope of enforcement proceedings; LBP-14-4, 79 NRC 337 (2014)
- petitioner fails to demonstrate that the issue of radiation dispersal due to site inundation is material to the findings the NRC must make to support approving a combined license application; LBP-12-7, 75 NRC 517 (2012)
- petitioner must also show that its contention is material to the findings NRC must make to support issuance of the license amendments; CLI-15-25, 82 NRC 402 (2015)
- petitioner must demonstrate that the issue raised in a contention is within the scope of the proceeding and material to the findings NRC must make to support the action involved in the proceeding; CLI-12-15, 75 NRC 709 (2012); LBP-12-13, 75 NRC 790 (2012); LBP-12-3, 75 NRC 191 (2012); LBP-15-20, 81 NRC 850 (2015)
- petitioner's issue of NRC Staff's compliance with its NEPA obligation to undertake a full evaluation of the environmental impacts associated with a proposed federal action is within the scope of an operating license amendment proceeding and material to the findings NRC must make; LBP-15-13, 81 NRC 472 (2015)
- petitioner's speculation that, because of the Fukushima accident, NRC would consider a much broader and more rigorous array of severe accident mitigation alternatives than have been previously considered fails to satisfy the materiality requirement; LBP-11-35, 74 NRC 757 (2011)
- petitioners did not demonstrate that the issue of whether the MACCS2 code was subject to quality assurance is material to the findings the NRC must make under NEPA to support the requested license extension; LBP-11-13, 73 NRC 571 (2011)
- radiological claims that represent a direct challenge to prior license amendments authorizing extended power uprates are outside the scope of a license amendment proceeding; LBP-15-13, 81 NRC 478 (2015)
- simply referencing a study without explaining the information's significance relative to the potential containment leakage monitored by the testing at issue does not establish its materiality; LBP-15-26, 82 NRC 178 (2015)
- there is no legal requirement that applicant consider population projections to the end of the license term, but petitioner could succeed in raising such a contention if it demonstrated that considering such data would be material to the proceeding; LBP-12-8, 75 NRC 555 (2012)
- to assess whether a contention is within the scope of, and material to, the proceeding, boards need to know the legal basis (safety or environmental) of the contention; LBP-13-8, 78 NRC 11 (2013)
- to be admissible, contentions must present a genuine dispute on a material fact; LBP-14-5, 79 NRC 395 n.100 (2014)
- whether the safe shutdown earthquake exceedance in applicant's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in this proceeding; LBP-11-10, 73 NRC 452 (2011)
- 10 C.F.R. 2.309(f)(1)(v)
- alleged facts and expert opinions in intervention petition and associated exhibits are sufficient to satisfy regulatory requirements; LBP-15-13, 81 NRC 472 (2015)
- bare assertions and speculation do not meet the Commission's standard of a concise statement of the alleged facts or expert opinions together with references to the specific sources and documents upon which the petitioner relies; LBP-11-21, 74 NRC 133 (2011); LBP-13-8, 78 NRC 14 (2013)

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because of the need to provide specific support for a contention in order to raise a genuine dispute, the genuine dispute admissibility requirement is sometimes discussed together with the requirement for petitioners and intervenors to provide factual or expert support for their allegations; LBP-15-1, 81 NRC 38 (2015)

“belief” that is not supported by alleged facts or expert opinion renders a contention inadmissible; LBP-15-26, 82 NRC 177 n.28 (2015)

board erred in admitting a contention that lacks the required support; CLI-12-5, 75 NRC 322 (2012)

by failing to provide any support that the integrity of leaking structures has the potential to prevent licensee from maintaining pressure, providing flow, or both, petitioners do not present the requisite factual bases; LBP-11-2, 73 NRC 61 (2011)

by pointing to the exemptions and the license amendment request, petitioner has adequately supported its statement that the LAR is legally deficient in light of the granted exemptions; LBP-15-24, 82 NRC 102 (2015)

claim that NRC Staff did not engage in the consultation process relevant to issues addressed by the Migratory Bird Treaty Act and that the impacts to wildlife with respect to this Act are inadequately analyzed is inadmissible; LBP-13-9, 78 NRC 101 (2013)

claim that the draft environmental impact statement does not adequately assess the impacts to threatened and endangered species is rejected; LBP-13-9, 78 NRC 101 (2013)

concern about computer modeling methodology used to calculate groundwater quantity impacts is inadmissible as lacking sufficient factual or expert support and as failing to establish a material factual or legal dispute; LBP-12-3, 75 NRC 200 (2012)

contention alleging deficiencies in Corp of Engineers’ compensatory mitigation methods under the Clean Water Act lack alleged facts or expert opinions; LBP-15-23, 82 NRC 65 n.30 (2015)

contention concerning cultural and historic resources is not admissible because it provides no alleged facts or expert opinions; LBP-14-6, 79 NRC 443 (2014)

contention contesting failure of applicant to evaluate groundwater impacts of in situ recovery is inadmissible for failure to present factual allegations and/or expert opinion to support the contention; LBP-13-6, 77 NRC 295 (2013)

contention that draft EIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 824 (2015)

contention that draft EIS must identify the percentage of radial collector well water drawn from underneath the industrial wastewater facility is inadmissible; LBP-15-19, 81 NRC 826-27 (2015)

contention that future expansion of independent spent fuel storage installation will cause a high and adverse impact on archaeological and cultural resources because there is a potential for unrecorded cultural resources on the property is admissible; LBP-14-6, 79 NRC 415 (2014)

contention that is primarily based on the fact that steam generator replacements in other reactors have experienced problems is not adequately supported; LBP-13-11, 78 NRC 182 (2013)

contentions must be raised with sufficient detail to put the parties on notice of the issues to be litigated; CLI-11-11, 74 NRC 437 (2011)

contentions must provide a concise statement of the alleged facts or expert opinions that support petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position; LBP-14-6, 79 NRC 441 (2014)

failure to reference specific sources showing that wind or other renewables are viable sources of baseload power within the service area, renders a contention inadmissible; LBP-15-5, 81 NRC 279 (2015)

failure to show the final supplemental environmental impact statement’s air emissions data represent new or materially different information renders a new contention inadmissible; LBP-14-5, 79 NRC 399 (2014)

for a contention to be admissible, petitioner must, among other things, provide a concise statement of the alleged facts or expert opinions that support its position on the issue and on which petitioner intends to rely at hearing, together with references to the specific sources and documents that support its position; CLI-12-5, 75 NRC 346 n.265 (2012)

intervenor need not make its case at the contention admission stage, but must indicate what facts or expert opinions provide the basis for its contention; LBP-13-6, 77 NRC 291 (2013)

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intervenor must provide a concise statement of the facts or expert opinions that support their position and upon which they intend to rely at hearing; LBP-12-15, 76 NRC 26 (2012); LBP-12-18, 76 NRC 162-63 (2012); LBP-12-27, 76 NRC 595 (2012)

license renewal contention alleging higher cancer death rates in local counties than the state average is inadmissible because it is based on unsupported speculation; LBP-13-8, 78 NRC 19-20 (2013)

only alleged facts, not evidence or expert opinion, are required to support contention admissibility; LBP-13-8, 78 NRC 14 (2013)

petitioner has provided adequate support for its claim that there are numerous new severe accident mitigation alternatives candidates that should be evaluated for their significance; LBP-12-8, 75 NRC 557 (2012)

petitioner is obliged to present factual allegations and/or expert opinion necessary to support its contention; LBP-12-3, 75 NRC 191 (2012); CLI-12-7, 75 NRC 390 (2012); LBP-12-8, 75 NRC 559 (2012); LBP-13-6, 77 NRC 285 (2013)

petitioner may question the practice for severe accident mitigation alternatives analysis to utilize mean consequence values, which results in an averaging of potential consequences, but must support such a challenge with alleged facts or expert opinion; LBP-11-13, 73 NRC 576 n.296 (2011)

petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support petitioner's position and on which petitioner intends to rely in litigating the contention at hearing; CLI-15-8, 81 NRC 504 (2015); LBP-15-1, 81 NRC 38 (2015); LBP-15-5, 81 NRC 258, 275 (2015); LBP-15-20, 81 NRC 851 (2015)

petitioner must provide references to specific sources and documents on which petitioner intends to rely to support its contention; LBP-12-8, 75 NRC 560 (2012); LBP-13-8, 78 NRC 14 (2013)

petitioner must state the alleged facts or expert opinions that support its position and on which it intends to rely at hearing; CLI-15-20, 82 NRC 221 (2015); LBP-11-13, 73 NRC 572 (2011)

petitioners do not provide any alleged facts or expert support indicating that the river valley is within the geographic area for which applicant was required to model atmospheric dispersion; LBP-11-13, 73 NRC 573 (2011)

petitions that lack alleged facts or expert opinions to support the contention are inadmissible; LBP-11-29, 74 NRC 621 (2011)

pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-15-5, 81 NRC 258 (2015)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceeding; LBP-13-8, 78 NRC 16 (2013)

support required for a contention necessarily will depend on the issue sought to be litigated; CLI-11-11, 74 NRC 442 (2011)

support required for a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-3, 75 NRC 138 (2012)

to make additional claims on a contention, intervenor must provide a sufficient explanation of its concern and a concise statement of the alleged facts supporting its position; LBP-14-5, 79 NRC 395 (2014)

10 C.F.R. 2.309(f)(1)(v)-(vi)

contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-13-12, 78 NRC 243 (2013)

contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 245 (2013)

contentions must provide factual support for underlying claims and identify a genuine dispute with the applicant on a material issue; CLI-14-6, 79 NRC 447 (2014); LBP-15-20, 81 NRC 850 (2015)

contentions must raise a genuine dispute with the license application and must have underlying factual or legal support; CLI-12-15, 75 NRC 709 (2012)

contentions that are not accompanied by sufficient factual support to raise a genuine dispute are inadmissible; LBP-13-12, 78 NRC 240 (2013)

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- 10 C.F.R. 2.309(f)(1)(vi)
absence of a prohibition is not sufficient justification to admit a contention; CLI-15-23, 82 NRC 326 (2015)
- admissibility of contention questioning whether a confirmatory order imposes reporting obligations on licensee employees that are overly broad, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 366 (2014)
- all properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-12-3, 75 NRC 192 (2012)
- as to whether the connected-action aspect of 40 C.F.R. 1508.25(a)(1) supports an improper-segmentation contention's admissibility, petitioners have not providing sufficient supporting information to show that a genuine dispute exists on the material issue; LBP-13-10, 78 NRC 149, 150 (2013)
- at the contention admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application; CLI-11-9, 74 NRC 243-44 (2011)
- bald allegations do not suffice to support contention admissibility; LBP-13-8, 78 NRC 14 (2013)
- board is wrong to strain to discern the outlines of any contention in an amorphous petition; CLI-15-18, 82 NRC 143 (2015)
- boards must not adjudicate the merits of allegations at the contention admissibility stage of an NRC proceeding, but, to be admissible, a contention must provide more than a bare assertion, and must explain the supporting reasons for the dispute raised in that contention; LBP-11-16, 73 NRC 664, 667 (2011)
- by failing to acknowledge, much less challenge with specificity, the safety and environmental evaluations that applicant will perform prior to construction and operation of a supplemental onsite LLRW storage facility, the contention fails to demonstrate the existence of a genuine dispute with the combined license application on a material issue of law or fact; LBP-12-7, 75 NRC 518 (2012)
- claim that the draft environmental impact statement does not adequately assess the impacts to threatened and endangered species is rejected; LBP-13-9, 78 NRC 101 (2013)
- concern about computer modeling methodology used to calculate groundwater quantity impacts is inadmissible as lacking sufficient factual or expert support and as failing to establish a material factual or legal dispute; LBP-12-3, 75 NRC 200 (2012)
- contention admissibility rules require that a proposed contention be supported by alleged fact or expert opinion; CLI-12-7, 75 NRC 390 (2012)
- contention alleging deficiencies in Corp of Engineers' compensatory mitigation methods under the Clean Water Act fail to articulate how the DEIS's analysis of mitigation proposals is speculative or lacks an adequate assessment of effectiveness is inadmissible; LBP-15-23, 82 NRC 66 (2015)
- contention alleging that environmental assessment has not adequately addressed impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 472-73 (2015)
- contention alleging that license renewal application fails to consider plutonium fuel use, which would place it outside the current licensing basis, is inadmissible; LBP-13-8, 78 NRC 23 (2013)
- contention as reformulated by the board is inadmissible; CLI-15-18, 82 NRC 149 (2015)
- contention asserting that DEIS must include the Corps of Engineers Clean Water Act section 404 permit analysis in order to satisfy NEPA fails to demonstrate a genuine dispute with the DEIS; LBP-15-23, 82 NRC 60 (2015)
- contention bases that do not pertain specifically to the license renewal application do not provide sufficient information to demonstrate a genuine dispute with applicant on a material issue; CLI-15-11, 81 NRC 549 (2015)
- contention contesting failure of applicant to evaluate groundwater impacts of in situ recovery is inadmissible for failure to present factual allegations and/or expert opinion to support the contention; LBP-13-6, 77 NRC 295 (2013)
- contention is inadmissible because it fails to controvert a specific portion of the combined license application or otherwise explain why applicant's analyses or conclusions are incorrect or inadequate; LBP-11-15, 73 NRC 643 (2011)

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contention is inadmissible for failure to show that a genuine dispute exists with applicant on a material issue of law or fact; LBP-11-33, 74 NRC 682-83 (2011); LBP-15-26, 82 NRC 175-76 (2015)

contention must provide sufficient information to show a genuine dispute with applicant on a material issue of law or fact; CLI-15-20, 82 NRC 221 (2015); LBP-12-13, 75 NRC 790 (2012)

contention of omission claims that the application fails to contain information on a relevant matter as required by law and provides the supporting reasons for petitioner's belief; LBP-15-5, 81 NRC 258 (2015)

contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the environmental assessment, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 614 n.111, 617 (2015)

contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-13-12, 78 NRC 243 (2013)

contention that applicant has failed to establish in its aging management plan that the effects of aging will be adequately managed for the period of extended operation fails to demonstrate the existence of a genuine dispute with applicant; LBP-15-6, 81 NRC 325 (2015)

contention that considers the terms of a confirmatory order warranted or unwarranted is irrelevant if they fall within NRC's authority to impose; LBP-14-4, 79 NRC 335 (2014)

contention that DEIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 824 (2015)

contention that DEIS must identify the percentage of radial collector well water drawn from underneath the industrial wastewater facility is inadmissible; LBP-15-19, 81 NRC 826-27 (2015)

contention that does not actually challenge any specific part of the integrated plant assessment or time-limited aging analyses fails to demonstrate the existence of a genuine dispute with the applicant; LBP-15-6, 81 NRC 322 (2015)

contention that does not dispute any specific portion of applicant's fuel handling accident analysis is inadmissible for lack of a genuine dispute; LBP-15-18, 81 NRC 801 (2015)

contention that fails to provide sufficient information to show that a genuine dispute exists with a combined license application on a material issue of law or fact is inadmissible; LBP-11-15, 73 NRC 637, 638 n.17 (2011)

contention that future expansion of independent spent fuel storage installation will cause a high and adverse impact on archaeological and cultural resources because there is a potential for unrecorded cultural resources on the property is admissible; LBP-14-6, 79 NRC 415 (2014)

contention that ice condenser containments lack acceptable aging management plans to adequately maintain critical components of the ice condenser containment for 20 years of additional operation is inadmissible; LBP-13-8, 78 NRC 27 (2013)

contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 244 (2013)

contention that license renewal application has failed to establish that the effects of aging on relay switches and snubbers will be adequately managed for the period of extended operation fails to demonstrate the existence of a genuine dispute with the applicant; LBP-15-6, 81 NRC 324 (2015)

contention that license renewal application lacks supporting documentation providing the analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 30 (2013)

contention that merely predicts that at some future date petitioner might petition to intervene in this adjudication fails to identify any dispute with the license application or the DEIS, and thus fails to satisfy the admission requirement; LBP-12-12, 75 NRC 752-53 (2012)

contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 144 (2013)

contention that NRC or licensee has abused or exceeded its lawful discretion with respect to nuclear safety programs is not admissible because it fails to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-14-4, 79 NRC 337 (2014)

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contention that NRC Staff's environmental assessment fails to consider that applicant's use of copper sulfate to control algae blooms will increase reactor operating temperatures in relation to waste is inadmissible; LBP-15-13, 81 NRC 478 (2015)

contention that provides no reference to any specific portion of the license amendment request that petitioners dispute is inadmissible; LBP-13-11, 78 NRC 182 (2013)

contention that requiring the tribe to formulate contentions before a final EIS is released and failing to follow scoping process violates NEPA is inadmissible; LBP-13-9, 78 NRC 74-75 (2013)

contention that the draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 83, 86 (2013)

contention that the draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is inadmissible; LBP-13-9, 78 NRC 68 (2013)

contention that the draft environmental impact statement fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 64 (2013)

contention that the draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 70 (2013)

contention was inadmissible because petitioner offered nothing to link the outcome of the Fukushima events to either the nuclear power plant or the license renewal application and thus failed to show any dispute with the application; CLI-12-13, 75 NRC 685 (2012)

contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-13-6, 77 NRC 285 (2013)

contentions must provide sufficient information to show a genuine dispute with applicant on a material issue of law or fact; CLI-15-8, 81 NRC 504 (2015)

contentions should refer to portions of the application that petitioner disputes along with supporting reasons for each dispute, and if petitioner believes that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for petitioner's belief; CLI-15-8, 81 NRC 504 (2015)

crux of the "genuine dispute" prong under this section is the requirement for specificity, that a contention must have more than general allegations; LBP-15-1, 81 NRC 37 (2015)

failure to provide a direct critique of the analysis in the environmental report discussing the potential for offshore power and interconnected wind farms is a failure to identify a genuine dispute with the applicant; LBP-15-5, 81 NRC 279 (2015)

failure to show that the final supplemental environmental impact statement's air emissions data represent new or materially different information renders a new contention inadmissible; LBP-14-5, 79 NRC 399 (2014)

Fukushima-related contention based on a Staff Requirements Memorandum is inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 784 n.7 (2011)

Fukushima-related contention is denied for failure to reference any specific portion of the application at issue; LBP-11-37, 74 NRC 783 n.6 (2011)

if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-15-5, 81 NRC 259 (2015)

if petitioner believes that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for petitioner's belief; CLI-15-20, 82 NRC 221-22 (2015)

intervenor need not prove their case on the merits, but need only allege some facts or expert opinion that support their position and demonstrate a genuine dispute with the sufficiency of the FEIS; LBP-12-18, 76 NRC 163 (2012)

intervention petitions must be filed within 60 days based on the documents then in existence, meaning that the petition must be based on the documents submitted with the application; LBP-11-22, 74 NRC 271 (2011)

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labor disputes are not within the scope of enforcement proceedings; LBP-14-4, 79 NRC 337 (2014)

licensing boards do not conduct evidentiary hearings to decide whether a future petition to intervene will be filed as predicted; LBP-12-12, 75 NRC 752-53 (2012)

other than hypothesizing that there will be a failure of the nuclear reactor vessel because of increased stress brought by the proposed license amendment request, the contention does not provide sufficient information to show that a genuine dispute exists; LBP-11-29, 74 NRC 621 (2011)

petitioner must provide sufficient information to show that a genuine dispute exists with applicant/licensee on a material issue of law or fact, including references to specific portions of the application that petitioner disputes and the supporting reasons for each dispute; CLI-14-2, 79 NRC 25, 30 (2014); CLI-15-25, 82 NRC 403 (2015); LBP-11-21, 74 NRC 137-38 (2011); LBP-13-8, 78 NRC 14 (2013); LBP-14-6, 79 NRC 443 (2014); LBP-15-19, 81 NRC 820 n.22 (2015); LBP-15-23, 82 NRC 59 (2015)

petitioner must refer to specific portions of the application that it disputes, along with the supporting reasons for each dispute; CLI-15-20, 82 NRC 221 (2015)

petitioner's burden on a contention of omission is to identify the omission and the supporting reasons for petitioners' belief that the application fails to contain information on a relevant matter as required by law; LBP-15-5, 81 NRC 258 (2015)

petitioners allege a specific material error in applicant's SAMA analysis in its failure to consider the potential for a severe accident at one unit to negatively impact safe operation at a proposed unit, thereby potentially increasing the total damage that would result from a severe accident; LBP-15-5, 81 NRC 275 (2015)

petitioners must provide a nexus between its concerns and any deficiencies in applicant's SAMA analysis, which would be necessary to establish a genuine dispute for an admissible contention; CLI-15-18, 82 NRC 141 (2015)

petitions that lack alleged facts or expert opinions to support the contention are inadmissible; LBP-11-29, 74 NRC 621 (2011)

properly formulated contentions must focus on the license application in question, challenging either specific portions of, or alleged omissions from, the application (including the safety analysis report/technical report and the ER) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-12-15, 76 NRC 27 (2012); LBP-12-27, 76 NRC 595 (2012)

requests for hearing must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; LBP-13-3, 77 NRC 91 (2013)

requirement that a contention refer to specific portions of the application ensures that the board will be able to determine whether the contention is within the scope of the proceeding and that applicant knows which portions of the application it must defend; LBP-15-20, 81 NRC 861-62 (2015)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceeding; LBP-13-8, 78 NRC 16 (2013)

support required for a contention necessarily will depend on the issue sought to be litigated; CLI-11-11, 74 NRC 442 (2011)

to be admissible a contention must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, including references to specific portions of the application that petitioner disputes; CLI-11-9, 74 NRC 244 n.65 (2011); LBP-12-24, 76 NRC 537 (2012); LBP-15-1, 81 NRC 37 (2015)

to demonstrate the admissibility of a NEPA contention that an applicant failed to consider a viable alternative to its proposed action, petitioner must show that its contention presents a genuine dispute; CLI-12-5, 75 NRC 342-43 (2012)

to the extent a contention is premised on error, it is inadmissible for failing to raise a genuine dispute of fact; LBP-11-6, 73 NRC 202 (2010)

to the extent that intervenors' proposed contention is based on asserted deficiencies in NRC Staff's process for soliciting public participation pursuant to the National Historic Preservation Act, the contention fails to demonstrate a genuine dispute on a material issue of fact or law; LBP-12-23, 76 NRC 486 (2012)

vague accusation does not rise to the level of an admissible genuine dispute of material fact or law; LBP-11-10, 73 NRC 452 (2011)

where NRC Staff has yet to complete any draft or final environmental or safety review, contentions must challenge the application itself; LBP-11-29, 74 NRC 620 (2011)

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- 10 C.F.R. 2.309(f)(1)(vii)
contentions for adjudicatory hearings must raise a genuine dispute with the applicant/licensee on a material issue of law or fact; CLI-12-10, 75 NRC 486 (2012)
- 10 C.F.R. 2.309(f)(2)
although environmental contentions are, in essence, challenges to NRC Staff's compliance with NEPA, those contentions must be raised, if possible, in response to applicant's environmental report; CLI-15-1, 81 NRC 7 (2015); LBP-11-32, 74 NRC 661 n.15, 665 n.27, 669 n.34(2011); LBP-11-38, 74 NRC 830 (2011); LBP-15-19, 81 NRC 819 (2015)
although petitioner proffered a contention within 30 days of events that prompted it, this does not automatically render a newly proffered contention timely; LBP-11-15, 73 NRC 636 (2011)
amendment of contentions and submission of new contentions are allowed when good cause is shown; CLI-12-1, 75 NRC 56 (2012)
because the motion and contention are based on information that is neither new nor materially different from information that was previously available, the motion to reopen and accompanying contention are untimely; LBP-12-11, 75 NRC 739 (2012)
challenge to the inputs and methodology in the SAMA analysis is impermissibly late; CLI-12-10, 75 NRC 488-89 (2012)
claims in a contention that did not genuinely stem from the specific amendments to the aging management plan or from particular information in the revised GALL Report were untimely under standards for admission of new or amended contentions; CLI-12-10, 75 NRC 492 (2012)
contention filed after the deadline for initial intervention petitions must be submitted in a timely fashion, based on new information that is materially different from information previously available; LBP-12-11, 75 NRC 734-35 (2012)
contentions filed after the deadline for initial intervention petitions also must satisfy the standards for late-filed contentions; CLI-12-10, 75 NRC 483 (2012); CLI-12-15, 75 NRC 709 (2012)
contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report, or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner; LBP-11-29, 74 NRC 620 n.37 (2011)
filing of amended or new contentions is permitted only with leave of the board and upon a showing that it is based on information not previously available and materially different and the filing is timely; LBP-12-13, 75 NRC 788 n.13 (2012)
for a new contention to be admissible, the new information must, in and of itself, be sufficient to support its admissibility; LBP-11-20, 74 NRC 82 (2011)
for a reopening motion to be timely presented, movant must show that the issue sought to be raised could not have been raised earlier; LBP-11-20, 74 NRC 85 n.110 (2011)
if a contention is based upon new information, it must meet the standards of this section; LBP-11-35, 74 NRC 719 (2011)
if new information becomes available that, e.g., an endangered species has been living on the site or that the facility has been leaking tritium into the groundwater, then a new contention alleging that the environmental report as originally filed did not comply with Part 51 may be filed; LBP-11-32, 74 NRC 670 (2011)
if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from data or conclusions in applicant's documents, late-filing standards are no bar to the admission of properly supported contentions; LBP-15-11, 81 NRC 423 n.130 (2015)
intervenor may need to amend an admitted environmental contention based on applicant's environmental report, or file a new contention altogether challenging Staff's draft environmental impact statement; LBP-12-12, 75 NRC 768 (2012)
intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 268 (2011)
intervenor may propose new or amended contentions based on data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that

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differ significantly from the data or conclusions in the applicant's environmental documents; LBP-11-6, 73 NRC 177 n.25 (2010); LBP-11-7, 73 NRC 277 (2011)

intervenor are not only permitted but are required to file their contentions in response to the license application, rather than await a fully formalized administrative decision; LBP-12-19, 76 NRC 198 (2012)

intervenor fail to show that, with respect to terrestrial and wetland mitigation plans, there are data or conclusions in the draft environmental impact statement that differ significantly from the data or conclusions in the applicant's documents; LBP-12-12, 75 NRC 759 (2012)

intervenor must file their NEPA contentions based on the environmental report; LBP-12-12, 75 NRC 752 (2012)

late-filed contentions must show that the information upon which the new contention is based was not previously available and is materially different than information previously available; CLI-12-10, 75 NRC 492 n.69 (2012)

material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 7 (2015)

motions to amend a contention must be based on new information that is materially different from information previously available and must be submitted in a timely fashion; LBP-12-27, 76 NRC 601 (2012)

NEPA-related contentions initially are based on applicant's environmental report which will inform the Staff's NEPA review; CLI-13-7, 78 NRC 213 n.76 (2013); LBP-13-10, 78 NRC 132 (2013)

new and amended contentions submitted after an intervenor's initial hearing request are evaluated under this section for timeliness and, if found timely, their general admissibility is analyzed pursuant to 10 C.F.R. 2.309(f)(1); LBP-11-10, 73 NRC 445 (2011)

new contentions filed after the initial filing may only be admitted upon a showing that the information upon which they are based was not previously available and is materially different than information previously available and they have been submitted in a timely fashion based on the availability of the subsequent information; LBP-12-18, 76 NRC 136-37 (2012)

new contentions must be timely and based on new information relevant to the plant and the application that is materially different from information previously available; LBP-12-1, 75 NRC 12 (2012)

new contentions submitted within 30 days of the occurrence of the triggering the event are timely; LBP-12-18, 76 NRC 137 (2012)

new environmental contentions may be filed if data or conclusions in the draft environmental impact statement differ significantly from the data or conclusions in the environmental report; LBP-11-32, 74 NRC 670 (2011); LBP-11-33, 74 NRC 682 n.12 (2011); LBP-11-34, 74 NRC 698 (2011); LBP-11-39, 74 NRC 866 (2011)

new or amended contentions are considered to be timely if filed within 60 days of any triggering event; LBP-11-9, 73 NRC 397 (2011)

new or amended contentions filed after the initial filing period has expired may be admitted as timely only with leave of the licensing board if it meets the timeliness standards of this section; LBP-12-7, 75 NRC 509 (2012); LBP-12-12, 75 NRC 748 (2012)

NRC preserves the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-11-22, 74 NRC 264 (2011)

NRC rules contain ample provisions through which litigants may seek admission of new or amended contentions; CLI-12-13, 75 NRC 689 (2012)

petitioner must base its environmental contentions on information available at the time its intervention petition is to be filed, including applicant's environmental report; CLI-14-2, 79 NRC 21 (2014)

petitioner must file NEPA-related contentions based on applicant's environmental report, but new or amended contentions are explicitly permitted if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from data or conclusions in applicant's documents; LBP-12-12, 75 NRC 752, 755-56 (2012); LBP-12-13, 75 NRC 788 n.13 (2012)

petitioner or intervenor may file timely new or amended contentions, with leave of the board, if the three requirements of this section are met; LBP-11-9, 73 NRC 400-01 (2011)

petitioner will have an opportunity to submit contentions based on the final supplemental environmental impact statement if appropriate; LBP-13-9, 78 NRC 75 (2013)

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- petitioners and intervenors are obliged to challenge applicant's environmental report; LBP-11-7, 73 NRC 276 (2011)
- proponent of a contention is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for its admission; CLI-12-13, 75 NRC 686 n.30 (2012)
- this section deals with the factors that govern the admission of timely new or amended contentions; LBP-11-9, 73 NRC 400 (2011)
- time for challenging the environmental report passes when NRC Staff releases its draft supplemental environmental impact statement, but contentions challenging the ER can be filed with the initial petition and prior to the time Staff's environmental review documents are completed; LBP-12-11, 75 NRC 737 (2012)
- untimeliness constitutes sufficient grounds on its own for denying the motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 49 (2012)
- when determining whether a new contention is timely for purposes of reopening a record, the Commission looks to whether the information on which it is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability; CLI-12-21, 76 NRC 498 (2012)
- where a supplemental environmental impact statement is being prepared, intervenor may submit proposed new contentions based on new information, including new information in the SER and Staff NEPA documents; LBP-11-22, 74 NRC 272 (2011)
- where the information in the draft environmental impact statement is so different from the information in the environmental report that the DEIS dispenses with and moots the issues raised in the original contention, intervenor must file a new or amended contention against the DEIS; LBP-11-1, 73 NRC 26 (2011)
- with respect to contentions filed after the initial petition, intervenors have the burden to show that they meet the criteria of this section; LBP-11-7, 73 NRC 286 n.203 (2011)
- 10 C.F.R. 2.309(f)(2)(i)
- for a newly proffered contention to be timely, it must be based on information that was not previously available; LBP-11-15, 73 NRC 636 (2011)
- 10 C.F.R. 2.309(f)(2)(i) & (ii)
- adoption of building code rules by a state presents new and materially different information not previously available, upon which intervenors may rest their proposed contention; LBP-11-7, 73 NRC 290 n.233 (2011)
- because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the environmental report as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, this argument is not timely; LBP-12-7, 75 NRC 514-15 (2012)
- request to admit a new or amended contention requires petitioner to show that the information upon which it is based was not previously available and is materially different from information previously available; CLI-14-2, 79 NRC 21 (2014)
- 10 C.F.R. 2.309(f)(2)(i)-(iii)
- amended contentions filed after the initial filing period has expired may be admitted only with leave of the licensing board if they satisfy the three criteria of this section; LBP-12-9, 75 NRC 620-21 (2012)
- contentions submitted after the initial filing period for receipt of petitions to intervene must be based on information not previously available and materially different than information previously available and must be submitted in a timely fashion based on availability of the new information; LBP-12-27, 76 NRC 592-93 (2012)
- good cause exists when the requirements of this section are satisfied; LBP-14-5, 79 NRC 382 (2014)
- if, within 60 days after pertinent information supporting a new contention first becomes available, Intervenor submit a particularized and otherwise admissible contention regarding construction of a mixed oxide facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements or the requirements for reopening the record; LBP-11-9, 73 NRC 401 (2011)
- intervenors may file new or amended contentions in response to the draft environmental impact statement if they can satisfy the test of this section; LBP-12-12, 75 NRC 752 (2012)

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- new or amended contention may be filed after initial docketing with leave of the presiding officer upon a showing that the information upon which the contention is based was not previously available, is based on materially different information previously unavailable, and has been submitted in a timely fashion based on the availability of the subsequent information; CLI-11-2, 73 NRC 339 (2011); LBP-11-7, 73 NRC 277-78 (2011); LBP-11-10, 73 NRC 445 (2011)
- new or amended contentions may be filed based on the draft environmental impact statement if based on new and materially different information, whether contained in the DEIS itself or some other source, and if it is filed in a timely manner once the new information becomes available or any delay is excused pursuant to section 2.309(c)(1); LBP-12-12, 75 NRC 752 (2012)
- new or amended contentions must be based on information not previously available and materially different from previously available information and be submitted in a timely fashion based on the availability of the subsequent information; LBP-14-6, 79 NRC 410 (2014)
- revised rules no longer require leave to file from the presiding officer; LBP-12-27, 76 NRC 600 n.103 (2012)
- timely new contentions may be filed with leave of the presiding officer if information on which they are based was not previously available and is materially different than information previously available, and they have been submitted in a timely fashion based on the availability of the subsequent information; LBP-11-25, 74 NRC 389 (2011); LBP-11-39, 74 NRC 866 (2011)
- timely new or amended contentions may be admitted if it meets three pleading requirements; LBP-11-32, 74 NRC 661 (2011)
- 10 C.F.R. 2.309(f)(2)(ii)
new contentions must be based on information materially different than the information previously available; CLI-14-2, 79 NRC 21 (2014); LBP-11-15, 73 NRC 636 (2011); LBP-14-5, 79 NRC 396-97 (2014)
- 10 C.F.R. 2.309(f)(2)(iii)
any contention filed within 30 days of the date when new and material information on which it is based first became available is regarded as timely; LBP-11-7, 73 NRC 287 (2011); LBP-11-39, 74 NRC 867 (2011); LBP-12-9, 75 NRC 621 (2012); LBP-12-23, 76 NRC 484 (2012)
- by filing proposed new or amended contentions within the time specified in the initial scheduling order, petitioner satisfies timeliness requirements but would still have to satisfy the other requirements of section 2.309(f)(2) or the requirements of section 2.309(c), as well as the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-11-22, 74 NRC 262-63 (2011)
- contention or amendment or supplement to a contention is considered timely if filed within 60 days of the date when the material information on which it is based first becomes available to the moving party through service, publication, or any other means; LBP-12-12, 75 NRC 748 (2012); LBP-12-27, 76 NRC 593 (2012)
- 10 C.F.R. 2.309(g)
petitioner may address the selection of hearing procedures, taking into account the provisions of 10 C.F.R. 2.310; LBP-11-16, 73 NRC 706 (2011)
- petitioner requesting Subpart G procedures must demonstrate by reference to the contention and the bases provided and the specific procedures in Subpart G that resolving the contention will require resolution of material issues of fact that may be best determined through use of the identified procedures; LBP-11-2, 73 NRC 78 (2011)
- 10 C.F.R. 2.309(h)(2)
petitioner is generally afforded 7 days to file its reply; LBP-12-3, 75 NRC 187 n.21 (2012)
- reply must be filed within 7 days after the filing of answers to an intervention petition; LBP-11-21, 74 NRC 120 n.14 (2011)
- state government has standing because the facility is located within the boundaries of the state and, accordingly, no further demonstration of standing is required; LBP-15-4, 81 NRC 163 (2015); LBP-15-18, 81 NRC 794 (2015); LBP-15-26, 82 NRC 173 (2015); LBP-15-24, 82 NRC 71 n.2 (2015)
- 10 C.F.R. 2.309(h)(3)
parties do not have an automatic right to respond to reply briefs; LBP-11-34, 74 NRC 695 (2011)
- petitions, answers, and replies are allowed unless otherwise specified by the Commission or the presiding officer, but no other written answers or replies will be entertained; LBP-11-2, 73 NRC 39 (2011)

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- 10 C.F.R. 2.309(i)(2)
petitioner has the right to file a reply; LBP-15-13, 81 NRC 461 (2015)
- 10 C.F.R. 2.310
upon admission of a contention, a board must identify the specific hearing procedure to be used in the adjudication; LBP-11-16, 73 NRC 706 (2011)
- 10 C.F.R. 2.310(a)
in the interest of expediting the further proceedings, hearing on senior reactor operator license denial will be conducted under the provisions of Subpart L of the Commission's Rules of Practice; LBP-13-3, 77 NRC 98 (2013)
license renewal proceeding may be conducted under the relatively informal procedures of Subpart L; LBP-11-2, 73 NRC 79 (2011)
procedural rules in Subpart L govern most adjudicatory proceedings; CLI-14-5, 79 NRC 259 (2014)
proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to Part 55 may be conducted under the procedures of Subpart L; LBP-11-16, 73 NRC 706 (2011); LBP-13-3, 77 NRC 98 n.79 (2013)
upon admission of a contention in a licensing proceeding, the board must identify the specific hearing procedures to be used to adjudicate the contention; LBP-11-2, 73 NRC 78 (2011); LBP-11-13, 73 NRC 587 (2011)
- 10 C.F.R. 2.310(b)
enforcement proceedings are typically conducted pursuant to the procedures in Subpart G; LBP-13-3, 77 NRC 98 n.79 (2013); LBP-14-11, 80 NRC 128 n.8 (2014)
- 10 C.F.R. 2.310(b)-(c)
unless the parties agree otherwise, enforcement matters and licensing of uranium enrichment facility construction and operation must be conducted under Subpart G; LBP-11-2, 73 NRC 79 n.322 (2011)
- 10 C.F.R. 2.310(d)
in reactor licensing matters, the relatively formal procedures provided in Subpart G of Part 2 govern if a contention necessitates resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter; LBP-11-2, 73 NRC 78 (2011); LBP-11-16, 73 NRC 706 (2011)
- 10 C.F.R. 2.310(g)
Commission has authority to rule that a license transfer case be adjudicated under Subpart L; CLI-14-5, 79 NRC 259 (2014)
licensing boards have all the powers necessary to perform their duties, including powers to regulate the conduct of the participants; LBP-13-2, 77 NRC 75 n.12 (2003)
procedural rules in Subpart M govern adjudications on transfer applications; CLI-14-5, 79 NRC 259 (2014)
- 10 C.F.R. 2.310(h)
unless the parties request a hearing pursuant to Subpart N, the board will hold a hearing pursuant to the procedures announced in Subpart L; LBP-13-3, 77 NRC 98 n.79 (2013)
- 10 C.F.R. 2.310(h)(1)
if the hearing on a contention is expected to take no more than 2 days to complete, the board can impose the Subpart N procedures for expedited proceedings with oral hearings specified in 10 C.F.R. 2.1400-.1407; LBP-11-13, 73 NRC 587 (2011)
- 10 C.F.R. 2.310(q)
licensing boards have all the powers necessary to perform their duties, including powers to regulate the conduct of the participants and to issue orders necessary to carry out their duties and responsibilities; LBP-13-2, 77 NRC 75 n.12 (2003)
- 10 C.F.R. 2.311
appeal as of right on the question of whether an initial intervention petition should have been wholly denied, or alternatively, was granted improperly are governed by this section; CLI-12-7, 75 NRC 385 n.16 (2012)
appeals from an order ruling on the admission of new or amended contentions is not permitted; LBP-14-5, 79 NRC 401 (2014)

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- limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, that is, when it has admitted or rejected all proposed contentions; LBP-14-8, 79 NRC 528 (2014)
- review of a board's dismissal of some contentions would normally await the end of the case; CLI-12-19, 76 NRC 388 (2012)
- 10 C.F.R. 2.311(a)
- piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)
- this section governs appeals of board rulings on hearing requests, petitions to intervene, and access to certain nonpublic information; CLI-12-6, 75 NRC 361 (2012)
- this section is applicable to an appeal of a board decision rejecting an intervention petition and a hearing request; CLI-14-6, 79 NRC 446 (2014)
- 10 C.F.R. 2.311(a)(1) & (2)
- appeals as of right are allowed on the question of whether an intervention petition should have been wholly denied; CLI-12-12, 75 NRC 606 (2012)
- 10 C.F.R. 2.311(b)
- briefs on appeal must conform to the requirements stated in section 2.341(c)(2); CLI-11-8, 74 NRC 219 (2011)
- replies to appeals filed pursuant to 10 C.F.R. 2.311 are not permitted; CLI-12-6, 75 NRC 260 n.36 (2012)
- 10 C.F.R. 2.311(c)
- appeal as of right from a board's ruling on an intervention petition is permitted upon denial of a petition to intervene and/or request for hearing, on the question as to whether it should have been granted; CLI-14-3, 79 NRC 36 (2014); LBP-15-1, 81 NRC 46 (2015)
- appeal as of right will be granted on the question whether a request for hearing or petition to intervene should have been granted; CLI-15-21, 82 NRC 301 (2015)
- appeals of contention admissibility rulings are available only upon denial of a petition to intervene and/or request for hearing on the question of whether it should have been granted or upon the grant of a petition to intervene and/or request for hearing on the question of whether it should have been wholly denied; CLI-12-8, 75 NRC 396-97 (2012); CLI-13-3, 77 NRC 54 (2013)
- denial of hearing request is appealable as of right; CLI-13-2, 77 NRC 44 n.20 (2013)
- petitioner is not allowed to reply to its opponent's answer; CLI-13-2, 77 NRC 44 n.20 (2013)
- piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)
- 10 C.F.R. 2.311(d)
- licensing board order granting a request for hearing on the question whether the request should have been wholly denied is appealable; CLI-15-23, 82 NRC 324 (2015)
- piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)
- 10 C.F.R. 2.311(d)(1)
- appeal as of right from a board's ruling on an intervention petition is permitted upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied; CLI-12-12, 75 NRC 606 (2012); CLI-12-19, 76 NRC 379 (2012); CLI-13-3, 77 NRC 54 (2013); CLI-14-3, 79 NRC 36 (2014); CLI-15-18, 82 NRC 137 n.8 (2015); CLI-15-25, 82 NRC 393 (2015); LBP-15-1, 81 NRC 46 (2015)
- applicant denied a senior reactor operator license has the right to demand a hearing, rather than being required to negotiate the contention admissibility requirements and a possible appeal in the event a hearing is granted; LBP-13-3, 77 NRC 92 n.53 (2013)
- because the board granted a hearing request, its decision to reject some contentions may not be appealed until the end of the case; CLI-14-2, 79 NRC 13 n.3 (2014)
- Commission affirmed the board's standing ruling, but declined to accept review of challenges to the board's admission of two contentions because petitioner had failed to perfect its appeal by challenging the validity of the board's admissibility rulings regarding other contentions; LBP-15-3, 81 NRC 77 (2015)
- Commission discourages piecemeal appeals; CLI-12-12, 75 NRC 607 (2012)

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- NRC rules of practice provide for an automatic right to appeal a licensing board decision deciding standing and contention admissibility, on the question whether a petition to intervene and request for hearing should have been granted, or denied in its entirety; CLI-11-11, 74 NRC 431 (2011); CLI-12-8, 75 NRC 396-97 (2012); CLI-14-2, 79 NRC 13 (2014)
- 10 C.F.R. 2.311(e)
appeal of an order selecting a hearing procedure is permitted on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in section 2.310; CLI-14-3, 79 NRC 36 n.29 (2014)
- 10 C.F.R. 2.314
counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 127-28 n.6 (2014)
"representative" means the attorney or other authorized representative of a party who has entered a notice of appearance; LBP-11-5, 73 NRC 139 (2011)
- 10 C.F.R. 2.314(b)
although the better practice would be to file a notice of appearance, pursuant to section 2.304(d), the signature of a person signing a pleading is a representation that the document has been subscribed in the capacity specified with full authority; LBP-13-12, 78 NRC 241 n.9 (2013)
an officer, member, or attorney representing an organization in a proceeding must file a written notice of appearance stating, among other things, his or her basis for representing the organization; LBP-11-13, 73 NRC 542-43 (2011)
duly authorized member or officer may represent his or her partnership, corporation, or unincorporated association even if he or she is not an attorney at law, but the representative's notice of appearance must state the basis of his or her authority to act on behalf of the party; LBP-11-13, 73 NRC 548 (2011)
- 10 C.F.R. 2.314(c)
licensing boards may impose reprimands, censures, or suspensions from proceedings on contumacious parties or their representatives; LBP-13-2, 77 NRC 76 n.13 (2003)
pro se representatives in licensing board proceedings, like all other representatives and/or lawyers, are required to be accurate and truthful and are subject to reprimand, censure, or suspension for failing in these duties; LBP-13-8, 78 NRC 19 n.25 (2013)
- 10 C.F.R. 2.315(a)
board accepted written limited appearance statements from members of the public in connection with the hearing; LBP-14-3, 79 NRC 277 n.36 (2014)
board permitted any person who was not a party to the proceeding to submit written limited appearance statements concerning the issues in the proceeding; LBP-13-13, 78 NRC 274 (2013)
boards may entertain oral and written limited appearance statements from members of the public in connection with a mandatory uncontested proceeding; LBP-11-26, 74 NRC 517, 535 n.13 (2011)
limited appearance statements do not constitute evidence but may assist the board and/or parties in defining the issues being considered; LBP-13-13, 78 NRC 274 (2013); LBP-15-27, 82 NRC 188 n.26 (2015)
no duty is imposed on a board to respond to limited appearance statements as litigable concerns; LBP-11-11, 73 NRC 521 n.31 (2011)
- 10 C.F.R. 2.315(c)
boards may afford an interested state, local governmental body, and federally recognized Indian tribe that has not been admitted as a party under section 2.309 a reasonable opportunity to participate in a hearing; LBP-15-19, 81 NRC 828 (2015)
governmental entity is permitted to participate in the proceeding as an interested local governmental body and will thus have the opportunity to support intervenors' already-admitted contention; LBP-15-19, 81 NRC 822 n.35 (2015)
interested governmental entities who failed to raise admissible contentions were eligible to participate in the license renewal proceeding; LBP-13-13, 78 NRC 265-66 (2013)
interested governmental entity may introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without being required to take a position with respect to

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- the issue, file proposed findings, and petition for review by the Commission; LBP-11-6, 73 NRC 166 n.4 (2010); LBP-15-19, 81 NRC 818, 828 n.63 (2015)
- local governmental body that is not admitted as a party shall, upon request, be permitted to participate in a hearing as an interested nonparty; LBP-11-6, 73 NRC 166 n.4 (2010)
- representative of a governmental entity that wishes to participate as a nonparty in the proceeding must identify those contentions on which it will participate in advance of any hearing held; LBP-15-11, 81 NRC 405 n.6 (2015)
- 10 C.F.R. 2.315(d)
- amicus curiae briefs may be filed when the Commission has taken up a matter pursuant to section 2.341 or sua sponte; CLI-13-9, 78 NRC 556 n.17 (2013); CLI-14-11, 80 NRC 171 n.20 (2014); CLI-15-1, 81 NRC 5 n.19 (2015); CLI-15-4, 81 NRC 225 n.8 (2015); CLI-15-5, 81 NRC 333 n.19 (2015); CLI-15-23, 82 NRC 324 n.16 (2015); CLI-15-24, 82 NRC 334 n.17 (2015)
- persons who are not parties may file an amicus curiae brief; CLI-15-1, 81 NRC 5 n.19 (2015)
- state government may file an amicus brief within the time allowed to the party whose position the brief will support; CLI-15-2, 81 NRC 216 (2015)
- 10 C.F.R. 2.316
- any consolidation of multiple parties' presentations of evidence that would prejudice the rights of any party may not be ordered; LBP-11-4, 73 NRC 124 (2011)
- contention challenging sufficiency of the draft environmental impact statement as it pertains to the protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 105 (2013)
- 10 C.F.R. 2.317(b)
- consolidating proceedings is the exception rather than the rule; CLI-14-5, 79 NRC 261 n.37 (2014)
- litigant asking for consolidation of proceedings has the burden of showing that it will be conducive to the proper dispatch of the Commission's business and to the ends of justice and will be conducted in accordance with the other provisions of Subpart C; CLI-14-5, 79 NRC 261 n.37 (2014)
- 10 C.F.R. 2.318
- commencement of a proceeding is described; CLI-12-3, 75 NRC 140 n.47 (2012)
- 10 C.F.R. 2.318(a)
- board jurisdiction terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case; CLI-12-14, 75 NRC 697 (2012); CLI-12-17, 76 NRC 210 n.11 (2012)
- this regulation does not provide an exhaustive list of every situation where board jurisdiction lapses; CLI-12-17, 76 NRC 210 (2012); CLI-12-14, 75 NRC 701 (2012)
- three occasions that could trigger termination of the presiding officer's jurisdiction are delineated; LBP-11-22, 74 NRC 276 (2011)
- where an amended version of a dismissed contention was pending before the board, the board retains jurisdiction to decide whether to admit the proposed contention; LBP-11-22, 74 NRC 263 (2011)
- 10 C.F.R. 2.319
- although boards are accorded considerable discretion to manage proceedings before them, they need not exercise it; LBP-15-15, 81 NRC 615 n.114 (2015)
- boards are given broad discretion in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case-management decisions; LBP-15-15, 81 NRC 615 n.114 (2015)
- boards have the duty to conduct a fair and impartial hearing according to law, and have all the powers necessary to that end; LBP-11-22, 74 NRC 282 (2011)
- boards have the power to take necessary and appropriate actions consistent with the Atomic Energy Act to conduct a fair hearing; LBP-15-15, 81 NRC 615 n.114 (2015)
- boards must exercise all the powers necessary to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-11-22, 74 NRC 280 (2011)
- broad discretion is given to NRC licensing boards in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case management decisions; CLI-14-10, 80 NRC 164 (2014)
- Commission generally defers to licensing boards on case management issues; CLI-11-13, 74 NRC 640 (2011)

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- contention challenging sufficiency of the draft environmental impact statement as it pertains to the protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 105 (2013)
- licensing boards have all the powers necessary to perform their duties; LBP-13-2, 77 NRC 75 n.12 (2003)
- licensing boards have authority to adjudicate exemption issues, but NRC Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 273 (2012)
- licensing boards have broad powers to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-15-30, 82 NRC 344 (2015)
- presiding officers have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to avoid delay and to maintain order and have all the powers necessary to those ends; CLI-14-10, 80 NRC 164 n.38 (2014); LBP-11-22, 74 NRC 280 (2011)
- 10 C.F.R. 2.319(c)
- consolidating proceedings is the exception rather than the rule; CLI-14-5, 79 NRC 261 n.37 (2014)
- 10 C.F.R. 2.319(d)
- board has ample authority to ensure that evidence offered concerning microcracking is limited to that specific material issue and does not stray into issues outside the scope of the license amendment proceeding; LBP-15-20, 81 NRC 859 (2015)
- boards are not precluded from considering documents despite their hearsay nature; LBP-11-14, 73 NRC 600 n.59 (2011)
- boards may on motion or on their own initiative strike any portion of a written presentation that is unreliable; LBP-11-14, 73 NRC 600 n.59 (2011)
- in proceedings under Part 2, strict rules of evidence do not apply to written submissions; LBP-11-14, 73 NRC 600 n.59 (2011); LBP-12-21, 76 NRC 248 n.171 (2012)
- 10 C.F.R. 2.319(e)
- presiding officer may restrict irrelevant, immaterial, unreliable, duplicative, or cumulative evidence and/or arguments; LBP-11-13, 73 NRC 556 n.134 (2011)
- 10 C.F.R. 2.319(e), and (g)
- board has ample authority to ensure that evidence offered concerning microcracking is limited to that specific material issue and does not stray into issues outside the scope of the license amendment proceeding; LBP-15-20, 81 NRC 859 (2015)
- 10 C.F.R. 2.319(k)
- licensing boards are expected to set procedures to ensure that the case is managed efficiently, in a manner that is fair to all of the parties; CLI-14-10, 80 NRC 164 n.39 (2014)
- 10 C.F.R. 2.319(l)
- boards are encouraged to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-12-13, 75 NRC 685 n.23 (2012)
- should a licensing board decision raise novel legal or policy questions, boards are to certify to the Commission those questions that would benefit from Commission consideration; CLI-11-5, 74 NRC 170 (2011); LBP-11-32, 74 NRC 671-72 (2011)
- 10 C.F.R. 2.320
- boards may take disciplinary action against a party that fails to comply with any prehearing order, as long as the action is just; CLI-14-10, 80 NRC 164-165 (2014)
- if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 14 n.10 (2014)
- 10 C.F.R. 2.321(c)
- licensing boards have authority to adjudicate exemption issues, but NRC Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 273 (2012)
- motion to reply is denied because no compelling circumstances are presented; CLI-12-6, 75 NRC 373 (2012)

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- presiding officers have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to avoid delay and to maintain order and have all the powers necessary to those ends; CLI-14-10, 80 NRC 164 n.38 (2014)
- 10 C.F.R. 2.323
- although MRC rules do not provide for filing of amicus curiae briefs on motions filed pursuant to this section, as a matter of discretion, the Commission has reviewed both the brief and NRC Staff's opposition; CLI-13-9, 78 NRC 556 n.17 (2013)
- heightened showing is required to prevent overuse of sua sponte review, including a demonstration of extraordinary circumstances; CLI-15-1, 81 NRC 9 n.39 (2015)
- if any portion of a filing is untimely tendered, it must be accompanied by a motion to file out of time; LBP-11-13, 73 NRC 545 (2011)
- requests for action from the presiding officer in an NRC adjudicatory proceeding must come in the form of a motion; CLI-15-13, 81 NRC 569 n.86 (2015)
- 10 C.F.R. 2.323(a)
- if applicants believe that their actions render a contention moot, then they should promptly file a motion for summary disposition; LBP-12-19, 76 NRC 202 n.103 (2012)
- motions must be filed no later than 10 days after the occurrence or circumstance from which the motion arises; LBP-12-26, 76 NRC 566 (2012)
- 10 C.F.R. 2.323(b)
- all motions must include a certification that movant has made a sincere effort to contact other parties in the proceeding and resolve the issue raised in the motion, and that the movant's efforts to resolve the issue have been unsuccessful; LBP-11-2, 73 NRC 47 (2011)
- because applicant did not comply with this section, the board does not consider information supplied with applicant's letter in connection with the board's analysis of petitioner's contention; LBP-11-2, 73 NRC 47 (2011)
- Fukushima-related contention is denied for failure of its proponent to contact the other parties to resolve the issue presented by the contention prior to its submission; LBP-11-37, 74 NRC 783 n.6 (2011)
- motion must be rejected if it does not include a certification that movant has made a sincere effort to contact other parties and resolve the issues raised in the motion; LBP-11-15, 73 NRC 635 n.13 (2011); LBP-11-34, 74 NRC 695 (2011); LBP-12-27, 76 NRC 601 (2012)
- 10 C.F.R. 2.323(c)
- applicant has no right to reply and may be granted permission only in compelling circumstances, such as where movant demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply; LBP-15-28, 82 NRC 243 (2015)
- evidentiary objections made for the first time after briefing has been completed unfairly deprive petitioners of the opportunity to file the response expressly provided in the NRC's procedural rules; LBP-15-5, 81 NRC 289 (2015); LBP-15-20, 81 NRC 859 (2015)
- movant has no right to reply except as permitted by the presiding officer and only in compelling circumstances; LBP-15-28, 82 NRC 235 n.8 (2015)
- parties do not have an automatic right to respond to reply briefs; LBP-11-34, 74 NRC 695 (2011)
- replies to motions that would otherwise be unauthorized are allowed if there are compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply; CLI-11-14, 74 NRC 808 n.39 (2011); CLI-14-3, 79 NRC 35 n.27 (2014)
- 10 C.F.R. 2.323(d)
- counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 127-28 n.6 (2014)
- pro se representative in licensing board proceedings, like all other representatives and/or lawyers, are required to be accurate and truthful and are subject to reprimand, censure, or suspension for failing in these duties; LBP-13-8, 78 NRC 19 n.25 (2013)
- 10 C.F.R. 2.323(e)
- motion for reconsideration is denied for failure to meet the high standard of this section; LBP-12-26, 76 NRC 563 (2012)

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- motion for reconsideration is procedurally defective, out of time, and fails to assert compelling circumstances justifying reconsideration; CLI-13-7, 78 NRC 204 n.14 (2013)
- motion for reconsideration should not include new arguments or evidence unless it relates to a board concern that applicant could not reasonably have anticipated; LBP-14-7, 79 NRC 458 (2014)
- motions for reconsideration must be filed within 10 days of the action for which reconsideration is requested; CLI-12-17, 76 NRC 209 n.7 (2012); CLI-14-10, 80 NRC 164 n.34 (2014); LBP-11-15, 73 NRC 616 n.16 (2011)
- motions for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-14-1, 79 NRC 3 n.6 (2014); LBP-11-15, 73 NRC 616 n.16 (2011)
- petition for review is treated as a petition for reconsideration; CLI-12-17, 76 NRC 209 (2012)
- reconsideration motion fails to identify a significant factual or legal matter that the board overlooked or provide compelling circumstances that render the board's decision invalid; LBP-14-7, 79 NRC 458 (2014)
- reconsideration motions may not be filed except upon leave of the adjudicatory body that rendered the decision and that procedural deficiency is reason enough to deny the request; CLI-12-17, 76 NRC 209 n.7 (2012)
- 10 C.F.R. 2.323(f)
- boards are authorized to refer a ruling to the Commission at the earliest opportunity if the board determines that the decision or ruling involves a novel issue that merits Commission review; CLI-11-5, 74 NRC 170 (2011); LBP-11-32, 74 NRC 671-72 (2011)
- boards are encouraged to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-12-13, 75 NRC 685 n.23 (2012)
- licensing board refers ruling that applicant has no legal duty to supplement an originally compliant environmental report to incorporate new and significant information that arises after the ER was duly submitted; LBP-11-32, 74 NRC 657 (2011)
- referred rulings or certified questions must raise significant and novel legal or policy issues or issues whose early resolution would materially advance the orderly disposition of the proceeding; CLI-15-1, 81 NRC 9 n.39 (2015)
- 10 C.F.R. 2.323(f)(1)
- board denies petition for rule waiver but refers the decision to the Commission because the legal issue presented by the petition is novel and worthy of the Commission's immediate attention; LBP-13-1, 77 NRC 60, 69 (2013)
- boards should refer rulings that raise novel or legal policy issues that would benefit from Commission review; CLI-11-11, 74 NRC 455 (2011)
- 10 C.F.R. 2.325
- applicant bears the burden of proof in a licensing proceeding; LBP-14-1, 79 NRC 52-53 (2014); LBP-14-3, 79 NRC 278 (2014)
- applicant for an exemption bears the burden of proof on all issues; LBP-12-6, 75 NRC 268 (2012)
- applicant in a licensing proceeding bears the burden of proof by a preponderance of the evidence on safety issues that it is entitled to the applied-for license; LBP-11-38, 74 NRC 829 (2011); LBP-12-17, 76 NRC 80 n.40 (2012)
- as proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding; LBP-15-3, 81 NRC 84 (2015); LBP-15-16, 81 NRC 641 (2015)
- moving party bears the burden of meeting reopening standards, and applicant retains the burden of proof on the question whether the license should be issued; CLI-15-19, 82 NRC 157 n.29 (2015)
- on safety issues, license applicants have the burden of establishing entitlement to the applied-for license by a preponderance of the evidence; LBP-12-5, 75 NRC 235 (2012); LBP-13-13, 78 NRC 279 (2013); LBP-14-3, 79 NRC 278 (2014)
- party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 75 (2003)
- regardless of the issuance of the license, the burden at hearing remains on applicant and, with respect to NEPA compliance, on NRC Staff; CLI-15-17, 82 NRC 41 (2015)

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- summary disposition movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law; LBP-11-14, 73 NRC 595 (2011); LBP-12-23, 76 NRC 450 (2012)
- unless the presiding officer otherwise orders, applicant or proponent of an order has the burden of proof; LBP-14-2, 79 NRC 149 (2014); LBP-15-2, 81 NRC 57 n.63 (2015)
- 10 C.F.R. 2.326
- bare assertions and speculation do not supply the requisite support to satisfy the standards for reopening a record; LBP-11-35, 74 NRC 729 (2011)
- because the motion to reopen and contention are based on information that is neither new nor materially different from information that was previously available, the motion and contention are untimely; LBP-12-11, 75 NRC 739 (2012)
- because the record is closed, petitioner's motion must meet the requirements for reopening; LBP-12-11, 75 NRC 734 (2012)
- "closed record" refers to a record developed at an evidentiary hearing; LBP-11-22, 74 NRC 281 (2011)
- combined license cannot be issued until the foreign ownership issue is properly corrected and then applicants may motion to reopen the record; LBP-12-19, 76 NRC 187 (2012)
- contention asserting that the NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 635 (2012)
- for new contentions to be admitted after the record has closed, petitioner must satisfy the Commission's demanding regulatory requirements for reopening the record; LBP-11-20, 74 NRC 69 (2011); LBP-11-23, 74 NRC 293, 295 n.37 (2011); LBP-11-35, 74 NRC 718 (2011)
- heavier burden applies to motions to reopen than to proponents of contentions in ongoing proceedings; CLI-11-5, 74 NRC 169 (2011)
- if a petition is rejected or dismissed at the docketing stage (before the evidentiary record has ever been opened), then subsequent petitions, in addition to meeting all other requirements, must also show that the evidentiary record should be reopened; LBP-14-4, 79 NRC 374 (2014)
- importance of finality in adjudicatory proceedings is reflected in this rule; CLI-15-19, 82 NRC 155 (2015)
- intervenor must show that a materially different result would be likely if the new contention is admitted; LBP-11-22, 74 NRC 281 (2011)
- intervenor seeking admission of new evidence after a licensing board has closed the evidentiary record must demonstrate sufficient grounds for reopening the record; CLI-12-10, 75 NRC 483 (2012)
- motions to reopen a closed record are governed by this section; CLI-12-3, 75 NRC 138 (2012); CLI-12-6, 75 NRC 367 (2012); CLI-15-19, 82 NRC 155 (2015)
- motions to reopen to admit a new contention must meet all requirements of this section as well as sections 2.309(c) and 2.309(f)(2); LBP-12-16, 76 NRC 47-48 (2012)
- new contentions filed after the record has closed must satisfy the timeliness requirement of either 10 C.F.R. 2.309(f)(2) or 2.309(c), and the admissibility requirements of section 2.309(f)(1), as well as the reopening requirements; LBP-11-22, 74 NRC 269 n.54 (2011)
- newly constituted board applied the reopening standard to new contentions filed after the prior proceeding was terminated for want of pending or admitted contentions; LBP-11-22, 74 NRC 269 n.50 (2011)
- NRC rules contain ample provisions through which litigants may seek admission of new or amended contentions; CLI-12-13, 75 NRC 689 (2012)
- petitioners have not raised an issue material to findings that the NRC must make to support final decisions in the captioned matters and they are unable to satisfy contention admissibility standards or meet the criteria to reopen a closed record; CLI-15-4, 81 NRC 231 n.47 (2015)
- proper mechanism for raising Fukushima-related, application-specific concerns in ongoing combined license cases is to file a new contention, consistent with the procedural rules applicable to the proceeding; CLI-11-5, 74 NRC 150 n.19 (2011)
- 10 C.F.R. 2.326(a)
- all factors must be met for a motion to reopen to be granted; CLI-12-3, 75 NRC 143 (2012)
- because the previous licensing board terminated the adjudicatory proceeding that was convened to consider challenges to the operating license renewal application, challengers must satisfy the stringent requirements for reopening; LBP-12-10, 75 NRC 638-39 (2012)

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- exceptionally grave issues may be considered in the discretion of the presiding officer even if untimely presented; LBP-12-1, 75 NRC 5 (2012)
- motion to reopen will not be granted unless movant satisfies all three criteria listed in this regulation and the motion is accompanied by an affidavit that satisfies section 2.326(b); CLI-15-19, 82 NRC 156 (2015)
- motions to reopen must be supported by affidavit, be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely if the evidence had been available; LBP-11-20, 74 NRC 74-75 (2011); LBP-11-35, 74 NRC 718 (2011); LBP-12-1, 75 NRC 5 (2012); LBP-14-8, 79 NRC 523 (2014); LBP-15-14, 81 NRC 594 (2015)
- new contention needs to meet requirements of this section, must be timely, must concern a significant environmental or safety issue, and must demonstrate the likelihood of a materially different result; CLI-12-14, 75 NRC 700 n.54 (2012); LBP-14-8, 79 NRC 523 (2014)
- NRC imposes a deliberately heavy burden on an intervenor who seeks to supplement the evidentiary record after it has been closed, even with respect to an existing contention; CLI-11-2, 73 NRC 338 (2011)
- petitioners' proposed Fukushima contention lacked the kind of significance and potential for a different result that would justify restarting already-closed hearings; CLI-12-11, 75 NRC 533 (2012)
- 10 C.F.R. 2.326(a)(1)
- board has discretion to consider an untimely motion to reopen if the motion presents an exceptionally grave issue; LBP-15-14, 81 NRC 594 (2015)
- claims in a contention that did not genuinely stem from the specific amendments to the aging management plan or from particular information in the revised GALL Report were untimely under standards for reopening the evidentiary record; CLI-12-10, 75 NRC 492 (2012)
- contention that the frequency of occurrence of severe accidents is erroneously underestimated should have been raised at the outset of the license renewal proceeding and thus is untimely; LBP-11-35, 74 NRC 748 (2011)
- exceptionally grave issues may be considered in the discretion of the presiding officer even if untimely presented; CLI-12-10, 75 NRC 496 n.84 (2012); LBP-11-20, 74 NRC 75 n.62 (2011); LBP-11-35, 74 NRC 728 (2011); LBP-12-1, 75 NRC 14 (2012); LBP-12-11, 75 NRC 739 (2012); LBP-12-16, 76 NRC 57 (2012)
- motions to reopen a closed record must be timely; CLI-11-2, 73 NRC 339 (2011); CLI-12-21, 76 NRC 498 (2012)
- motions to reopen must be timely and based on new information relevant to the plant and the application that is materially different from information previously available; LBP-12-1, 75 NRC 12 (2012)
- NRC recognizes an exception to the timeliness requirement in rare instances in which petitioner raises an exceptionally grave issue; CLI-11-2, 73 NRC 342 n.43 (2011)
- reopening will only be allowed where proponent presents material, probative evidence that either could not have been discovered before or could have been discovered but is so grave that, in the judgment of the presiding officer, it must be considered anyway; CLI-12-10, 75 NRC 498 (2012)
- untimeliness constitutes sufficient grounds on its own for denying the motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 49 (2012)
- 10 C.F.R. 2.326(a)(1)-(3)
- motions to reopen must be timely, address a significant safety or environmental issue, and show that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-12-3, 75 NRC 138 (2012); CLI-12-6, 75 NRC 367 (2012); CLI-12-10, 75 NRC 496 (2012); CLI-12-15, 75 NRC 713 (2012)
- reopening criteria that must be satisfied are discussed; LBP-11-20, 74 NRC 92 (2011)
- 10 C.F.R. 2.326(a)(2)-(3)
- petitioner has not satisfied reopening standards because it has not raised a significant environmental issue and has not demonstrated that a materially different result would be likely if the contention had been considered initially; CLI-15-11, 81 NRC 549 (2015)

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10 C.F.R. 2.326(a)(3)

boards are better positioned than the Commission to consider, in the first instance, whether petitioner has shown that a materially different result is likely should it prove the claims in the contention; CLI-12-14, 75 NRC 702 (2012)

motions to reopen must demonstrate that a materially different result would likely have been reached had its purported new evidence been considered initially; CLI-11-2, 73 NRC 346 (2011); CLI-12-10, 75 NRC 498 (2012); CLI-12-10, 75 NRC 498 (2012); LBP-12-1, 75 NRC 16 (2012); LBP-12-19, 76 NRC 204 n.112 (2012)

petitioner does not demonstrate, with the level of support required under section 2.326(b), that a materially different result would have been likely had the possibility of recriticality over a period longer than 24 hours, or even 4 days, been considered in the SAMA analysis initially; CLI-12-3, 75 NRC 143-44 (2012)

petitioner failed to satisfy NRC standards for reopening because its motion was untimely and it failed to demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-11-2, 73 NRC 335 (2011)

petitioner must satisfy the reopening criteria, which include demonstrating the likelihood of a materially different result in the SAMA analysis if the newly proffered evidence were considered; CLI-12-15, 75 NRC 715 (2012)

this section expressly refers to a motion to reopen a closed record to consider additional evidence and newly proffered evidence; LBP-11-22, 74 NRC 281 (2011)

to meet the reopening standards, petitioner needed to demonstrate a likelihood that the aqueous modeling would lead to a materially different cost-benefit analysis conclusion; CLI-12-15, 75 NRC 719 (2012)

10 C.F.R. 2.326(b)

absence of a competent affidavit deprives the board of the ability or even the opportunity to substantively consider whether a materially different result would be obtained as is required by the regulatory reopening standards; LBP-11-23, 74 NRC 321 (2011)

affidavits setting forth factual and/or technical bases for the reopening criteria must address each criterion separately and provide a specific explanation of why it has been met; CLI-11-8, 74 NRC 222 (2011); CLI-12-3, 75 NRC 138, 149 & n.112 (2012); CLI-12-6, 75 NRC 367 (2012); CLI-12-10, 75 NRC 496 (2012); CLI-12-14, 75 NRC 700 n.54 (2012); CLI-12-15, 75 NRC 713 (2012); LBP-11-20, 74 NRC 75, 92 (2011); LBP-11-23, 74 NRC 296 (2011); LBP-11-35, 74 NRC 718-19, 724, 753 (2011); LBP-12-1, 75 NRC 5 (2012); LBP-12-10, 75 NRC 639, 651-52 (2012); LBP-14-8, 79 NRC 523 (2014)

affidavits supporting a motion to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-11-8, 74 NRC 222 (2011); CLI-12-3, 75 NRC 139 (2012); CLI-12-6, 75 NRC 367 (2012); CLI-12-15, 75 NRC 713 (2012); LBP-11-35, 74 NRC 737 (2011); LBP-15-14, 81 NRC 594 (2015)

bare assertions and speculation do not supply the requisite support for a motion to reopen; CLI-11-2, 73 NRC 346 (2011)

bare assertions are insufficient to demonstrate a genuine dispute on a material issue of law or fact under NRC's general contention admissibility requirements in section 2.309(f)(1)(vi), let alone a motion to reopen, which sets a higher evidentiary standard; CLI-12-3, 75 NRC 149 (2012)

evidence contained in affidavits accompanying motions to reopen must meet admissibility standards; LBP-15-14, 81 NRC 594 n.24 (2015)

level of support required to sustain a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-6, 75 NRC 367 (2012)

mere mention of the future filing of an affidavit does not satisfy this requirement; LBP-14-8, 79 NRC 527 n.39 (2014)

motions to reopen must also be accompanied by affidavits that set forth the factual and/or technical bases for movant's claim; LBP-15-14, 81 NRC 594, 596 (2015)

motions to reopen must be supported by affidavit, be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely if the evidence had been available; LBP-14-8, 79 NRC 523 (2014)

reply affidavit that did not accompany the motion to reopen will not be considered in determining whether petitioners have satisfied this section; LBP-12-10, 75 NRC 652 n.124 (2012)

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- 10 C.F.R. 2.326(d)
boards are to consider NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule; LBP-12-3, 75 NRC 208 (2012)
contention relating to a matter not previously in controversy among the parties must satisfy the requirements of section 2.309(c) and (f); LBP-12-1, 75 NRC 5-6 (2012); LBP-12-10, 75 NRC 639 (2012); LBP-14-8, 79 NRC 523 (2014)
criteria for reopening a closed record when the motion relates to a contention not previously in controversy are set out; LBP-11-20, 74 NRC 76 (2011)
motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in section 2.309(c); CLI-11-8, 74 NRC 226 (2011); LBP-11-20, 74 NRC 78, 92 (2011); LBP-11-23, 74 NRC 295 n.37, 296 (2011); LBP-11-35, 74 NRC 719 (2011); LBP-15-14, 81 NRC 595 n.29 (2015)
reopening standards expressly contemplate contentions that raise issues not previously litigated; CLI-12-3, 75 NRC 140 (2012)
rule is not intended to be limited to motions seeking only to submit additional evidence relating to a previously admitted contention; LBP-11-20, 74 NRC 91 (2011)
- 10 C.F.R. 2.327(b)
transcript of Atomic Safety and Licensing Board hearings will be available for inspection in the agency's public records system; LBP-11-5, 73 NRC 134 (2011)
- 10 C.F.R. 2.328
all hearings will be public; LBP-11-5, 73 NRC 134 (2011)
an adjudicatory hearing can be closed if the Commission orders it; LBP-11-5, 73 NRC 134 n.4 (2011)
board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 231 (2012)
boards may exclude the public from adjudicatory hearings or actions that involve restricted data, defense information, safeguards information protected from disclosure under the authority of AEA § 147, or information protected from disclosure under the authority of section 148; LBP-11-5, 73 NRC 134 n.4 (2011)
- 10 C.F.R. 2.329(a)
board conducted an initial scheduling conference to discuss development of an initial scheduling order that would help achieve just resolution of a dispute as efficiently and expeditiously as possible; LBP-14-11, 80 NRC 127 (2014)
- 10 C.F.R. 2.329(b)(1)
one fundamental purpose of the prehearing conference and the scheduling order is expediting the disposition of the proceeding; LBP-12-19, 76 NRC 200 (2012)
- 10 C.F.R. 2.329(e)
initial scheduling orders set forth issues or matters in controversy to be determined in the proceeding; LBP-14-11, 80 NRC 128 (2014)
- 10 C.F.R. 2.332(a)
shortly after a hearing request has been granted, the board must set a schedule to govern the proceeding; LBP-11-22, 74 NRC 279 (2011)
- 10 C.F.R. 2.332(b)
boards must use the applicable Model Milestones in 10 C.F.R. Part 2, Appendix B as a starting point for the schedule, but the board shall make appropriate modifications based upon the circumstances of each case; LBP-11-22, 74 NRC 279 (2011)
- 10 C.F.R. 2.332(c)
purpose of scheduling orders is to ensure proper case management, with the objective of expediting disposition of the proceeding, establishing early and continuing control so that the proceeding will not be protracted because of lack of management, and discouraging wasteful prehearing activities; LBP-15-29, 82 NRC 253-54 (2015)
- 10 C.F.R. 2.332(c)(1)
one fundamental purpose of the prehearing conference and the scheduling order is expediting the disposition of the proceeding; LBP-12-19, 76 NRC 200 (2012)

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- 10 C.F.R. 2.332(d)
hearings on environmental issues addressed in the environmental impact statement may not commence before issuance of the final EIS; CLI-15-17, 82 NRC 45 n.76 (2015); LBP-13-13, 78 NRC 275-76 (2013); LBP-11-22, 74 NRC 272 n.69 (2011); LBP-11-30, 74 NRC 631 (2011); LBP-15-3, 81 NRC 122 n.49 (2015)
hearings on safety issues may commence before publication of NRC Staff's safety evaluation if commencing the hearings at that time would expedite the proceeding; LBP-11-22, 74 NRC 272 n.69 (2011); LBP-11-30, 74 NRC 631 (2011); LBP-13-13, 78 NRC 275 (2013)
presiding officer must take into consideration NRC Staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact Staff's ability to complete its reviews in a timely manner; LBP-13-13, 78 NRC 275 (2013)
- 10 C.F.R. 2.333
contention challenging sufficiency of the draft environmental impact statement as it pertains to the protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 105 (2013)
- 10 C.F.R. 2.334(b)
filing deadlines will not be modified unless a party, in advance of the deadline, petitions the board for a change and demonstrates that there is good cause for such a change; LBP-14-11, 80 NRC 136 (2014)
- 10 C.F.R. 2.335
absent a rule waiver, NRC rules and regulations are not subject to attack in an adjudicatory proceeding; CLI-14-6, 79 NRC 447 (2014); CLI-15-22, 82 NRC 316 (2016); LBP-11-13, 73 NRC 568 (2011)
board improperly allowed petitioner to challenge the generic environmental impact statement's finding regarding severe accident consequences; CLI-15-6, 81 NRC 379 (2015)
board is prohibited from imposing restrictions on the use of 10 C.F.R. 50.61a that go beyond the requirements in the regulation; CLI-15-22, 82 NRC 316 (2016)
boards are precluded from hearing rule challenge absent a showing of special circumstances; LBP-14-9, 80 NRC 49 (2014)
boards cannot add a new requirement to a regulation; LBP-15-17, 81 NRC 788 (2015)
boards cannot prohibit what regulations allow except under specific conditions; LBP-15-17, 81 NRC 780 (2015)
Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-13, 73 NRC 551 (2011); LBP-11-21, 74 NRC 132 (2011)
challenges to the ABWR design certification are impermissible; LBP-11-38, 74 NRC 844 (2011)
contention is a challenge to section 50.61a itself, which is impermissible; LBP-15-17, 81 NRC 781 (2015)
contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-13-6, 77 NRC 284 (2013)
contention that seeks to impose a requirement beyond those imposed by a Commission regulation is inadmissible; CLI-11-9, 74 NRC 242 (2011); LBP-15-26, 82 NRC 175 n.22 (2015)
generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 350-51 (2015)
no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-11-8, 74 NRC 229 (2011)
Part 51's license renewal provisions cover environmental issues relating to onsite spent fuel storage generically and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-11-13, 73 NRC 570 (2011)
parties with new and significant information that could undermine the rationale for a Commission regulation must seek a rulemaking instead of challenging the regulation in a particular proceeding unless the information uniquely applies to a given adjudication; LBP-11-35, 74 NRC 715-16 (2011)
petitioner's suggestion that issuance of a license immediately upon completion of NRC Staff's review where a hearing is pending is inappropriate constitutes an attack on the regulation itself, which is not allowed in an individual adjudication in the absence of a waiver; CLI-15-17, 82 NRC 41 n.49 (2015)

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rule waiver petitions must address the criteria in this regulation; CLI-15-22, 82 NRC 318 (2016)

term “petition” in this section refers to the waiver petition, not a petition to intervene; CLI-11-11, 74 NRC 448 n.116 (2011)

to the extent that petitioner challenges the generic environmental impact statement, its remedy is a petition for rulemaking or a petition for a waiver of the rules based on circumstances; CLI-11-11, 74 NRC 456 (2011)

waivers of NRC regulations may be granted in extraordinary situations where special circumstances can be demonstrated; LBP-13-12, 78 NRC 242 (2013)

10 C.F.R. 2.335(a)

absent a waiver, no rule or regulation of the Commission, or any provision thereof, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to 10 C.F.R. Part 2; CLI-11-8, 74 NRC 229 (2011); CLI-12-6, 75 NRC 364 (2012); CLI-12-19, 76 NRC 380 (2012); CLI-15-19, 82 NRC 157 (2015); CLI-15-20, 82 NRC 218 n.40 (2015); CLI-15-21, 82 NRC 302 (2015); LBP-11-2, 73 NRC 46 (2011); LBP-11-13, 73 NRC 550, 553, 566 n.204 (2011); LBP-11-16, 73 NRC 655 701, 702 (2011); LBP-11-21, 74 NRC 125, 136, 140 (2011); LBP-11-29, 74 NRC 617-18 (2011); LBP-11-35, 74 NRC 714 (2011); LBP-12-8, 75 NRC 566 (2012); LBP-12-12, 75 NRC 755 (2012); LBP-12-24, 76 NRC 530 (2012); LBP-13-12, 78 NRC 242 (2013); LBP-14-16, 80 NRC 193 (2014); LBP-15-4, 81 NRC 164 (2015); LBP-15-5, 81 NRC 272 n.128 (2015); LBP-15-6, 81 NRC 325 (2015); LBP-15-17, 81 NRC 778 (2015); LBP-15-24, 82 NRC 76 n.37 (2015); LBP-15-26, 82 NRC 175 n.22 (2015)

adjudications are not the proper arena for challenges to NRC regulations; CLI-13-1, 77 NRC 9-10, 35 (2013); LBP-13-1, 77 NRC 62 (2013)

board admitted a contention on a conditional basis, pending Commission ruling on merits of petition for waiver of NRC regulations; CLI-11-11, 74 NRC 444 (2011)

challenge to use of an alternate concentration limit is an impermissible challenge to an NRC regulation; LBP-15-11, 81 NRC 434 n.213 (2015)

collateral attacks on NRC regulations, unsupported by any showing of special circumstances warranting a waiver, are rejected; LBP-14-16, 80 NRC 202 (2014)

collateral challenge to NRC emergency response data system rule is inadmissible; CLI-15-20, 82 NRC 218 (2015)

combined license applicant may reference an as-yet-uncertified design at its own risk; CLI-12-9, 75 NRC 429-30 (2012)

contention outside the scope of a proceeding is not admissible for hearing in that proceeding; CLI-15-21, 82 NRC 305 (2015)

contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-13-12, 78 NRC 243 (2013)

contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 244 (2013)

contention that, in the event of a core melt accident, applicant’s emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks NRC’s emergency planning regulation; LBP-11-15, 73 NRC 638 (2011)

contentions calling for requirements in excess of those imposed by regulations will be rejected as a collateral attack on regulations; CLI-12-5, 75 NRC 315 n.88 (2012)

contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; LBP-15-3, 81 NRC 106 (2015); LBP-15-5, 81 NRC 258 (2015)

contentions challenging existing NRC safety regulations are barred from consideration in adjudicatory proceedings; LBP-12-18, 76 NRC 158 (2012)

contentions that are the subject of general rulemaking by the Commission may not be litigated in individual licensing proceedings; CLI-14-8, 80 NRC 79 n.27 (2014)

contentions that challenge an agency rule or regulation without a waiver, in addition to being expressly prohibited, are outside the scope of the proceeding; CLI-15-21, 82 NRC 302 (2015)

contentions that challenge an NRC regulation are inadmissible; LBP-13-9, 78 NRC 73 (2013); LBP-13-12, 78 NRC 240 (2013)

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even if petitioner disputes that the Commission's newly adopted Continued Storage Rule satisfies the requirements of the National Environmental Policy Act or the court's decision, it cannot challenge the adoption or validity of the rule itself before a board; LBP-14-15, 80 NRC 155 (2014)

limited exception to NRC's general prohibition against challenges to its rules or regulations in adjudicatory proceedings is provided; CLI-13-7, 78 NRC 206 (2013)

litigants may not challenge a rule in NRC adjudicatory proceedings absent a showing of special circumstances; CLI-15-1, 81 NRC 10 (2015)

participant may request waiver of a current rule or regulation in a specific proceeding under special circumstances as an exception to the prohibition against challenging NRC rules or regulations in adjudicatory proceedings; CLI-14-7, 80 NRC 6 (2014)

petitioners are not barred from contending that additional testing is necessary to show margins of safety equivalent to those of the ASME BPV Code, Section XI, Appendix G because petitioners allege noncompliance with 10 C.F.R. Part 50, Appendix G and not Appendix H; LBP-15-20, 81 NRC 845 (2015)

regulations can be challenged only under extremely limited circumstances; LBP-15-5, 81 NRC 302 n.363 (2015)

scope of license amendment proceedings is limited to the license amendment request; LBP-15-24, 82 NRC 76 n.37 (2015)

to the extent a contention would require licensee to maintain the ERDS link or to create another ERDS-like system after its reactor is permanently shut down and defueled, it is an impermissible collateral attack on a regulation; LBP-15-4, 81 NRC 167 (2015)

to the extent petitioner seeks to raise a generic challenge to the 10-mile plume exposure pathway EPZ, such an argument constitutes an impermissible challenge to 10 C.F.R. 50.47(c)(2); LBP-11-15, 73 NRC 642 n.22 (2011)

to the extent that intervenors challenge all radiological releases from nuclear power plants, the contention presents an impermissible challenge to the NRC's regulations; LBP-12-12, 75 NRC 782 (2012)

to the extent that petitioner challenges the board's decision to apply the reopening standards strictly, its challenge constitutes an improper collateral attack on NRC regulations; CLI-11-2, 73 NRC 338 n.21 (2011)

use of "and" in the list of requirements for rule waiver means that all four factors must be met; CLI-11-11, 74 NRC 452 n.138 (2011)

10 C.F.R. 2.335(a)-(b)
petitioners cannot challenge an NRC regulation without first obtaining a waiver; LBP-15-20, 81 NRC 840 (2015)

10 C.F.R. 2.335(a)-(d)
procedure for obtaining a rule waiver is set out; CLI-12-19, 76 NRC 380 (2012)

10 C.F.R. 2.335(b)
absent a waiver, contentions that raise a direct or indirect challenge to a Commission regulation are inadmissible; LBP-11-16, 73 NRC 702 (2011); LBP-15-4, 81 NRC 164-65 (2015)

any request for a rule waiver or exception must be accompanied by an affidavit that identifies the subject matter of the proceeding as to which the application of the regulation would not serve the purposes for which the regulation was adopted, and the affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-11-16, 73 NRC 702 n.351 (2011)

collateral attacks on NRC regulations, unsupported by any showing of special circumstances warranting a waiver, are rejected; LBP-14-15, 80 NRC 153 (2014); LBP-14-16, 80 NRC 202 (2014)

limited exception to NRC's general prohibition against challenges to its rules or regulations in adjudicatory proceedings is provided; CLI-11-11, 74 NRC 448 (2011); CLI-13-7, 78 NRC 206 (2013)

litigants may not challenge a rule in NRC adjudicatory proceedings absent a showing of special circumstances; CLI-15-1, 81 NRC 10 (2015); LBP-15-4, 81 NRC 173 (2015); LBP-15-5, 81 NRC 272 n.129 (2015)

no rule or regulation of the Commission, or any provision thereof is subject to attack in any adjudicatory proceeding subject to 10 C.F.R. Part 2 except as provided by the waiver provision of this regulation; LBP-15-24, 82 NRC 76 n.37 (2015)

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- NRC rules provide a mechanism for supplementing an original NEPA analysis, but the rules do not guarantee a hearing; CLI-13-7, 78 NRC 211 (2013)
- participant may request the waiver of a current rule or regulation in a specific proceeding under special circumstances as an exception to the prohibition against challenging NRC rules or regulations in adjudicatory proceedings; CLI-11-11, 74 NRC 448 (2011); CLI-14-7, 80 NRC 6 (2014); LBP-14-16, 80 NRC 193 (2014)
- petition for rule waiver or exception must allege special circumstances that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived and those circumstances must be unique rather than common to a large class of facilities; LBP-12-6, 75 NRC 271 (2012)
- petitioner who believes a regulation should not be applied in a particular proceeding may seek a waiver of that regulation; LBP-13-1, 77 NRC 63 (2013)
- petitioners are not required to demonstrate that their complaint is unique to the facility in question or that their complaint reflects a significant safety issue; LBP-13-1, 77 NRC 64 (2013)
- rule waiver petitions must be accompanied by an affidavit that identifies the specific aspects of the subject matter of the proceeding as to which the application of the rule or regulation would not serve the purposes for which it was adopted; CLI-11-11, 74 NRC 448, 449 n.123 (2011); CLI-12-6, 75 NRC 364 (2012); CLI-12-19, 76 NRC 387 (2012); CLI-13-7, 78 NRC 206-07 (2013); CLI-15-6, 81 NRC 379 n.204 (2015); CLI-15-21, 82 NRC 302 (2015); LBP-11-35, 74 NRC 714 (2011); LBP-12-6, 75 NRC 271 (2012); LBP-12-24, 76 NRC 539 (2012); LBP-13-1, 77 NRC 63, 66 (2013); LBP-13-12, 78 NRC 243 (2013); LBP-14-16, 80 NRC 194 (2014); LBP-15-3, 81 NRC 96 n.22 (2015); LBP-15-17, 81 NRC 778 n.156 (2015)
- special circumstances are required for a rule waiver; LBP-14-16, 80 NRC 186 (2014)
- to challenge generic application of a rule, petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply; CLI-13-7, 78 NRC 207 (2013)
- to litigate a SAMA-related contention in adjudicatory proceedings where the SAMA-analysis exception applies, petitioner must obtain a waiver by satisfying the requirements in this section as well as the contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 212 (2013)
- to obtain waiver of a rule, the allegation of special circumstances must be set forth with particularity and supported by an affidavit or other proof; CLI-12-6, 75 NRC 364 (2012); LBP-14-16, 80 NRC 196 n.79 (2014); LBP-15-5, 81 NRC 272 n.129 (2015)
- to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in this license renewal proceeding, the Commission must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 449 (2011)
- 10 C.F.R. 2.335(b)-(c)
- presiding officers must dismiss any petition for waiver that does not make a prima facie showing of special circumstances with respect to the subject matter of the particular proceeding such that application of the rule or regulation would not serve the purposes for which it was adopted; LBP-11-35, 74 NRC 714 (2011)
- 10 C.F.R. 2.335(b)-(d)
- Commission remands license renewal proceeding to the board for the limited purpose of considering a rule waiver petition; CLI-12-19, 76 NRC 378 (2012)
- conditions necessary for grant of a rule waiver are outlined; LBP-15-6, 81 NRC 325 (2015)
- 10 C.F.R. 2.335(c)
- role of the board when a rule waiver request is filed is limited to determining whether petitioner has made a prima facie showing that it has satisfied 10 C.F.R. 2.335(b), and if not, the board may not further consider the matter; LBP-13-1, 77 NRC 64 (2013)
- 10 C.F.R. 2.335(d)
- Commission may direct further proceedings as it considers appropriate to aid its determination; CLI-11-11, 74 NRC 448 n.117 (2011)
- licensing board initially determines, based on the record, whether a prima facie showing has been made by the petitioner for its rule waiver request, and then the board must certify the matter directly to the

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- Commission for a final determination; LBP-13-1, 77 NRC 64 (2013); LBP-14-16, 80 NRC 193, 194 (2014)
- 10 C.F.R. 2.336
“disclosing party” means the party required to make mandatory disclosure; LBP-11-5, 73 NRC 136 (2011)
each party to a proceeding must disclose all documents relevant to the admitted contentions, except those documents for which a claim of privilege or protected status is made; LBP-11-5, 73 NRC 132 (2011)
“receiving party” means the party to whom the mandatory disclosure must be made; LBP-11-5, 73 NRC 139 (2011)
SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 139-40 (2011)
- 10 C.F.R. 2.336(a)
board suspended mandatory disclosure obligations until further notice; CLI-12-14, 75 NRC 695 (2012)
- 10 C.F.R. 2.336(a)(3)
claim and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-12-3, 75 NRC 208 n.37 (2012); LBP-13-6, 77 NRC 303 n.35 (2013)
parties must list documents claimed to be privileged or protected on a privilege log; LBP-11-5, 73 NRC 132 (2011)
- 10 C.F.R. 2.336(b)
because parties to a Subpart L proceeding may not seek discovery from the other parties to the proceeding, all such parties must make periodic mandatory disclosures; LBP-14-2, 79 NRC 146 (2014)
NRC Staff is exempted from the obligations of the protective order, even though Staff might hold many documents that are subject to the mandatory disclosure requirements; LBP-11-5, 73 NRC 133 (2011)
- 10 C.F.R. 2.336(b)(3)
in a Subpart L proceeding, NRC Staff must disclose or provide documents that support Staff’s review of the application or proposed action, together with a list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made; LBP-13-5, 77 NRC 238 (2013)
- 10 C.F.R. 2.336(b)(5)
claim and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-12-3, 75 NRC 208 n.37 (2012); LBP-13-6, 77 NRC 303 n.35 (2013)
in a Subpart L proceeding, NRC Staff must disclose or provide documents that support Staff’s review of the application or proposed action, together with a list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made; LBP-13-5, 77 NRC 238, 246 (2013)
- 10 C.F.R. 2.336(c)
all disclosures under this section must be accompanied by a certification (in the form of a sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification; LBP-14-2, 79 NRC 147 (2014)
- 10 C.F.R. 2.336(d)
disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update; LBP-14-2, 79 NRC 147 (2014)
if a board issues a scheduling order before the effective date of the final rule that incorporates this section, which currently requires parties to update their disclosures every 14 days, that obligation would change to every month on a day specified by the board, unless the parties agree otherwise, once the effective date of the rule is reached; LBP-15-1, 81 NRC 31 n.75 (2015)
parties to a Subpart L proceeding must update their disclosures every month after initial disclosures on a due date selected by the presiding officer in the order admitting contentions; LBP-14-2, 79 NRC 147 (2014)
- 10 C.F.R. 2.336(e)(1)
parties, including NRC Staff, may be sanctioned for noncompliance with the disclosure regulations; LBP-14-2, 79 NRC 147 (2014)
- 10 C.F.R. 2.336(e)(2)
presiding officer may impose sanctions on a party that fails to provide any document required to be disclosed, unless the party demonstrates good cause for its failure to make the disclosure; LBP-14-2, 79 NRC 147 (2014)

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- 10 C.F.R. 2.337
evidence contained in affidavits supporting a motion to reopen must meet the admissibility standards of this section; CLI-12-6, 75 NRC 367 (2012)
this section, in establishing the evidentiary standard of “relevant, material, and reliable evidence” being admissible in a hearing, thereby establishes the right of all parties to present such admissible evidence; LBP-11-4, 73 NRC 124 (2011)
- 10 C.F.R. 2.337(a)
boards accord each exhibit weight to the extent that it is relevant, material, and reliable; LBP-11-18, 74 NRC 36 (2011)
evidence contained in affidavits supporting a motion to reopen must meet the admissibility standards, i.e., be relevant, material, and reliable; CLI-12-3, 75 NRC 138-39 (2012); CLI-12-6, 75 NRC 367 (2012); LBP-11-23, 74 NRC 304 n.78 (2011)
only relevant, material, and reliable evidence that is not unduly repetitious will be admitted; LBP-12-21, 76 NRC 248 n.171 (2012)
- 10 C.F.R. 2.337(f)
although this section, by its terms, applies to evidence at hearings, the bounds this rule places on official notice is also appropriate for the contention admissibility stage of a proceeding; LBP-11-7, 73 NRC 290 n.231 (2011)
board takes official notice of the contents of a document that was discussed at the hearing but was not submitted as an exhibit by any party; LBP-13-13, 78 NRC 390 n.984 (2013)
licensing board takes official notice of NRC-issued licenses; LBP-15-3, 81 NRC 140 n.64 (2015)
licensing board takes official notice of NRC regulatory guide; LBP-15-3, 81 NRC 83 n.11 (2015)
promulgation of state regulations falls within the broad reach of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-7, 73 NRC 290 n.231 (2011)
- 10 C.F.R. 2.337(f)(1)
boards may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-20, 74 NRC 101 n.56 (2011)
Google Maps and Mapquest searches of distance from petitioner’s address may be used to establish proximity to a proposed facility; LBP-12-3, 75 NRC 189 n.26 (2012)
- 10 C.F.R. 2.338
boards are empowered to approve settlements proposed by the parties; LBP-15-30, 82 NRC 344 n.25 (2015)
Commission, like other adjudicatory bodies, looks with favor upon settlements; LBP-14-4, 79 NRC 333 (2014)
fair and reasonable settlement of issues proposed for litigation is encouraged; LBP-15-21, 82 NRC 6-7 (2015); LBP-15-30, 82 NRC 345 (2015)
strictures governing settlements are set forth; LBP-15-21, 82 NRC 7 (2015)
this section is a new provision that consolidates and amplifies the previous rules pertaining to settlement; LBP-15-30, 82 NRC 344 n.25 (2015)
- 10 C.F.R. 2.338(a)
NRC has a policy of encouraging settlements; LBP-14-4, 79 NRC 368 (2014)
- 10 C.F.R. 2.338(b)
parties pursuing settlement may seek to have a settlement judge appointed; LBP-14-11, 80 NRC 133 (2014)
- 10 C.F.R. 2.338(f)
settlement is encouraged, but the fact that a possible settlement is being negotiated does not change any of the deadlines set forth in the initial scheduling order; LBP-14-11, 80 NRC 133 (2014)
- 10 C.F.R. 2.338(g)
form of settlement agreements is set forth; LBP-15-21, 82 NRC 7 (2015)
presiding officer approval for settlements in contested proceedings with admitted contentions is evidenced from other provisions of section 2.338; LBP-15-30, 82 NRC 344 n.25 (2015)
settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted; LBP-15-30, 82 NRC 344 n.25 (2015)

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- 10 C.F.R. 2.338(h)
content of settlement agreements is set forth; LBP-15-21, 82 NRC 7-8 (2015)
- 10 C.F.R. 2.338(i)
board finds that it is not necessary for a notice of hearing to be issued before the board can approve a settlement; LBP-15-30, 82 NRC 344 n.25 (2015)
in an enforcement proceeding, due weight must be given to NRC Staff's position; LBP-15-21, 82 NRC 8 (2015)
NRC's policy of encouraging settlements specifically recognizes that settlements are not inviolate, and the presiding officer or Commission may order adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding; LBP-14-4, 79 NRC 368 (2014)
parties bring settlement requests pursuant to this regulation; LBP-15-30, 82 NRC 344 n.25 (2015)
settlement agreement approval process is discussed; LBP-15-21, 82 NRC 7-8 (2015)
settlements approved by a presiding officer are subject to Commission review; LBP-15-21, 82 NRC 8 (2015)
upon review of a settlement agreement, the board is satisfied that its terms reflect a fair and reasonable settlement in keeping with the objectives of the NRC's enforcement policy, and satisfy the requirements of 10 C.F.R. 2.338(g) and (h); LBP-11-3, 73 NRC 83 (2011)
- 10 C.F.R. 2.340
automatic stay provisions were removed in 2007; CLI-11-5, 74 NRC 155 n.49 (2011)
- 10 C.F.R. 2.340(a)
boards have limited authority to consider matters in addition to those properly put into controversy by the parties; LBP-11-9, 73 NRC 417-18 (2011)
boards may consider any matter, but only to the extent that the board determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the board; LBP-11-9, 73 NRC 418 (2011)
requesting authorization from the Commission for the board, on its own motion, to examine and decide the serious safety or common defense and security matters underlying contentions is allowed to be used for matters that were initially raised by a party, where that party later withdrew; LBP-11-9, 73 NRC 414 (2011)
- 10 C.F.R. 2.340(a)(2)(ii)
where NRC Staff takes action pursuant to a determination of no significant hazards consideration and issues a license amendment prior to a presiding officer's initial decision, the Staff will thereafter take appropriate action (if necessary) in accordance with the presiding officer's decision; CLI-15-25, 82 NRC 405 n.101 (2015); LBP-15-13, 81 NRC 474 n.114 (2015)
- 10 C.F.R. 2.340(b)
adequacy of NRC Staff's review of transmission-corridor impacts might be appropriate for the board's consideration sua sponte; CLI-15-1, 81 NRC 4 (2015)
because the final environmental impact statement had been issued and the board had ruled that a contention remained procedurally defective, it was an appropriate point for board consideration of whether the contention merited sua sponte review; LBP-14-9, 80 NRC 37 (2014)
boards must request Commission approval to undertake sua sponte review; CLI-15-1, 81 NRC 4-5 (2015); LBP-14-9, 80 NRC 27 (2014)
licensing boards may request Commission approval to consider the merits of a serious environmental issue even when it was excluded from the proceeding for procedural reasons; LBP-14-9, 80 NRC 38 (2014)
sua sponte authority of presiding officer is compared under predecessor rule 10 C.F.R. 2.760a; LBP-14-9, 80 NRC 38 (2014)
untimely filed contention is appropriate for sua sponte board review; LBP-14-9, 80 NRC 26-27 (2014)
with Commission's express approval, a licensing board may make findings on a serious safety, environmental, or common defense and security matter not put into controversy by the parties; CLI-15-1, 81 NRC 8-9 (2015)
- 10 C.F.R. 2.340(b)(1)
boards may make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental,

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- or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer; LBP-14-9, 80 NRC 38 (2014)
- 10 C.F.R. 2.341
- amicus curiae filings are allowed at the Commission's discretion or sua sponte; CLI-15-4, 81 NRC 225 n.8 (2015); CLI-15-10, 81 NRC 537-38 n.5 (2015)
- as a consequence of the Commission ruling that the board should have terminated the proceeding once it resolved all contentions, all of the board's earlier interlocutory orders become ripe for appellate review; CLI-12-14, 75 NRC 699 (2012)
- because the Commission's vacatur order does not address the merits, it need not address an argument that NRC Staff impermissibly raises objections to the merits of the board's decision without filing a petition for review; CLI-13-9, 78 NRC 559 n.31 (2013)
- challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 385 (2012)
- Commission exercises its discretion to review a board decision that raises a potentially recurring procedural issue of some importance; CLI-12-14, 75 NRC 699 (2012)
- following issuance of the board's final dispositive decision on contentions held in abeyance, and consistent with NRC procedural rules, applicant and intervenor will have the opportunity to appeal the Board's decisions; CLI-14-3, 79 NRC 37 (2014)
- heightened showing is required to prevent overuse of sua sponte review, including a demonstration of extraordinary circumstances; CLI-15-1, 81 NRC 9 n.39 (2015)
- in light of the board's limited jurisdiction, it concludes that petitioner may appeal its decision immediately; LBP-14-8, 79 NRC 528-29 (2014)
- petitioners have a right to reply to petitions for review subject to this section; CLI-12-6, 75 NRC 360 n.33 (2012)
- piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)
- review of a board's dismissal of some contentions would normally await the end of the case; CLI-12-19, 76 NRC 388 (2012)
- settlements approved by a presiding officer are subject to Commission review; LBP-15-21, 82 NRC 8 (2015)
- this section applies to appeals of rulings on new contentions filed after initial intervention petitions; CLI-12-7, 75 NRC 385 (2012)
- time for petitioning for review of any of a board's prior interlocutory rulings will run from the date of the Commission's ruling closing the record; CLI-12-14, 75 NRC 703 (2012)
- waste confidence contention's pendency creates some uncertainty as to whether petitioner may appeal the board's ruling on a proposed contention, or whether it must await resolution of the waste confidence issue; LBP-14-8, 79 NRC 528 (2014)
- 10 C.F.R. 2.341(a)(1)
- this section governs review of the majority of presiding officer decisions; CLI-12-6, 75 NRC 361 (2012)
- 10 C.F.R. 2.341(a)(4)(iii) & (iv)
- review is granted where petitions for review raise substantial questions of law and procedure; CLI-15-6, 81 NRC 369 (2015)
- 10 C.F.R. 2.341(b)
- following issuance of the board's final dispositive decision on contentions held in abeyance, and consistent with NRC procedural rules, applicant and intervenor will have the opportunity to appeal the Board's decisions; CLI-14-3, 79 NRC 37 (2014)
- petition for review of order dismissing final contention and terminating proceeding must be filed within 25 days after the order is served; LBP-15-22, 82 NRC 51 (2015)
- petitioner will have an opportunity to challenge the board's contention admissibility decision at the end of the case; CLI-12-13, 75 NRC 688-89 (2012)
- piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-13-3, 77 NRC 54 (2013)
- with the board's termination of the proceeding, the board's interlocutory rulings on contention admissibility became ripe for appeal; CLI-11-9, 74 NRC 236 (2011)

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- 10 C.F.R. 2.341(b)(1)
petitions for review are allowed after a full or partial initial decisions, both of which are considered final decisions; CLI-11-10, 74 NRC 255 (2011); CLI-11-14, 74 NRC 810 (2011)
petitions for review must be filed within 15 days; CLI-12-17, 76 NRC 209 n.7 (2012)
- 10 C.F.R. 2.341(b)(1)-(3)
parties may choose whether to submit a petition for review, an answer in support of the petition, or neither; CLI-11-14, 74 NRC 808 n.36 (2011)
- 10 C.F.R. 2.341(b)(2)
intervenor's motion for an enlargement of the page limit for their petition for review is granted;
CLI-14-10, 80 NRC 161 n.16 (2014)
- 10 C.F.R. 2.341(b)(2)-(3)
petitions for review of partial initial decision and any answer shall conform to the requirements of this section; LBP-12-5, 75 NRC 255 (2012)
- 10 C.F.R. 2.341(b)(3)
although rules do not provide for filing of reply briefs, as a matter of discretion the Commission reviews a reply brief; CLI-15-7, 81 NRC 492 n.68 (2015)
any other party to the proceeding may file an answer supporting or opposing Commission review;
CLI-15-6, 81 NRC 368 n.149 (2015)
only the petitioning party may file reply briefs; CLI-15-7, 81 NRC 492 n.68 (2015)
- 10 C.F.R. 2.341(b)(4)
Commission may, as a matter of discretion, grant review of a full or partial initial decision, giving due weight to the existence of a substantial question with respect to any of the considerations outlined in this regulation; CLI-12-1, 75 NRC 45-46 (2012); CLI-15-2, 81 NRC 214 (2015); CLI-15-19, 82 NRC 154 (2015)
petition for review may be granted if it presents a substantial question with respect to one or more of five considerations; CLI-11-2, 73 NRC 336-37 (2011)
standard for discretionary review is described; CLI-15-7, 81 NRC 493 (2015)
- 10 C.F.R. 2.341(b)(4)(i)
grant of discretionary review requires that intervenors raise a substantial question that the board's findings of fact are clearly erroneous; CLI-14-10, 80 NRC 166 (2014); CLI-15-7, 81 NRC 497 (2015)
important questions of law and material fact merit Commission review; CLI-15-6, 81 NRC 351 (2015)
- 10 C.F.R. 2.341(b)(4)(i)-(v)
Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations of this section; CLI-11-9, 74 NRC 237 (2011); CLI-12-3, 75 NRC 138 (2012); CLI-12-6, 75 NRC 361 (2012); CLI-12-7, 75 NRC 385 (2012); CLI-12-10, 75 NRC 483 (2012); CLI-12-15, 75 NRC 710 (2012); CLI-12-21, 76 NRC 494 (2012); CLI-14-10, 80 NRC 161 (2014); CLI-15-1, 81 NRC 6 (2015); CLI-15-9, 81 NRC 519 (2015)
- 10 C.F.R. 2.341(b)(4)(ii)
petition for review must raise a substantial question with respect to whether a necessary legal conclusion is without governing precedent or is contrary to established law; CLI-15-7, 81 NRC 494, 496 (2015)
- 10 C.F.R. 2.341(b)(4)(ii), (iii)
applicant satisfied the regulatory standards for discretionary review by identifying a substantial question as to whether the board decision reaches at least one necessary legal conclusion without governing precedent or addresses at least one substantial and important question of law, policy, or discretion;
CLI-13-1, 77 NRC 17 (2013)
- 10 C.F.R. 2.341(b)(4)(iii)
important questions of law and material fact merit Commission review; CLI-15-6, 81 NRC 351 (2015)
intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 527-28 & n.98 (2015)
- 10 C.F.R. 2.341(b)(5)
Commission declines to consider new arguments raised on appeal that the board did not have the opportunity to consider; CLI-15-17, 82 NRC 40 n.46 (2015)
- 10 C.F.R. 2.341(c)(2)
briefs on appeal are limited to 30 pages in length, absent Commission order directing otherwise;
CLI-11-8, 74 NRC 219 (2011)

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- page limit for appellate briefs excludes tables of content and citation, appropriate exhibits, and statutory or regulatory extracts; CLI-11-8, 74 NRC 219 (2011)
- 10 C.F.R. 2.341(d)
motions for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-14-1, 79 NRC 3 n.6 (2014)
petition for review is treated as a petition for reconsideration; CLI-12-17, 76 NRC 209 (2012)
- 10 C.F.R. 2.341(f)
Commission will consider taking discretionary interlocutory review where the requesting party shows that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 37 (2015)
- 10 C.F.R. 2.341(f)(1)
boards are encouraged to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-12-13, 75 NRC 685 (2012)
piecemeal review of licensing board decisions is disfavored, but boards may refer rulings that, although interlocutory, raise significant and novel legal or policy issues or require Commission resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 206 (2013)
referred rulings or certified questions must raise significant and novel legal or policy issues or issues whose early resolution would materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 206 n.25 (2013); CLI-15-1, 81 NRC 9 n.39 (2015)
review of a board's certified question that raises a significant and novel issue whose early resolution will materially advance the orderly disposition of the proceeding is granted; CLI-11-4, 74 NRC 2 (2011)
- 10 C.F.R. 2.341(f)(2)
appropriate mechanism to challenge individual contention admissibility determinations following a ruling on an initial petition is a request for interlocutory review; CLI-12-12, 75 NRC 607 (2012)
Commission may at its discretion grant a party's request for interlocutory review of a board decision; CLI-12-18, 76 NRC 373 (2012)
discretionary interlocutory review is granted only where the party demonstrates that the issue for which it seeks review threatens it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through an appeal following the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-6, 74 NRC 209 (2011); CLI-11-14, 74 NRC 811 (2011); CLI-12-12, 75 NRC 607 (2012); CLI-12-13, 75 NRC 687-88 (2012); CLI-12-18, 76 NRC 373 (2012); CLI-13-3, 77 NRC 54 (2013); CLI-15-24, 82 NRC 335 (2015)
interlocutory review of decisions and actions of a presiding officer may be available; LBP-14-5, 79 NRC 401 (2014)
where an admitted contention is pending before the board, appeals do not lie under section 2.311, but rather under this section, which governs petitions for interlocutory review, including board rulings on new contentions; CLI-13-3, 77 NRC 54 (2013)
- 10 C.F.R. 2.341(f)(2)(i)
Commission may grant interlocutory review if the issue for which the party seeks review threatens the party adversely affected by it with immediate and serious irreparable impact which could not be alleviated through an appeal at the end of the case; CLI-15-17, 82 NRC 39 n.41 (2015)
- 10 C.F.R. 2.341(f)(2)(i)-(ii)
denial of summary disposition neither threatens the Staff with immediate and serious irreparable impact which could not be alleviated through a petition for review of the presiding officer's final decision nor affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-10, 74 NRC 256 (2011)
- 10 C.F.R. 2.342
because this section does not apply to petitioners' motion for a stay, the Commission does not address applicant's request to strike the motion because it exceeds that rule's 10-page limit; CLI-12-11, 75 NRC 528 n.26 (2012)
Commission considers requests for stays of licensing board decisions under this section; CLI-12-11, 75 NRC 528 (2012)

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- this provision explicitly authorizing stay applications is available only to parties to adjudicatory proceedings seeking stays of decisions or actions of a presiding officer pending the filing and resolution of a petition for review; CLI-11-5, 74 NRC 158 (2011)
- 10 C.F.R. 2.342(a)
regulation applies only to decisions or actions of a presiding officer or licensing board in a proceeding to which the movant is a party pending the filing and resolution of a petition for review; CLI-14-4, 79 NRC 252 (2014)
- 10 C.F.R. 2.342(e)
four factors must be addressed when the Commission or presiding officer is asked to stay the effectiveness of a presiding officer's decision or action during the pendency of an appeal; CLI-15-17, 82 NRC 38 n.27 (2015)
in deciding motions seeking a stay of agency action pending judicial review, the Commission looks to the same four-part test that governs stays of licensing board decisions pending Commission review; CLI-12-11, 75 NRC 528-29 (2012)
irreparable injury is the most important of the factors for grant or denial of a stay; LBP-15-2, 81 NRC 53-54 (2015)
standards of this section are applied to requests to stay presiding officer decisions; CLI-14-6, 79 NRC 449 n.30 (2014)
- 10 C.F.R. 2.343
in its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-11-8, 74 NRC 219 n.15 (2011); CLI-12-12, 75 NRC 613-14 (2012)
- 10 C.F.R. 2.345
petition for review is treated as a petition for reconsideration; CLI-12-17, 76 NRC 209 (2012)
- 10 C.F.R. 2.345(a)(1)
reconsideration motions must be filed within 10 days of the action for which reconsideration is requested; CLI-12-17, 76 NRC 209 n.7 (2012)
- 10 C.F.R. 2.345(b)
if leave to file a motion for reconsideration is granted, the motion must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, which renders the decision invalid; CLI-12-17, 76 NRC 209 (2012)
- 10 C.F.R. 2.346(i)
Secretary of the Commission refers motions to reopen to the Atomic Safety and Licensing Board Panel pursuant to her authority; CLI-12-14, 75 NRC 702 n.61 (2012)
- 10 C.F.R. 2.390
flooding hazard reevaluation report contains security-related information, and so a portion of the document is not publicly available; DD-15-4, 81 NRC 872 (2015); DD-15-5, 81 NRC 880 (2015)
NRC regulations encompass the FOIA exemptions as well as instructions for outside entities who might submit nonpublic information to the NRC; CLI-13-5, 77 NRC 228 (2013)
- 10 C.F.R. 2.390(a)(1), (3), (4)
parties shall produce, as part of their mandatory disclosures, privilege logs covering any documents claimed to qualify for protected status as security-related information and/or as protected information; LBP-11-5, 73 NRC 133 (2011)
- 10 C.F.R. 2.390(a)(1)-(9)
SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 139-40 (2011)
- 10 C.F.R. 2.390(a)(4)
confidential commercial information, release of which likely would lead to substantial competitive harm, is entitled to protection; CLI-15-24, 82 NRC 334 (2015)
- 10 C.F.R. 2.390(a)(5)
among the categories of privileged documents are interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Commission; LBP-13-5, 77 NRC 238 (2013)

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- 10 C.F.R. 2.390(b)
protective order, and the good-faith representation and designation of documents as protected documents, serves in lieu of the requirement for marking and for an affidavit; LBP-11-5, 73 NRC 141 n.18 (2011)
- 10 C.F.R. 2.390(b)(6)
if the Commission determines on appeal that information withheld under a protective order should have been publicly disclosed, it will direct that such information and the transcript of the related *in camera* session be made publicly available; CLI-15-24, 82 NRC 338 n.40 (2015)
in camera hearing sessions may be held when information sought to be withheld from public disclosure is offered into evidence; CLI-15-24, 82 NRC 338 n.39 (2015)
- 10 C.F.R. 2.390(d)(1)
parties shall produce, as part of their mandatory disclosures, privilege logs covering any documents claimed to qualify for protected status as security-related information and/or as protected information under; LBP-11-5, 73 NRC 133 (2011)
- 10 C.F.R. 2.402
consolidating proceedings is the exception rather than the rule; CLI-14-5, 79 NRC 261 n.37 (2014)
- 10 C.F.R. 2.702(f)
licensee's motion to quash subpoena duces tecum because production of the requested file would compromise its employee concerns program by potentially subjecting information contained in the file to public disclosure as an official agency record under FOIA is denied; CLI-13-5, 77 NRC 226-27 (2013)
- 10 C.F.R. 2.704(a)
within 45 days of the initial scheduling order, target of the enforcement order must provide certain information and documents to the NRC enforcement director; LBP-14-11, 80 NRC 133-34 (2014)
- 10 C.F.R. 2.704(a)(2)
scope of mandatory disclosures that parties must make under Subpart G is defined by the disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 128 (2014)
- 10 C.F.R. 2.705(b)
NRC Staff counsel may file written interrogatories that the target of an enforcement order must answer; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.705(b)(1)
scope of discovery under Subpart G covers any matter that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party; LBP-14-11, 80 NRC 128-29 (2014)
- 10 C.F.R. 2.705(f)
as soon as practicable after issuance of the initial scheduling order, parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the proceeding or any portion thereof, to make or arrange for the disclosures required by section 2.704, and to develop a proposed discovery plan; LBP-14-11, 80 NRC 132-33 (2014)
discovery may not begin until 10 days after petitioner and the Director have held the mandatory consultation; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.706(a)
NRC Staff counsel may take the deposition of the target of an enforcement order or any other person; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.707(a)
NRC Staff counsel may require the target of an enforcement order to provide the Director with a copy of any designated relevant document that is within his possession, custody, or control; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.709
within certain constraints, target of an enforcement order may pursue discovery against the NRC Staff; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.709(a)(1)
target of an enforcement order may require NRC Staff to attend a prehearing meeting where he can require that Staff member to answer questions orally under oath; LBP-14-11, 80 NRC 134 (2014)

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- 10 C.F.R. 2.709(a)(2)
target of an enforcement order may serve interrogatories on NRC Staff, must show that answers to the interrogatories are necessary to a proper decision in the proceeding, and may ask the board to direct NRC Staff to answer those interrogatories; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.709(a)(3), (4)
target of an enforcement order may require NRC Staff to attend a prehearing meeting where he can require that Staff member to answer questions orally under oath; LBP-14-11, 80 NRC 134 (2014)
- 10 C.F.R. 2.709(a)(6)
scope of mandatory disclosures that parties must make under Subpart G is defined by the disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 128 (2014)
- 10 C.F.R. 2.709(a)(6)(i)(A)
target of an enforcement order must be provided a copy of all NRC Staff documents that are relevant to disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 133 (2014)
- 10 C.F.R. 2.709(d)
boards can request that a document for which a deliberative process privilege is claimed be provided to it for *in camera* inspection; LBP-13-5, 77 NRC 245 n.64 (2013)
- 10 C.F.R. 2.710
contradictory provisions of subsections (a) and (b) are discussed; LBP-11-23, 74 NRC 332 (2011)
standard for deciding motions for summary disposition in Subpart L proceedings closely parallels the standard used by the federal courts in deciding motions for summary judgment; LBP-11-31, 74 NRC 648 (2011)
- 10 C.F.R. 2.710(a)
all material facts set forth in the statement required to be served by summary disposition movant will be considered to be admitted unless controverted by the statement required to be served by the opposing party; LBP-11-4, 73 NRC 123 (2011); LBP-12-26, 76 NRC 564 (2012)
if summary disposition movant meets its burden, the nonmoving party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation and cannot rely on mere allegations or denials, or the facts in controversy will be deemed admitted; LBP-11-14, 73 NRC 595 (2011); LBP-12-23, 76 NRC 450 (2012)
if the opponent of summary disposition declines to oppose the moving party's prima facie showing of undisputed material facts, those facts will be considered admitted; LBP-12-4, 75 NRC 218-19 (2012)
motions for summary disposition must contend that there are facts on which there is no genuine issue to be heard; LBP-14-5, 79 NRC 395 n.100 (2014)
summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-12-2, 75 NRC 163 n.18 (2012)
this section establishes not only an obligation but also a right to respond in a summary disposition context; LBP-11-4, 73 NRC 124 (2011)
- 10 C.F.R. 2.710(b)
at issue is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the summary disposition opponent for a reasonable trier of fact to find in favor of that party; LBP-11-4, 73 NRC 100 (2011)
if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 100 (2011)
if no answer to a summary disposition motion is filed, the decision sought, if appropriate, must be rendered; LBP-12-26, 76 NRC 564 (2012)
if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; LBP-11-20, 74 NRC 103-04 n.72 (2011)
only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition; LBP-11-4, 73 NRC 100 (2011)
opponent of a summary disposition motion cannot rest on the allegations or denials of a pleading, but instead must go beyond the pleadings and by its own affidavits, or the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; LBP-12-4, 75 NRC 218 (2012)

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- 10 C.F.R. 2.710(d)(2)
at issue is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the summary disposition opponent for a reasonable trier of fact to find in favor of that party; LBP-11-4, 73 NRC 100 (2011)
even where no factual dispute exists, summary disposition may only be granted if movant is entitled to judgment as a matter of law; LBP-12-26, 76 NRC 573 (2012)
if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 100 (2011)
motions for summary disposition shall be granted if filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-11-4, 73 NRC 98-99 (2011); LBP-11-7, 73 NRC 263 (2011); LBP-11-14, 73 NRC 594 (2011); LBP-12-2, 75 NRC 163 n.18 (2012); LBP-12-4, 75 NRC 218 (2012); LBP-12-19, 76 NRC 190 (2012); LBP-12-23, 76 NRC 450 (2012); LBP-12-26, 76 NRC 564, 573, 574 (2012)
motions for summary disposition will be granted if there is no genuine issue as to any material fact and the moving party is entitled to a decision as a matter of law; LBP-11-17, 74 NRC 20 n.40 (2011); LBP-11-31, 74 NRC 648, 649 (2011)
only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition; LBP-11-4, 73 NRC 100 (2011)
summary disposition movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law; LBP-12-23, 76 NRC 466 (2012)
where a nonmoving party declines to oppose a motion for summary disposition, the board shall accept as admitted the moving party's prima facie showing of material facts, but boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 219 (2012)
- 10 C.F.R. 2.714(a)(1)
where the time for filing contentions had expired in a given case, no new TMI-related contentions would be accepted absent a showing of good cause and a balancing of the late-filing factors; CLI-11-5, 74 NRC 154 (2011)
- 10 C.F.R. 2.714(b)
to the extent that the board relied on a precedent that allowed notice pleading under this regulation in making its contention admissibility determination, it erred; CLI-15-23, 82 NRC 325 n.21 (2015)
- 10 C.F.R. 2.749(b)
affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein; LBP-11-23, 74 NRC 332 (2011)
- 10 C.F.R. 2.758(d) (2004)
if on the basis of the petition, affidavit, and any response provided for in paragraph (b) of this section, the presiding officer determines that a prima facie showing has been made, the presiding officer shall, before ruling thereon, certify the matter directly to the Commission; CLI-11-11, 74 NRC 448 n.116 (2011)
- 10 C.F.R. 2.760a
matters not put into controversy by the parties will be examined and decided by the presiding officer only in extraordinary circumstances where he determines that a serious safety, environmental, or common defense and security matter exists; LBP-14-9, 80 NRC 38 n.63 (2014)
- 10 C.F.R. 2.764
Commission temporarily suspended the immediate effectiveness rule following the Three Mile Island accident; CLI-11-5, 74 NRC 153 (2011)
- 10 C.F.R. 2.802
if intervenor wishes to effect a substantive change to Part 50, Appendix E, § VI.2, it may petition for rulemaking; LBP-15-4, 81 NRC 175 (2015)
if petitioner's challenge to an agency rule or regulation relates to an issue of broader significance, then filing a petition for rulemaking is the better approach; CLI-13-7, 78 NRC 208 n.42 (2013)

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- insofar as applicant contends that NRC's requirements for self-guarantors are not useful or relevant in evaluating the financial condition of numerous similarly situated corporations, applicant may petition NRC to amend its rules at any time; LBP-12-6, 75 NRC 260 (2012)
- parties with new and significant information that could undermine the rationale for a Commission regulation must seek a rulemaking instead of challenging the regulation in a particular proceeding unless the information uniquely applies to a given adjudication; LBP-11-35, 74 NRC 715-16 (2011)
- petitioner may file a petition for rulemaking to expand the scope of NRC license renewal regulations if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 308 (2015)
- petitioner must avail itself of a rulemaking petition if it wishes to pursue a challenge to a Commission rule; CLI-14-6, 79 NRC 447 (2014); LBP-11-15, 73 NRC 638 (2011); LBP-13-6, 77 NRC 298 (2013)
- petitioners request that NRC amend 10 C.F.R. 54.17(c) to permit a reactor licensee to file a license renewal application no sooner than 10 years before the expiration of the current license; CLI-11-1, 73 NRC 2-3 (2011)
- sole remedy to challenge the wisdom or lawfulness of 10 C.F.R. 51.53(c)(2) is to file a petition for rulemaking with the Commission; LBP-13-12, 78 NRC 242 (2013)
- to the extent petitioner seeks to have applicant implement safety measures in addition to those ordered, its recourse is to petition for rulemaking or for license modification, suspension, or revocation; LBP-12-14, 76 NRC 7 n.36 (2012)
- to the extent that petitioner challenges the generic environmental impact statement, its remedy is a petition for rulemaking or a petition for a waiver of the rules based on circumstances; CLI-11-11, 74 NRC 456 (2011)
- 10 C.F.R. 2.802(a)
- any interested person may petition the Commission to issue, amend, or rescind any regulation; CLI-12-19, 76 NRC 387 n.56 (2012); CLI-13-7, 78 NRC 208 n.42 (2013); CLI-13-10, 78 NRC 569 n.39 (2013)
- rulemaking petitioners assert that NRC Staff's review of the expedited-transfer issue generated new and significant information regarding the environmental impacts of spent fuel storage; CLI-14-7, 80 NRC 5 (2014)
- 10 C.F.R. 2.802(d)
- licensing boards (as opposed to the Commission) are not empowered to grant a request to suspend a licensing proceeding pending disposition of a rulemaking petition; LBP-11-33, 74 NRC 679 n.5 (2011)
- rulemaking petitioner may request that the Commission suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking; CLI-11-5, 74 NRC 173 (2011); CLI-12-6, 75 NRC 357 n.12 (2012); CLI-14-6, 79 NRC 448 (2014); CLI-14-7, 80 NRC 6 (2014)
- suspension provision provides an opportunity for a participant to ensure that a successful rulemaking petition is applied in an ongoing adjudication; CLI-14-7, 80 NRC 7 (2014)
- 10 C.F.R. 2.805
- contents of the licensees' responses may lead to additional regulatory actions to update plants' licensing bases, such as orders, license amendments, or rulemakings, for which the public would have participation rights; CLI-15-14, 81 NRC 743 (2015)
- 10 C.F.R. 2.900-2.913
- board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 231 (2012)
- 10 C.F.R. 2.1015
- should a suspended adjudication resume, the Commission will consider appeals in due course, consistent with relevant Subpart J rules; CLI-13-8, 78 NRC 234 n.77 (2013)
- 10 C.F.R. 2.1019(i)
- licensing board directed parties defending depositions to make efforts to identify and obtain Licensing Support Network documents that must be indexed for the benefit of other parties and to circulate those indexes as soon as practicable; CLI-11-13, 74 NRC 638 n.14 (2011)
- 10 C.F.R. 2.1022
- discovery cannot be completed nor can the evidentiary hearing be held until the safety evaluation report and all necessary environmental impact statements are completed; CLI-13-8, 78 NRC 227 (2013)

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- 10 C.F.R. 2.1023
before a final decision approving or disapproving a construction authorization application may be reached, not only must NRC Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 226 (2013)
- 10 C.F.R. 2.1026(a)
subject to exceptions, the presiding officer must adhere to the schedule set forth in 10 C.F.R. Part 2, Appendix D; CLI-13-8, 78 NRC 232 n.66 (2013)
- 10 C.F.R. Part 2, Subpart L
complexity and number of issues in a proceeding do not per se lead ineluctably to the conclusion that cross-examination is necessary to ensure a fair and adequate hearing; CLI-12-18, 76 NRC 375 (2012)
- 10 C.F.R. 2.1202(a)
NRC Staff issuance of a license during pendency of a hearing is allowed if it provides the board and parties notice and an explanation why the public health and safety are protected and why the action is in accord with the common defense and security; CLI-15-17, 82 NRC 35 n.11, 41 (2015)
"prompt" issuance is not defined as an immediate one; LBP-15-2, 81 NRC 53 n.33 (2015)
timing of license issuance is informed by instruction for NRC Staff to promptly issue its approval or denial of the application consistent with its findings, and despite the pendency of a hearing; LBP-15-2, 81 NRC 53 n.33 (2015); LBP-15-16, 81 NRC 638 n.104 (2015)
- 10 C.F.R. 2.1202(b)(1)(i)
NRC Staff will become a party to cases involving an application denied by the NRC Staff; CLI-14-5, 79 NRC 264 n.48 (2014)
- 10 C.F.R. 2.1203
NRC Staff is also under a special obligation in Subpart L proceedings to create and to maintain a hearing file; LBP-14-2, 79 NRC 147 (2014)
NRC Staff violated requirements for initial disclosure of all relevant documents; LBP-14-2, 79 NRC 243 (2014)
- 10 C.F.R. 2.1203(b)
hearing file consists of any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action; LBP-14-2, 79 NRC 243 n.664 (2014)
- 10 C.F.R. 2.1203(c)
NRC Staff has a continuing duty to keep the hearing file up to date; LBP-14-2, 79 NRC 147, 243 n.664 (2014)
- 10 C.F.R. 2.1203(d)
parties to a Subpart L proceeding may not seek discovery from the other parties to the proceeding; LBP-14-2, 79 NRC 146 (2014)
Subpart L procedures provide for a more informal proceeding in which discovery is generally prohibited except for specified mandatory disclosures under 10 C.F.R. 2.336 and the mandatory production of the hearing file under 10 C.F.R. 2.1203(a); LBP-11-13, 73 NRC 587 (2011)
- 10 C.F.R. 2.1205
affidavits are required to support statements of fact, and in ruling on summary disposition motions the standards of subpart G shall apply; LBP-11-23, 74 NRC 332 (2011)
if a party believes an admitted contention is mooted by the inclusion of additional information, that party may file a motion for summary disposition; LBP-14-5, 79 NRC 385 (2014)
in Subpart L proceedings, licensing boards must apply the summary disposition standard for Subpart G proceedings, found in 10 C.F.R. 2.710; LBP-11-14, 73 NRC 594 (2011); LBP-12-23, 76 NRC 450 (2012)
summary disposition is appropriate where alleged omission from initial renewal application is cured in updated SAMA analysis; LBP-15-29, 82 NRC 253 (2015)
test for the "materially different result" requirement of section 2.326(a)(3), is whether it has been shown that a motion for summary disposition could be defeated; LBP-11-20, 74 NRC 94 (2011); LBP-12-1, 75 NRC 27 (2012)
to remove an admitted contention from the proceeding, a party must file, and a board must grant, a motion for summary disposition; LBP-14-5, 79 NRC 384 (2014)

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- 10 C.F.R. 2.1205(a)
motions for summary disposition must be in writing and must include a written explanation of the basis of the motion, and affidavits to support statements of fact; LBP-12-4, 75 NRC 218 (2012)
- 10 C.F.R. 2.1205(b)
summary disposition opponent has 20 days from proponent's filing of its motion to oppose that motion; LBP-12-7, 75 NRC 511-12 (2012)
- 10 C.F.R. 2.1205(c)
in a proceeding governed by Subpart L, the board is to apply the standards of Subpart G when ruling on motions for summary disposition; LBP-11-4, 73 NRC 98 (2011); LBP-11-7, 73 NRC 263 (2011); LBP-11-17, 74 NRC 20 n.40 (2011); LBP-12-2, 75 NRC 163 n.18 (2012); LBP-12-4, 75 NRC 218 (2012); LBP-12-19, 76 NRC 190 n.120 (2012)
successful motions for summary disposition must show that movant is entitled to a decision as a matter of law; LBP-11-31, 74 NRC 649 (2011)
summary disposition of a contention is appropriate when there no longer exists any genuine dispute over a material fact and the moving party is entitled to judgment as a matter of law; LBP-11-17, 74 NRC 20 (2011)
summary disposition shall be granted if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-12-26, 76 NRC 564 (2012)
standard for deciding motions for summary disposition in Subpart L proceedings is found in section 2.710; LBP-11-31, 74 NRC 648 (2011)
- 10 C.F.R. 2.1207
in a proceeding to be conducted under Subpart L, the evidentiary record is opened upon the filing of the first initial written statements of position and written testimony with supporting affidavits on the admitted contentions; LBP-11-22, 74 NRC 281 n.112 (2011)
taking of evidence for the record in a Subpart L hearing is described; CLI-12-3, 75 NRC 140 n.47 (2012)
written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in most common types of hearings, licensing boards themselves, not the parties, orally examine the witnesses; LBP-12-21, 76 NRC 248 n.171 (2012)
- 10 C.F.R. 2.1207(a)
where parties have provided prefiled direct testimony in Subpart L cases and submitted a list of confidential proposed questions for the board to ask the witnesses, the need for cross-examination by parties should be a rare circumstance, except where questions of witness credibility, motive, or intent are at issue; CLI-12-18, 76 NRC 375-76 (2012)
- 10 C.F.R. 2.1207(a)(2)
requests for protected documents shall be filed within 60 days of the listing of the document on the privilege log and, in any event, no later than 10 days after the deadline for filing rebuttal testimony; LBP-11-5, 73 NRC 141 (2011)
- 10 C.F.R. 2.1207(a)(3)
parties filed proposed questions for the board to ask at the evidentiary hearing; LBP-13-13, 78 NRC 277 (2013)
- 10 C.F.R. 2.1207(a)(3)(iii)
proposed questions filed by all parties will be publicly released by order of the board 30 days after its decision; LBP-13-13, 78 NRC 277 (2013)
questions proposed by all parties will be publicly released by order of this board 30 days after issuance of its partial initial decision; LBP-14-3, 79 NRC 277 n.40 (2014)
- 10 C.F.R. 2.1207(b)(6)
when using Subpart L procedures, the board has the primary responsibility for questioning the witnesses at any evidentiary hearing; LBP-11-13, 73 NRC 587 (2011)
- 10 C.F.R. 2.1210
partial initial decision constitutes a final decision of the Commission 40 days from the date of issuance or the first agency business day following that date if it is a Saturday, Sunday, or federal holiday unless a petition for review is filed in accordance with section 2.1212; LBP-12-5, 75 NRC 255 (2012)

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- 10 C.F.R. 2.1210(c)(3)
initial decision shall include the additional Staff actions necessary if inconsistent with prior Staff action approving or denying the application; CLI-15-17, 82 NRC 40 n.47 (2015)
licenses may be altered as a result of the evidentiary hearing; CLI-15-17, 82 NRC 41 (2015)
- 10 C.F.R. 2.1212
petition for review may be granted if it presents a substantial question with respect to one or more five considerations; CLI-11-2, 73 NRC 336-37 (2011)
- 10 C.F.R. 2.1213
if NRC Staff grants a renewed license before a hearing takes place, the Tribe may seek a stay of Staff's action; CLI-12-4, 75 NRC 156 (2012)
notification of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 49-50 (2015)
- 10 C.F.R. 2.1213(a)
intervenor may seek a stay of NRC Staff's immediately effective license issuance; LBP-15-3, 81 NRC 78 n.3 (2015)
- 10 C.F.R. 2.1213(d)
in determining whether to grant or deny an application for a stay, a board must balance four separate interests; LBP-15-2, 81 NRC 53 (2015)
movant has the burden of persuasion on the four stay factors; LBP-15-2, 81 NRC 53 (2015)
movant must address the four factors relevant to a stay motion; CLI-15-17, 82 NRC 38 n.27 (2015)
- 10 C.F.R. 2.1213(d)(1)
section 2.341(f)(2)(i) is compared; CLI-15-17, 82 NRC 39 n.41 (2015)
- 10 C.F.R. 2.1300
Commission has authority to rule that a license transfer case be adjudicated under Subpart L; CLI-14-5, 79 NRC 259 (2014)
provisions of 10 C.F.R. Part 2, Subpart M, together with the generally applicable intervention provisions in 10 C.F.R. Part 2, Subpart C, govern adjudicatory proceedings on license transfer applications; CLI-15-8, 81 NRC 504 n.20 (2015)
scope of Subpart M proceedings covers all adjudicatory proceedings on an application for transfer of control of an NRC license, without distinction as to how the proceeding commences; CLI-14-5, 79 NRC 259 n.26 (2014)
- 10 C.F.R. 2.1308
absent a unanimous preference for a hearing consisting of written comments, the license transfer hearing will be an oral one; CLI-14-5, 79 NRC 264 (2014)
within 15 days from an order granting a hearing, each party must indicate what kind of hearing it prefers; CLI-14-5, 79 NRC 264 (2014)
- 10 C.F.R. 2.1309(a)(7)
although NRC Staff is not required to be a party to a license transfer adjudication, the Commission directs the Staff to become a party; CLI-14-5, 79 NRC 264 (2014)
- 10 C.F.R. 2.1316
NRC Staff is required to notify the presiding officer and the parties whether it desires to participate as a party in a license transfer proceeding; CLI-14-5, 79 NRC 264 n.47 (2014)
- 10 C.F.R. 2.1316(b)
NRC Staff is not required to be a party to a license transfer adjudication; CLI-14-5, 79 NRC 264 (2014)
- 10 C.F.R. 2.1319(a)
ordinarily, the Commission itself presides over license transfer hearings, but NRC rules allow the Commission to designate one or more Commissioners or any other person permitted by law to preside; CLI-14-5, 79 NRC 263 n.44 (2014)
record of licensing board evidentiary hearing on license transfer application must be certified to the Commission; CLI-15-26, 82 NRC 410 (2015)
- 10 C.F.R. 2.1320(b)(1)
presiding officer may certify questions or refer rulings to the Commission for decision; CLI-14-5, 79 NRC 264 n.46 (2014)

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- 10 C.F.R. 2.1320(b)(3)
where the Commission does not preside over a license transfer proceeding, the presiding officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented; CLI-14-5, 79 NRC 263 n.44 (2014); LBP-14-10, 80 NRC 85-86 (2014)
- 10 C.F.R. 2.1331
upon completion of a license transfer hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision; CLI-14-5, 79 NRC 263 n.44 (2014)
- 10 C.F.R. 2.1402(b)
selection of hearing procedures for contentions at the outset of a proceeding is not immutable because availability of Subpart G procedures under 10 C.F.R. 2.310(d) depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified, under 10 C.F.R. 2.336(a)(1), until after contentions are admitted; LBP-11-13, 73 NRC 588 n.389 (2011)
- 10 C.F.R. Part 2, Appendix B
evidentiary hearing should begin 175 days after release of NRC Staff's environmental review document; CLI-15-17, 82 NRC 45 n.77 (2015)
in an uncontested operating license proceeding, the Commission would informally review the Staff recommendations, and the license would issue only after Commission action; CLI-11-5, 74 NRC 153 n.34 (2011)
- 10 C.F.R. Part 2, Appendix B, § II
board is directed to rule within 140 days of the date of the referral on whether the hearing request should be granted; CLI-15-14, 81 NRC 735 n.28 (2015)
boards should develop schedules that will provide a fair and expeditious procedure for resolving new or amended contentions that might be proposed during the course of the proceeding, not just those already admitted; LBP-11-22, 74 NRC 279 (2011)
filing of new contentions based on the SER and Staff NEPA documents is expressly contemplated by the Model Milestones and scheduling orders; LBP-11-22, 74 NRC 272 (2011)
Model Milestones permit the filing of proposed late-filed contentions on the Safety Evaluation Report and necessary National Environmental Policy Act documents within 30 days of the issuance of those documents; LBP-11-22, 74 NRC 262, 279 (2011)
schedule for Subpart L proceedings, including the closing of the record, is described; CLI-12-3, 75 NRC 140 n.47 (2012)
when establishing a schedule, boards are to consider NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding, along with other factors; LBP-11-22, 74 NRC 279 (2011)
- 10 C.F.R. Part 2, Appendix B, § III
once the nature of a license transfer hearing is settled, Subpart M and NRC Model Milestones set a default schedule for the remainder of the proceeding; CLI-14-5, 79 NRC 264 (2014)
- 10 C.F.R. Part 2, Appendix D
discovery cannot be completed nor can the evidentiary hearing be held until the safety evaluation report and all necessary environmental impact statements are completed; CLI-13-8, 78 NRC 227 (2013)
- 10 C.F.R. 9.19(b)
any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-11-5, 73 NRC 139 n.14 (2011)
- 10 C.F.R. 12.101
parties who prevail against the government in certain types of agency proceedings are allowed to recover attorneys' fees and other expenses incurred in connection with the proceeding unless the government's position was substantially justified, or other special circumstances render an award unjust; LBP-11-8, 73 NRC 354 (2011)
- 10 C.F.R. 12.103
adversary adjudications conducted by the Commission pursuant to any other statutory provision that requires a proceeding before the NRC to be so conducted as to fall within the meaning of adversary adjudication under Equal Access to Justice Act are included; LBP-11-8, 73 NRC 354 (2011)

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- 10 C.F.R. 12.105(a)
for a prevailing party to recover attorneys' fees and expenses, the party must have incurred those fees and expenses in connection with the adversary adjudication in question; LBP-11-8, 73 NRC 362 (2011)
prevailing party is not entitled to an award for attorneys' fees and expenses if the position of the Commission over which the applicant has prevailed was substantially justified; LBP-11-8, 73 NRC 368 (2011)
- 10 C.F.R. 12.204(a)
within 30 days of the Commission's decision upholding the board majority decision setting aside the NRC Staff's immediately effective enforcement order, petitioner applied for an award of over \$250,000 in attorneys' fees; LBP-11-8, 73 NRC 353 (2011)
- 10 C.F.R. 12.306(a)
board's determination of whether the government's position was substantially justified is made on the basis of the written record and oral argument; LBP-11-8, 73 NRC 368 (2011)
- 10 C.F.R. 20.1003
ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-11-12, 74 NRC 480 (2011)
ALARA principle as used in NRC regulations does not mean as low as achievable as a comparison between achievable doses, but rather as low as reasonably achievable below the dose limits; CLI-11-12, 74 NRC 491 (2011)
annual 100-millirem limit for members of the public is defined to include radiation exposure to construction workers; CLI-12-2, 75 NRC 108 (2012)
"residual radioactivity" is defined as radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control; CLI-13-6, 78 NRC 166 (2013)
- 10 C.F.R. 20.1101
uranium enrichment facility applicant's commitment to monitoring and the corrective action program provides reasonable assurance that public health and safety will be protected and applicant has a program in compliance with the regulations; LBP-12-21, 76 NRC 336 (2012)
- 10 C.F.R. 20.1101(b)
ALARA is a general requirement for all doses to members of the public established in the radiation protection programs in Part 20, including the license termination dose criteria; CLI-11-12, 74 NRC 480 (2011)
ALARA requirement in this section applies to the dose criteria for license termination; CLI-11-12, 74 NRC 481 (2011)
licensee must establish that the dose to a member of the public with legally enforceable institutional controls in place will not exceed 25 mrem per year, and is as low as reasonably achievable; CLI-11-12, 74 NRC 481 (2011)
radiation protection requirements with which licensees must comply, such as procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable, are outlined; LBP-12-4, 75 NRC 217 (2012)
- 10 C.F.R. 20.1301
annual 100-millirem limit for members of the public is defined to include radiation exposure to construction workers; CLI-12-2, 75 NRC 108 (2012)
dose limit for individual members of the public from a licensed activity is a total effective dose equivalent of 100 millirem per year; CLI-11-12, 74 NRC 480 (2011)
dose limits for individual members of the public are 100 millirem in a year; DD-11-3, 73 NRC 382 (2011)
dose limits from tritium in groundwater for individual members of the public were never approached; DD-11-1, 73 NRC 11 (2011)
- 10 C.F.R. 20.1302(a)
uranium enrichment facility licensee must survey radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in section 20.1301; LBP-12-21, 76 NRC 366 (2012)

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- 10 C.F.R. 20.1401(d)
agreement states may adopt license termination requirements that incorporate more conservative dose calculation methodologies than NRC requirements; CLI-11-12, 74 NRC 482-83 (2011)
- 10 C.F.R. 20.1402
dose limit for license termination is a constraint within the public dose limit of 25 mrem per year to members of the public; CLI-11-12, 74 NRC 480 (2011)
for license termination under either restricted use or unrestricted use, dose to a member of the public must not only be 25 mrem per year or lower but also as low as reasonably achievable; CLI-11-12, 74 NRC 481 (2011)
objective of decommissioning is to reduce residual radioactivity in structures, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that nuclide; CLI-13-1, 77 NRC 6 (2013)
provisions of this section govern unrestricted release; CLI-13-6, 78 NRC 166 n.43 (2013)
sites not eligible for restricted release must be remediated to unrestricted use; CLI-11-12, 74 NRC 481 (2011)
sites will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a Total Effective Dose Equivalent to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable; CLI-13-6, 78 NRC 159 n.7 (2013)
terminating a license for unrestricted use allows no dependence on governmental monitoring of engineered barriers and land-use restrictions to achieve a maximum dose of 25 mrem per year to a member of the public; CLI-11-12, 74 NRC 480-81 (2011)
to provide adequate protection to the public upon license termination, NRC has established a maximum dose level to the public of 25 mrem per year, which licensee must satisfy without regard to cost, and regardless of whether decommissioning is to be accomplished through restricted or unrestricted release; CLI-13-6, 78 NRC 162 n.18 (2013)
- 10 C.F.R. 20.1403
determination expressly required by the text “further reductions in residual radioactivity . . . were not being made because the residual levels associated with restricted conditions are ALARA” is an inquiry that focuses on how far it is possible, on a cost-effective basis, to further reduce the “residual levels”; CLI-13-6, 78 NRC 168 (2013)
for license termination under either restricted use or unrestricted use, doses to a member of the public must not only be 25 mrem per year or lower but also as low as reasonably achievable; CLI-11-12, 74 NRC 481 (2011)
if a licensee is able to demonstrate initial eligibility for restricted release, it must then show that the restricted-release dose criteria will be met; CLI-11-12, 74 NRC 481 (2011)
terminating a license for restricted use relies on legally enforceable institutional controls to achieve the 25 mrem dose limit; CLI-11-12, 74 NRC 481 (2011)
- 10 C.F.R. 20.1403(a)
ALARA analysis calls for licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site so that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls; CLI-13-6, 78 NRC 162 (2013)
ALARA-based analysis must be performed to identify whether a site is eligible or ineligible for further consideration of restricted release; CLI-11-12, 74 NRC 481 (2011)
ALARA principle incorporated into this section serves as a regulatory tool to limit the use of restricted release, i.e., to screen out sites that should be removing contamination to achieve unrestricted use; CLI-13-6, 78 NRC 162 (2013)
board provides textual analysis and additional clarifying explanation of its interpretation of this section; CLI-13-6, 78 NRC 159 (2013)
“further reductions” necessarily refers to further reductions from the level of residual radioactivity that a licensee proposes to leave in place under its proposed restricted-release decommissioning plan; CLI-13-6, 78 NRC 167 (2013)

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initial eligibility demonstration employs a cost-benefit analysis, either a conventional ALARA analysis or an analysis of net public or environmental harm, which incorporates a subset of the factors used in a conventional ALARA analysis; CLI-11-12, 74 NRC 481 (2011)

licensee must demonstrate through either method that further reducing proposed residual radioactivity to unrestricted-release levels, without considering the impacts of institutional controls and engineered barriers associated with restricted release, would not be cost-beneficial; CLI-13-6, 78 NRC 167 (2013)

licensee must weigh costs and benefits of removing radioactive contamination using one of two alternative analyses modeled on the ALARA principle; CLI-13-6, 78 NRC 162 (2013)

licensee seeking to demonstrate eligibility to pursue restricted release must show that further reductions, to a dose level of 25 mrem, of the levels of residual radioactivity proposed to be left in place under a restricted-release plan either would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; CLI-13-6, 78 NRC 167 (2013)

licensees, in determining whether levels are ALARA, are to consider detriments, such as traffic accidents; CLI-13-6, 78 NRC 169 (2013)

nothing in NRC license termination regulations calls for a comparison of doses of restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 161 (2013)

NRC prefers that licensees satisfy radiation dose criteria for license termination through unrestricted-release decommissioning if it is cost-beneficial to do so; CLI-13-6, 78 NRC 160 (2013)

objective of decommissioning is to reduce residual radioactivity in structures, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that nuclide; CLI-13-1, 77 NRC 6 (2013)

one of the benefits of removing enough radioactivity to cross the 25-mrem threshold is that the value of the affected property is likely to increase, and it is in this sense that NRC guidelines contemplate, as part of the ALARA analysis, a comparison between restricted release and unrestricted release; CLI-13-6, 78 NRC 172 (2013)

“reductions in residual radioactivity” refers only to dose reductions to the public that can be accomplished solely through the steps associated with unrestricted-release decommissioning, i.e., removal of contaminated material or decontamination; CLI-13-6, 78 NRC 166-67 (2013)

“residual levels,” as used in the phrase “were not being made because the residual levels . . . are ALARA,” refers back to, and is shorthand for, the term “residual radioactivity” used earlier in the introductory language; CLI-13-6, 78 NRC 168 (2013)

results of ALARA analysis will determine licensee’s initial eligibility to pursue restricted release; CLI-13-6, 78 NRC 162 (2013)

sites will be considered acceptable for license termination under restricted conditions if licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of section 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; CLI-13-6, 78 NRC 161 n.11 (2013)

to qualify for license termination under restricted release, licensee must demonstrate why further reductions in residual radioactivity that would be necessary to decommission a site pursuant to an unrestricted-release plan are not being made; CLI-13-6, 78 NRC 166 (2013)

words “further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402” are analyzed; CLI-13-6, 78 NRC 166 (2013)

10 C.F.R. 20.1403(b)

dose limit for license termination is a constraint within the public dose limit of 25 mrem per year to members of the public; CLI-11-12, 74 NRC 480 (2011)

for license termination under restricted conditions, licensee must provide legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year; CLI-13-6, 78 NRC 159 n.7 (2013)

if licensee demonstrates, through either of the two cost-benefit approaches, that removing radioactive contamination to the unrestricted-use level would not be cost-beneficial, then licensee must show that, with the addition of engineered barriers and institutional controls, the average annual dose to the public

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- will not exceed 25 mrem per year *and* is as low as is reasonably achievable; CLI-13-6, 78 NRC 163 (2013)
- licensee must establish that the dose to a member of the public with legally enforceable institutional controls in place will not exceed 25 mrem per year, and is as low as reasonably achievable; CLI-11-12, 74 NRC 481 (2011)
- to provide adequate protection to the public upon license termination, NRC has established a maximum dose level to the public of 25 mrem per year, which licensee must satisfy without regard to cost, and regardless of whether decommissioning is to be accomplished through restricted or unrestricted release; CLI-13-6, 78 NRC 162 n.18 (2013)
- 10 C.F.R. 20.1403(e)
- despite having passed the initial eligibility test for restricted release, if licensee cannot satisfy dose criteria, its site will not be considered acceptable for license termination under restricted conditions; CLI-13-6, 78 NRC 163 (2013)
- if institutional controls fail and engineered barriers have degraded over a period of time, the dose to a member of the public will not exceed 100 mrem per year, or 500 mrem per year under certain circumstances, and is as low as reasonably achievable; CLI-11-12, 74 NRC 481-82 (2011)
- licensee must show that, if institutional controls fail, enough residual radioactivity has been removed from the site so that the average annual dose to the public will not exceed 100 mrem per year and is as low as is reasonably achievable; CLI-13-6, 78 NRC 163 (2013)
- New Jersey has adopted license termination requirements that incorporate more conservative dose calculation methodologies than NRC requirements; CLI-11-12, 74 NRC 483 (2011)
- reducing residual radioactivity from preexisting levels to the lowest level that can be accomplished cost-beneficially facilitates greater protection of public health and safety in the event engineered barriers and institutional controls fail over the long term; CLI-13-6, 78 NRC 170 (2013)
- 10 C.F.R. 20.1406
- combined license applications include operational procedures to minimize contamination of the facility and environment, facilitate eventual decommissioning, and minimize generation of radioactive waste; CLI-12-2, 75 NRC 108 (2012)
- 10 C.F.R. 20.1501(a)
- uranium enrichment facility licensee's radiological surveys must be as necessary and reasonable for compliance, and must include magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiological hazards; LBP-12-21, 76 NRC 366 (2012)
- 10 C.F.R. Part 20, Appendix B
- Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 565 (2011)
- 10 C.F.R. Part 20, Appendix B, tbl. 2
- minimum detectable concentrations for gaseous effluent and evaporator condensate must be 5% or less of the concentrations listed in the table; LBP-11-26, 74 NRC 570 n.32 (2011)
- 10 C.F.R. Part 20, Appendix B, tab. 2, col. 2
- discharges of chemicals and other effluents from the cooling basin to groundwater or surface water must remain within limits stated in this table; LBP-11-16, 73 NRC 679 (2011)
- 10 C.F.R. Part 20, Appendix D
- even with the additional conservatisms, concentrations at potential receptor locations resulting from bounding accidental effluent release scenarios remain within applicable regulatory limits; CLI-12-9, 75 NRC 451 (2012)
- 10 C.F.R. 21.3
- applicant requests an exemption from the definitions of "commercial grade items," "basic component," "critical characteristic," "dedication," and "dedicated entity" to permit applicant to have some procurement flexibility; LBP-11-11, 73 NRC 504 (2011)
- 10 C.F.R. 30.4
- applicant seeks an exemption from the requirements of this section to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 503-04 (2011)

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- “byproduct material” refers to the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content; LBP-15-16, 81 NRC 626 n.2 (2015)
- “commencement of construction” includes clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site; LBP-11-11, 73 NRC 506 (2011); LBP-11-26, 74 NRC 538 (2011)
- 10 C.F.R. 30.9(a)
information provided to NRC by license applicant shall be complete and accurate in all material respects; DD-14-4, 79 NRC 508, 509, 513, 514-15 (2014)
petitioner’s concern that information provided by licensee concerning training received by its employees was not accurate and in violation was not substantiated; DD-14-4, 79 NRC 510, 511, 516 (2014)
- 10 C.F.R. 30.10(a)(1)
choosing to store a radiographic exposure device at a facility that did not comply with NRC security requirements and was not an authorized storage location under the license is considered deliberate misconduct; LBP-14-11, 80 NRC 129 (2014)
- 10 C.F.R. 30.11(a)
NRC may grant an exemption from the regulatory requirements if it determines the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest; LBP-11-11, 73 NRC 497 (2011)
- 10 C.F.R. 30.32(a)
license application for byproduct material may incorporate information contained in previous applications, statements, or reports filed with the Commission, provided that the reference is clear and specific; LBP-12-24, 76 NRC 517 n.69 (2012)
- 10 C.F.R. 30.33(a)(3)
license applications will be approved if, in addition to other requirements met, applicant is qualified by training and experience to use the material for the purpose requested in such manner as to protect health and minimize danger to life or property; DD-14-4, 79 NRC 516 (2014)
- 10 C.F.R. 30.33(a)(5)
applicant seeks an exemption from the requirements of this section to permit it to begin certain preconstruction activities at the site before completion of NRC’s environmental review under Part 51; LBP-11-11, 73 NRC 503-04 (2011)
for a proposed nuclear materials-related activity, commencement of construction relative to that activity prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-11, 73 NRC 506 (2011); LBP-11-26, 74 NRC 538 (2011)
preconstruction activities that are allowed under Part 50 are also allowed for materials licenses; LBP-11-26, 74 NRC 539 (2011)
- 10 C.F.R. 30.34(e)
NRC may issue a license to impose such additional conditions, requirements, and limitations as may be necessary to effectuate the purposes of the Atomic Energy Act and the agency’s regulations; LBP-11-11, 73 NRC 497 (2011)
- 10 C.F.R. 30.35(a)-(b)
financial assurance requirements are structured according to the quantity of material that will be authorized for possession and use; CLI-11-4, 74 NRC 9 (2011)
- 10 C.F.R. 30.35(f)(2)
applicant’s commitment to provide a letter of credit issued by a financial institution whose operations are regulated and examined by a federal or state agency is sufficient to satisfy decommissioning funding assurance requirements; CLI-11-4, 74 NRC 2 (2011); LBP-11-26, 74 NRC 517-18 (2011)
- 10 C.F.R. 30.35(f)(2)(ii)
an acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; CLI-11-4, 74 NRC 4 n.15 (2011)
because it has chosen a surety method, licensee must ensure that the letter of credit is payable to a trust established for decommissioning costs; CLI-11-4, 74 NRC 3 (2011)

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- 10 C.F.R. Part 30, Appendix A, § II.B
financial tests for parent company guarantees and self-guarantees require that an independent certified public accountant review the data used in the financial test and require that the licensee inform NRC within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; CLI-11-4, 74 NRC 7 n.31 (2011)
- 10 C.F.R. Part 30, Appendix C
licensees have not been permitted to include the value of goodwill to meet the 10:1 tangible net worth requirement; LBP-12-6, 75 NRC 262 (2012)
request for exemption from requirements of this regulation to allow applicant to act as a self-guarantor of decommissioning funds without satisfying the financial test for self-guarantors is denied; LBP-12-6, 75 NRC 259 (2012)
request for hearing on Staff denial of permission to use an alternate method for demonstrating decommissioning funding assurance is granted; LBP-11-19, 74 NRC 62 (2011)
- 10 C.F.R. Part 30, Appendix C, § II.A
financial test for self-guarantee of the decommissioning funding obligation requires that licensee maintain a bond rating of "A" or better and have a tangible net worth at least 10 times the total current decommissioning cost estimate; LBP-12-6, 75 NRC 261 (2012)
- 10 C.F.R. Part 30, Appendix C, § II.A.1
intangible assets may be used to meet specified criteria in the financial tests for self-guarantees; CLI-13-1, 77 NRC 8 (2013)
to qualify for the alternative method of self-funding for decommissioning, licensee must have, among other things, a tangible net worth at least ten times the total current decommissioning cost estimate (a 10:1 ratio requirement); CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. Part 30, Appendix C, § II.A.3
to qualify for the alternative method of self-funding for decommissioning, licensee must have, among other things, a bond rating of "A" or better, as issued by Standard and Poor's or Moody's; CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. Part 30, Appendix C, § II.B.2
financial tests for parent company guarantees and self-guarantees require that an independent certified public accountant review the data used in the financial test and require that the licensee inform NRC within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; CLI-11-4, 74 NRC 7 n.31 (2011)
- 10 C.F.R. Part 30, Appendix C, § II.B.3
to use the self-guarantee mechanism to fulfill its decommissioning funding obligation, a licensee that issues bonds must annually satisfy the financial test set forth in this regulation; CLI-13-1, 77 NRC 12-13 (2013); LBP-12-6, 75 NRC 261 (2012)
- 10 C.F.R. 34.3
"radiographer's assistant," is defined; LBP-15-21, 82 NRC 10 n.7 (2015)
- 10 C.F.R. 40.3
assessment of monetary penalty against U.S. Army for possession of depleted uranium without a license is denied; DD-11-5, 74 NRC 404 (2011)
possession of depleted uranium at multiple installations without an NRC license and performance of decommissioning at a military installation without proper NRC authorization is a violation; DD-11-5, 74 NRC 403 (2011)
- 10 C.F.R. 40.4
applicant seeks an exemption from the requirements of this section to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 503-04 (2011)
"byproduct material" refers to the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content; LBP-15-16, 81 NRC 626 n.2 (2015)

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- “commencement of construction” includes clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site; LBP-11-11, 73 NRC 506 (2011); LBP-11-26, 74 NRC 538 (2011)
- “construction” and “commencement of construction” are defined; LBP-12-3, 75 NRC 193-94 (2012)
- “construction” does not include site exploration, including preconstruction monitoring to establish background information related to the environmental impacts of construction or operation, or the protection of environmental values; LBP-15-3, 81 NRC 91 (2015)
- definition of byproduct material was clarified by adding the clause “including discrete surface wastes resulting from uranium solution extraction processes”; LBP-15-16, 81 NRC 636 n.92 (2015)
- grounds for license denial exist if, prior to issuance of a license to possess and use source and byproduct materials for uranium milling, there is commencement of construction by an applicant; LBP-12-3, 75 NRC 193 (2012)
- nothing in the definition of “construction” precludes the installation of wells or the use of monitoring protocols as needed to provide those background data; LBP-15-3, 81 NRC 91 (2015)
- “source material” is defined as uranium being extracted through the ISL process; LBP-15-16, 81 NRC 626 n.1 (2015)
- 10 C.F.R. 40.9
- licensee or applicant must inform the NRC of information that applicant or licensee has identified as having a significant implication for public health and safety or common defense and security; LBP-15-15, 81 NRC 616 n.120 (2015)
- materials license application must provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that cultural and historic resources are identified and protected; LBP-15-16, 81 NRC 643 n.141 (2015)
- 10 C.F.R. 40.14
- exemption from decommissioning funding requirements to allow applicant to act as a self-guarantor without satisfying the financial test for self-guarantors must be in the public interest or otherwise satisfy the requirements of this section; LBP-12-6, 75 NRC 259, 269 (2012)
- exemptions from the alternative financial test for self-guarantee of the decommissioning funding obligation that are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest are permitted; LBP-12-6, 75 NRC 262 (2012)
- 10 C.F.R. 40.14(a)
- NRC may grant an exemption from regulatory requirements if it determines that the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest; LBP-11-11, 73 NRC 497 (2011)
- source materials licensees can seek an exemption from the decommissioning financial assurance requirements; CLI-13-1, 77 NRC 9 (2013)
- 10 C.F.R. 40.31(a)
- license for source material may incorporate information contained in previous applications, statements, or reports filed with the Commission, provided that the reference is clear and specific; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 40.31(f)
- applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an environmental report with its application; LBP-15-3, 81 NRC 82 (2015)
- contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 23 (2014)
- 10 C.F.R. 40.31(h)
- regulation applies to uranium mills, but not to in situ recovery facilities; LBP-14-5, 79 NRC 397 (2014)
- 10 C.F.R. 40.31(i)
- admissibility of contention that environmental documents lack an adequate description of financial assurances sufficient to ensure the payment of the costs of restoration and long-term monitoring of up to 30 years is decided; LBP-15-15, 81 NRC 6002-03 (2015)

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- 10 C.F.R. 40.32(c)
water balance in the final supplemental environmental impact statement is appropriate and in accordance with NRC regulatory guidance and federal regulations; LBP-15-16, 81 NRC 683 n.404 (2015)
- 10 C.F.R. 40.32(e)
applicant is not prohibited from gathering complete information on baseline water quality; LBP-12-3, 75 NRC 193 (2012)
applicant seeks an exemption from the requirements of this section to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 503-04 (2011)
commencement of construction is prohibited prior to a NEPA determination; LBP-15-16, 81 NRC 660 n.250 (2015)
for a proposed nuclear materials-related activity, commencement of construction relative to that activity prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of authorization to conduct that activity; LBP-11-11, 73 NRC 506 (2011); LBP-11-26, 74 NRC 538 (2011); LBP-12-3, 75 NRC 193 (2012)
in situ recovery license applicant is barred from installing a complete wellfield and associated monitor well networks until after a license is issued; LBP-15-3, 81 NRC 91 (2015)
preconstruction activities that are allowed under Part 50 are also allowed for materials licenses; LBP-11-26, 74 NRC 539 (2011)
- 10 C.F.R. 40.36
request for exemption from requirements of this regulation to allow applicant to act as a self-guarantor of the funds necessary for eventually decommissioning a facility, without satisfying the financial test for self-guarantors is denied; LBP-12-6, 75 NRC 259 (2012)
with limited exceptions, source material licensees must demonstrate that they can pay for the decommissioning of their regulated facilities; CLI-13-1, 77 NRC 5 (2013); LBP-12-6, 75 NRC 260-61 (2012)
- 10 C.F.R. 40.36(a)
source materials licensees must submit a decommissioning funding plan far in advance of submitting the actual plans for decommissioning; CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. 40.36(a)-(b)
financial assurance requirements are structured according to the quantity of material that will be authorized for possession and use; CLI-11-4, 74 NRC 9 (2011)
- 10 C.F.R. 40.36(b)(2)
certification of financial assurance may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material; CLI-11-4, 74 NRC 9 n.43 (2011)
- 10 C.F.R. 40.36(d)
applicant seeks authorization to provide financial assurance for decommissioning funding on a forward-looking, incremental basis; LBP-11-11, 73 NRC 503 (2011)
certification of financial assurance may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material; CLI-11-4, 74 NRC 9 n.43 (2011)
decommissioning funding plans must include a periodically adjusted cost estimate, specify the method for assuring that sufficient funds will be available when needed, and certify that the amount assured for decommissioning meets or exceeds estimated decommissioning costs; CLI-13-1, 77 NRC 6 (2013)
request for an exemption that would enable it to provide decommissioning funding on a forward-looking, incremental basis, at a rate proportional to the then-current decontamination and decommissioning liability is granted; CLI-11-4, 74 NRC 3 n.4 (2011)
source materials licensees must submit a decommissioning funding plan far in advance of submitting the actual plans for decommissioning; CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. 40.36(e)
request for hearing on Staff denial of permission to use an alternative method for demonstrating decommissioning funding assurance is granted; LBP-11-19, 74 NRC 62 (2011)
source materials licensees have numerous options for meeting their decommissioning funding obligations; LBP-12-6, 75 NRC 261 (2012)

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- source materials licensees must submit a decommissioning funding plan far in advance of submitting the actual plans for decommissioning; CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. 40.36(e)(1)-(3)
nongovernment licensees must demonstrate financial assurance for decommissioning by prepayment, use of a surety method, insurance, or other guarantee method, or use of an external sinking fund; CLI-13-1, 77 NRC 5-6 (2013)
- 10 C.F.R. 40.36(e)(2)
applicant's commitment to provide a letter of credit issued by a financial institution whose operations are regulated and examined by a federal or state agency is sufficient to satisfy decommissioning funding assurance requirements; CLI-11-4, 74 NRC 2 (2011); LBP-11-26, 74 NRC 517-18 (2011)
bond-issuing licensees may provide a self-guarantee of funds for decommissioning costs based on a financial test set forth in Appendix C of Part 30; CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. 40.36(e)(2)(ii)
an acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; CLI-11-4, 74 NRC 4 n.15 (2011)
because it has chosen a surety method, licensee must ensure that the letter of credit is payable to a trust established for decommissioning costs; CLI-11-4, 74 NRC 3 (2011)
- 10 C.F.R. 40.38(a)
this section applies only to enrichment facility licensee USEC, and it has no relevance to any other enrichment facility applicant; LBP-11-11, 73 NRC 488 n.16 (2011)
- 10 C.F.R. 40.41(c)
water balance in the final supplemental environmental impact statement is appropriate and in accordance with NRC regulatory guidance and federal regulations; LBP-15-16, 81 NRC 683 n.404 (2015)
- 10 C.F.R. 40.41(e)
NRC may issue a license to impose such additional conditions, requirements, and limitations as may be necessary to effectuate the purposes of the Atomic Energy Act and the agency's regulations; LBP-11-11, 73 NRC 497 (2011)
- 10 C.F.R. 40.41(e)(2)
issued licenses can be revoked, conditioned, modified, or affirmed based on the evidence reviewed at the evidentiary hearing; LBP-15-16, 81 NRC 638 n.104 (2015)
- 10 C.F.R. 40.41(g)
NRC is required to verify through inspection that the facility has been constructed in accordance with the requirements of the license; LBP-12-21, 76 NRC 259-60 (2012)
uranium enrichment facility cannot be operated until the agency verifies through inspection that the facility has been constructed in accordance with the license; LBP-11-11, 73 NRC 509 (2011)
- 10 C.F.R. 40.42
licensee must submit a decommissioning plan when it decides to cease NRC-licensed activities at its facility; CLI-13-1, 77 NRC 6 (2013)
- 10 C.F.R. 40.42(a)
each specific license expires at the end of the day on the expiration date stated in the license unless licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license; CLI-15-17, 82 NRC 38 n.30 (2015)
having submitted its license renewal application more than 30 days prior to the scheduled expiration of its current license, licensee is allowed to continue operations under that license; LBP-11-30, 74 NRC 631 (2011)
specific license expires on the expiration date stated in the license, unless the licensee has filed a request for renewal not less than 30 days prior to the expiration date, and a license in timely renewal expires on the day on which NRC makes a final determination to deny the request, or, if the determination states an expiration date, then the stated expiration date; CLI-12-4, 75 NRC 156 n.9 (2012)
timing of source materials license renewal application enables licensee to operate under NRC's timely renewal provision until the agency renews the license; LBP-15-2, 81 NRC 50, 57 n.66 (2015)
when licensee has made timely and sufficient application for a renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-11-30, 74 NRC 629 n.5 (2011)

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- when licensee has made timely and sufficient application for a renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-15-11, 81 NRC 404 n.2 (2015)
- 10 C.F.R. 40.42(d), (e), 40.42(g)(4)(v)
admissibility of contention that applicant submit a decommissioning plan and related updated financial plans is decided; LBP-15-15, 81 NRC 603 (2015)
- 10 C.F.R. Part 40, Appendix A
contention that DSEIS lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is admissible; LBP-13-10, 78 NRC 135 (2013)
contention that final supplemental environmental impact statement fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline (i.e., original or premining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-3, 81 NRC 85 (2015)
intervenor fail to establish the validity of their various challenges to the adequacy of the FSEIS description of the baseline water quality at the ISR site; LBP-15-3, 81 NRC 111 (2015)
neither “baseline” nor “background” is explicitly defined; LBP-15-16, 81 NRC 659 (2015)
requirements in Part 40, such as many of the provisions in Appendix A, that, by their own terms, apply only to conventional uranium milling activities, cannot sensibly govern in situ leach mining; LBP-15-16, 81 NRC 637 n.94 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 4(e)
contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 23 (2014)
regulation refers to safety criteria that apply to applicants and licensees and is not relevant to the NEPA review; LBP-13-9, 78 NRC 109 (2013)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B
nothing in this criterion precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant’s precicensing program were adequate to provide the necessary information to properly characterize the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 92 (2015)
post-licensing, preoperational activities conducted to comply with Part 40, Appendix A, Criterion 7 are associated with compliance with the dictates of this regulation; LBP-15-3, 81 NRC 75 n.2 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B(5)
applicant’s use of alternate concentration limits is a legal right; LBP-13-9, 78 NRC 87 (2013)
background water quality data are used to establish existing hazardous constituent concentrations in an aquifer, which can then be used to set post-operational concentration limits; LBP-15-16, 81 NRC 659 (2015)
Commission-approved background cannot be established until after an ISR license has been issued; LBP-15-3, 81 NRC 91 (2015)
purpose of ACLs is to address situations where restoring groundwater to baseline conditions or MCLs would not be practicable; LBP-13-9, 78 NRC 88-89 n.355 (2013)
requirements for groundwater restoration standards for ISR mining operations are set forth; LBP-15-3, 81 NRC 113 (2015)
three alternative standards for groundwater restoration at ISR facilities are background concentrations, maximum values from chart 5C, or an alternate concentration limit; LBP-13-9, 78 NRC 89 n.355 (2013)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B(5)(a)
no in situ recovery facility has ever requested that all OZ aquifer groundwater hazardous constituents be restored to CAB concentrations or Criterion 5B(5)(b) MCLs, as those are currently defined; LBP-15-3, 81 NRC 129 n.58 (2015)
“primary groundwater restoration” is to return the constituent to background levels; LBP-15-3, 81 NRC 114 (2015)
subset of the production and injection wells to be drilled within the boundaries of the ISR wellfield is to be used to sample groundwater from the aquifer prior to the commencement of operations to establish hazardous constituent Commission-approved background concentrations; LBP-15-3, 81 NRC 76 (2015)

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- 10 C.F.R. Part 40, Appendix A, Criterion 5B(5)(a)-(c)
bounding analysis provided in the final supplemental environmental impact statement, as supplemented in the record, provides sufficient information about a reasonable range of hazardous constituent concentration values associated with potential post-operational alternate concentration limits so as to provide an appropriate NEPA assessment of the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits; LBP-15-3, 81 NRC 153 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B(5)(b)
EPA drinking water maximum contaminant levels continue to be an accepted groundwater restoration standard; LBP-15-3, 81 NRC 116 n.46 (2015)
“secondary groundwater restoration” is restoration of constituent levels to the drinking water limits enumerated in Appendix A, Table 5C; LBP-15-3, 81 NRC 114 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B(5)(c)
claim that alternate concentration limit could not be accurately generated until the post-operational decommissioning process did not account for the possible creation of a bounding analysis based on the historical experience at other ISR sites; LBP-13-10, 78 NRC 137 (2013)
contention asserting that because no previous ISL/ISR mining operation has been able to restore groundwater to baseline standards, applicant will be required to request that the Commission set an alternate concentration limit for aqueous contaminants is admissible; LBP-12-3, 75 NRC 196 (2012)
contention that FSEIS fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 111 (2015)
NRC regulations explicitly allow the use of alternate concentration limits for hazardous constituents; LBP-15-11, 81 NRC 434 n.212 (2015)
restoration to an alternate concentration limit is permitted only when restoration to a primary or the secondary Table 5C standard is not practically achievable; LBP-15-3, 81 NRC 114 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B(6)
restoration to an alternate concentration limit is permitted only when restoration to a primary or the secondary Table 5C standard is not practically achievable; LBP-15-3, 81 NRC 114 (2015)
to have an alternate concentration limit approved, licensee must demonstrate that the hazardous constituent value is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the ACL is not exceeded; LBP-15-3, 81 NRC 114 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5B(6)(a)(i)-(x)
nineteen factors must be considered in making the “present and potential hazard” finding requisite to Commission approval of an alternate concentration limit; LBP-15-3, 81 NRC 114 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5C
EPA drinking water maximum contaminant levels continue to be an accepted groundwater restoration standard; LBP-15-3, 81 NRC 116 n.46 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 5G(2)
contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 23 (2014)
regulation refers to safety criteria that apply to applicants and licensees and is not relevant to the NEPA review; LBP-13-9, 78 NRC 109 (2013)
- 10 C.F.R. Part 40, Appendix A, Criterion 7
activities associated with, and the data coming from, precicensing groundwater monitoring activities are associated with compliance with the dictates of this regulation; LBP-15-3, 81 NRC 75 n.2 (2015)
applicant must establish a precicensing monitoring program that is used to provide complete baseline data on the in situ recovery site and its environs; LBP-15-3, 81 NRC 89 (2015); LBP-15-16, 81 NRC 659 (2015)
applicant must provide complete baseline data on a milling site and its environs; LBP-15-16, 81 NRC 660 (2015)
applicant’s monitoring program for establishing existing site characterization baseline values for certain site groundwater constituents prior to issuance of a source materials license for ISR facility construction and operation need not, to comply with NEPA and NRC’s Part 51 implementing regulations, be

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- conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 111 (2015)
- contention alleging that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-16, 81 NRC 659-60 (2015)
- nothing in this criterion precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in an applicant's precicensing program were adequate to provide the necessary information to properly characterize the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 92 (2015)
- to comply with NEPA and Part 51 implementing regulations, applicant's precicensing monitoring program for site characterization is not required to be conducted so as to provide information needed to set Appendix A, Criterion 5B groundwater protection standards, in accord with an Appendix A, Criterion 7A preoperational license condition-based monitoring program; LBP-15-3, 81 NRC 153 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 7A
licensee shall establish a detection monitoring program needed for NRC to set the site-specific groundwater protection standards in paragraph 5B(1) of this appendix, and the monitoring program must be in place when specified by NRC in license conditions; LBP-15-3, 81 NRC 91 (2015)
- nothing in this criterion precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's precicensing program were adequate to provide the necessary information to properly characterize the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 92 (2015)
- post-licensing, preoperational activities conducted to comply with this Criterion are associated with compliance with the dictates of this regulation; LBP-15-3, 81 NRC 75 n.2 (2015)
- 10 C.F.R. Part 40, Appendix A, Criterion 9
financial surety arrangements must be established by each mill operator before the commencement of operations to ensure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas; LBP-15-15, 81 NRC 615 n.116 (2015)
- 10 C.F.R. Part 50
stringent safety requirements apply to the construction and operation of reactor spent fuel pools and independent spent fuel storage installations; CLI-15-4, 81 NRC 240 (2015)
- 10 C.F.R. 50.2
"applicant" means a person or entity applying for a license; LBP-14-7, 79 NRC 476 (2014)
current licensing basis includes plant-specific design-basis information as documented in the most recent final safety analysis report; LBP-11-21, 74 NRC 130 (2011)
"decommissioning" is defined; LBP-15-24, 82 NRC 72 n.9 (2015); LBP-15-28, 82 NRC 236 n.13 (2015)
"design bases" refers to information that identifies the specific functions to be performed by an SSC of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design; DD-15-11, 82 NRC 369 (2015); LBP-12-24, 76 NRC 538 (2012)
nuclear reactor is an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction; DD-13-3, 78 NRC 581 (2013)
"permanent cessation of operations" for a nuclear power reactor facility is defined as a certification by a licensee to the NRC that it has permanently ceased or will permanently cease reactor operations; LBP-15-4, 81 NRC 170 n.77 (2015)
"permanent fuel removal" from a nuclear power reactor facility is defined as a certification by the licensee to the NRC that it has permanently removed all fuel assemblies from the reactor vessel; LBP-15-4, 81 NRC 170 n.77 (2015)
production and utilization facilities are defined; LBP-12-19, 76 NRC 191 n.31 (2012)
production and utilization facilities include nuclear power reactors; LBP-11-25, 74 NRC 390 n.58 (2011)
utilization facilities include commercial nuclear power reactors; LBP-13-7, 77 NRC 328 n.34 (2013)
- 10 C.F.R. 50.9(a)
applicants must provide information that is complete and accurate in all material respects; LBP-15-24, 82 NRC 79, 98 (2015)

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- information provided to NRC by an applicant must be complete and accurate in all material respects; LBP-11-32, 74 NRC 668 n.31 (2011)
- 10 C.F.R. 50.9(b)
applicants shall notify NRC of information identified by applicant as having, for the regulated activity, a significant implication for public health and safety or common defense and security; LBP-11-32, 74 NRC 668 n.31 (2011)
- 10 C.F.R. 50.10
determination the Commission must make is whether NRC Staff review of a limited work authorization has been adequate to support the findings found in this section; CLI-12-2, 75 NRC 74 (2012)
limited work authorization rule narrowed the scope of activities requiring permission from NRC in the form of an LWA by eliminating the concept of commencement of construction formerly described in section 50.10(c) and the authorization formerly described in section 50.10(e)(1); LBP-14-9, 80 NRC 31 (2014)
NEPA's requirement to discuss alternatives to the proposed action does not extend to the construction of transmission line corridors, because it is not "construction" as defined in the regulation; LBP-11-6, 73 NRC 207 n.63 (2010)
- 10 C.F.R. 50.10(a)(2)
activities that are no longer considered "construction" are listed; LBP-11-11, 73 NRC 506 n.23 (2011); LBP-11-26, 74 NRC 539 n.14 (2011)
- 10 C.F.R. 50.10(a)(2)(iii), (vii)
construction of a transmission line is defined as a preconstruction activity; LBP-12-12, 75 NRC 778 (2012)
- 10 C.F.R. 50.10(a)(2)(vii)
in the 2007 limited work authorization rule, NRC decided that the building of transmission lines to serve a nuclear power plant would no longer be classified as a construction activity and would no longer require authorization from NRC; LBP-14-9, 80 NRC 49 (2014)
limited work authorization rule expressly excludes transmission lines from the delineated construction activities that would require NRC approval before being undertaken; CLI-15-1, 81 NRC 10 n.48 (2015)
- 10 C.F.R. 50.10(c)
amendment to the definition of construction generally prohibited, absent an NRC construction permit, any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site and construction of nonnuclear facilities such as turbogenerators and turbine buildings for use in connection with the facility; LBP-14-9, 80 NRC 29 (2014)
NRC's broad definition of "construction" in the pre-2007 version of the regulation was originally added to Part 50 because of the interpretation that enactment of NEPA required NRC to expand its permitting/licensing authority; LBP-14-9, 80 NRC 53 (2014)
- 10 C.F.R. 50.10(d)
certain "construction" activities are allowed at a reactor site pursuant to a limited work authorization as long as a site redress plan is submitted; LBP-11-11, 73 NRC 507 (2011)
- 10 C.F.R. 50.10(e)(iii)-(iv)
scope of Commission examination of the adequacy of NRC Staff's safety review of a limited work authorization application is described; CLI-12-2, 75 NRC 75 (2012)
- 10 C.F.R. 50.10(g)
certain "construction" activities are allowed at a reactor site pursuant to a limited work authorization as long as a site redress plan is submitted; LBP-11-11, 73 NRC 507 (2011)
- 10 C.F.R. 50.12
for there to be any statutory right to a hearing on the granting of a rule exemption, such a grant must be part of a proceeding for the granting, suspending, revoking, or amending of any license or construction permit under the Atomic Energy Act; CLI-13-1, 77 NRC 10 n.37 (2013)
rule exemption requests that do not involve special circumstances must be denied as a matter of law; CLI-13-1, 77 NRC 16, 35 n.188 (2013)
- 10 C.F.R. 50.12(a)(1)
exemption from a regulation will be granted when the request is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; LBP-11-10, 73 NRC 451 n.158 (2011)

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- 10 C.F.R. 50.12(a)(2)(i)-(vi)
exemption from a regulation will be granted if application of the regulation in the particular circumstances conflicts with other NRC rules or requirements, would not serve or is not necessary to achieve the underlying purpose of the rule, would result in undue hardship or other costs, would not benefit public health and safety, would provide only temporary relief, or there is present any other material circumstance not considered when the regulation was adopted; LBP-11-10, 73 NRC 451 n.158 (2011)
- 10 C.F.R. 50.12(a)(2)(ii)
because current levels of emergency planning are required by regulation, licensee cannot make changes contemplated in its license amendment request without first receiving certain regulatory exemptions; LBP-15-18, 81 NRC 795 (2015)
demonstration that application of a regulation is not necessary to achieve its underlying purpose is listed as a special circumstance warranting an exemption; CLI-12-9, 75 NRC 448 (2012)
exemption should be granted if special circumstances exist, such as when compliance is not necessary to satisfy the purpose of the regulations from which an exemption is sought; LBP-12-6, 75 NRC 270 (2012)
- 10 C.F.R. 50.12(a)(2)(vi)
exemption may be appropriate where there is present any circumstance that was not considered by NRC when it promulgated the pertinent regulation in the first place; LBP-12-6, 75 NRC 270 (2012)
- 10 C.F.R. 50.30(d)
operating license application may incorporate any pertinent info submitted with application for construction permit; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 50.33
denial of license transfer applications typically is on grounds of operating costs and inability to pay the annual cost for spent fuel storage; CLI-14-5, 79 NRC 260 (2014)
general information required for a license transfer application is provided in this regulation; CLI-14-5, 79 NRC 260 n.32 (2014)
limited scope of review called for under Part 54, renewal of a license for a research reactor, is essentially a fresh operating license review; CLI-11-11, 74 NRC 436 n.47 (2011)
- 10 C.F.R. 50.33(f)
electric utility applicant for an operating license is exempt from a financial qualifications review; DD-15-8, 82 NRC 110 (2015)
license transfer applicant must show that the proposed transferee has the financial qualifications to carry out activities for which the license is sought; CLI-15-26, 82 NRC 411 (2015)
source of funds for operating and maintenance expenses would be unaffected by a transaction for decommissioning funding; CLI-11-4, 74 NRC 7 n.30 (2011)
- 10 C.F.R. 50.33(f)(2)
applicant must submit information that demonstrates that it possesses or has reasonable assurance of obtaining funds necessary to cover estimated operating costs for the period of the license; CLI-15-8, 81 NRC 506 n.48, 508-09 (2015)
five years of financial revenue-and-expense estimates must be submitted as part of a license transfer application; CLI-15-26, 82 NRC 409-10 (2015)
license transfer applicant must submit estimates for total annual operating costs for each of the first 5 years of facility operation; CLI-15-8, 81 NRC 509 n.65 (2015)
operating license applicant must submit information that demonstrates that it possesses, or has reasonable assurance of obtaining, funds necessary to cover estimated operating costs for the period of the license; DD-15-8, 82 NRC 110 (2015)
- 10 C.F.R. 50.33(f)(5)
Commission decision does not foreclose NRC Staff's ability to request additional information on any part of the license transfer application; CLI-15-26, 82 NRC 412 n.33 (2015)
NRC has authority to request that an established or newly formed entity submit additional or more detailed information respecting its financial arrangements and status of funds; DD-15-8, 82 NRC 111 (2015)
- 10 C.F.R. 50.33(g)
emergency planning zones are approximately a 10-mile radius around a reactor unit as adjusted to reflect the road network and land use; CLI-12-9, 75 NRC 458 (2012)

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- 10 C.F.R. 50.33(k)
licensees must submit, with each operating license application, certification specifying how financial assurance for decommissioning will be provided; DD-15-8, 82 NRC 111 (2015)
- 10 C.F.R. 50.33(k)(1)
license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 505 (2015)
- 10 C.F.R. 50.34
construction permit applications must include the principal design criteria for a proposed facility, describe the design bases and their relationship of to the principal design criteria in the preliminary safety analysis report; DD-13-3, 78 NRC 577 (2013)
limited scope of review called for under Part 54, renewal of a license for a research reactor, is essentially a fresh operating license review; CLI-11-11, 74 NRC 436 n.47 (2011)
- 10 C.F.R. 50.34(a)(3)(i)
applicant for a construction permit must include the principal design criteria for a proposed facility and the relationship of the design bases to the PDC as part of the preliminary safety analysis report; DD-15-11, 82 NRC 365 (2015)
- 10 C.F.R. 50.34(b)
operating license applicant must present the design bases of the facility and safety analyses of the facility as a whole in the final SAR; DD-15-11, 82 NRC 365 (2015)
- 10 C.F.R. 50.34(b)(4)
contention that final safety analysis report is deficient because it does not include information provided in applicant's seismic evaluation process report is rejected; LBP-15-14, 81 NRC 593 (2015)
final safety analysis report must take into account any pertinent information developed since the submittal of the preliminary safety analysis report; LBP-15-14, 81 NRC 593 (2015)
- 10 C.F.R. 50.34a(a)
combined license application must identify the means for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable; LBP-11-6, 73 NRC 245 (2010)
- 10 C.F.R. 50.36
criteria for limiting conditions for operation address aspects of reactor operation that contribute to prevention of accidents and provide the capability to immediately mitigate accidents; DD-13-3, 78 NRC 576-77 (2013)
criteria to be used in determining what items must be included in technical specifications are identified; LBP-13-7, 77 NRC 330 n.37 (2013)
if petitioner wishes to pursue its concerns about the safety of relocating certain surveillance frequencies generically, it may, at any time, file a petition for rulemaking to amend the regulation; CLI-13-10, 78 NRC 569 (2013)
NRC revised this rule in 1995 and established clearer criteria as to what constitutes a technical specification that must be in the license; LBP-12-25, 76 NRC 550 (2012)
technical specifications are those technical requirements that are incorporated in an NRC license; LBP-12-25, 76 NRC 549 n.21 (2012)
technical specifications derived from the analyses and evaluations included in the safety analysis report are required; DD-13-3, 78 NRC 575 (2013)
technical specifications must include limits for safety system settings and control settings, limiting conditions for operation, surveillance requirements, design features, and administrative controls; DD-13-3, 78 NRC 575 (2013)
- 10 C.F.R. 50.36(b)
NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 49 (2014)
- 10 C.F.R. 50.36(c)(1)(i)(A)
safety limits for nuclear reactors are limits on important process variables that are found to be necessary to reasonably protect the integrity of the physical barriers that guard against the uncontrolled release of radioactivity; DD-13-3, 78 NRC 575, 580 (2013)

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- 10 C.F.R. 50.36(c)(2)
limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility; DD-13-3, 78 NRC 575 (2013)
- 10 C.F.R. 50.36(c)(2)(ii)
technical specifications for limiting conditions for operation of a nuclear reactor must be established for each item meeting one or more of the four criteria specified in this regulation; DD-13-3, 78 NRC 576, 582 (2013)
- 10 C.F.R. 50.36(c)(3)
surveillance requirements relate to test, calibration, or inspection to ensure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met for certain structures, systems, and components; CLI-13-10, 78 NRC 565 n.6 (2013)
- 10 C.F.R. 50.36(c)(4)
design features to be included in the technical specifications are those features of the facility such as materials of construction and geometric arrangements, which, if altered or modified, would have a significant effect on safety and are not covered by other TSs; DD-13-3, 78 NRC 576 (2013)
- 10 C.F.R. 50.36b(a) & (b)
NRC is clearly authorized to require licensees to protect the environment and to prevent them from causing adverse environmental impacts; LBP-13-4, 77 NRC 217 (2013)
- 10 C.F.R. 50.38
absent a transfer, license renewal application will be denied where licensee remains under foreign ownership, control, or domination; CLI-14-5, 79 NRC 256 (2014)
contention alleging that statutory and regulatory prohibitions on foreign ownership, control, or domination forbid the licensing of proposed units is decided; LBP-14-3, 79 NRC 271, 272, 273, 278, 281, 300, 314 (2014)
- 10 C.F.R. 50.38
any alien or any corporation or other entity that the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is ineligible to apply for and obtain a license; CLI-13-4, 77 NRC 102-03 n.1 (2013); CLI-15-7, 81 NRC 482, 485, 486 n.29, 491 (2015); LBP-11-25, 74 NRC 391 (2011); LBP-12-19, 76 NRC 191 (2012)
applicants are ineligible to obtain a license because they fail to meet the requirements of the AEA and NRC regulations regarding foreign ownership; LBP-12-22, 76 NRC 443 (2012)
combined license will not be issued where applicants are 100% owned by a foreign corporation, which is 85% owned by the French government, and the foreign corporation has the power to exercise ownership, control, or domination over applicants, and the Negation Action Plan submitted by applicants does not negate this situation; LBP-12-19, 76 NRC 188 (2012)
connection of the three prohibitions on foreign ownership with the conjunction “or” rather than “and” shows that a license may not be granted if *any* of the three prohibitions is violated; LBP-12-19, 76 NRC 195-96 (2012)
foreign-owned, -controlled, or -dominated entity is ineligible to apply for, let alone obtain, a combined license; LBP-11-25, 74 NRC 394-95 (2011); LBP-12-19, 76 NRC 201 (2012)
- 10 C.F.R. 50.40
considerations that NRC should review for grant of a license amendment are defined in this regulation; LBP-15-17, 81 NRC 778 (2015)
in determining whether a license amendment, construction permit, or early site permit will be issued to applicant, common standards of this regulation are applied; LBP-15-20, 81 NRC 841 (2015)
- 10 C.F.R. 50.40(a)
there must be reasonable assurance that the activities at issue will not endanger the health and safety of the public; CLI-15-22, 82 NRC 316 n.44 (2016)
- 10 C.F.R. 50.43(a)(3)
notice of combined license applications must be published in the *Federal Register* for 4 consecutive weeks; CLI-12-2, 75 NRC 74 n.46 (2012)
- 10 C.F.R. 50.44
measures for combustible gas control for nuclear power reactors are discussed; DD-13-1, 77 NRC 352, 353-54 (2013)

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- 10 C.F.R. 50.47
emergency plans are approved by the NRC and FEMA and are updated on an ongoing basis; CLI-15-6, 81 NRC 378 (2015)
- 10 C.F.R. 50.47(a)(1)(i)
license amendment requests do not require an updated or separate emergency plan unless such a plan would be germane to the type of license amendment request under review or is part of a licensee's periodic update of emergency plans; LBP-11-29, 74 NRC 622 (2011)
no finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency is necessary for issuance of a renewed nuclear power reactor operating license; CLI-15-6, 81 NRC 377 (2015); LBP-11-29, 74 NRC 622-23 (2011); LBP-13-13, 78 NRC 539 (2013)
nuclear power reactors must have emergency plans in place to respond to accidents despite the fact that Table B-1 within 10 C.F.R. Part 51 concludes that the environmental impacts of both design basis and severe accidents at a nuclear reactor are small for all plants; LBP-13-13, 78 NRC 542 (2013)
- 10 C.F.R. 50.47(a)(1)(ii)
before issuing a combined license, NRC must conclude that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-11-6, 73 NRC 227 (2010)
- 10 C.F.R. 50.47(a)(2)
in any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation ability of state and local emergency plans; LBP-11-6, 73 NRC 227 (2010); LBP-15-4, 81 NRC 175 n.107 (2015)
NRC Staff considers FEMA's findings on emergency plans in making its necessary finding of reasonable assurance that adequate protective measures can, and will, be taken in the event of a radiological emergency; CLI-12-9, 75 NRC 456 (2012)
offsite emergency plans are reviewed biennially by NRC and the Federal Emergency Management Agency in a comprehensive emergency preparedness exercise; CLI-15-6, 81 NRC 377 (2015)
- 10 C.F.R. 50.47(b)
emergency planning zones are approximately a 10-mile radius around a reactor unit as adjusted to reflect the road network and land use; CLI-12-9, 75 NRC 458 (2012)
licensee is prohibited from simply disconnecting its ERDS when the reactor is powered down during decommissioning; LBP-15-4, 81 NRC 178-79 (2015)
proposed staffing changes meet emergency plan standards and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency commensurate with credible accidents in the permanently shutdown and defueled condition; CLI-15-20, 82 NRC 220 (2015)
- 10 C.F.R. 50.47(b)(2), (4), (5)
licensee's obligation to provide emergency planning data is discussed; LBP-15-4, 81 NRC 180 (2015)
- 10 C.F.R. 50.47(b)(6)
adequate provisions must exist for prompt communications among principal response organizations to emergency personnel and to the public; LBP-15-4, 81 NRC 180 (2015)
licensee's obligation to provide emergency planning data is discussed; LBP-15-4, 81 NRC 180 (2015)
- 10 C.F.R. 50.47(b)(9)
licensee's obligation to provide emergency planning data is discussed; LBP-15-4, 81 NRC 180 (2015)
- 10 C.F.R. 50.47(b)(10)
contention that, in the event of a core-melt accident, applicant's emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks this emergency planning regulation; LBP-11-15, 73 NRC 638 (2011)
sheltering must be considered in developing the recommended range of protective actions in an emergency plan; LBP-11-6, 73 NRC 232 n.96 (2010)
- 10 C.F.R. 50.47(c)(2)
NRC provides for a plume exposure pathway emergency planning zone and an ingestion exposure pathway EPZ around nuclear power plants in the event of a nuclear accident; LBP-11-15, 73 NRC 640 (2011)
NRC's safety regulations cover a 50-mile planning area; LBP-14-4, 79 NRC 375 n.74 (2014)

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- to the extent petitioner seeks to raise a generic challenge to the 10-mile plume exposure pathway EPZ, such an argument constitutes an impermissible challenge to this regulation; LBP-11-15, 73 NRC 642 n.22 (2011)
- 10 C.F.R. 50.47(e)
holder of a combined license for a newly built reactor may not load fuel or operate except as provided in accordance with Appendix E; LBP-15-4, 81 NRC 171 (2015)
- 10 C.F.R. 50.48
safety contention challenging aging management of electrical transformers does not include transformer support structures; LBP-13-13, 78 NRC 403 n.1085 (2013)
- 10 C.F.R. 50.48(b)
unapproved operator manual actions represent potential noncompliances; DD-12-3, 76 NRC 423 (2012)
- 10 C.F.R. 50.49
cables important to safety must be designed to meet their intended function for the environment that they are subjected to and if cables have been exposed to conditions for which they are not designed, licensees must demonstrate, through testing or monitoring, reasonable assurance that the cables can perform their intended design function for the licensed operating term; DD-13-2, 78 NRC 190 (2013)
cables subject to the environmental qualification standards of this regulation are cables that are important to the safety of a nuclear power plant and are required to function during an accident when exposed to harsh environmental conditions; LBP-13-13, 78 NRC 377 (2013)
design-basis events are defined; DD-15-11, 82 NRC 369 (2015)
environmentally qualified cable is defined; LBP-13-13, 78 NRC 377 (2013)
licensees must ensure that electrical cables are designed to function in environmental conditions during normal operation and during accidents; DD-13-2, 78 NRC 189 (2013)
licensees must establish an environmental qualification program for electrical equipment important to safety that would be exposed to harsh environmental conditions expected to develop as a result of design-basis accidents; DD-15-11, 82 NRC 364, 368 (2015)
particular requirements for the environmental qualification of electric components important to safety for nuclear power plants are set forth; CLI-12-10, 75 NRC 490 n.49 (2012)
- 10 C.F.R. 50.49(a)
licensees are required to establish a program for qualifying certain defined electric equipment; LBP-11-20, 74 NRC 111 (2011)
- 10 C.F.R. 50.49(b)
safety-related electric equipment that must be environmentally qualified is described; LBP-11-20, 74 NRC 111 (2011)
- 10 C.F.R. 50.49(c)
electric equipment important to safety but located in a mild environment does not fall within the scope of this rule; CLI-12-10, 75 NRC 490 n.49 (2012)
environmental qualification of electric equipment important to safety located in an environment that would at no time be significantly more severe than the environment that would occur during normal plant operation is not included within the scope of this section; LBP-11-20, 74 NRC 112 (2011)
mild environment would at no time be significantly more severe than the environment that would occur during normal plant operation, including anticipated operational occurrences; CLI-12-10, 75 NRC 490 n.49 (2012)
requirements to establish an environmental qualification program do not apply to equipment in a mild environment; DD-15-11, 82 NRC 368 (2015)
- 10 C.F.R. 50.49(d)
licensees have identified, and NRC has accepted, lists of equipment important to safety subject to environmental qualification; DD-15-11, 82 NRC 369 (2015)
- 10 C.F.R. 50.49(e)
environmental qualification program must include and be based on temperature and pressure, humidity, submergence (if the equipment could be subject to submergence) that could result from a design-basis accident, chemical effects, aging, synergistic effects, and margins; DD-15-11, 82 NRC 369 (2015)

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- 10 C.F.R. 50.51(a)
time frame for SAMA analysis is inherent in NRC's regulatory scheme, which provides for a 40-year license term, with the possibility of license renewal for an additional 20-year period; CLI-13-7, 78 NRC 214 n.81 (2013)
- 10 C.F.R. 50.54(a)
licensee must implement managerial and administrative controls to ensure safe operation through implementation of the facility's quality assurance program; DD-13-3, 78 NRC 577 (2013)
- 10 C.F.R. 50.54(bb)
licensees must submit for NRC approval their plans to manage spent fuel after the permanent cessation of reactor operation; CLI-15-4, 81 NRC 240 (2015)
- 10 C.F.R. 50.54(f)
as part of the NRC post-Fukushima lessons-learned activities, NRC is requiring all licensees to reevaluate seismic hazards at their sites, and to this end, issued a request for information; DD-15-1, 81 NRC 197 (2015)
flood hazard reevaluations being performed pursuant to a request for information are beyond the current design/licensing basis of operating plants; DD-15-4, 81 NRC 872 (2015)
NRC addressed concerns about flooding at GE Mark I and II boiling water reactors through a request for information; DD-15-1, 81 NRC 200 (2015)
NRC's post-Fukushima lessons learned and information-gathering process authorizes NRC to collect information from licensees to determine whether licenses should be modified, suspended, or revoked; LBP-15-27, 82 NRC 187 (2015)
petitioner's request that the NRC take escalated enforcement action against licensee concerning flooding protection is being addressed by NRC's request for information; DD-15-5, 81 NRC 879-80, 881 (2015)
request for information instructed all licensees to reevaluate seismic hazards at their sites using updated seismic hazard information, present-day guidance and methodologies, and a risk evaluation; DD-15-6, 81 NRC 888 (2015)
request that NRC order licensees to determine and implement required staff to fill all necessary positions for responding to a multiunit event until rulemaking is complete is addressed; DD-14-2, 79 NRC 495 (2014)
request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 493 (2014)
request that NRC order licensees to reevaluate seismic and flooding hazards at their sites against current NRC requirements and guidance, and if necessary, update the design basis and structures, systems, and components important to safety to protect against the updated hazards is addressed; DD-14-2, 79 NRC 498 (2014)
request under this section is to enable the Commission to determine whether or not the license should be modified, suspended, or revoked; CLI-15-14, 81 NRC 737 (2015)
seismic hazard reevaluations of all nuclear power reactors are not de facto license amendments because they do not amend any facility's license; LBP-15-27, 82 NRC 192 (2015)
- 10 C.F.R. 50.54(hh)
extensive damage mitigation guidelines are intended to guide onsite emergency actions and they include guidance and strategies intended to maintain or restore core cooling and containment and spent fuel pool cooling capabilities under the circumstances associated with the loss of large areas of the plant due to fire or explosion; LBP-12-18, 76 NRC 150 (2012)
- 10 C.F.R. 50.54(hh)(2)
apparent gaps in this regulation are outlined; LBP-11-21, 74 NRC 139-40 (2011)
challenge to applicant's compliance with this section falls outside the scope of a license renewal proceeding; LBP-11-21, 74 NRC 131 (2011)
challenges to this provision are neither germane to age-related degradation nor unique to the license renewal period; LBP-11-21, 74 NRC 130 (2011)
current reactor licensees comply with the requirements of this section through conditions on their operating licenses; LBP-11-21, 74 NRC 131 (2011)

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- evaluation of existing dose projection models or a dose assessment are not required; CLI-11-9, 74 NRC 244 (2011)
- licensees must develop and implement guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire; CLI-11-5, 74 NRC 149 n.14 (2011); CLI-12-2, 75 NRC 100 (2012); DD-15-11, 82 NRC 375 (2015)
- request that NRC order licensees to provide reasonable protection for equipment from the effects of design-basis external events and to add equipment as needed to address multiunit events while other requirements are being revised and implemented is addressed; DD-14-2, 79 NRC 491 (2014)
- severe accident mitigative strategy requirements for licensees are set forth; CLI-11-9, 74 NRC 238 (2011)
- this section applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52; LBP-11-21, 74 NRC 130 (2011)
- this section requires use of readily available resources and identification of potential practicable areas for the use of beyond-readily-available resources, indicating NRC's preference for practicability; CLI-11-9, 74 NRC 243 n.57 (2011)
- 10 C.F.R. 50.54(o)
primary reactor containments are subject to the requirements 10 C.F.R. Part 50, Appendix J; LBP-15-26, 82 NRC 168 (2015)
- 10 C.F.R. 50.54(q)
licensee must maintain an emergency plan, review it annually through an independent reviewer, and conduct periodic exercises to measure the plan's effectiveness; CLI-15-6, 81 NRC 377 (2015)
relocation of a technical support center requires separate NRC approval; CLI-12-9, 75 NRC 456 (2012)
- 10 C.F.R. 50.54(q)(1)(iii)
reduction in emergency plan effectiveness means a reduction in licensee's capability to perform an emergency planning function in the event of a radiological emergency; CLI-15-20, 82 NRC 219 n.55 (2015)
- 10 C.F.R. 50.54(q)(1)(iv)
emergency plan as changed must continue to meet the requirements in Part 50, Appendix E and the standards in section 50.47(b); CLI-15-20, 82 NRC 219 (2015)
licensee changes to its emergency plan must not reduce the effectiveness of the plan; CLI-15-20, 82 NRC 219 (2015)
- 10 C.F.R. 50.54(q)(2)
all Part 50 licensees must meet emergency planning requirements, regardless of whether the facility is operating or has been permanently shut down and defueled; LBP-15-18, 81 NRC 796 n.16 (2015)
holder of a license under Part 50, or a combined license under Part 52, shall follow and maintain the effectiveness of an emergency plan that meets the requirements in Appendix E to Part 50; LBP-15-4, 81 NRC 171 n.87 (2015)
- 10 C.F.R. 50.54(q)(3)
licensee does not have the discretion to remove the emergency response data system without first performing and meeting the two-part screening test in this section; CLI-15-20, 82 NRC 228 (2015)
licensee may change its emergency plan without prior NRC approval if licensee completes and retains an analysis demonstrating that the revised emergency plan satisfies a two-part test; CLI-15-20, 82 NRC 219 (2015)
licensee may revise an emergency plan without prior NRC approval if the screening criteria are met; CLI-15-20, 82 NRC 228-29 (2015)
licensees whose emergency plan describes emergency response data system or its use during an emergency would need to process a change to their emergency plans; CLI-15-20, 82 NRC 219 (2015)
to discontinue the ERDS link, analysis showing that such a change does not reduce the plan's effectiveness is required; LBP-15-4, 81 NRC 173, 174 n.101 (2015)
- 10 C.F.R. 50.54(x)
licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent; DD-11-6, 74 NRC 423 (2011)

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- 10 C.F.R. 50.55a
applicants must implement the edition and addendum of the ASME Code for Operation and Maintenance of Nuclear Plants, incorporated by reference in this section, 12 months before fuel loading; CLI-12-2, 75 NRC 92 (2012)
ASME Code for Operation and Maintenance of Nuclear Power Plants is incorporated by reference; CLI-12-9, 75 NRC 461 (2012); CLI-15-13, 81 NRC 578-79 (2015)
- 10 C.F.R. 50.55a(b)(2)
latest edition and addenda of the ASME Boiler and Pressure Vessel Code has been incorporated by reference; LBP-15-20, 81 NRC 834 n.8 (2015)
- 10 C.F.R. 50.55a(b), 50.55a(g)(4)
this section on inservice inspections incorporates by reference the requirements of section XI of the ASME Boiler and Pressure Vessel Code; CLI-11-8, 74 NRC 230 (2011)
- 10 C.F.R. 50.55a(f)(4)
even if licensee chooses to satisfy a license condition by incorporating the condition into its IST program, it still must comply with this section throughout the life of the plant; CLI-12-9, 75 NRC 464 (2012)
- 10 C.F.R. 50.55a(f)(4)(i)
after the rulemaking is completed, licensees for new reactors will be required to comply with the ASME code preservice and inservice surveillance provisions for squib valves; CLI-15-13, 81 NRC 579 (2015)
- 10 C.F.R. 50.55a(g)(4)
inservice visual inspection of containment system must comply with ASME Boiler and Pressure Vessel Code Section XI; LBP-15-26, 82 NRC 170-71 n.11 (2015)
- 10 C.F.R. 50.57(a)(3)
Commission must find that activities authorized by a license amendment can be conducted without endangering the health and safety of the public and will be in compliance with Commission regulations; LBP-15-20, 81 NRC 841 (2015)
contention about a matter not covered by a specific rule need only allege that the matter poses a significant safety problem; LBP-15-17, 81 NRC 787 (2015); LBP-15-20, 81 NRC 847-48, 854 n.151 (2015)
licensee is prohibited from simply disconnecting its ERDS when the reactor is powered down during decommissioning; LBP-15-4, 81 NRC 178-79 (2015)
there must be reasonable assurance that the activities at issue will not endanger the health and safety of the public; CLI-15-22, 82 NRC 316 n.44 (2016)
- 10 C.F.R. 50.57(a)(3)(i)
perfection in plant construction and the facility construction quality assurance program is not a precondition for a license under either the Atomic Energy Act or NRC regulations; LBP-14-7, 79 NRC 471 (2014)
- 10 C.F.R. 50.58(b)(5)
no significant hazards consideration determination permits NRC to make an authorized license amendment effective immediately rather than awaiting the outcome of an adjudicatory challenge; LBP-15-26, 82 NRC 172 n.14 (2015)
- 10 C.F.R. 50.58(b)(6)
apart from discretionary review by the Commission, NRC Staff's no significant hazards consideration determination under section 50.92(c) may not be contested; LBP-15-26, 82 NRC 178 & n.30, 180 (2015)
no petition or other request for review of or hearing on the NRC Staff's significant hazards determination will be entertained by the Commission; LBP-13-11, 78 NRC 181 n.18 (2013)
no significant hazards consideration determination is a procedural decision barred from litigation; LBP-15-13, 81 NRC 477 (2015); LBP-15-17, 81 NRC 790 (2015)
- 10 C.F.R. 50.59
actions taken by licensee under this regulation do not give rise to hearing rights under the AEA; LBP-15-27, 82 NRC 195-96 (2015)
admissibility of contention that a license amendment will be required for licensee to update and maintain accurate design basis documents is decided; CLI-15-5, 81 NRC 336-37 (2015)

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admissibility of contention that licensee is undertaking modifications for protection against severe flooding in the event of upstream dam failures that will require a license amendment is decided; CLI-15-5, 81 NRC 335 (2015)

although licensee can change from one proven test to another without prior NRC approval, it would need to follow the screening process under this section to ensure that it doesn't affect safety of the plant; LBP-13-13, 78 NRC 391 (2013)

any changes to the facility as described in the final safety analysis report must be either submitted to the NRC for approval through a license amendment or changed in accordance with the provisions of this section; DD-11-3, 73 NRC 385 (2011)

applicant can only make a change in its procedures if screening demonstrates that this regulation does not apply or if the review under this regulation demonstrates that there are no remaining unreviewed safety questions; LBP-13-13, 78 NRC 365, 387 (2013)

applicant's commitment in the updated final safety analysis report cannot be changed without NRC Staff oversight and, specifically, evaluation of the eight criteria listed in this regulation; LBP-13-13, 78 NRC 363-64 (2013)

challenges to licensee actions taken under this regulation may only be taken by means of a petition for enforcement action under 10 C.F.R. 2.206; CLI-15-5, 81 NRC 337 (2015)

contention that steam generator replacement project be deemed an experiment and that an adjudicatory public hearing be convened for independent analysis of the project before it is implemented is inadmissible; LBP-13-11, 78 NRC 179-80 (2013)

degree to which this section applies is controlled not by how a modification is labeled but by whether the substance of the change brings that revision within the confines of this section; LBP-12-25, 76 NRC 552 n.23 (2012)

except where the Commission determines that a discretionary hearing is warranted, section 2.206 provides the means to challenge licensee actions under this section; CLI-12-20, 76 NRC 439 n.10 (2012)

if a different state-of-the-art test is developed prior to the time of the actual testing, applicant is allowed the flexibility to use the state-of-the-art test, subject to a prescreening for whether NRC approval is required; LBP-13-13, 78 NRC 392 (2013)

if licensee is unable to operate a reactor in strict accordance with its license, it must seek authorization from NRC for a license amendment; LBP-13-7, 77 NRC 331 (2013)

licensee must obtain a license amendment from NRC if a change to its facility triggers the safety standards described in this section; LBP-13-7, 77 NRC 318 (2013)

licensee will determine whether any proposed changes to the plant, procedures, license, or licensing basis associated with its design reconstitution effort require a license amendment; CLI-15-5, 81 NRC (2015)

licensees are allowed to make changes to a facility without obtaining a license amendment if certain criteria are satisfied; CLI-14-11, 80 NRC 168, 179 (2014)

licensees must obtain NRC approval before implementing changes to the facility or facility procedures that do not meet certain criteria; DD-13-3, 78 NRC 577-78 (2013)

licensing board used the criteria of this section as an analytical tool to address the question of whether a confirmatory action letter issued to licensee by NRC Staff constituted a de facto license amendment that would be subject to a hearing opportunity; LBP-13-11, 78 NRC 181 (2013)

licensing boards have no authority to hear challenges to actions taken under this regulation; LBP-13-11, 78 NRC 181 (2013)

members of the public may challenge an action taken under this section only by means of a petition under 10 C.F.R. 2.206; LBP-13-7, 77 NRC 334 (2013); LBP-13-11, 78 NRC 180 (2013)

petitioners' argument that power reactor is being operated as a test reactor reflects a misreading of the regulations; LBP-15-20, 81 NRC 863 (2015)

request that NRC immediately revoke prior preapproval of the hardened vent system or direct torus vent system at each GE BWR Mark I unit has been addressed by an order modifying licenses with regard to reliable hardened containment vents capable for operation under severe accident conditions; DD-15-1, 81 NRC 198-99 (2015)

request that NRC order licensee to submit a license amendment application for the design and installation of replacement steam generators and for additional enforcement action is moot; DD-15-7, 82 NRC 258-73 (2015)

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- standards are provided for a licensee to request a license amendment before it may make changes in the facility as described in the updated final safety analysis report; LBP-13-7, 77 NRC 329 (2013)
- this regulation is not a process for verifying design adequacy, and required design control measures for verifying adequacy of design are expected to be implemented before entering the section 50.59 process; DD-15-7, 82 NRC 264 (2015)
- 10 C.F.R. 50.59(a)(6)
- any operation of that might result in in-plane vibrations due to fluid elastic instability is inconsistent with the analyses or descriptions in the UFSAR is the type of test or experiment that triggers the obligation to seek a license amendment; LBP-13-7, 77 NRC 343 (2013)
- “tests or experiments not described in the UFSAR,” constitute any activity where any structure, system, or component is utilized or controlled in a manner that is either outside the reference bounds of the design bases as described in the UFSAR or inconsistent with the analyses or descriptions in the UFSAR; LBP-13-7, 77 NRC 343 (2013)
- 10 C.F.R. 50.59(c)
- circumstances under which licensee may or may not make changes in a facility without obtaining a license amendment are set forth; LBP-13-11, 78 NRC 178 n.6 (2013)
- types of changes, tests, or experiments that may be undertaken without prior NRC approval as well as those that would require a license amendment are outlined; CLI-15-14, 81 NRC 732 n.11 (2015)
- 10 C.F.R. 50.59(c)(1)
- activities the licensee may pursue without submitting a license amendment request, including certain tests or experiments, are defined; LBP-15-17, 81 NRC 791 (2015)
- circumstances under which licensee may make changes to its facility and procedures as described in its updated FSAR and conduct tests or experiments not otherwise described in the UFSAR without obtaining a license amendment are discussed; CLI-12-20, 76 NRC 438-39 n.5 (2012); CLI-14-11, 80 NRC 168 n.3 (2014)
- if a procedure is not specifically called out in the updated final safety analysis report, licensee may change it without using the license amendment process described in this regulation; LBP-13-13, 78 NRC 365 (2013)
- licensees may make changes in the procedures described in updated final safety analysis report and conduct tests or experiments not otherwise described in the UFSAR, without obtaining a license amendment; CLI-14-4, 79 NRC 250 n.4 (2014)
- licensees must periodically update their final safety analysis reports to reflect changes to the facility, make changes in the procedures as described in the UFSAR, and conduct tests or experiments not described in the UFSAR; LBP-13-7, 77 NRC 329 (2013)
- 10 C.F.R. 50.59(c)(1)(i)
- licensee must request a license amendment if the proposed action requires that existing technical specifications be changed; LBP-13-7, 77 NRC 329 (2013)
- revisions to technical specifications that are necessary to allow licensee to operate safely with the replacement steam generators after they have been installed require a license amendment; LBP-13-11, 78 NRC 180 (2013)
- technical specifications are those technical requirements that are incorporated in an NRC license; LBP-12-25, 76 NRC 549 n.21 (2012)
- 10 C.F.R. 50.59(c)(2)
- changes with respect to components (e.g., steam generators) are permitted without a license amendment under prescribed conditions that assure that the replacement components are sufficiently similar to the original that safety requirements are maintained or improved; LBP-13-7, 77 NRC 339 (2013)
- conditions under which licensee must seek a license amendment are specified; LBP-13-7, 77 NRC 330 (2013)
- 10 C.F.R. 50.59(c)(2)(vii) & (viii)
- “design bases” means information that identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for a design; LBP-13-7, 77 NRC 330-31 n.38 (2013)

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- 10 C.F.R. 50.59(c)(2)(viii)
any operation of that might result in in-plane vibrations due to fluid elastic instability is inconsistent with the analyses or descriptions in the UFSAR is the type of test or experiment that triggers the obligation to seek a license amendment; LBP-13-7, 77 NRC 343 (2013)
licensee must seek a license amendment before implementing a test or experiment that will result in a departure from a method of evaluation described in the updated final safety analysis report used in establishing the design basis or in the safety analysis; LBP-13-7, 77 NRC 341 (2013)
- 10 C.F.R. 50.59(d)(1)
failure to provide an appropriate basis for a determination that the change in the method of evaluation did not require a license amendment prior to implementing the change constitutes a violation; DD-15-7, 82 NRC 262 (2015)
licensee must maintain records of changes in the facility made pursuant to section 50.59(c)(1) that include a written evaluation that provides the bases for the determination that the change does not require a license amendment pursuant to section 50.59(c)(2); CLI-14-11, 80 NRC 169 n.4 (2014)
where there was no reasonable likelihood that a change in the method of evaluation would have required a license amendment, the change was a minor violation; DD-15-7, 82 NRC 262 (2015)
- 10 C.F.R. 50.61
neutron radiation embrittlement of reactor pressure vessel walls, decreasing their fracture toughness, is discussed; LBP-15-17, 81 NRC 759, 762 (2015)
requirements of this rule are compared with new rule in section 50.61a to predict future reference temperatures across the reactor pressure vessel; CLI-15-22, 82 NRC 313 (2016)
surveillance data are continuously integrated into future embrittlement projections; LBP-15-17, 81 NRC 765 (2015)
- 10 C.F.R. 50.61(a)(7)
if reference values projected at specific areas of the reactor pressure vessel for the end of life of the plant surpass the current screening criteria, licensee must submit a safety analysis and obtain NRC approval to continue to operate; LBP-15-17, 81 NRC 763 n.37 (2015)
- 10 C.F.R. 50.61(b)(2)
pressurized thermal shock screening criterion is given for plates, forgings, and axial and circumferential weld materials; LBP-15-17, 81 NRC 763 (2015)
when the reference temperature of a reactor pressure vessel is above the screening limit, the RPV is considered to have an unreasonably high risk of fracture from a pressurized thermal shock event; LBP-15-17, 81 NRC 763 (2015)
- 10 C.F.R. 50.61(b)(6)
if NRC does not approve continued operation based on licensee's safety analysis, licensee must request an opportunity to modify the reactor pressure vessel or related reactor systems to reduce the potential for failure of the reactor vessel due to pressurized thermal shock events; LBP-15-17, 81 NRC 763-64 (2015)
- 10 C.F.R. 50.61(c)(2)(i)
plant-specific surveillance data must be integrated into the transition fracture toughness reference temperature estimate; LBP-15-17, 81 NRC 762 n.27, 765 n.54 (2015)
- 10 C.F.R. 50.61a
applicant requests an operating license amendment to implement alternate fracture toughness requirements for protection against pressurized thermal shock events; LBP-15-17, 81 NRC 758 (2015)
licensee is not required to collect additional surveillance data from the subject plant, but rather licensee must use any data that demonstrate the embrittlement trends for the materials, including surveillance programs at other plants with or without a surveillance program integrated under Part 50, Appendix H; CLI-15-22, 82 NRC 318 (2016)
licensees seeking to use the updated methodology in this section must submit a license amendment request under section 50.90; CLI-15-22, 82 NRC 313 (2016)
material samples used in a licensee's consistency check must be from the same heat, but there is no requirement that the sample come from the reactor pressure vessel subject to the license amendment request; CLI-15-22, 82 NRC 318 (2016)

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- probabilistic embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data in a process called the consistency check; CLI-15-22, 82 NRC 313 (2016); LBP-15-17, 81 NRC 765 (2015)
- requirements of this rule are compared with the old rule in section 50.61 to predict future reference temperatures across the reactor pressure vessel; CLI-15-22, 82 NRC 313 (2016)
- 10 C.F.R. 50.61a, equations 1, 5
reference temperature shift is the difference in reference temperature from the unirradiated to the post-irradiated states; LBP-15-17, 81 NRC 769 n.87 (2015)
- 10 C.F.R. 50.61a, equations 5-7
consistency check does not rely on information that is unique to a particular reactor pressure vessel, but instead on the chemical properties and fluence of the material samples; LBP-15-17, 81 NRC 788 (2015)
- 10 C.F.R. 50.61a(a)(2)-(6)
information that license amendment request must contain to use updated embrittlement model is described; CLI-15-22, 82 NRC 313 (2016)
- 10 C.F.R. 50.61a(a)(10)
licensee is not required to collect additional surveillance data from the subject plant, but rather must use any data that demonstrate the embrittlement trends for the materials, including surveillance programs at other plants with or without a surveillance program integrated under Part 50, Appendix H; CLI-15-22, 82 NRC 318 (2016)
- licensees must use data from other reactors (sister-plant data) when they are available, provided the data are from material samples of the same heat; CLI-15-22, 82 NRC 313 (2016)
- surveillance data include any data that demonstrate embrittlement trends for the beltline materials; LBP-15-17, 81 NRC 783 (2015)
- surveillance data include data from other plants, and licensees must consider these data under certain circumstances; CLI-15-22, 82 NRC 313 n.19 (2016)
- surveillance data need not be obtained from the same reactor pressure vessel that is the subject of the license amendment; CLI-15-22, 82 NRC 313 (2016); LBP-15-17, 81 NRC 767 (2015)
- use of a material sample in the consistency check is not dependent on its location inside a reactor pressure vessel or which RPV it comes from; LBP-15-17, 81 NRC 788 (2015)
- 10 C.F.R. 50.61a(c)(1)-(2)
application to use Alternate PTS Rule must contain the projected embrittlement reference temperatures along various portions of the reactor pressure vessel, from the present to a future point, compared to the Alternate Screening Criteria and assessment of flaws in the reactor pressure vessel; LBP-15-17, 81 NRC 766 (2015)
- 10 C.F.R. 50.61a(c)(2)
licensee must separately examine for flaws in the reactor vessel; LBP-15-17, 81 NRC 766 n.58 (2015)
- 10 C.F.R. 50.61a(c)(3)
reference temperature values are compared to the alternate screening criteria to determine whether the reactor pressure vessel is safe to operate; LBP-15-17, 81 NRC 766 (2015)
- 10 C.F.R. 50.61a(d)(1)
alternate pressurized thermal shock rule provides measures for ongoing reporting; LBP-15-17, 81 NRC 765 n.49 (2015)
- 10 C.F.R. 50.61a(d)(2)-(7)
alternate pressurized thermal shock rule specifies mitigation processes for licensees if they project they will exceed (or they do exceed) the rules' screening criteria; LBP-15-17, 81 NRC 765 n.49 (2015)
- 10 C.F.R. 50.61a(e)
application to use Alternate PTS Rule must contain an assessment of flaws in the reactor pressure vessel; LBP-15-17, 81 NRC 766 (2015)
- 10 C.F.R. 50.61a(f)
alternate pressurized thermal shock rule changes how licensees derive projected reference temperatures for the components of their reactor pressure vessels; LBP-15-17, 81 NRC 765 (2015)
- application to use alternate PTS rule must contain the projected embrittlement reference temperatures along various portions of the reactor pressure vessel, from the present to a future point, compared to the Alternate Screening Criteria and assessment of flaws in the reactor pressure vessel; LBP-15-17, 81 NRC 766 (2015)

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- in calculating embrittlement reference temperatures, licensee must calculate neutron flux through the reactor pressure vessel using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases; LBP-15-17, 81 NRC 766 (2015)
- 10 C.F.R. 50.61a(f)(1)-(3)
embrittlement model projects the reference temperatures for various parts of the reactor pressure vessel at the end of life of the plant; LBP-15-17, 81 NRC 766 n.61 (2015)
- 10 C.F.R. 50.61a(f)(4)
licensee must establish the nil-ductility reference temperature for the reactor pressure vessel material in the annealed state, before the reactor was operational for various key points along the RPV; LBP-15-17, 81 NRC 766 (2015)
- 10 C.F.R. 50.61a(f)(4)(i), (ii)
licensee can use a set of generic mean nil-ductility reference temperature values if measured values are not available; LBP-15-17, 81 NRC 766 n.60 (2015)
- 10 C.F.R. 50.61a(f)(6)
if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 784 (2015)
licensees have some discretion in considering other plant-specific information that may be helpful in aligning their embrittlement models with the surveillance data; LBP-15-17, 81 NRC 768 (2015)
- 10 C.F.R. 50.61a(f)(6), equations 5-7
differing amounts of copper, nickel, phosphorus, and manganese between material samples for the consistency check are accounted for; LBP-15-17, 81 NRC 792 n.256 (2015)
- 10 C.F.R. 50.61a(f)(6)(i)
alternate pressurized thermal shock rule is designed to enable all commercial pressurized water reactor licensees to assess the state of their reactor pressure vessels relative to a new criterion without the need to make new material property measurements, instead using only information that is currently available; LBP-15-17, 81 NRC 765 (2015)
licensee must perform a consistency check of its embrittlement model against available surveillance data; LBP-15-17, 81 NRC 765 (2015)
licensees have to verify that their reference temperature calculations at the time of the application match up with surveillance data; LBP-15-17, 81 NRC 766-67 (2015)
licensees must use data from other reactors (sister-plant data) when they are available, provided the data are from material samples of the same heat; CLI-15-22, 82 NRC 313 (2016)
surveillance data include data from other plants, and licensees must consider these data under certain circumstances; CLI-15-22, 82 NRC 313 n.19 (2016)
surveillance data used in the consistency check need not come from the same reactor pressure vessel that is the subject of the license amendment request; CLI-15-22, 82 NRC 313 (2016)
to verify calculations used to support the license amendment request to use updated embrittlement model, licensees must compare their calculations to heat-specific surveillance data; CLI-15-22, 82 NRC 313 (2016)
when fluence of a material sample is known, it must be used in the consistency check if it is of the appropriate chemical composition; CLI-15-22, 82 NRC 319 n.65 (2016)
- 10 C.F.R. 50.61a(f)(6)(i)(A)
material samples used in a licensee's consistency check must be from the same heat, but there is no requirement that the sample come from the reactor pressure vessel subject to the license amendment request; CLI-15-22, 82 NRC 318 (2016); LBP-15-17, 81 NRC 767, 791 (2015)
- 10 C.F.R. 50.61a(f)(6)(i)(A), (B)
surveillance data must be used in the consistency check when it is a heat-specific match for one or more of the materials for which the reference temperature is being calculated and three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 788 (2015)
- 10 C.F.R. 50.61a(f)(6)(i)(B)
consistency check is required if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 767 (2015)

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- consistency check seeks to compare, for a specific material type, the model's projected embrittlement with the actual embrittlement values at the same fluence provided by material samples; LBP-15-17, 81 NRC 788 (2015)
- if fewer than three surveillance data points exist for a specific material, then the embrittlement model must be used without performing the consistency check; LBP-15-17, 81 NRC 767 (2015)
- purpose of the consistency check is to determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 767 (2015)
- three or more samples are required to conduct a consistency check; LBP-15-17, 81 NRC 769 n.84 (2015)
- 10 C.F.R. 50.61a(f)(6)(i)(B)(ii)
alternate pressurized thermal shock rule changes how licensees derive projected reference temperatures for the components of their reactor pressure vessels; LBP-15-17, 81 NRC 765 (2015)
- 10 C.F.R. 50.61a(f)(6)(ii)-(v)
consistency check compares mean and slope of the embrittlement model curve against surveillance data and checks to confirm that outliers fall within acceptable residual values provided in the regulation; LBP-15-17, 81 NRC 767 n.67 (2015)
- 10 C.F.R. 50.61a(f)(6)(vi)
if the embrittlement model deviates from the physical samples over the limits specified in the regulation, licensee must submit additional evaluations and seek approval for the deviations from the Director of the Office of Nuclear Reactor Regulation; LBP-15-17, 81 NRC 767-68 (2015)
- 10 C.F.R. 50.61a(g), tbl. 1
alternate screening criteria consist of eighteen different reference temperature limits that depend on reactor pressure vessel wall thickness and the part of the RPV under consideration; LBP-15-17, 81 NRC 765 (2015)
- 10 C.F.R. 50.63
each nuclear power plant must be able to cool the reactor core and maintain containment integrity in the event of a station blackout of a specified duration; LBP-12-18, 76 NRC 168-69 (2012)
- for purposes of the license renewal rule, NRC Staff has determined that the plant system portion of the offsite power system that is used to connect the plant to the offsite power source should be included within the scope of the station blackout rule; CLI-12-5, 75 NRC 321 (2012)
- revision of this section to expand the coping capability to include cooling the spent fuel, preventing a loss-of-coolant accident, and preventing containment failure would be a significant benefit; LBP-12-18, 76 NRC 147, 169 (2012)
- safety contention challenging aging management of electrical transformers does not include transformer support structures; LBP-13-13, 78 NRC 403 n.1085 (2013)
- 10 C.F.R. 50.63(c)(ii) & (iii)
station blackout is a beyond-design-basis event and therefore regulations requiring emergency operating procedures do not apply, and so operators would follow a set of procedures required by this section; LBP-12-18, 76 NRC 150 (2012)
- 10 C.F.R. 50.65
active components are excluded from aging management review on the basis of existing regulatory requirements for maintenance and monitoring of structures, systems, and components; CLI-15-6, 81 NRC 348 (2015)
- because irradiated fuel is continually present in the spent fuel pool once the reactor discharges the first batch of spent fuel, and conditions are most challenging during reactor shutdown for refueling, maintenance of equipment related to the safe storage of spent fuel is typically addressed as part of shutdown risk management; DD-13-3, 78 NRC 579 (2013)
- licensees must monitor structures, systems, and components in a manner sufficient to provide reasonable assurance that the SSCs are capable of supporting their intended function; CLI-15-6, 81 NRC 348 n.30 (2015); DD-15-3, 81 NRC 724 (2015)
- relay switches and snubbers do not rely on time-limited assumptions based on the plant's operating term, but rather are subject to ongoing maintenance programs; LBP-15-6, 81 NRC 323 (2015)
- 10 C.F.R. 50.65(a)(1)
Maintenance Rule requires monitoring of a component's performance or condition; CLI-15-6, 81 NRC 364 n.120 (2015)

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- 10 C.F.R. 50.65(a)(4)
guidance for implementation of risk management requirements during shutdown operations is provided; DD-13-3, 78 NRC 579 (2013)
- 10 C.F.R. 50.65(b)
all structures and components that are important to safety must be maintained to manage the effects of aging, but most systems, structures, and components are adequately maintained under existing programs as required by the Maintenance Rule; CLI-15-6, 81 NRC 352 (2015)
- 10 C.F.R. 50.71
current licensing basis includes plant-specific design-basis information as documented in the most recent final safety analysis report; LBP-11-21, 74 NRC 130 (2011)
- 10 C.F.R. 50.71(e)
although NRC Staff reviews submissions under this regulation for compliance with such administrative requirements as timeliness and content, it does not approve substantive changes, such as changes to a seismic analysis, as part of the process; LBP-15-27, 82 NRC 196 (2015)
final safety analysis reports must be updated so that NRC is aware of changes that are made that do not require prior NRC approval; CLI-12-2, 75 NRC 81 (2012)
licensees are required to update their final safety analysis report, which was originally submitted as part of the application for the license, to ensure that the information included in the FSAR contains the latest information developed; CLI-15-14, 81 NRC 742 n.8 (2015); DD-11-3, 73 NRC 385 (2011); DD-15-11, 82 NRC 365 (2015); LBP-15-27, 82 NRC 195 (2015)
licensees must periodically submit an updated FSAR to the agency, but NRC does not review the submittals for accuracy or otherwise approve the analyses therein; CLI-15-14, 81 NRC 746 (2015)
submission of updated FSAR pages does not constitute a licensing action but is only intended to provide information; LBP-15-27, 82 NRC 195 (2015)
this regulation is only a reporting requirement; LBP-15-27, 82 NRC 195 (2015)
updates to the UFSAR are controlled by the requirements of 10 C.F.R. 50.90 and 50.59; CLI-15-14, 81 NRC 746 n.37 (2015)
- 10 C.F.R. 50.71(e)(4)
licensees must update their final safety analysis reports every 2 years; CLI-15-14, 81 NRC 747 (2015); LBP-15-27, 82 NRC 196 (2015)
- 10 C.F.R. 50.72
ERDS activation requirement applies only to operating nuclear power reactors; LBP-15-4, 81 NRC 170, 172 (2015)
exception provision is most reasonably interpreted as exempting from the ERDS program all nuclear reactors that have permanently ceased operations and defueled, i.e., that are permanently shut down; LBP-15-4, 81 NRC 167 (2015)
licensee of a permanently shutdown reactor is never required to activate the ERDS link, and thus it follows that such a licensee need not maintain the ERDS link; LBP-15-4, 81 NRC 167 (2015)
licensee's failure to timely notify NRC about safety relief valve failure and inoperability is a violation; DD-11-6, 74 NRC 422-23 (2011)
- 10 C.F.R. 50.72(a)(4)
activating the emergency response data system must be performed as soon as possible but at most within 1 hour of an emergency declaration; CLI-15-20, 82 NRC 224 n.92 (2015)
emergency response data system activation requirements are specified; CLI-15-20, 82 NRC 214 n.8 (2015)
licensees must activate the emergency response data system as soon as possible but not later than 1 hour after declaring an emergency class of alert, site area emergency, or general emergency; CLI-15-20, 82 NRC 214 (2015); LBP-15-4, 81 NRC 170 (2015)
provision directing licensees to activate ERDS during exigent circumstances applies only to operating nuclear power reactors; LBP-15-4, 81 NRC 161 (2015)
this section describes implementation, maintenance and activation of the ERDS system in the event of an emergency; LBP-15-4, 81 NRC 184 n.36 (2015)
- 10 C.F.R. 50.72(b)
licensee must notify NRC as soon as practical, and in all cases within 1 hour of the occurrence, of any deviation from a plant's technical specifications; DD-11-6, 74 NRC 423 (2011)

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- 10 C.F.R. 50.73
relief valve failure and inoperability found during the refueling outage, which potentially affected the ability of the SRVs to satisfy design actuation requirements, meets the requirements for a licensee event report; DD-11-6, 74 NRC 423 (2011)
- 10 C.F.R. 50.73(a)(2)(i)(B)
evidence that relief valve failure and inoperability may have existed for a period of time greater than allowed by technical specifications is a reportable event; DD-11-6, 74 NRC 423 (2011)
- 10 C.F.R. 50.75
financial qualifications review for decommissioning funding assurance is revisited every year until the license is terminated; DD-11-4, 73 NRC 718 (2011)
license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 505 (2015)
licensee must file an annual report to NRC certifying that financial assurance for decommissioning will be or has been provided in an amount that may be more, but not less, than the amount stated in the regulations, adjusted as appropriate for changes in labor, energy, and waste burial costs; DD-11-3, 73 NRC 388 (2011)
- 10 C.F.R. 50.75(b) and (c)
estimated amount of decommissioning funds must be reported to NRC; DD-11-7, 74 NRC 790 (2011)
- 10 C.F.R. 50.75(c)
decommissioning funding requirements encompass costs of low-level waste burial; CLI-15-8, 81 NRC 511 (2015)
formulas, based on reactor type and power level, are provided for determining minimum dollar amounts required to demonstrate reasonable assurance of decommissioning funding; CLI-15-8, 81 NRC 505 (2015)
licensees may use a site-specific methodology to determine the decommissioning funding needed as long as the amount is greater than the decommissioning cost estimate derived from formulas in this section; DD-11-7, 74 NRC 791 (2011)
licensees must use the formulas in this section to estimate the minimum funding amount needed for radiological decommissioning; DD-11-7, 74 NRC 791 (2011)
- 10 C.F.R. 50.75(c) & n.1
spent fuel management is not a decommissioning activity; LBP-15-24, 82 NRC 73 (2015)
without an exemption from the NRC, licensee is prohibited from using decommissioning funds for spent fuel management because it is not an allowable decommissioning expense; LBP-15-28, 82 NRC 236 (2015)
- 10 C.F.R. 50.75(c)(2)
licensees must annually adjust the amount of decommissioning funding assurance; DD-15-8, 82 NRC 111 (2015)
- 10 C.F.R. 50.75(e)(1)
NRC monitors the status of decommissioning funds and, when necessary, requires additions to funds through parent company guarantees, cash deposits, or other methods permitted under this regulation; DD-15-8, 82 NRC 112 (2015)
- 10 C.F.R. 50.75(e)(1)(i)
financial assurance for decommissioning may be based on the prepayment method; CLI-15-8, 81 NRC 505 (2015)
- 10 C.F.R. 50.75(e)(1)(ii)
licensee who has collected funds based on a site-specific estimate under section 50.75(b)(1) may take credit for projected earnings on the external sinking funds using up to a 2% annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate; DD-11-4, 73 NRC 717-18 (2011)
use of the 4.81% forecast interest rate and the 2.81% annual inflation rate is in compliance; DD-11-4, 73 NRC 718 (2011)
- 10 C.F.R. 50.75(e)(1)(v)
contracts that licensee is relying on for decommissioning funding must be reported to NRC; DD-11-7, 74 NRC 791 (2011)

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- 10 C.F.R. 50.75(e)(2)
if NRC Staff makes a finding of no reasonable assurance, NRC reserves the right to take steps to ensure a licensee's adequate accumulation of decommissioning funds; DD-11-4, 73 NRC 718 (2011)
NRC reserves the right to review, as necessary, the rate of accumulation of decommissioning funds and to take additional actions, as appropriate on a case-by-case basis, to ensure an adequate accumulation of decommissioning funds; DD-11-7, 74 NRC 791, 792 (2011)
- 10 C.F.R. 50.75(e)(3)
applicant is required to submit a report on its decommissioning funding assurance mechanism after combined licenses are issued and no later than 30 days after the NRC publishes notice of intended operation in the *Federal Register*; CLI-12-2, 75 NRC 83 (2012)
- 10 C.F.R. 50.75(f)
an annual report on recalculations of decommissioning cost estimates and projected available decommissioning funding must be submitted by a licensee for a plant that has closed before the end of its licensed life; DD-11-4, 73 NRC 716-17 (2011)
two years before permanent cessation of operations, licensee must submit a preliminary decommissioning cost estimate that includes a plan for adjusting decommissioning funds to demonstrate that funds will be available when needed to cover decommissioning costs; DD-15-8, 82 NRC 112 (2015)
- 10 C.F.R. 50.75(f)(1)
status of decommissioning funds must be reported to NRC at least once every 2 years; DD-15-8, 82 NRC 111-12 (2015)
- 10 C.F.R. 50.75(f)(1) and (2)
power reactor licensees must report decommissioning funding assurance information to NRC at least once every 2 years; DD-11-7, 74 NRC 790 (2011)
- 10 C.F.R. 50.75(f)(2)
power reactor licensees must report to the NRC at least once every 2 years on the status of their decommissioning funding for each reactor or part of a reactor that they own; DD-11-4, 73 NRC 716 (2011)
- 10 C.F.R. 50.75(h)
if licensee amends any of its grandfathered license conditions that were related to the decommissioning trust fund, from that point forward licensee must comply with all of the requirements of this regulation; LBP-15-24, 82 NRC 72 (2015); LBP-15-28, 82 NRC 243 n.70 (2015)
- 10 C.F.R. 50.75(h)(1)-(4)
license amendment request seeks to replace 30-day notice requirement and other plant-specific license conditions with the decommissioning fund requirements; LBP-15-28, 82 NRC 236 (2015)
reporting and recordkeeping rules for decommissioning trusts are government by this regulation; LBP-15-28, 82 NRC 236 (2015)
- 10 C.F.R. 50.75(h)(1)(iv)
decommissioning trust fund cannot be used for nondecommissioning expenses that are not allowed under this regulation; LBP-15-24, 82 NRC 72 n.8, 77, 80, 81 (2015)
exemption from regulations will only be issued if the license is granted; LBP-15-24, 82 NRC 82 (2015)
if license amendment request is approved, licensee will no longer have to provide 30-day notice to the Commission once it begins decommissioning and starts making withdrawals from the decommissioning fund; LBP-15-28, 82 NRC 236 (2015)
licensee seeks regulatory exemptions to allow it to use decommissioning funds to manage spent fuel and eliminate the 30-day notice requirement that would otherwise apply to spent fuel management; LBP-15-28, 82 NRC 236 (2015)
thirty-day notice is not required for decommissioning withdrawals made under section 50.82(a)(8); LBP-15-24, 82 NRC 80, 85, 90 (2015)
- 10 C.F.R. 50.75(h)(5)
contention frames a legal dispute over the meaning of this regulation's direction that a license amendment shall be in accord with the provisions of paragraph (h) of this section; LBP-15-24, 82 NRC 101-02 (2015)
if a licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of paragraph (h) of this section; LBP-15-24, 82 NRC 79 n.65 (2015)

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- petitioner has identified a genuine legal dispute concerning whether a license amendment can be in accordance with the provisions of paragraph (h) of 10 C.F.R. 50.75 where a plant is already exempt from two provisions of 10 C.F.R. 50.75(h)(1)(iv); LBP-15-24, 82 NRC 102 (2015)
- state has demonstrated that its contention is relevant to the findings NRC must make before approving the license amendment request because, to approve the amendment, NRC Staff must find that applicant's LAR is in accordance with this regulation; LBP-15-24, 82 NRC 84-85 (2015)
- there is no time limit on when licensee can seek an amendment to the license conditions relating to its decommissioning trust fund; LBP-15-24, 82 NRC 92-93 (2015)
- where license conditions predate issuance of this regulation, the plant was grandfathered and allowed to keep its existing license conditions; LBP-15-24, 82 NRC 72 (2015); LBP-15-28, 82 NRC 243 n.70 (2015)
- 10 C.F.R. 50.80
- commitments in the revised combined license application restrict foreign ownership share to no more than 10% and require NRC consent for any change in foreign ownership of 5% or more; LBP-14-3, 79 NRC 302 n.214 (2014)
- licensee is required to submit a license transfer application to NRC; CLI-14-5, 79 NRC 256 n.5 (2014)
- NRC approval is required for transfer of control of ownership and/or operating authority responsibilities within the facility operating license; DD-15-8, 82 NRC 112 (2015)
- 10 C.F.R. 50.80(a)
- written consent from NRC is required for all license transfers; CLI-15-8, 81 NRC 502 (2015); CLI-15-26, 82 NRC 411 (2015)
- 10 C.F.R. 50.80(b)(1)(i)
- license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 505 (2015)
- proposed transferee for an operating license must satisfy the same financial qualification requirements that apply to an applicant for an initial operating license; CLI-15-26, 82 NRC 411 (2015)
- subject areas that license transfer applications must address are outlined; CLI-15-8, 81 NRC 511 (2015)
- 10 C.F.R. 50.80(b)(2)
- subject areas that license transfer applications must address are outlined; CLI-15-8, 81 NRC 511 (2015)
- 10 C.F.R. 50.80(c)(1)
- license transfer applicant must demonstrate that the proposed transferee is qualified to hold the license; CLI-15-26, 82 NRC 411 (2015)
- 10 C.F.R. 50.82
- areas of minor radioactive contamination are evaluated and remediated as needed during plant decommissioning; DD-11-1, 73 NRC 12 (2011)
- 10 C.F.R. 50.82(a)(1)(i)
- licensee must provide certifications to NRC Staff that it has permanently ceased power operations; DD-15-7, 82 NRC 261 (2015)
- 10 C.F.R. 50.82(a)(1)(i) & (ii)
- licensee must provide certifications to NRC Staff that it has permanently ceased power operations and that all fuel has been permanently removed from the reactor vessel; DD-14-3, 79 NRC 500, 503 (2014); DD-15-1, 81 NRC 203 (2015)
- 10 C.F.R. 50.82(a)(1)(ii)
- licensee must provide certifications to NRC Staff that it has permanently removed fuel from its reactors; DD-15-7, 82 NRC 261 (2015)
- 10 C.F.R. 50.82(a)(2)
- docketing of certifications of shutdown and defueling means that licensee's Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel; DD-14-3, 79 NRC 500, 503 (2014)
- upon docketing of certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, license will no longer authorize operation of the reactor or emplacement or retention of fuel in the reactor vessel; CLI-15-20, 82 NRC 215 (2015); DD-15-7, 82 NRC 261 (2015); LBP-15-4, 81 NRC 170 n.80 (2015)

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- 10 C.F.R. 50.82(a)(3)
nuclear power facility arguably exists until final decommissioning, which may take up to 60 years, or longer if approved by the Commission; LBP-15-4, 81 NRC 169 n.76 (2015)
- 10 C.F.R. 50.82(a)(4)(i)
licensee must submit a post-shutdown decommissioning activities report before or within 2 years following permanent cessation of operations; DD-15-8, 82 NRC 112 (2015)
to disburse funds without prior notice, licensee must provide a description of the planned decommissioning activities along with a schedule for their accomplishment; LBP-15-24, 82 NRC 81 (2015)
- 10 C.F.R. 50.82(a)(8)
function of the procedural and administrative changes is merely to facilitate the orderly conduct of licensee's business and to ensure that information needed by NRC to perform its regulatory functions is readily available; LBP-15-24, 82 NRC 83 (2015)
given that licensee has not included discovery of unexpected levels of contaminants, and contamination in places not previously expected, in the decommissioning cost estimate, such fund withdrawals would require a 30-day notice; LBP-15-24, 82 NRC 88-89 (2015)
if license amendment request is approved, licensee will no longer have to provide 30-day notice to the Commission once it begins decommissioning and starts making withdrawals from the decommissioning fund; LBP-15-28, 82 NRC 236 (2015)
licensee must provide a 30-day notice for all withdrawals other than ordinary administrative expenses to operate the decommissioning fund, but those notices are no longer required once decommissioning has begun and withdrawals are made under this regulation; LBP-15-24, 82 NRC 72-73 (2015)
- 10 C.F.R. 50.82(a)(8)(i)(A)
decommissioning trust funds may be used by licensees if withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in section 50.2; LBP-15-24, 82 NRC 72 n.9 (2015)
licensee seeks regulatory exemptions to allow it to use decommissioning funds to manage spent fuel and eliminate the 30-day notice requirement that would otherwise apply to spent fuel management; LBP-15-28, 82 NRC 236 (2015)
- 10 C.F.R. 50.82(a)(8)(i)(B)
licensees cannot make decommissioning fund withdrawals that would reduce the value of the trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise; LBP-15-24, 82 NRC 77 (2015)
NRC requires a contingency factor for decommissioning funds to provide for unforeseen events that may happen during operations or decommissioning that could increase the overall costs of this activity; LBP-15-24, 82 NRC 80 (2015)
potential consequences of insufficient offsite storage for spent fuel is one of the unforeseen conditions that this regulation was promulgated to address; LBP-15-24, 82 NRC 90 (2015)
- 10 C.F.R. 50.82(a)(8)(i)(B)-(C)
licensee cannot reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and licensee must maintain its ability to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license; LBP-15-24, 82 NRC 73 (2015)
licensee is required to ensure that the site can be safely maintained and decommissioned, even in the face of unexpected costs; LBP-15-24, 82 NRC 80 (2015)
- 10 C.F.R. 50.82(a)(8)(iii)-(v)
instead of providing notice before each decommissioning expense, licensee must submit a decommissioning cost estimate and timeline, called a Post Shutdown Decommissioning Activities Report, and annual reports on expenditures; LBP-15-24, 82 NRC 73 (2015)
- 10 C.F.R. 50.90
applicant must fully describe in its license amendment request the changes desired; LBP-15-24, 82 NRC 98 (2015)

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- circumstances under which licensee may make changes to its facility and procedures as described in its updated FSAR and conduct tests or experiments not otherwise described in the UFSAR without obtaining a license amendment are discussed; CLI-12-20, 76 NRC 438-39 n.5 (2012)
- FSAR updates must reflect changes that licensee has made through a license amendment request and certain changes that do not require a license amendment; LBP-15-27, 82 NRC 195 (2015)
- if licensee sought to make a change to a surveillance frequency that did not conform to the NEI 04-10 standard, then it would then need to request a license amendment; CLI-13-10, 78 NRC 565 n.9 (2013)
- licensee cannot be exempted from license conditions without a license amendment modifying such conditions; LBP-15-28, 82 NRC 238 n.26 (2015)
- licensees cannot amend the terms of their license unilaterally; CLI-14-11, 80 NRC 173 (2014)
- licensees may make changes in the procedures described in its updated final safety analysis report and conduct tests or experiments not otherwise described in the UFSAR without obtaining a license amendment; CLI-14-4, 79 NRC 250 n.4 (2014)
- licensees seeking to use the updated methodology in 10 C.F.R. 50.61a must submit a license amendment request; CLI-15-22, 82 NRC 313 (2016)
- NRC licensees require a license amendment to modify license conditions; LBP-15-24, 82 NRC 74 (2015)
- to amend a license, including technical specifications in the license, an application for amendment must be filed, fully describing the changes desired; CLI-15-22, 82 NRC 316 (2016)
- to take advantage of the Alternate PTS Rule, licensee must request approval from the Office of Nuclear Reactor Regulation, in accordance with the procedures for submitting a license amendment; LBP-15-17, 81 NRC 766 (2015)
- when licensee wants to amend a license, application for an amendment must be filed with the Commission; CLI-15-5, 81 NRC 334 (2015); CLI-15-14, 81 NRC 741 (2015)
- 10 C.F.R. 50.90-.92
- if licensee is unable to operate a reactor in strict accordance with its license, it must seek authorization from NRC for a license amendment; LBP-13-7, 77 NRC 331 (2013)
- 10 C.F.R. 50.91
- process for making the no significant hazards consideration determination is discussed; LBP-15-26, 82 NRC 172 n.14 (2015)
- 10 C.F.R. 50.91(a)(1)
- when licensee submits its license amendment application to NRC, it must provide the agency its analysis about the issue of no significant hazards consideration using the standards in 10 C.F.R. 50.92; LBP-15-17, 81 NRC 790 n.238 (2015)
- 10 C.F.R. 50.91(a)(4)
- final no significant hazards consideration determination allows the Commission to issue the challenged license amendment before the petitioner's request for a hearing is adjudicated; LBP-15-17, 81 NRC 790 n.238 (2015)
- license amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention has filed a request for a hearing; LBP-15-17, 81 NRC 790 n.238 (2015)
- 10 C.F.R. 50.91(a)(5)
- "exigent circumstances" determination seems compelled by the fact that violation of the technical specifications limit for the plant, whatever the cause of the temperature increase, requires a dual unit shutdown; LBP-15-13, 81 NRC 477 (2015)
- where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment; LBP-15-13, 81 NRC 477 (2015)
- 10 C.F.R. 50.91(a)(6)
- NRC Staff may determine that exigent circumstances exist such that there is insufficient time for a full 30-day public comment period on a license amendment request; LBP-15-13, 81 NRC 476 (2015)
- where the Commission finds that exigent circumstances exist and it also determines that an amendment involves no significant hazards considerations, it will provide a hearing after issuance, if one has been requested by a person who satisfies the intervention requirements of 10 C.F.R. 2.309; CLI-15-25, 82 NRC 393 n.21 (2015)

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- 10 C.F.R. 50.91(b)(1)
when licensee requests an amendment, it must notify the state in which its facility is located of its request by providing that state with a copy of its application; LBP-15-28, 82 NRC 243 n.72 (2015)
- 10 C.F.R. 50.92
licensee is prohibited from simply disconnecting its ERDS when the reactor is powered down during decommissioning; LBP-15-4, 81 NRC 178-79 (2015)
there can be no actual license amendment until and unless it is issued by the NRC Staff; LBP-13-7, 77 NRC 327 (2013)
- 10 C.F.R. 50.92(a)
determinations on whether to grant an applied-for license amendment are to be guided by the considerations that govern the issuance of initial licenses or construction permits to the extent applicable and appropriate; CLI-15-22, 82 NRC 316 n.44 (2016); LBP-15-17, 81 NRC 778 (2015); LBP-15-20, 81 NRC 840-41 (2015)
- 10 C.F.R. 50.92(c)
eligibility conditions for a no significant hazards consideration determination on a proposed amendment are discussed; LBP-15-26, 82 NRC 172 n.14 (2015)
licensing boards lack jurisdiction to adjudicate challenges to NRC Staff's proposed no significant hazards consideration determination; LBP-13-11, 78 NRC 181 n.18 (2013)
- 10 C.F.R. 50.109
backfitting includes the modification of or addition to systems, structures, components, or designs of a facility; LBP-11-17, 74 NRC 17 n.19 (2011)
Commission administratively exempted from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 443 n.101 (2012)
Commission requests briefing from NRC Staff on the circumstances, if any, NRC Staff would judge a potentially cost-beneficial mitigation alternative to warrant further NRC consideration outside of the license renewal review, either via a backfit analysis or as part of another process; CLI-15-3, 81 NRC 219 (2015)
if combined licenses issue without including license conditions, NRC regulations relevant to the finality of decisions could result in some additional administrative requirements to satisfy in imposing new requirements on licensee; CLI-12-9, 75 NRC 439 (2012)
licenses may be amended to add appropriate conditions, depending on whether the conditions are within the scope of the certified design; CLI-12-9, 75 NRC 438 (2012)
- 10 C.F.R. 50.109(a)(3)
NRC may impose new requirements defined as "backfitting" on previously licensed power reactors only if it finds that there is a substantial increase in the overall protection of public health and safety or the common defense and security and the direct and indirect costs of implementation for that facility are justified in view of this increased protection; LBP-11-17, 74 NRC 22 n.53, 26 (2011); LBP-12-18, 76 NRC 154 n.124 (2012)
when NRC imposes new regulatory requirements that are important safety enhancements but not deemed necessary to ensure adequate protection of public health and safety, NRC often does not require existing licensees to implement them based on considerations such as whether they are cost-beneficial; CLI-12-2, 75 NRC 127 (2012)
- 10 C.F.R. 50.109(a)(4)(i)
NRC could require modifications to the inservice testing program pursuant to compliance backfit provisions; CLI-12-2, 75 NRC 93 (2012)
- 10 C.F.R. 50.109(a)(4)(ii)
an exception to the backfit rule is provided if the Commission determines that regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; CLI-12-9, 75 NRC 440 n.98 (2012); LBP-12-18, 76 NRC 154 n.124 (2012)

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- 10 C.F.R. Part 50, Appendix A, GDC 2
NRC Staff ensures that applicant's design basis for the new units will protect public health and safety by verifying that the design basis will withstand maximum flooding events; LBP-11-6, 73 NRC 217 n.78(2010)
structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as floods without loss of capability to perform their safety functions; LBP-13-8, 78 NRC 12 (2013)
- 10 C.F.R. Part 50, Appendix A, GDC 11
reactors must exhibit a negative void coefficient in the power operating range; LBP-12-12, 75 NRC 774-75 (2012)
- 10 C.F.R. Part 50, Appendix A, GDC 14
wear of steam generator tubes is of critical importance to evaluations performed in the final safety analysis report, because the tubes are part of the reactor coolant pressure boundary, and assurance of their integrity is required; LBP-13-7, 77 NRC 336-37 n.44 (2013)
- 10 C.F.R. Part 50, Appendix A, GDC 19
applicant must ensure that its control room remains habitable in case of accidental release of hazardous gases; CLI-12-9, 75 NRC 454 (2012)
- 10 C.F.R. Part 50, Appendix A, GDC 44
applicability of these regulations to boiling water reactor spent fuel pools is discussed; DD-15-11, 82 NRC 364-68 (2015)
plants must employ an ultimate heat sink to transfer heat from structures, systems, and components that are important to safety; LBP-15-13, 81 NRC 459 n.5 (2015)
system must be provided to transfer heat from structures, systems, and components important to safety to an ultimate heat sink under normal operating and accident conditions, and must be able to perform this safety function with either onsite or offsite power, assuming a single component failure; DD-15-11, 82 NRC 366 (2015)
- 10 C.F.R. Part 50, Appendix A, GDC 61
establishing safety limits for stored irradiated fuel is not appropriate, but measures to prevent a significant loss of coolant inventory under accident conditions that could challenge the cooling of the stored fuel are documented in the updated final safety analysis report; DD-13-3, 78 NRC 581 (2013)
fuel storage system must be designed to prevent significant reduction in coolant inventory under accident conditions and with a residual heat removal capability having reliability and testability that reflects the importance to safety of decay heat and other residual heat removal; DD-15-11, 82 NRC 365-66 (2015)
spent fuel storage systems must be designed to ensure adequate safety under normal and postulated accident conditions; CLI-15-4, 81 NRC 240 (2015)
- 10 C.F.R. Part 50, Appendix B
applicant must establish and implement its own quality assurance program when it enters into a contract for the conduct of safety-related combined license application activities and to retain overall control of safety-related activities performed by the contractor; CLI-14-10, 80 NRC 159 n.7 (2014)
during the license renewal period, the regulations of this section concerning ongoing inspections and audits apply; LBP-13-13, 78 NRC 381 (2013)
license applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but applicant retains responsibility for the quality assurance program; LBP-12-23, 76 NRC 476 (2012); LBP-14-7, 79 NRC 477 (2014)
petitioners' assertions that the MACCS2 code was not subjected to quality assurance requirements is deficient because a SAMA analysis is not subject to such requirements; LBP-11-2, 73 NRC 69 (2011)
"quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service; DD-15-2, 81 NRC 207-08 (2015)
quality assurance requirements apply to design of the safety-related functions of the structures, systems, and components that prevent or mitigate the consequences of postulated accidents; LBP-14-7, 79 NRC 474 (2014)
use of the past tense when referring to "quality assurance applied to the design" shows that safety-related design activities must have been performed under an acceptable QA program even though those

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- activities were performed prior to the date on which the combined license application (which includes the FSAR) was filed with the NRC; LBP-14-7, 79 NRC 474 (2014)
- 10 C.F.R. Part 50, Appendix B, Introduction
quality assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system that provide a means to control the quality of the material, structure, component, or system to predetermined requirements; LBP-14-7, 79 NRC 469 n.109 (2014)
- 10 C.F.R. Part 50, Appendix B, Criterion I
applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility for the program; CLI-14-10, 80 NRC 165-66 (2014)
- 10 C.F.R. Part 50, Appendix B, Criterion III
failure to verify adequacy of thermal-hydraulic and flow-induced vibration design of the replacement steam generators was determined to be of very low safety significance, because the tubes did not leak and continued to meet the required structural integrity criterion; DD-15-7, 82 NRC 263-64 (2015)
licensee's operation of primary coolant pumps contrary to plant licensing and the FSAR is a violation of this criterion; DD-15-3, 81 NRC 725 (2015)
- 10 C.F.R. Part 50, Appendix B, Criterion XI
licensees must assess the condition of their components, monitor performance of structures, systems, and components to ensure that they can fulfill their intended functions, and establish a suitable test program to demonstrate that components will perform satisfactorily in-service; DD-13-2, 78 NRC 189 (2013)
- 10 C.F.R. Part 50, Appendix B, Criterion XVI
because all aspects of licensee's current licensing basis will remain in effect during the period of extended operation, in the event that renewed licenses are issued, the requirements that conditions adverse to quality be corrected will apply; LBP-13-13, 78 NRC 332-33 (2013)
quality assurance programs must establish measures to ensure that conditions adverse to quality are promptly identified and corrected; LBP-14-7, 79 NRC 470 (2014)
- 10 C.F.R. Part 50, Appendix B, Criterion XVIII
comprehensive system of planned and periodic audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine effectiveness of the program; LBP-14-7, 79 NRC 480 (2014)
- 10 C.F.R. Part 50, Appendix E
emergency planning zones are approximately a 10-mile radius around a reactor unit as adjusted to reflect the road network and land use; CLI-12-9, 75 NRC 458 (2012)
license amendment requests do not require an updated or separate emergency plan unless such a plan would be germane to the type of license amendment request under review or is part of a licensee's periodic update of emergency plans; LBP-11-29, 74 NRC 622 (2011)
NRC provides for a plume exposure pathway emergency planning zone and an ingestion exposure pathway EPZ around nuclear power plants in the event of a nuclear accident; LBP-11-15, 73 NRC 640 (2011)
proposed staffing changes meet emergency plan standards and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency commensurate with credible accidents in the permanently shutdown and defueled condition; CLI-15-20, 82 NRC 220 (2015)
- 10 C.F.R. Part 50, Appendix E, § IV.A
during a nuclear emergency in the United States, the individual licensee and the appropriate state and local government officials have direct responsibilities for the coordinated response to the event; LBP-11-15, 73 NRC 641 (2011)
- 10 C.F.R. Part 50, Appendix E, § IV.E.9
combined license applicant's emergency plan must contain and describe adequate provisions for emergency facilities and equipment, including at least one onsite and one offsite communications system, each of which shall have a backup power source; LBP-11-15, 73 NRC 637 (2011)
- 10 C.F.R. Part 50, Appendix E, § IV.F.2
offsite emergency plans are reviewed biennially by NRC and the Federal Emergency Management Agency in a comprehensive emergency preparedness exercise; CLI-12-9, 75 NRC 456 (2012); CLI-15-6, 81 NRC 377 (2015)

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- 10 C.F.R. Part 50, Appendix E, § V
activities that the closed plants in 1991 are exempt from performing are limited to only implementation and maintenance of the ERDS; LBP-15-4, 81 NRC 184 (2015)
- 10 C.F.R. Part 50, Appendix E, § VI
any alleged ambiguity in the exception provision is eliminated when the regulatory language is examined in light of the regulatory history and framework; LBP-15-4, 81 NRC 174 n.100 (2015)
ERDS is a direct electronic data link between licensees of operating reactors and the NRC Operations Center, and its objective is to allow NRC to monitor critical parameters during an emergency; LBP-15-4, 81 NRC 160-61 (2015)
if this section were a one-time requirement that applied only to units existing in 1991, that would mean it was not intended to apply prospectively to newly built reactors; LBP-15-4, 81 NRC 171 (2015)
NRC, in its capacity as the federal agency charged with regulating the nuclear industry in a manner that protects public health and safety, monitors nuclear emergencies; LBP-11-15, 73 NRC 641 (2011)
participation in the emergency response data system is mandatory; CLI-15-20, 82 NRC 214 (2015)
regulatory history, like the regulation itself, is focused entirely on implementation and maintenance of the ERDS operations with not one word about decommissioning the system; LBP-15-4, 81 NRC 182 (2015)
- 10 C.F.R. Part 50, Appendix E, § VI.1
when selected plant data are not available on licensee's onsite computer system, retrofitting of data points is not required; CLI-15-20, 82 NRC 214 n.10 (2015)
- 10 C.F.R. Part 50, Appendix E, § VI.2
all nuclear power facilities that are shut down permanently or indefinitely are exempted from participating in the ERDS program; LBP-15-4, 81 NRC 161, 167 (2015)
any facility with an operating reactor unit is required to provide ERDS for that unit, regardless of the status of other reactors at the facility; LBP-15-4, 81 NRC 168 (2015)
except Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware for the emergency response data system shall be provided at each unit by the licensee to interface with the NRC receiving system; CLI-15-20, 82 NRC 214 n.14 (2015); LBP-15-4, 81 NRC 161, 172 (2015)
if licensee of a permanently shutdown reactor is never required to activate the ERDS link, it must be concluded that such a licensee is exempt from the ERDS program; LBP-15-4, 81 NRC 170 (2015)
meaning of "shut down permanently" is discussed; CLI-15-20, 82 NRC 226 (2015)
nuclear power facilities that are shut down permanently are exempt from the need to provide an emergency response data system interface with the NRC; CLI-15-20, 82 NRC 218 (2015)
nuclear power facility has shut down permanently within the meaning of this regulation when it has permanently ceased reactor operations, and permanently removed fuel from the reactor vessel, as those terms are defined in 10 C.F.R. 50.2; LBP-15-4, 81 NRC 169-70 (2015)
plants that are shut down do not have to provide the ERDS hardware, or assemble and transmit data; LBP-15-4, 81 NRC 181 (2015)
scope of the ERDS exception is informed by the regulatory history, which states that ERDS is to be used by licensees of operating reactors; LBP-15-4, 81 NRC 167 (2015)
- 10 C.F.R. Part 50, Appendix E, § VI.2.a(ii)
parameters from which ERDS transmits data points for boiling water reactors are identified; LBP-15-4, 81 NRC 169 n.73 (2015)
- 10 C.F.R. Part 50, Appendix E, § VI.4.d
each licensee is required to complete implementation of the ERDS by February 13, 1993, or before initial escalation to full power, whichever comes later; LBP-15-4, 81 NRC 161, 171 n.87, 189 (2015)
- 10 C.F.R. Part 50, Appendix G
licensees may follow regulatory guides to determine equivalent safety margins, or may use any other methods, procedures, or selection of materials data and transients to demonstrate compliance with this regulation; LBP-15-20, 81 NRC 835 n.20 (2015)
materials in a reactor vessel must maintain a minimum level of 50 ft-lb of Charpy upper-shelf energy, which is a measurement of the amount of energy the material can absorb at high temperatures before it fractures and fails; LBP-15-20, 81 NRC 833 (2015)

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- 10 C.F.R. Part 50, Appendix G, § IV.A.1.a
equivalent margins analysis must demonstrate that the calculated energy will provide margins of safety against fracture that are equivalent to those required by Appendix G of Section XI of the ASME Code; CLI-15-23, 82 NRC 322-23 (2015)
licensees have the option of demonstrating that values of Charpy upper-shelf energy below 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME BPV Code; LBP-15-20, 81 NRC 833-34, 842 (2015)
under normal plant conditions, materials at the beltline of the reactor pressure vessel must maintain Charpy upper-shelf energy of no less than 50 ft-lb (68 joules); CLI-15-23, 82 NRC 322 (2015)
- 10 C.F.R. Part 50, Appendix H
contention contesting adequacy of licensee's equivalent margins analysis is not a challenge to NRC regulations; LBP-15-20, 81 NRC 841-42 (2015)
licensees must attach a particular number of surveillance capsules to specified areas within the reactor vessel, typically near the inside vessel wall at the beltline; LBP-15-20, 81 NRC 838 (2015)
reactor vessel material surveillance programs provide material property data necessary to implement a regulatory scheme to protect reactor pressure vessels from failure due to withstand a pressurized thermal shock event; CLI-15-22, 82 NRC 312 (2016)
surveillance program to monitor pressurized water reactor pressure vessel is described; LBP-15-17, 81 NRC 761 (2015)
- 10 C.F.R. Part 50, Appendix H, § I
minimum frequency with which surveillance capsules must be tested is set by ASTM Standard E 185 (1982 version), which is incorporated into Appendix H; LBP-15-20, 81 NRC 842 (2015)
pressurized water reactor pressure vessel surveillance program relies on physical material samples, also known as specimens, capsules, or coupons, which are withdrawn periodically from the reactor vessel; LBP-15-17, 81 NRC 761 (2015)
- 10 C.F.R. Part 50, Appendix H, § III.A
exemption from the surveillance program is allowed if a reactor's lifetime irradiation levels are below a certain threshold; LBP-15-17, 81 NRC 761 n.25 (2015)
- 10 C.F.R. Part 50, Appendix H, § III.B.2
physical specimens must come from near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface; LBP-15-17, 81 NRC 761 n.24 (2015)
- 10 C.F.R. Part 50, Appendix H, § III.B.3
NRC must preapprove the schedule for removing material samples from the reactor vessel; LBP-15-17, 81 NRC 761 (2015)
surveillance capsule withdrawal schedule is not part of the plant's license; LBP-15-20, 81 NRC 842 (2015)
- 10 C.F.R. Part 50, Appendix H, § III.C
integrated surveillance program among similar reactors is allowed if the reactors have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage; LBP-15-17, 81 NRC 761 n.25 (2015)
- 10 C.F.R. Part 50, Appendix H, § III.C.3
no reduction in the amount of testing is allowed without NRC approval; CLI-15-23, 82 NRC 326 n.24 (2015)
- 10 C.F.R. Part 50, Appendix I
NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the ALARA dose objectives; DD-11-1, 73 NRC 11 (2011)
- 10 C.F.R. Part 50, Appendix J, Option A, § II
containment system is defined as the principal barrier, after the reactor coolant pressure boundary, to prevent release of quantities of radioactive material that would have a significant radiological effect on public health; LBP-15-26, 82 NRC 168 (2015)
leakage rate acceptance limit is based on minimizing leakage that would occur at the calculated peak containment internal pressure related to the design-basis loss-of-coolant accident; LBP-15-26, 82 NRC 170 n.9 (2015)

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- required Type A containment leakage tests measures total leakage rate from all potential leakage paths, including containment liner welds, valves, fittings, and components that penetrate the containment; LBP-15-26, 82 NRC 168 n.4 (2015)
- 10 C.F.R. Part 50, Appendix J, Option B, § I
licensees must conduct periodic containment leakage tests to ensure that leakage does not exceed the allowable rates specified in the technical specifications and the containment will perform its design function following an accident up to and including the plant design-basis accident; LBP-15-26, 82 NRC 168 (2015)
- 10 C.F.R. Part 50, Appendix J, Option B, §§ II and III
contention argument is an improper attempt to graft a historical-event criterion onto the performance-criteria specified in Appendix J, Option B; LBP-15-26, 82 NRC 175 (2015)
- 10 C.F.R. Part 50, Appendix J, Option B, § III.A
Commission placed no historical-event restriction on reactors electing to comply with Appendix J through performance-based testing; LBP-15-26, 82 NRC 175 & n.24 (2015)
overall integrated leakage rate must not exceed allowable leakage rate with margin, as specified in the Technical Specifications; LBP-15-26, 82 NRC 170 n.9 (2015)
periodic visual inspections of the accessible interior and exterior surfaces of the containment system are required to identify structural deterioration that may affect containment integrity; LBP-15-26, 82 NRC 170 (2015)
Type B pneumatic tests detect and measure local leakage rates across pressure-retaining, leakage-limiting boundaries other than valves; LBP-15-26, 82 NRC 168-69 (2015)
- 10 C.F.R. Part 50, Appendix J, Option B, § III.B
Type C pneumatic tests measure containment isolation valve leakage rates; LBP-15-26, 82 NRC 168-69 (2015)
- 10 C.F.R. Part 50, Appendix R, § II
objectives of licensee's fire protection program to extend the concept of defense-in-depth to fire protection are discussed; DD-12-3, 76 NRC 421 (2012)
- 10 C.F.R. Part 50, Appendix R, § III.F
fire detection systems shall be automatic and capable of operating with or without offsite power; DD-12-3, 76 NRC 422 (2012)
NRC Staff will disposition violations as part of its ongoing reactor oversight process, and evidentiary hearings before NRC at the request of third parties are not a part of this process; DD-12-3, 76 NRC 425 (2012)
- 10 C.F.R. Part 50, Appendix R, § III.G
licensee cited for violations for use of unapproved operator manual actions to mitigate safe shutdown equipment malfunctions caused by a fire-induced single spurious actuation in lieu of protecting the equipment; DD-12-3, 76 NRC 424 (2012)
NRC Staff will disposition violations as part of its ongoing reactor oversight process, and evidentiary hearings before NRC at the request of third parties are not a part of this process; DD-12-3, 76 NRC 425 (2012)
plants licensed to operate before January 1, 1979, must meet fire safety regulations; DD-12-3, 76 NRC 420 (2012)
unapproved operator manual actions represent potential noncompliances; DD-12-3, 76 NRC 423 (2012)
underlying purpose of this regulation is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event; DD-12-3, 76 NRC 421 (2012)
- 10 C.F.R. Part 50, Appendix R, § III.G.2
means to ensure that a redundant train of safe-shutdown cables and equipment is free of fire damage in instances in which redundant trains are located in the same fire area outside of primary containment are described; DD-12-3, 76 NRC 421 (2012)
use of operator manual actions in lieu of the protection methods specified in this regulation is not consistent with the regulations and plants need regulatory approval for each specific OMA proposed; DD-12-3, 76 NRC 421 (2012)
- 10 C.F.R. Part 50, Appendix S, § III
safe shutdown earthquake is defined; LBP-11-10, 73 NRC 452 (2011)

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- 10 C.F.R. Part 51
qualitative benefits and costs in the cost-benefit analysis for the uranium enrichment facility are estimated to be small, moderate, or large, using the same general definitions found in the regulations of this part; LBP-12-21, 76 NRC 306 (2012)
relative to NEPA, in mandatory hearings, boards are to determine whether the review conducted by NRC Staff has been adequate, but they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-11, 73 NRC 476 n.10 (2011)
uranium enrichment facility applicant is required to prepare an environmental report; LBP-12-21, 76 NRC 291 (2012)
- 10 C.F.R. 51.1
because the Commission has established a requirement to provide information to be used by NRC staff in fulfillment of its obligation under the National Environmental Policy Act, suitability of applicant's SAMA analysis must be judged by the requirements of NEPA; LBP-11-18, 74 NRC 37 (2011)
regulations in Part 51 implement National Environmental Policy Act § 102(2); LBP-15-5, 81 NRC 264 (2015)
section 51.28(a)(5) is subject to the general limitation that the NRC's NEPA regulations do not apply to any environmental effects that NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations; LBP-12-12, 75 NRC 754-55 (2012)
- 10 C.F.R. 51.1(a)
severe accident mitigation alternatives analyses are required pursuant to NEPA; LBP-11-13, 73 NRC 571 (2011)
- 10 C.F.R. 51.4
construction of a transmission line is defined as a preconstruction activity; LBP-12-12, 75 NRC 778 (2012)
Limited Work Authorization Rule expressly excludes transmission lines from the delineated construction activities that would require NRC approval before being undertaken; CLI-15-1, 81 NRC 10 n.48 (2015)
- 10 C.F.R. 51.4(1)(ii)(G)
building of transmission lines is excluded from the definition of construction; LBP-14-9, 80 NRC 31 (2014)
- 10 C.F.R. 51.7
contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 55 (2013)
- 10 C.F.R. 51.10
admissibility of contention that environmental assessment fails to adequately describe or analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 430 (2015)
admissibility of contention that environmental assessment fails to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 443 (2015)
admissibility of contention that environmental assessment fails to provide an analysis of the impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 447 (2015)
admissibility of contention that final environmental assessment fails to adequately analyze cumulative impacts is decided; LBP-15-11, 81 NRC 432 (2015)
admissibility of contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with restoration standards and difficulty and cost in achieving the them and the use of the alternative standards permitted under the proposed rules is decided; LBP-15-15, 81 NRC 607, 608 (2015)
admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 418 (2015)
agency is required to consider all reasonable alternatives under the National Environmental Policy Act; LBP-15-15, 81 NRC 607-08 (2015)
compliance with NEPA is ultimately the responsibility of NRC; CLI-12-13, 75 NRC 684 (2012)

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- contention alleging that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies, is decided; LBP-15-16, 81 NRC 659-60 (2015)
- contention that draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 83 (2013)
- contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 58, 110 (2013)
- contention that draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 65 (2013)
- contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 94-95 (2013)
- contention that draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 86 (2013)
- contention that draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 69 (2013)
- contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess adequate confinement and potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 55, 107 (2013)
- contention that draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 89 (2013)
- contention that draft supplemental environmental impact statement fails to consider connected actions is admissible; LBP-13-9, 78 NRC 75 (2013)
- contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 428 (2015)
- contention that environmental assessment violates the National Environmental Policy Act in its failure to provide an analysis of the groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 424 (2015)
- contention that final environmental assessment fails to adequately analyze all reasonable alternatives is inadmissible; LBP-15-11, 81 NRC 434 (2015)
- contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 434-35 (2015)
- contention that final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 393 (2014)
- contention that NRC has failed to engage other relevant federal, state, and local agencies and has not analyzed impacts subject to jurisdiction and control of these other agencies, and has thus failed to comply with NEPA's action-forcing mandate and general purpose is inadmissible; LBP-13-9, 78 NRC 82 (2013)
- mitigation measures must be discussed in the final supplemental environmental impact statement; LBP-15-16, 81 NRC 687 (2015)
- NRC has the right to prepare an independent environmental impact statement whenever NRC has regulatory authority over an activity; LBP-13-9, 78 NRC 82-83 (2013)
- 10 C.F.R. 51.10(a)
- although NRC regulations do not require NRC Staff to analyze the environmental impacts of NRC licensing actions on the environment of foreign nations, Staff extended its outreach to international organizations to inform its analysis of the potential environmental impacts of the project; CLI-15-13, 81 NRC 581 (2015)
- Commission shall prepare an environmental impact statement during review of the early site permit application; LBP-11-10, 73 NRC 440 n.93 (2011)

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- NRC, as an independent regulatory agency, is not bound by those portions of CEQ's NEPA regulations that have a substantive impact on the way in which NRC performs its regulatory functions; CLI-11-11, 74 NRC 444 (2011)
- to evaluate a license renewal application for a nuclear power reactor, NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 21 (2011)
- 10 C.F.R. 51.14(a)
every combined license application must be accompanied by an environmental report to aid the Commission in its preparation of an environmental impact statement; LBP-11-6, 73 NRC 172 (2010)
purpose of applicant's environmental report is to aid the Commission in its preparation of an environmental impact statement; LBP-12-9, 75 NRC 623 (2012)
- 10 C.F.R. 51.14(a)(3)
purpose of applicant's environmental report is to assist NRC in preparing the agency's own environmental analysis; LBP-11-28, 74 NRC 608 (2011)
- 10 C.F.R. 51.14(b)
applicant's environmental report is not the vehicle for the NRC Staff's safety review; LBP-11-6, 73 NRC 216 (2010)
Council on Environmental Quality regulations that define the scope of an environmental impact statement to include cumulative impacts are incorporated; LBP-12-3, 75 NRC 201 (2012)
"cumulative impact" is defined as the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions; LBP-12-24, 76 NRC 511 (2012)
cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-13-4, 77 NRC 120 (2013)
definition of "connected actions" in 40 C.F.R. 1508.25 is also adopted by this NRC regulation; LBP-14-9, 80 NRC 41 (2014)
effects and impacts as used in this regulation are synonymous with 40 C.F.R. 1508.8; LBP-13-4, 77 NRC 120 (2013)
environmental impact statements must address the cumulative impact of the proposed action, which is defined as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions; LBP-13-4, 77 NRC 120 (2013)
in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the Council on Environmental Quality; LBP-11-7, 73 NRC 301 n.314 (2011)
irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation, NRC regulations categorize impacts into direct, indirect, and cumulative; LBP-11-26, 74 NRC 546 (2011)
NRC adopted the Council on Environmental Quality's definition of "effects" in 40 C.F.R. 1508.8; LBP-14-9, 80 NRC 42 (2014)
NRC has expressly adopted, and is therefore bound by, the CEQ definition of cumulative impacts; LBP-14-6, 79 NRC 420 (2014)
scope of environmental concerns that must be considered in the environmental impact statement are discussed; LBP-11-6, 73 NRC 172-73 (2010)
scope of the term "impact" includes cumulative impacts; LBP-12-24, 76 NRC 513 (2012)
separate actions are connected if, among other things, they cannot or will not proceed unless other actions are taken previously or simultaneously, or they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-12-12, 75 NRC 779 (2012); LBP-14-6, 79 NRC 421 (2014)
when drafting an environmental impact statement, agency's scope of review must include analysis of any connected or cumulative actions to the central proposed action; LBP-15-16, 81 NRC 697 (2015)
- 10 C.F.R. 51.20
NRC Staff is required to prepare environmental impact statements for reactor licensing proceedings; CLI-14-7, 80 NRC 6 n.13 (2014)

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- 10 C.F.R. 51.20(a)(1)
environmental impact statement is required when the proposed project is a major federal action significantly affecting the quality of the human environment; LBP-15-15, 81 NRC 616 (2015)
- 10 C.F.R. 51.20(b)(1)
actions requiring an environmental impact statement or a supplement to an EIS are a limited work authorization, construction permit for a nuclear power reactor, testing facility, or fuel reprocessing plant, or an early site permit; LBP-11-10, 73 NRC 440 n.93 (2011)
- 10 C.F.R. 51.20(b)(2)
an environmental impact statement is required for renewal of an operating license for a nuclear power reactor; LBP-12-1, 75 NRC 36 (2012)
NRC's review of a COL application is the type of proposed action obliging the Staff to prepare an environmental impact statement or a supplement thereto; LBP-11-39, 74 NRC 868 (2011)
- 10 C.F.R. 51.20(b)(8)
issuing a license to possess and use source material to a uranium milling facility is identified as a major federal action; LBP-15-16, 81 NRC 641 n.123 (2015)
NRC Staff must prepare an environmental impact statement in connection with a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery; LBP-15-3, 81 NRC 83 (2015)
- 10 C.F.R. 51.22(a)
actions that the Commission, by rule or regulation, has declared to be a categorical exclusion do not individually or cumulatively have a significant effect on the human environment; LBP-14-6, 79 NRC 413 n.40 (2014)
categories of actions are exempt from NEPA review where NRC has made a generic finding that the actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 180 n.33 (2015)
- 10 C.F.R. 51.22(b)
admissibility of contention that final environmental assessment fails to satisfy NRC's requirement for an environmental impact statement when there are unresolved conflicts concerning reasonable alternatives is decided; LBP-15-15, 81 NRC 604, 616 (2015)
any interested person may challenge the use of a categorical exclusion by presenting special circumstances; LBP-15-26, 82 NRC 181 (2015)
petitioners' request for waiver of 10 C.F.R. 51.22(c)(15) has not shown that there are unresolved conflicts concerning alternative uses of available resources; CLI-11-3, 73 NRC 621 n.33 (2011)
special circumstances exception allows petitioner to challenge a no significant hazards consideration determination; LBP-15-26, 82 NRC 182 (2015)
- 10 C.F.R. 51.22(c)(9)
license amendment request is not categorically exempt from environmental review if it involves a significant hazards consideration that excludes it from categorical exemption pursuant to the criteria in paragraph (i); LBP-15-26, 82 NRC 180 (2015)
- 10 C.F.R. 51.22(c)(10)(ii)
recordkeeping or administrative procedures are categorically excluded from environmental review; LBP-15-24, 82 NRC 94 (2015)
- 10 C.F.R. 51.22(c)(13)
cask certification for transportation poses such a minimal environmental impact that it merits a categorical exclusion from NEPA; LBP-14-6, 79 NRC 413 (2014)
- 10 C.F.R. 51.22(c)(15)
categorical exclusion from the NEPA requirement to prepare an environmental assessment or environmental impact statement for the issuance of import licenses involving low-level radioactive waste is provided; CLI-11-3, 73 NRC 619, 620 (2011)
request for rule waiver is denied; CLI-11-3, 73 NRC 616 (2011)
- 10 C.F.R. 51.22(c)(21)
license transfer applications need not include an environmental analysis under NEPA; CLI-15-8, 81 NRC 510 (2015)

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- 10 C.F.R. 51.22(c)(25)
exemptions from decommissioning fund expenditure notification requirements are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-28, 82 NRC 237 (2015)
exemptions from decommissioning fund withdrawals were categorically excluded from environmental review as administrative changes that did not increase the risk of public radiation exposure; LBP-15-24, 82 NRC 74 (2015)
- 10 C.F.R. 51.23
Commission instituted a rulemaking to revise the agency's generic determination on the environmental impacts of continued storage of spent nuclear fuel; LBP-14-12, 80 NRC 139 (2014)
generic findings are reflected regarding impacts of spent fuel storage after the cessation of licensed operation of a nuclear power plant; CLI-14-8, 80 NRC 74 (2014)
no additional procedural steps are necessary to add the impacts of continued storage to existing environmental impact statements because this regulation, by its terms, has already done so; CLI-15-10, 81 NRC 542 (2015)
purpose of the regulation is to restrict repetitive litigation at the licensing board level on the continued storage and disposal of spent nuclear fuel; LBP-14-16, 80 NRC 198 (2014)
regulation governing the storage and disposal of spent nuclear fuel was vacated; LBP-14-15, 80 NRC 154 (2014); LBP-15-1, 81 NRC 21 (2015)
when considering continued storage in licensing reviews with previously completed final environmental impact statements, NRC Staff is expected to use a consistent and transparent process to ensure that all stakeholders are aware of how the environmental impacts of continued storage are considered in each licensing action affected by this regulation; CLI-15-10, 81 NRC 544 (2015)
- 10 C.F.R. 51.23(a)
Commission believes there is reasonable assurance that sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time; LBP-11-16, 73 NRC 701 (2011)
rule expressed the Commission's reasonable assurance that a repository was likely to be available by 2007-2009; LBP-14-16, 80 NRC 188 (2014)
ruling on petitions for waiver of application of the waste confidence rule in independent spent fuel storage installation license renewal proceeding is deferred and the contention held it in abeyance; LBP-12-24, 76 NRC 507 n.6 (2012)
spent fuel can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation and there is reasonable assurance that sufficient mined geologic repository capacity will be available when necessary; CLI-14-8, 80 NRC 74 (2014)
spent nuclear fuel can be stored safely at licensed nuclear facilities until such time as a long-term geologic storage facility is constructed; LBP-12-24, 76 NRC 509 (2012)
Waste Confidence Rule concerning storage and disposal of high-level waste is vacated and the issue is remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to support the Commission's conclusions or a site-specific environmental impact statement in all relevant proceedings; LBP-13-13, 78 NRC 270 (2013)
- 10 C.F.R. 51.23(b)
absent a rule waiver, NRC Staff is not expected to revisit the impact determinations made in the Continued Storage GEIS as part of its site-specific NEPA reviews; CLI-15-10, 81 NRC 539 n.13 (2015)
agency did not need to assess site-specific impacts of continuing to store spent fuel in either an onsite or offsite storage facility in new reactor licensing environmental impact statements or environmental assessments beyond the expiration dates of reactor licenses; LBP-14-16, 80 NRC 188 (2014)
allegation that the Continued Storage Rule and generic environmental impact statement fail to address the trust responsibility the NRC owes an Indian tribe represents a collateral attack on the Continued Storage Rule and GEIS; LBP-14-16, 80 NRC 192-193 (2014)
because this regulation prescribes a specific procedure for incorporating the environmental impacts of continued storage into a site-specific analysis, this procedure, rather than a procedure set forth in the general provisions of Part 51, governs NRC environmental review; CLI-15-10, 81 NRC 540 (2015)

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- “deemed incorporated” function of this regulation provides administrative efficiency by adding the environmental impacts of continued storage to site-specific environmental impact statements without additional work by NRC Staff; CLI-15-10, 81 NRC 539 (2015)
- discussion of any environmental impact of spent fuel storage during the period following the term of the reactor operating license in any environmental impact statement, environmental assessment, environmental report, or other analysis prepared in connection with enumerated power reactor and dry cask licenses is excluded; CLI-14-8, 80 NRC 74, 78 (2014)
- discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following the term of the reactor operating license or amendment, reactor combined license or amendment, or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment, or other analysis; LBP-11-16, 73 NRC 701 (2011)
- environmental impacts of at-reactor and away-from-reactor storage of spent fuel are considered for 60 years after the end of a reactor’s licensed life for operation, an additional 100 years of storage, and the indefinite storage of spent nuclear fuel and incorporated into site-specific environmental impact statements; CLI-15-10, 81 NRC 541 (2015)
- environmental impacts of continued storage have been incorporated into the environmental impact statements at issue in the proceedings by operation of law; CLI-15-10, 81 NRC 539 (2015)
- impact determinations in the Continued Storage generic environmental impact statement shall be deemed incorporated into the environmental impact statements associated with combined license and license renewal applications; CLI-15-10, 81 NRC 537 (2015)
- license applicants are not required to discuss the environmental impacts of spent nuclear fuel storage in a reactor facility storage pool or an ISFSI for the period following the term of the reactor operating license, reactor combined license, or ISFSI license; LBP-12-24, 76 NRC 509 (2012); LBP-14-16, 80 NRC 192 n.57 (2014)
- waste confidence undergirds certain agency licensing decisions, in particular new reactor licensing and reactor license renewal; CLI-12-16, 76 NRC 66 (2012); CLI-14-8, 80 NRC 76 (2014)
- 10 C.F.R. 51.26
where an environmental assessment resulted in a finding of no significant impact, a full environmental impact statement is unnecessary; CLI-15-17, 82 NRC 41 n.53 (2015)
- 10 C.F.R. 51.26(d)
when a supplement to an environmental impact statement is prepared, NRC Staff need not conduct a scoping process; LBP-13-9, 78 NRC 73, 75 (2013)
- 10 C.F.R. 51.28
definition of the scope of the environmental impact statement is the responsibility of the NRC Staff; LBP-14-9, 80 NRC 52 (2014)
- 10 C.F.R. 51.28(a)(5)
applicant has no duty to invite affected Indian tribes to participate in the environmental scoping process; LBP-15-5, 81 NRC 280 (2015)
First Nations in Canada must receive invitations to participate in the environmental impact statement scoping process when there are transboundary environmental impacts from a project; LBP-12-12, 75 NRC 753 (2012)
NRC Staff has a duty to invite any affected Indian tribe to participate in the environmental scoping process; LBP-15-5, 81 NRC 279-80 (2015)
- 10 C.F.R. 51.29
definition of the scope of the environmental impact statement is the responsibility of the NRC Staff; LBP-14-9, 80 NRC 52 (2014)
- 10 C.F.R. 51.29(a)(1)
NRC is directed to use the Council on Environmental Quality regulation 40 C.F.R. 1502.4 in defining the scope of its impact statements; LBP-12-12, 75 NRC 778-79 n.212 (2012); LBP-14-6, 79 NRC 420 n.81 (2014); LBP-14-9, 80 NRC 40, 52 n.157 (2014)
NRC Staff must correctly evaluate basic issues whether or not they were raised by intervenors; LBP-14-9, 80 NRC 69 (2014)
scope of an environmental impact statement is governed by the provisions of 40 C.F.R. 1502.4; LBP-11-10, 73 NRC 440 (2011)

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- 10 C.F.R. 51.29(b)
NRC Staff must prepare a summary of determinations and conclusions and provide it to scoping participants; LBP-13-9, 78 NRC 72 (2013)
- 10 C.F.R. 51.30
when an environmental assessment is appropriate, it need only include a brief discussion of environmental impacts of the proposed action; LBP-14-6, 79 NRC 436 (2014)
- 10 C.F.R. 51.30(a)(1)
environmental assessment, and associated finding of no significant impact, must contain sufficient discussion of environmental impacts and the reasons why the proposed action will not have a significant effect on the quality of the human environment; LBP-15-13, 81 NRC 471 (2015)
- 10 C.F.R. 51.31
an environmental assessment can be the basis of a finding under section 51.32 that the proposed agency action will not have a significant effect upon the environment such that a full-blown EIS (or supplemental EIS) is not required; LBP-13-6, 77 NRC 300 n.32 (2013)
- 10 C.F.R. 51.31(a)
environmental assessment, and associated finding of no significant impact, must contain sufficient discussion of environmental impacts and the reasons why the proposed action will not have a significant effect on the quality of the human environment; LBP-15-13, 81 NRC 471 (2015)
- 10 C.F.R. 51.32
issuance of an environmental assessment is appropriate where NRC Staff determines that the proposed project will result in no significant impacts; LBP-15-11, 81 NRC 415 (2015)
- 10 C.F.R. 51.32(a)
preparation of an environmental impact statement for the proposed action is unnecessary if NRC Staff determines that the proposed action will not have a significant effect on the quality of the human environment; CLI-15-25, 82 NRC 392 n.18 (2015)
- 10 C.F.R. 51.32(a)(3)
environmental assessment, and associated finding of no significant impact, must contain sufficient discussion of environmental impacts and the reasons why the proposed action will not have a significant effect on the quality of the human environment; LBP-15-13, 81 NRC 471 (2015)
- 10 C.F.R. 51.33
NRC Staff may publish a draft finding of no significant impact for public comment, but it is not required to do so in all cases; CLI-15-17, 82 NRC 41 n.53 (2015)
- 10 C.F.R. 51.41
as a practical matter, Staff relies heavily upon applicant's environmental report in preparing its environmental impact statement; LBP-11-38, 74 NRC 830 (2011); LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 81 (2012); LBP-14-7, 79 NRC 459 (2014)
NEPA obligates NRC Staff to undertake a full and independent evaluation of the environmental impacts of applicant's proposed action; LBP-12-9, 75 NRC 626 n.16 (2012)
NRC is required to independently assess the validity of the information that applicant submits in its environmental report; LBP-13-4, 77 NRC 213 (2013)
NRC Staff is empowered to issue requests for additional information relevant to an applicant's environmental report; LBP-11-33, 74 NRC 681 n.9 (2011); LBP-11-34, 74 NRC 697 (2011)
to assist NRC in preparation of a supplemental environmental impact statement, license renewal applicants are required to prepare an environmental report; CLI-13-7, 78 NRC 210 (2013)
- 10 C.F.R. 51.45
applicant is not required to assess cumulative impacts in its environmental report, but NUREG-1748 requests that applicant discuss any past, present, or reasonably foreseeable future actions that could result in cumulative impacts when combined with the proposed action; LBP-12-24, 76 NRC 536 (2012)
applicant is not required to discuss the federal government's trust responsibility to Indian tribes in its environmental report; LBP-12-24, 76 NRC 520 (2012)
contention alleging that applicant's environmental report does not evaluate the impacts on water availability fails to show a genuine dispute; LBP-11-16, 73 NRC 682-83, 685 (2011)
contention asserting that the applicant's environmental report fails to address the reasonably foreseeable impacts of climate change on water availability is admissible; LBP-11-16, 73 NRC 692 (2011)

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- contention claiming that the environmental report's discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with the requirements of this section is admissible; LBP-11-16, 73 NRC 675, 677 (2011)
- contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 23 (2014)
- materials license application must provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that cultural and historic resources are identified and protected; LBP-15-16, 81 NRC 643 n.141 (2015)
- mere promise by applicant to follow applicable regulations in capping and abandoning active and inactive oil and gas wells in the footprint of the cooling basin and plant is insufficient to satisfy the NRC's regulations; LBP-11-16, 73 NRC 678 (2011)
- NRC must prepare an environmental impact statement that adequately evaluates the environmental impacts of relicensing, including impacts to tribal hunting and fishing rights and subsistence consumption; LBP-15-5, 81 NRC 282 (2015)
- severe accident mitigation alternatives must be considered in environmental reports; CLI-11-5, 74 NRC 167 n.100 (2011)
- 10 C.F.R. 51.45(a)
- applicant may submit a supplement to an environmental report at any time; CLI-12-13, 75 NRC 687 n.31 (2012); LBP-12-13, 75 NRC 788 (2012)
- to assist NRC in preparation of a supplemental environmental impact statement, license renewal applicants are required to prepare an environmental report; CLI-13-7, 78 NRC 210 (2013)
- types of information that an environmental report must contain are described; CLI-13-7, 78 NRC 210 (2013)
- 10 C.F.R. 51.45(b)
- applicant for a uranium ISR license is required to provide data from a groundwater monitoring program that are sufficient to establish a precensuring site characterization baseline for assessing the potential effects of facility operations on local groundwater quality; LBP-15-3, 81 NRC 88 (2015)
- "baseline" data describe results of applicant's preoperational or baseline groundwater quality sampling program providing data on project-wide groundwater conditions; LBP-15-16, 81 NRC 660-61 (2015)
- environmental reports must contain a description of the proposed action, a statement of its purposes, and a description of the environment affected; LBP-15-3, 81 NRC 83 (2015)
- environmental reports must discuss impacts of the proposed action on the environment, adverse environmental effects that cannot be avoided, alternatives to the proposed action, relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources; LBP-12-9, 75 NRC 623 n.10 (2012)
- final supplemental environmental impact statement must include an analysis of cultural impacts; LBP-15-16, 81 NRC 650 (2015)
- 10 C.F.R. 51.45(b)(1)
- applicant must submit an environmental report discussing the impact of the proposed action on the environment; LBP-11-6, 73 NRC 197 n.50, 216(2010); LBP-12-24, 76 NRC 513 (2012)
- cumulative impacts analysis is included within the scope of environmental impact statements; LBP-12-3, 75 NRC 202 n.33 (2012)
- environmental reports must discuss environmental impacts in proportion to their significance; LBP-11-6, 73 NRC 173 (2010); LBP-12-9, 75 NRC 623 (2012)
- 10 C.F.R. 51.45(b)(1)-(2)
- applicant's environmental report must describe reasonably foreseeable environmental impacts, discussed in proportion to their significance, and adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-11-6, 73 NRC 191, 242 (2010); LBP-11-16, 73 NRC 678 (2011); LBP-12-9, 75 NRC 630 (2012)
- 10 C.F.R. 51.45(b)(1), (2), (5)
- requirements for environmental reports are listed; LBP-14-9, 80 NRC 58 (2014)

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- 10 C.F.R. 51.45(b)(1)-(5)
environmental reports must discuss the five elements of this regulation; LBP-15-3, 81 NRC 83 (2015)
- 10 C.F.R. 51.45(b)(3)
applicant is to provide in its environmental report an analysis of alternatives to the proposed action that is sufficiently complete to aid NRC Staff in developing and exploring its own set of alternatives; LBP-11-13, 73 NRC 552 (2011); LBP-11-21, 74 NRC 137 n.126 (2011); LBP-12-8, 75 NRC 562, 567 (2012)
applicant must provide a discussion of the no-action alternative in its environmental report; LBP-12-8, 75 NRC 567 (2012)
applicant's environmental report must discuss appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-11-6, 73 NRC 197 n.50 (2010)
merely describing an alternative is insufficient to comply with NEPA; LBP-11-14, 73 NRC 605 n.92 (2011)
- 10 C.F.R. 51.45(b)(5)
applicant's environmental report is to discuss any irreversible and irretrievable commitments of resources that would be involved in the proposed action; LBP-12-3, 75 NRC 196 (2012)
nonspeculative irreversible and irretrievable commitment of resources requires that an environmental report provide an impacts analysis of such an occurrence; LBP-13-10, 78 NRC 137 (2013)
- 10 C.F.R. 51.45(c)
applicant's environmental report must contain a sufficient analysis of potential environmental consequences and alternatives to enable the NRC Staff to prepare an environmental impact statement that fulfills the agency's obligations under NEPA; LBP-11-14, 73 NRC 598 (2011)
as a practical matter, Staff relies heavily upon applicant's environmental report in preparing its environmental impact statement; LBP-11-38, 74 NRC 830 (2011); LBP-14-7, 79 NRC 459 (2014)
contention that environmental report does not satisfy NEPA because it does not consider a range of mitigation measures to mitigate the risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 265 (2015)
environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 260 (2015)
environmental report must contain a full discussion of mitigation plans; LBP-11-6, 73 NRC 208 (2010)
environmental report must contain an analysis of the cumulative impacts of the activities to be authorized by a combined license; LBP-11-6, 73 NRC 173 (2010)
environmental report must include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-11-6, 73 NRC 173 (2010); LBP-11-13, 73 NRC 552 (2011)
environmental report shall include an analysis that considers and balances environmental effects of the proposed action, environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-12-8, 75 NRC 562 (2012); LBP-12-9, 75 NRC 623 n.10 (2012)
environmental report should contain sufficient data to aid the Commission in its development of an independent analysis; CLI-12-13, 75 NRC 687 n.31 (2012); LBP-12-9, 75 NRC 623 (2012); LBP-11-6, 73 NRC 173, 242 (2010)
in light of preconstruction impacts described in the environmental report, the ER must contain an analysis of the cumulative impacts of the activities to be authorized by the combined license; LBP-12-9, 75 NRC 623 n.10 (2012)
it is applicant's responsibility to include information in the environmental report that NRC Staff needs to prepare the draft environmental impact statement, including information on alternatives available for reducing or avoiding adverse environmental effects; LBP-12-12, 75 NRC 769-70 (2012)
license renewal applicant's environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in Appendix B; LBP-11-21, 74 NRC 132 (2011)

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- merely describing an alternative is insufficient to comply with NEPA; LBP-11-14, 73 NRC 605 n.92 (2011)
- NRC limits the scope of environmental analysis of preconstruction activities to activities falling within the scope of its regulatory authority; CLI-12-9, 75 NRC 472 (2012)
- NRC Staff relies heavily on applicant's environmental report in preparing its environmental impact statement; LBP-12-5, 75 NRC 236 (2012); LBP-12-17, 76 NRC 81 (2012)
- regulation contains no language modifying NRC Staff's obligation under NRC and CEQ regulations to include connected actions in the scope of the proposed action, and the statement of considerations cannot interpret what the regulation itself does not contain; LBP-14-9, 80 NRC 52-53 (2014)
- regulation contains no language to the effect that a proposed action that is the subject of an agency environmental impact statement must include all connected actions as defined in 40 C.F.R. 1508.25; LBP-14-9, 80 NRC 52 (2014)
- 10 C.F.R. 51.45(d)
- applicant is not required to explain in its environmental report every aspect of the process it must pursue in the course of obtaining a federal permit, license, or approval; LBP-12-15, 76 NRC 35 n.6 (2012)
- applicant's environmental report must identify and discuss the status of all permits, licenses, and other approvals that are required from federal, state, and local agencies; LBP-11-16, 73 NRC 704 n.364 (2011); LBP-12-12, 75 NRC 763 (2012)
- if applicant was required to update its environmental report every time NRC issued a request for additional information, there would need to be dozens, if not hundreds, of such updates; LBP-12-13, 75 NRC 787 n.9 (2012)
- implication that any agency prerequisite with which applicant must comply to operate a plant during an extended term constitutes an "approval" under this section would entail an unreasonably strained definition of "approval"; LBP-12-15, 76 NRC 34 (2012)
- information request from NRC Staff is not an approval that needed to be listed in applicant's environmental report; LBP-15-27, 82 NRC 193 n.50 (2015)
- none of the post-Fukushima orders or information requests can be characterized as approvals that must be obtained in connection with renewal of an operating license; LBP-12-15, 76 NRC 34 (2012)
- to consider any or all of NRC Staff documents as "approvals" by reason of the fact that they request information that will be used to assess compliance with agency requirements would impose an unintended reporting encumbrance; LBP-12-15, 76 NRC 34 n.5 (2012)
- 10 C.F.R. 51.49(e)
- for a limited work authorization application for a site where a construction permit was issued but construction of the plant was never completed, the environmental report may incorporate the earlier environmental impact statement; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 51.50
- contention alleging that applicant's environmental report does not evaluate the impacts on water availability fails to show a genuine dispute; LBP-11-16, 73 NRC 682-83, 685 (2011)
- 10 C.F.R. 51.50(b)(1)
- applicant's environmental report must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-11-16, 73 NRC 697 (2011)
- early site permit applicant is required to evaluate alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-11-16, 73 NRC 699 (2011)
- 10 C.F.R. 51.50(b)(2)
- applicant's environmental report need not include an assessment of the economic, technical, or other benefits (e.g., need for power) and costs of the proposed action; LBP-11-16, 73 NRC 696 (2011)
- 10 C.F.R. 51.50(c)
- an environmental report is required for a combined license application; CLI-11-5, 74 NRC 167 n.100 (2011); LBP-12-9, 75 NRC 623 (2012)
- contentions that challenge applicant's environmental report are within the scope of a combined license proceeding; LBP-12-9, 75 NRC 630 (2012)
- 10 C.F.R. 51.50(c)(1)(iii)
- environmental reports must include new information when a prior license has been issued for the facility, and the ER in question is associated with a subsequent license for the same facility; LBP-11-32, 74 NRC 667 (2011)

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- 10 C.F.R. 51.50(c)(2), (3)
environmental report for a combined license application may incorporate NRC's environmental assessment for a standard design certification or an underlying manufacturing license; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 51.51(a)
contributions of the uranium fuel cycle must be evaluated and added to the environmental costs of a proposed new nuclear power plant; LBP-11-26, 74 NRC 543 (2011)
- 10 C.F.R. 51.52
every environmental report prepared for the construction permit stage, the early site permit stage, or the combined license stage of a light-water-cooled nuclear power reactor must contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor; LBP-12-12, 75 NRC 771 (2012)
- 10 C.F.R. 51.52(b)
for reactors not meeting the conditions of section 51.52(a), the environmental report shall contain a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor, including assessments of the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport; LBP-12-12, 75 NRC 773 (2012)
this section does not establish limits on power or on fuel enrichment, but instead requires applicant to perform an analysis if the conditions of section 51.52(a) are not met; LBP-12-12, 75 NRC 773 (2012)
- 10 C.F.R. 51.53
types of information that an environmental report must contain are described; CLI-13-7, 78 NRC 210 (2013)
- 10 C.F.R. 51.53(a)
environmental reports prepared under the provisions of this section may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or site, or any information contained in a final environmental document previously prepared by the NRC Staff that relates to the production or utilization facility or site; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 51.53(b)
section 51.53(c)(3)(iv) does not apply to license amendment applicants requesting a power uprate; LBP-11-29, 74 NRC 624 (2011)
- 10 C.F.R. 51.53(b)(2)
costs and benefits of the energy-efficient building code are essential to determine whether the adoption of an energy-efficient building code should be included as an alternative; LBP-11-21, 74 NRC 136 (2011)
- 10 C.F.R. 51.53(c)
license renewal applicant's environmental report may adopt the findings of the generic environmental impact statement, but must also include site-specific analyses of Category 2 issues; CLI-15-6, 81 NRC 351 (2015)
license renewal applicants must submit an environmental report to aid NRC Staff in its preparation of a supplemental environmental impact statement; CLI-12-13, 75 NRC 684 (2012)
license renewal applicants need not provide a site-specific analysis of the environmental impacts of spent fuel storage in their environmental report; CLI-11-11, 74 NRC 445 (2011)
- 10 C.F.R. 51.53(c)(1)
license renewal applications must include an environmental report to assist NRC Staff in preparing its environmental impact statement; LBP-12-8, 75 NRC 549 (2012)
- 10 C.F.R. 51.53(c)(2)
alternatives for reducing adverse environmental impacts, including impacts of severe accidents, are among the limited issues within the scope of a license renewal proceeding; LBP-11-13, 73 NRC 550 (2011)
among the limited issues within the scope of a license renewal proceeding are cost-effective alternatives for mitigating severe accidents; LBP-11-2, 73 NRC 45 (2011)
contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-13-12, 78 NRC 242, 243 (2013)
contention that the environmental report fails to satisfy this section because it does not include information about plans to modify the facility in response to post-Fukushima enforcement order is inadmissible; LBP-12-15, 76 NRC 28 (2012)

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- discussion of the economic costs and benefits of the proposed action and alternatives is required if such costs and benefits are essential for a determination regarding the inclusion of an alternative in the range of alternatives considered; LBP-11-21, 74 NRC 136 (2011)
- environmental reports for license renewal need only consider those alternatives that are reasonable; LBP-12-15, 76 NRC 36 (2012)
- license renewal applicant's environmental report must address environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-5, 75 NRC 338 (2012); CLI-12-8, 75 NRC 397 (2012); LBP-12-8, 75 NRC 549, 567 (2012); LBP-12-15, 76 NRC 36 (2012)
- license renewal applicants need not include a need-for-power discussion in their environmental reports; CLI-14-6, 79 NRC 447 (2014); LBP-11-2, 73 NRC 53 (2011); LBP-11-13, 73 NRC 556-57 (2011); LBP-11-21, 74 NRC 136 (2011)
- NRC Staff is required to issue a final environmental impact statement that thoroughly and objectively evaluates reasonable alternatives to the proposed action; LBP-12-17, 76 NRC 113 (2012)
- purpose of the regulation is described; CLI-11-11, 74 NRC 449 (2011)
- sole remedy to challenge the wisdom or lawfulness of this regulation is to file a petition for rulemaking under section 2.802 with the Commission; LBP-13-12, 78 NRC 242 (2013)
- to the extent that applicant proposes modifications to the facility in response to a request for information, NEPA also requires the consideration of the effectiveness and relative costs of a range of alternatives for satisfying the NRC's concerns; LBP-12-15, 76 NRC 32 (2012)
- 10 C.F.R. 51.53(c)(3)
- contradiction between paragraphs (ii)(L) and (iv) is discussed; LBP-13-1, 77 NRC 62 (2013)
- issues that a license renewal applicant must address in its environmental report, as well as those that it need not address, are listed; LBP-12-8, 75 NRC 549 (2012)
- 10 C.F.R. 51.53(c)(3)(i)
- any contention on a Category 1 issue amounts to a challenge to the regulation barring challenges to generic environmental findings; CLI-12-19, 76 NRC 384 (2012)
- because Category 1 issues already have been reviewed on a generic basis, applicant's environmental report need not provide a site-specific analysis of these issues; CLI-11-11, 74 NRC 445 (2011); LBP-11-21, 74 NRC 132 (2011)
- because it is a Category 1 issue, license renewal applicants need not address bird collisions in their environmental reports unless they are aware of relevant new and significant information; CLI-13-7, 78 NRC 213 (2013)
- Category 1 impacts are those that NRC has determined are common across plants and are outside the scope of individual license renewal proceedings; LBP-13-13, 78 NRC 490 (2013)
- challenges to the basic regulatory structure of the NRC's design basis and generic environmental impacts already assessed through rulemaking are inadmissible; LBP-11-32, 74 NRC 663 (2011)
- environmental report for the license renewal stage need not contain environmental analysis of Category 1 issues identified in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 260 (2015)
- license renewal applicant can adopt findings of the generic environmental impact statement, designated as Category 1 issues in Table B-1 of Appendix B to Subpart A of Part 51; LBP-13-13, 78 NRC 285 (2013)
- license renewal applicant need not include analyses of the environmental impacts of Category 1 issues in its environmental report because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 381 n.18 (2012)
- license renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues; CLI-13-7, 78 NRC 212 n.66 (2013)
- 10 C.F.R. 51.53(c)(3)(i)-(ii)
- environmental impacts of license renewal are classified as either Category 1, which are generically addressed by the NRC's generic environmental impact statement for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 21 (2011)
- 10 C.F.R. 51.53(c)(3)(ii)
- environmental report must analyze environmental impacts of a license renewal on matters identified as Category 2 issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 260 (2015)

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license renewal applicant can adopt findings of the generic environmental impact statement but must also include site-specific analyses of certain environmental impacts in its environmental report, designated as Category 2 issues; LBP-13-13, 78 NRC 285 (2013)

license renewal applicants must provide a plant-specific analysis of issues designated as Category 2; CLI-11-11, 74 NRC 445 n.99 (2011); CLI-12-19, 76 NRC 381 (2012); LBP-11-21, 74 NRC 132 (2011) types of information that an environmental report must contain are described; CLI-13-7, 78 NRC 210 (2013)

10 C.F.R. 51.53(c)(3)(ii)(B)

license renewal applicants must submit documentation of their compliance with sections 316(a) and (b) of the Clean Water Act concerning thermal discharges; LBP-12-16, 76 NRC 53 (2012)

license renewal applicants whose plants use once-through cooling systems must provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 C.F.R. Part 125, or equivalent state permits and supporting documentation; LBP-12-10, 75 NRC 676 (2012)

10 C.F.R. 51.53(c)(3)(ii)(E)

license renewal applicants must assess the impact of the proposed action on threatened or endangered species in accordance with the Endangered Species Act as part of their environmental report; LBP-12-10, 75 NRC 642 (2012)

10 C.F.R. 51.53(c)(3)(ii)(L)

alternatives for reducing adverse environmental impacts, including impacts of severe accidents, are among the limited issues within the scope of a license renewal proceeding; LBP-11-13, 73 NRC 550 (2011) alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives; LBP-11-2, 73 NRC 46 (2011); LBP-11-13, 73 NRC 566 (2011)

although a consideration of alternatives to mitigate severe accidents must be provided if not previously performed, applicant must provide this analysis only for those issues identified as Category 2 issues in Appendix B to Subpart A of Part 51; LBP-11-2, 73 NRC 65 (2011)

although disagreement over proper interpretation of NRC regulations may give rise to an admissible contention, petitioner's proposed interpretation is in direct conflict with the plain meaning of the regulation and its Statement of Considerations; LBP-12-8, 75 NRC 566 (2012)

although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 569 (2012)

among the limited issues within the scope of a license renewal proceeding are cost-effective alternatives for mitigating severe accidents; LBP-11-2, 73 NRC 45 (2011)

applicant is exempt from including in its environmental report a site-specific severe accident mitigation alternatives analysis because NRC Staff previously considered severe accident mitigation design alternatives in its final environmental impact statement; CLI-13-7, 78 NRC 202-03 (2013)

applicant's estimate and NRC Staff's approval of projected population estimate for severe accident mitigation alternatives analysis are reasonable and satisfy the requirements under NEPA and this regulation; LBP-13-13, 78 NRC 484 (2013)

applicant's severe accident mitigation alternatives analysis is sufficiently site specific and its use and NRC Staff's approval of the NUREG-1150 TIMDEC and CDNFRM input values is reasonable and appropriate and satisfies the requirements under NEPA; LBP-13-13, 78 NRC 465, 474 (2013)

applicant's use of the MAAP code to generate fission product source terms for use in its severe accident mitigation alternatives analysis is reasonable under NEPA; LBP-12-26, 76 NRC 581 (2012)

at the contention admissibility stage, it is simply not appropriate for boards to decide what additional information, if any, is necessary to cure a claimed deficiency in a license application; CLI-11-11, 74 NRC 439-40 (2011)

board denies petition for rule waiver but refers the decision to the Commission because the legal issue presented by the petition is novel and worthy of the Commission's immediate attention; LBP-13-1, 77 NRC 60 (2013)

contention is within the scope of license renewal proceeding because NRC regulations require that the environmental report include a severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 298 (2015)

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contention regarding mitigation alternatives is effectively a collateral attack on this regulation, which exempts applicants from having to reanalyze severe accident mitigation alternatives during the renewal process; LBP-14-15, 80 NRC 153 (2014)

contention that challenges lack of severe accident mitigation alternatives analysis in applicant's environmental report is inadmissible; CLI-13-7, 78 NRC 203 (2013)

contention that severe accident mitigation alternatives analysis does not accurately reflect decontamination and cleanup costs is decided; LBP-13-13, 78 NRC 450 (2013)

environmental analysis of severe accidents is designated as a Category 2 site-specific issue for license renewal, and therefore the SAMA analysis normally is subject to challenge in a license renewal adjudicatory proceeding; CLI-13-7, 78 NRC 211 (2013)

environmental reports must include a discussion of severe accident mitigation alternatives if NRC has not considered them previously for the applicant's plant; CLI-13-7, 78 NRC 210 (2013)

exception in this section operates as the functional equivalent of a Category 1 issue, removing severe accident mitigation alternatives from litigation in case-by-case license renewal adjudications; CLI-13-7, 78 NRC 203 (2013)

final supplemental environmental impact statement must demonstrate that the NRC Staff has received sufficient information to take a hard look at severe accident mitigation alternatives; LBP-11-17, 74 NRC 27 (2011)

for license renewal, analysis of the potential mitigation of, and alternatives to, severe accidents is required on a site-specific basis; LBP-11-17, 74 NRC 25 (2011)

intent of NRC in promulgating this regulation is to exempt applicants from being required to submit SAMA analyses in the license renewal proceedings for Limerick, Watts Bar, and Comanche Peak; LBP-12-8, 75 NRC 566 (2012)

license renewal applicant is not required to perform a new severe accident mitigation alternatives analysis; LBP-14-15, 80 NRC 153 (2014)

license renewal applicants must provide a severe accident mitigation alternatives analysis if NRC Staff has not yet previously considered SAMAs for the applicant's plant in an environmental impact statement or related supplement, or in an environmental assessment; CLI-12-5, 75 NRC 322-23 (2012); CLI-12-19, 76 NRC 380, 382, 383 (2012); CLI-15-18, 82 NRC 139 n.16 (2015); LBP-11-17, 74 NRC 21, 27 (2011); LBP-11-18, 74 NRC 37 (2011); LBP-11-21, 74 NRC 132 (2011); LBP-12-8, 75 NRC 564 (2012); LBP-13-1, 77 NRC 61 (2013)

license renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues; CLI-13-7, 78 NRC 212 n.66 (2013)

licensing board erred in concluding that it is impossible to waive the exception in this section; CLI-13-7, 78 NRC 206 (2013)

NEPA requires NRC to provide a reasonable mitigation alternatives analysis, containing reasonable estimates, including, where appropriate, full disclosures of any known shortcomings in available methodology, incomplete or unavailable information and significant uncertainties, and a reasoned evaluation of whether and to what extent these or other considerations credibly could or would alter the analysis on which SAMDAs are considered; LBP-11-38, 74 NRC 832 (2011)

NRC did not mandate a specific approach to SAMA analyses, but instead, stated that it would review each severe accident mitigation consideration provided by a license renewal applicant on its merits and determine whether it constitutes a reasonable consideration of SAMAs; CLI-13-7, 78 NRC 214 n.82 (2013)

petitioner's assertion that severe accidents from spent fuel pools must be considered in applicant's SAMA analysis is in direct conflict with NRC regulations; LBP-11-2, 73 NRC 65 (2011)

possibility that new SAMA candidates may become available cannot be the basis for a successful petition to waive this regulation, because the Commission knew that SAMA technology would change, but was confident that processes, other than the SAMA analysis process, would adequately address any such developments; LBP-13-1, 77 NRC 67-68 (2013)

preponderance of the evidence shows that applicant's estimate and the NRC Staff's approval of the projected population are reasonable and satisfy NEPA requirements and this regulation; LBP-13-13, 78 NRC 489 (2013)

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- purpose of subsection (L) is to limit the analysis during relicensing to exclude consideration of SAMAs regarding plant operation that were previously considered; LBP-13-1, 77 NRC 64-65 (2013)
- purpose of the exemption is to reflect NRC's view that one severe accident mitigation alternatives analysis, as a general matter, satisfies NRC obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; CLI-13-7, 78 NRC 210 (2013); LBP-14-15, 80 NRC 154 (2014)
- requirement for license renewal applicants to consider severe accident mitigation alternatives stems from this environmental regulation; CLI-12-10, 75 NRC 484 (2012)
- SAMA analysis fulfills the requirement to provide a consideration of alternatives to mitigate severe accidents; LBP-11-13, 73 NRC 566 (2011)
- severe accident mitigation alternatives analyses are required pursuant to NEPA; LBP-11-13, 73 NRC 571 (2011)
- severe accident mitigation alternatives analysis for relicensing must be performed by licensee and included in the license renewal application; LBP-12-26, 76 NRC 567 (2012)
- severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; CLI-12-19, 76 NRC 381 (2012); LBP-12-8, 75 NRC 551 (2012)
- severe accident mitigation alternatives analysis is not part of NRC's safety review for license renewal under the Atomic Energy Act, but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act; CLI-12-1, 75 NRC 41 (2012); CLI-12-15, 75 NRC 706 (2012)
- severe accident mitigation alternatives analysis is required for license renewal; LBP-13-13, 78 NRC 286 (2013)
- severe accident mitigation alternatives analysis is required to discuss a recently discovered fault located near the plant; LBP-15-29, 82 NRC 248 (2015)
- severe accident mitigation alternatives analysis must be considered as part of the environmental report and, ultimately, as part of NRC Staff's supplemental environmental impact statement for a power reactor license renewal; LBP-15-5, 81 NRC 260 (2015)
- site-specific consideration of severe accident mitigation alternatives is required at the time of license renewal unless a previous consideration of such alternatives regarding plant operation has been included in a final environmental impact statement, final environmental assessment, or a related supplement; CLI-11-5, 74 NRC 166 n.100 (2011)
- subsection (L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in case-by-case license renewal adjudications; LBP-13-1, 77 NRC 67 (2013)
- 10 C.F.R. 51.53(c)(3)(iii)
- among the limited issues within the scope of a license renewal proceeding are alternatives for reducing adverse environmental impacts listed as Category 2 issues in Appendix B to Subpart A of 10 C.F.R. Part 51; LBP-11-2, 73 NRC 45 (2011); LBP-11-13, 73 NRC 550 (2011)
- environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 260 (2015)
- 10 C.F.R. 51.53(c)(3)(iv)
- applicant is not barred from voluntarily supplementing its environmental report; LBP-11-32, 74 NRC 668 n.30 (2011)
- because it is a Category 1 issue, license renewal applicants need not address bird collisions in their environmental reports unless they are aware of relevant new and significant information; CLI-13-7, 78 NRC 213 (2013)
- environmental reports must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; CLI-12-19, 76 NRC 382 (2012); CLI-13-7, 78 NRC 210 (2013); LBP-11-29, 74 NRC 624 (2011); LBP-11-32, 74 NRC 666, 667 (2011); LBP-12-8, 75 NRC 549, 550 (2012); LBP-13-1, 77 NRC 62 (2013)
- environmental reports must discuss new SAMAs addressed in more recent reports for other nuclear power plants of the same or similar boiling water reactor Mark II design; LBP-14-15, 80 NRC 152-53 (2014)
- given that petitioner is challenging an omission in applicant's environmental report of material that petitioner alleges is required to be there, the issue is within the scope of the proceeding; LBP-12-8, 75 NRC 556-57 (2012)

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- “new and significant information” requirement does not override, for purposes of litigating the issues in an adjudicatory proceeding, the exclusion of Category 1 issues in section 51.53(c)(3)(i) from site-specific review; CLI-12-19, 76 NRC 384 (2012)
- NRC Staff is not barred from filing a request for additional information asking the applicant to supplement the environmental report; LBP-11-32, 74 NRC 668 n.30 (2011)
- phrase “new” requires that the environmental report include environmental information that is new as compared to the original ER for the same facility and new as of the time of submission of the required ER, but does not impose a continuing duty to supplement an ER that was compliant when submitted; LBP-11-32, 74 NRC 667 (2011)
- this section does not apply to license amendment applicants requesting a power uprate; LBP-11-29, 74 NRC 624 (2011)
- 10 C.F.R. 51.53(d)
- applicant need not submit an environmental report until the final stage of decommissioning as part of its license termination plan; LBP-15-24, 82 NRC 95 (2015)
- environmental reports must include new information when a prior license has been issued for the facility, and the ER in question is associated with a subsequent license for the same facility; LBP-11-32, 74 NRC 667 (2011)
- post-operating license stage supplement to applicant’s environmental report may incorporate by reference any information contained in applicant’s construction permit stage environmental report; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 51.60
- applicant may incorporate material by reference that the applicant itself has previously submitted, not material prepared by NRC Staff; LBP-12-24, 76 NRC 518 n.69, 532-33 (2012)
- contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 23 (2014)
- 10 C.F.R. 51.60(a)
- for materials license amendment or renewal applications or other form of permission for which applicant has previously submitted an environmental report, the supplement to applicant’s ER may be limited to incorporating by reference, updating, or supplementing the information previously submitted to reflect any significant environmental change, including any resulting from operational experience or a change in operations or proposed decommissioning activities; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 51.60(b)
- applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an environmental report with its application; LBP-15-3, 81 NRC 82 (2015)
- 10 C.F.R. 51.61
- regulation applies to an application for an independent spent fuel storage installation; LBP-15-24, 82 NRC 95 n.172 (2015)
- 10 C.F.R. 51.62(a)
- environmental report for application for land disposal of radioactive waste may incorporate by reference information contained in the application or in any previous application, statement, or report filed with the Commission provided that such references are clear and specific; LBP-12-24, 76 NRC 517-18 n.69 (2012)
- 10 C.F.R. 51.67
- DOE may be required to supplement its final EIS when there is new information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-13-8, 78 NRC 232 (2013)
- 10 C.F.R. 51.70
- admissibility of contention that environmental assessment fails to adequately describe or analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 430 (2015)
- admissibility of contention that environmental assessment fails to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 443 (2015)

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admissibility of contention that environmental assessment fails to provide an analysis of the impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 447 (2015)

admissibility of contention that final environmental assessment fails to adequately analyze cumulative impacts is decided; LBP-15-11, 81 NRC 432 (2015)

admissibility of contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with restoration standards is decided; LBP-15-15, 81 NRC 607, 608 (2015)

admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 418 (2015)

agency is required to consider all reasonable alternatives under the National Environmental Policy Act; LBP-15-15, 81 NRC 607-08 (2015)

although NRC has issued a generic environmental impact statement for in situ uranium recovery facilities that assesses potential ISR facility construction/operation/decommissioning impacts, for the initial licensing of each individual ISR facility, NRC Staff will first prepare a draft supplemental environmental impact statement; LBP-15-3, 81 NRC 83 (2015)

contention that draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 83 (2013)

contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 58, 110 (2013)

contention that draft environmental impact statement fails to adequately assess cumulative impacts of the proposed action and another proposed ISL uranium mining operation is inadmissible; LBP-13-10, 78 NRC 141 (2013)

contention that draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 65 (2013)

contention that draft environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 137, 139 (2013)

contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 94-95 (2013)

contention that draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 86 (2013)

contention that draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 69 (2013)

contention that draft environmental impact statement fails to include adequate hydrological information to demonstrate applicant's ability to contain groundwater fluid migration is admissible; LBP-13-10, 78 NRC 139, 140 (2013)

contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 55, 107 (2013)

contention that draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 89 (2013)

contention that draft environmental impact statement lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is admissible; LBP-13-10, 78 NRC 135 (2013)

contention that draft supplemental environmental impact statement fails to consider connected actions is admissible; LBP-13-9, 78 NRC 75 (2013)

contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 428 (2015)

contention that environmental assessment violates the National Environmental Policy Act in its failure to provide an analysis of the groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 424 (2015)

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- contention that final environmental assessment fails to adequately analyze all reasonable alternatives is inadmissible; LBP-15-11, 81 NRC 434 (2015)
- contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 434-35 (2015)
- contention that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies, is decided; LBP-15-16, 81 NRC 659-60 (2015)
- contention that final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 393 (2014)
- contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 144 (2013)
- mitigation measures must be discussed in the final supplemental environmental impact statement; LBP-15-16, 81 NRC 687 (2015)
- NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
- 10 C.F.R. 51.70(b)
- contention that draft environmental impact statement fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 61 (2013)
- contention that final environmental assessment fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-15-11, 81 NRC 427 (2015)
- NRC Staff need not replicate the work completed by another entity, but rather must independently review and find relevant and scientifically reasonable any outside reports or analyses on which it intends to rely in its environmental impact statement; LBP-11-1, 73 NRC 25 n.9 (2011)
- NRC Staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement; LBP-13-4, 77 NRC 213 (2013)
- 10 C.F.R. 51.71
- admissibility of contention that environmental assessment fails to adequately describe or analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 430 (2015)
- admissibility of contention that environmental assessment fails to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 443 (2015)
- admissibility of contention that environmental assessment fails to provide an analysis of the impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 447 (2015)
- admissibility of contention that final environmental assessment fails to adequately analyze cumulative impacts is decided; LBP-15-11, 81 NRC 432 (2015)
- admissibility of contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with restoration standards is decided; LBP-15-15, 81 NRC 607, 608 (2015)
- admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 418 (2015)
- agency is required to consider all reasonable alternatives under the National Environmental Policy Act; LBP-15-15, 81 NRC 607-08 (2015)
- contention that draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 83 (2013)
- contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 110 (2013)

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- contention that draft environmental impact statement fails to adequately assess cumulative impacts of the proposed action and another proposed ISL uranium mining operation is inadmissible; LBP-13-10, 78 NRC 141 (2013)
- contention that draft environmental impact statement fails to adequately assess the likelihood and impacts of fluid migration to the adjacent groundwater is admissible; LBP-13-10, 78 NRC 139, 140 (2013)
- contention that draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 65 (2013)
- contention that draft environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 137, 139 (2013)
- contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 94-95 (2013)
- contention that draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 86 (2013)
- contention that draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 69 (2013)
- contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess adequate confinement and potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 107 (2013)
- contention that draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 89 (2013)
- contention that draft environmental impact statement lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is admissible; LBP-13-10, 78 NRC 135 (2013)
- contention that draft supplemental environmental impact statement fails to consider connected actions is admissible; LBP-13-9, 78 NRC 75 (2013)
- contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 428 (2015)
- contention that environmental assessment violates the National Environmental Policy Act in its failure to provide an analysis of the groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 424 (2015)
- contention that final environmental assessment fails to adequately analyze all reasonable alternatives is inadmissible; LBP-15-11, 81 NRC 434 (2015)
- contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 434-35 (2015)
- contention that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies, is decided; LBP-15-16, 81 NRC 659-60 (2015)
- contention that final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 393 (2014)
- contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 144 (2013)
- draft environmental impact statement indicates what other interests and considerations of federal policy, including factors not related to environmental quality, if applicable, are relevant to the consideration of environmental effects of the proposed action; LBP-14-6, 79 NRC 436 (2014)
- draft environmental impact statement must address matters specified in section 51.45; LBP-14-9, 80 NRC 58 n.184 (2014)
- environmental impacts will be considered irrespective of whether a certification or license from the appropriate authority has been obtained; LBP-15-16, 81 NRC 699 (2015)

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- even if not quantifiable, important qualitative considerations must also be addressed in an environmental impact statement; LBP-11-23, 74 NRC 345 (2011)
- for each license renewal application, NRC Staff must prepare a plant-specific supplement to the generic environmental impact statement that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts; LBP-12-8, 75 NRC 549 (2012)
- mitigation measures must be discussed in the final supplemental environmental impact statement; LBP-15-16, 81 NRC 687 (2015)
- NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
- suspension of proceedings is not appropriate where petitioners seek revision of NRC's existing rules, and no regulatory gap currently exists with regard to those provisions; CLI-14-7, 80 NRC 9 n.32 (2014)
- there is no enumeration of the required contents of a draft environmental impact statement regarding endangered or threatened species; LBP-12-12, 75 NRC 762 (2012)
- 10 C.F.R. 51.71(a)
- generic environmental impact statement for in-situ leach uranium milling facilities addresses, among other topics, matters specified in section 51.45; LBP-15-3, 81 NRC 83-84 (2015)
- purpose of applicant's environmental report is to assist NRC in preparing the agency's own environmental analysis; LBP-11-28, 74 NRC 608 (2011)
- 10 C.F.R. 51.71(b)
- although a draft supplemental environmental impact statement may rely in part on applicant's environmental report, NRC Staff must independently evaluate and be responsible for the reliability of all information used in the DSEIS; LBP-15-3, 81 NRC 84 (2015)
- NRC Staff must include in the final supplemental environmental impact statement an analysis of significant problems and objections raised by any affected Indian tribes, and by other interested persons; LBP-15-16, 81 NRC 650, 655 (2015)
- 10 C.F.R. 51.71(c)
- although NRC Staff, in its draft environmental impact statement, did not explain the Great Lakes Compact's review process, it satisfied its duty by stating that applicant must obtain a water withdrawal permit from the state and citing the governing Michigan statute; LBP-12-12, 75 NRC 764-65 (2012)
- 10 C.F.R. 51.71(d)
- although license requirements and other environmental quality standards are to be considered in assessing environmental impacts, they do not negate NRC Staff's responsibility to consider all environmental effects; LBP-15-3, 81 NRC 115 (2015)
- analysis for all draft and final environmental impact statements, by virtue of section 51.90, will, to the fullest extent practicable, quantify the various factors considered; LBP-15-3, 81 NRC 115 (2015)
- applicant's radiological measurements and monitoring program is subject to scrutiny; LBP-11-26, 74 NRC 565 (2011)
- draft environmental impact statement must consider the economic, technical, and other benefits and costs of the proposed action; LBP-11-7, 73 NRC 282 n.175 (2011)
- draft environmental impact statement must include a preliminary analysis that considers and weighs the environmental effects of and alternatives to the proposed action and alternatives available for reducing or avoiding adverse environmental effects; LBP-12-18, 76 NRC 160, 175-76 (2012); LBP-14-9, 80 NRC 43 (2014)
- final supplemental environmental impact statement must include an analysis of cultural impacts; LBP-15-16, 81 NRC 650 (2015)
- if important factors in the cost-benefit balancing cannot be quantified, they may be discussed qualitatively; LBP-11-7, 73 NRC 282 n.173 (2011)
- NRC is required to consider alternatives available for reducing or avoiding adverse environmental effects; LBP-11-7, 73 NRC 264 n.49 (2011)
- NRC must address any purported need for additional power during its environmental review of a combined license application; LBP-11-7, 73 NRC 282 n.175 (2011)
- NRC Staff is to consider and weigh the environmental, technical, and other costs and benefits of a proposed action and alternatives, and, to the fullest extent practicable, quantify the various factors considered; LBP-11-7, 73 NRC 282 n.173 (2011)

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- NRC's obligation to evaluate new recommendations for enhanced accident mitigation does not depend upon whether intervenors have identified unique characteristics of the site or the proposed new reactor; LBP-12-18, 76 NRC 144 (2012)
- once NRC has properly defined the scope of the proposed action, including any connected actions, the agency's environmental impact statement must evaluate the environmental effects of the proposed action; LBP-14-9, 80 NRC 42 (2014)
- petitioners question applicant's failure to consider the qualitative benefits of installing engineered filters; LBP-15-5, 81 NRC 264 (2015)
- to the extent that there are important qualitative considerations or factors that cannot be quantified in the environmental impact statement, those considerations or factors will be discussed in qualitative terms; LBP-11-23, 74 NRC 336 (2011); LBP-15-3, 81 NRC 115 (2015); LBP-15-5, 81 NRC 263 (2015)
- when connected actions have been identified, the agency must evaluate any potential effects in the environmental impact statement; LBP-15-16, 81 NRC 697 (2015)
- where environmental impacts are practically quantifiable, NRC has a duty to discuss them in those terms in the final supplemental environmental impact statement; LBP-15-3, 81 NRC 115 (2015)
- 10 C.F.R. 51.71(d) & n.3
blanket reliance by NRC Staff on Clean Water Act permits is not permitted; LBP-14-9, 80 NRC 63-64 (2014)
- compliance with the Clean Water Act does not negate the requirement for NRC to weigh all environmental effects of a proposed action; LBP-12-16, 76 NRC 57 (2012)
- compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality; LBP-15-11, 81 NRC 439 (2015)
- if a federal or state environmental agency issues a permit to the operator of a nuclear power plant that imposes numerical limits on the amount of pollution that the plant may emit, then NRC's final environmental impact statement may reasonably assume that the company's emissions will comply with those numerical limits; LBP-13-4, 77 NRC 218 n.96 (2013)
- 10 C.F.R. 51.72
asserted new information must present a seriously different picture of the environmental impact of the proposed project than what was previously envisioned; LBP-12-1, 75 NRC 15 n.57 (2012)
- NRC rules provide a process to prepare supplemental draft or final environmental impact statements when the agency identifies new and significant information; CLI-14-7, 80 NRC 8 (2014)
- only where new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned is supplementation of an environmental impact statement required; LBP-11-39, 74 NRC 868 (2011)
- 10 C.F.R. 51.72(a)
circumstances under which NRC Staff must prepare supplemental environmental review documents are described; CLI-11-5, 74 NRC 167 (2011); LBP-11-33, 74 NRC 682 n.12 (2011)
- NRC Staff must include new and significant information in the supplemental draft environmental impact statement; LBP-11-34, 74 NRC 697-98 (2011)
- NRC will supplement an EIS if there are substantial changes in the proposed action relevant to environmental concerns or new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-12-7, 75 NRC 388 (2012); LBP-11-33, 74 NRC 681 (2011)
- 10 C.F.R. 51.72(a)(2)
draft environmental impact statements must capture and address any new and significant information that arises in the interval after the applicant files its originally compliant environmental report; LBP-11-32, 74 NRC 667, 669 n.33 (2011)
- if recommendations of the NRC's Near-Term Task Force review of the Fukushima Dai-ichi accident constitute relevant new and significant information, then the draft supplemental environmental impact statement must address it; LBP-11-28, 74 NRC 608 (2011)
- supplement to the draft or final environmental impact statement is required if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-28, 74 NRC 609 (2011); LBP-11-32, 74 NRC 662, 672 (2011)

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- where NRC intends to mandate that an originally compliant environmental document be supplemented, it does so explicitly; LBP-11-32, 74 NRC 666-67 (2011)
- 10 C.F.R. 51.72(b)
NRC Staff has the option of preparing a supplement to a draft or final environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA; CLI-11-5, 74 NRC 167 n.103 (2011)
- 10 C.F.R. 51.73
although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final environmental impact statement stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 760 (2012)
NRC rules provide a mechanism for supplementing an original NEPA analysis; CLI-13-7, 78 NRC 211 (2013)
NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
NRC's NEPA regulations require a request for public comment on a draft environmental impact statement and a supplement to a DEIS distributed in accordance with 10 C.F.R. 51.74 and on any supplement to the FEIS prepared pursuant to 10 C.F.R. 51.92(a) or (b); LBP-14-9, 80 NRC 68 (2014)
petitioner may submit to NRC Staff any information that it believes to be new and significant by participating in NRC's parallel NEPA process wherein an opportunity for public comment on the draft supplemental EIS is provided; CLI-13-7, 78 NRC 212 (2013)
public comment period is required for draft and supplemental environmental impact statements; CLI-12-16, 76 NRC 67 (2012)
- 10 C.F.R. 51.74
although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final environmental impact statement stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 760 (2012)
NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
petitioner may submit to NRC Staff any information that it believes to be new and significant by participating in NRC's parallel NEPA process wherein an opportunity for public comment on the draft supplemental EIS is provided; CLI-13-7, 78 NRC 212 (2013)
- 10 C.F.R. 51.75(c)
issuance of a combined license is a major federal action significantly affecting the quality of the human environment, and requiring an environmental impact statement; LBP-13-4, 77 NRC 119 (2013)
- 10 C.F.R. 51.90
legal requirements applicable to a draft environmental impact statement, as specified in sections 51.70(b) and 51.71, are imposed on a final EIS; LBP-15-3, 81 NRC 115 (2015)
NRC Staff must prepare a final environmental impact statement in accordance with the requirements of section 51.71 for a draft environmental impact statement; LBP-12-18, 76 NRC 160 (2012); LBP-14-9, 80 NRC 43, 58 n.184 (2014)
NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
once NRC has properly defined the scope of the proposed action, including any connected actions, the agency's environmental impact statement must evaluate the environmental effects of the proposed action; LBP-14-9, 80 NRC 42 (2014)
when connected actions have been identified, the agency must evaluate any potential effects in the environmental impact statement; LBP-15-16, 81 NRC 697 (2015)
- 10 C.F.R. 51.90-94
contention that final supplemental environmental impact statement fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline (i.e., original or premining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-3, 81 NRC 85, 111 (2015)

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- contention that FSEIS fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 111 (2015)
- 10 C.F.R. 51.91
additional content is required in a final environmental impact statement compared to a draft EIS; LBP-15-3, 81 NRC 115 n.44 (2015)
NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
- 10 C.F.R. 51.91(a)(1)
analysis and response to state's extensive comments to the draft supplemental environmental impact statement regarding state-specific energy conservation and efficiency as a replacement alternative fulfills NRC Staff's obligation to take a hard look at alternatives; LBP-13-13, 78 NRC 519, 520 (2013)
NRC Staff is not obligated to fully adopt, or agree with, all comments to the draft supplemental environmental impact statement regarding the no-action alternative; LBP-13-13, 78 NRC 521 (2013)
- 10 C.F.R. 51.91(a)(1)(i)-(v)
final environmental impact statements will include responses to any comments on the draft environmental impact statement; LBP-13-13, 78 NRC 508 (2013)
- 10 C.F.R. 51.92
NRC rules provide a process to prepare supplemental draft or final environmental impact statements when the agency identifies new and significant information; CLI-14-7, 80 NRC 8 (2014)
when a supplement to a final environmental impact statement is required and what it must contain are outlined; LBP-15-3, 81 NRC 115 n.44 (2015)
when an environmental impact statement is prepared at the early site permit stage, NRC Staff must prepare a supplemental EIS for the combined license focusing on issues related to the impacts of construction and operation for which new and significant information has been identified; CLI-12-2, 75 NRC 117 (2012)
with respect to the need to supplement an issued final EIS, the party offering the new contention has the burden of presenting information sufficient to show that there is a genuine issue regarding whether the NRC Staff should supplement its document; LBP-15-16, 81 NRC 704 (2015)
- 10 C.F.R. 51.92(a)
circumstances under which NRC Staff must prepare supplemental environmental review documents are described; CLI-11-5, 74 NRC 167 n.103 (2011); LBP-11-33, 74 NRC 681, 682 n.12 (2011)
duty to supplement the final supplemental environmental impact statement is mandatory, is not avoidable through findings of compliance with the agency's safety regulations, and is waivable only where the consequences are remote and highly improbable; CLI-12-11, 75 NRC 532 (2012)
final environmental impact statement may be supplemented if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts; CLI-12-6, 75 NRC 376 n.147 (2012); CLI-12-7, 75 NRC 388 (2012)
NRC Staff must prepare supplemental environmental review documents when there are substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-12-18, 76 NRC 162 (2012)
- 10 C.F.R. 51.92(a)(1)-(2)
before taking a proposed action, Staff must issue a supplemental environmental impact statement if there are substantial changes in the proposed action that are relevant to environmental concerns or there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-39, 74 NRC 868 (2011)
- 10 C.F.R. 51.92(a)(2)
environmental assessment cannot import previous environmental analyses without consideration of subsequent developments at the site and to hold otherwise would render meaningless NEPA's requirement to supplement an environmental impact statement or environmental assessment; CLI-15-25, 82 NRC 399 (2015)
if the NRC Staff safety review reveals any new and significant information relating to the environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 413 (2014)

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- importing analysis from a previously completed environmental assessment while disregarding intervening events would render meaningless NEPA's requirement to supplement an environmental impact statement or EA; LBP-15-13, 81 NRC 471 n.89 (2015)
- new information in the Fukushima Task Force Report is relevant to environmental concerns; LBP-12-18, 76 NRC 167 (2012)
- regulation does not apply to the question whether the environmental assessment adequately describes the current environment, but rather applies when considering whether to supplement an environmental analysis for the period between issuance of the final document and before the agency has taken the proposed action; CLI-15-25, 82 NRC 399 (2015)
- supplement to the draft or final environmental impact statement is required if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-32, 74 NRC 662, 668, 672 (2011); LBP-12-18, 76 NRC 157, 166 (2012)
- supplementation of a final environmental impact statement is required when a final action has not been taken and there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-15-10, 81 NRC 542 (2015)
- where NRC intends to mandate that an originally compliant environmental document be supplemented, it does so explicitly; LBP-11-32, 74 NRC 667 (2011)
- 10 C.F.R. 51.92(c)
NRC Staff has the option of preparing a supplement to a draft or final environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA; CLI-11-5, 74 NRC 167 n.103 (2011)
- 10 C.F.R. 51.92(c)(3)
final supplemental environmental impact statement did not contain a separate discussion of alternative sites because these were assessed at the early site permit stage; CLI-12-2, 75 NRC 118 n.352 (2012)
- 10 C.F.R. 51.92(d)
when a supplement to an environmental impact statement is prepared, NRC Staff need not conduct a scoping process; LBP-13-9, 78 NRC 73, 75 (2013)
- 10 C.F.R. 51.92(f)(1)
NRC's NEPA regulations require a request for public comment on a draft environmental impact statement and a supplement to a DEIS distributed in accordance with 10 C.F.R. 51.74 and on any supplement to the FEIS prepared pursuant to 10 C.F.R. 51.92(a) or (b); LBP-14-9, 80 NRC 68 (2014)
- 10 C.F.R. 51.93
distribution requirements for a final environmental impact statement (and a supplement thereto) are imposed; LBP-15-3, 81 NRC 115 n.44 (2015)
NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
- 10 C.F.R. 51.94
final environmental impact statement (or supplement thereto) must be considered in the agency's decisionmaking; LBP-15-3, 81 NRC 115 n.44 (2015)
NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 177 n.25 (2010)
- 10 C.F.R. 51.95
preponderance of the evidence supports conclusion that NRC Staff's reasoned, qualitative approach to weighing the costs and benefits of plant shutdown on property values and the local community is reasonable and satisfies regulatory requirements; LBP-13-13, 78 NRC 505 (2013)
suspension of proceedings is not appropriate where petitioners seek revision of NRC's existing rules, and no regulatory gap currently exists with regard to those provisions; CLI-14-7, 80 NRC 9 n.32 (2014)
- 10 C.F.R. 51.95(c)
for each license renewal application, NRC Staff must prepare a plant-specific supplement to the generic environmental impact statement that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts; LBP-12-8, 75 NRC 549 (2012); LBP-12-10, 75 NRC 644 (2012)
NRC Staff uses applicant's environmental report as a starting point for its own environmental review of a license renewal application, the results of which are published as a supplement to the generic environmental impact statement; CLI-15-6, 81 NRC 351 (2015)

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- to assist NRC in preparation of a supplemental environmental impact statement, license renewal applicants are required to prepare an environmental report; CLI-13-7, 78 NRC 210 (2013)
- 10 C.F.R. 51.95(c)(2)
NRC Staff is not required to analyze the need for the power for license renewal; LBP-13-13, 78 NRC 519 n.1929 (2013)
supplemental environmental impact statements for license renewal are not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 507 (2013)
- 10 C.F.R. 51.95(c)(3)
if NRC Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by Staff for its significance, consistent with NEPA requirements; CLI-12-19, 76 NRC 385-86 n.54 (2012)
NRC rules provide a mechanism for supplementing an original NEPA analysis; CLI-13-7, 78 NRC 211 (2013)
- 10 C.F.R. 51.95(c)(4)
environmental impacts of license renewal are classified as either Category 1, which are addressed by the NRC's generic environmental impact statement for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 21 (2011)
license renewal applicant need not include analyses of the environmental impacts of Category 1 issues in its environmental report because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 381 n.18 (2012)
license renewal applicants must identify in their environmental reports any new and significant information of which the applicant is aware to assist in the preparation of NRC's new-and-significant-information analysis; CLI-13-7, 78 NRC 210 (2013)
NRC rules provide a mechanism for supplementing an original NEPA analysis; CLI-13-7, 78 NRC 211 (2013)
NRC Staff must make a recommendation on the environmental acceptability of the license renewal action, and the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; CLI-12-8, 75 NRC 399 n.36 (2012)
- 10 C.F.R. 51.101(a)
excluding the transmission corridor from the scope of the proposed action also removes it from the limitation on actions; LBP-14-9, 80 NRC 56 (2014)
important consequence of decision whether to include new construction within the scope of the proposed action is that, if it is included, it will be subject to the limitation on actions in this regulation; LBP-14-9, 80 NRC 44 (2014)
- 10 C.F.R. 51.101(a)(1)
when NRC Staff prepares a final environmental impact statement, then, until a record of decision is issued, no action concerning the proposal may be taken by the Commission that would have an adverse environmental impact or limit the choice of reasonable alternatives; LBP-14-9, 80 NRC 44 (2014)
- 10 C.F.R. 51.101(a)(2)
any action concerning applicant's proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives may be grounds for denial of a license; LBP-14-9, 80 NRC 44 (2014)
- 10 C.F.R. 51.102(a)
as part of its environmental review, NRC Staff must prepare a Record of Decision to accompany any Commission decision on any action for which a final EIS has been prepared; LBP-13-13, 78 NRC 525 (2013)
- 10 C.F.R. 51.102(b)
NRC Staff typically prepares the record of decision; LBP-13-13, 78 NRC 525 (2013)
- 10 C.F.R. 51.102(c)
final supplemental environmental impact statement is merged with any relevant licensing board decision; CLI-15-6, 81 NRC 387 (2015)
initial decision of the presiding officer or final decision of the Commissioners acting as a collegial body will constitute the record of decision; CLI-15-6, 81 NRC 387 (2015)

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- this provision replaced a previous version that expressly permitted licensing boards to modify the content of an environmental impact statement; CLI-15-6, 81 NRC 387-88 (2015)
- 10 C.F.R. 51.103(a)(3)
record of decision must discuss relevant factors including economic and technical considerations among alternatives; LBP-11-7, 73 NRC 282 n.175 (2011)
- 10 C.F.R. 51.103(a)(4)
NRC's record of decision for the license must state whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted; LBP-11-17, 74 NRC 22 (2011); LBP-12-18, 76 NRC 161 (2012)
- once NRC completes its environmental review, its record of decision must summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-11-17, 74 NRC 22 (2011); LBP-12-18, 76 NRC 161 (2012); LBP-13-9, 78 NRC 69 (2013)
- 10 C.F.R. 51.105(b)
presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning the benefits assessment if those issues were not addressed by applicant in the early site permit application; LBP-11-16, 73 NRC 696 (2011)
- 10 C.F.R. 51.107
Commission must determine whether the NRC Staff's review of a combined license application has been adequate to support the findings set forth in this regulation; CLI-12-9, 75 NRC 428 (2012)
- 10 C.F.R. 51.107(a)
determination the Commission must make is whether NRC Staff review of a combined license application has been adequate to support the findings found in this section; CLI-12-2, 75 NRC 74 (2012); CLI-15-13, 81 NRC 557, 589 (2015)
- environmental issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 560 (2015)
- in uncontested hearings, it is NRC's duty to ensure, among other things, that it has adhered to its obligations under the National Environmental Policy Act; CLI-15-1, 81 NRC 11 n.54 (2015)
- NRC Staff must weigh unavoidable adverse environmental impacts and resource commitments (costs) against the project's benefits; CLI-15-13, 81 NRC 588 (2015)
- 10 C.F.R. 51.107(a)(1)
final environmental impact statements must comply with sections 102(2)(A), (C), and (E) of NEPA and the agency's Part 51 regulations; LBP-14-9, 80 NRC 57-58 (2014)
- 10 C.F.R. 51.107(a)(1)-(4)
NRC must conduct a hearing on the uncontested environmental and safety aspects of the proposed plant; LBP-13-4, 77 NRC 220 n.99 (2013)
- scope of Commission examination of whether environmental requirements of a combined license application have been met is described; CLI-12-2, 75 NRC 75 (2012)
- 10 C.F.R. 51.107(a)(2)
under NEPA, NRC independently considers the final balance among the conflicting factors contained in the record in determining whether the combined licenses should issue; CLI-12-9, 75 NRC 465 (2012)
- 10 C.F.R. 51.107(a)(3)
although NRC does not license construction or operation of a transmission corridor, it has the authority to deny the license for a proposed nuclear plant if, for example, the total environmental costs of the new reactor and connected actions exceed the benefits; LBP-12-12, 75 NRC 779-80 (2012)
- environmental, economic, technical, and other benefits must be weighed against environmental and other costs for each proposed action; LBP-11-7, 73 NRC 281 (2011)
- in a combined license proceeding, the Commission may require implementation of mitigation measures it deems necessary and appropriate by imposing conditions in the license; LBP-12-18, 76 NRC 161 (2012)
- in every combined license proceeding, the presiding officer must determine whether the license should be issued, denied, or appropriately conditioned to protect environmental values; LBP-13-4, 77 NRC 217 (2013)
- NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 49 (2014)

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- NRC uses environmental impact information to determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; LBP-12-12, 75 NRC 780 (2012); LBP-14-9, 80 NRC 42 (2014)
- 10 C.F.R. 51.107(b)(3)
matter resolved in an early site permit proceeding may be revisited in the combined license proceeding when new and significant information is presented; LBP-11-10, 73 NRC 431 (2011)
- 10 C.F.R. 51.107(d)
determination the Commission must make is whether NRC Staff review of a limited work authorization has been adequate to support the findings found in this section; CLI-12-2, 75 NRC 74 (2012)
- 10 C.F.R. 51.107(d)(1)(i)-(iv)
scope of Commission examination of whether environmental requirements of a limited work authorization have been met is described; CLI-12-2, 75 NRC 75 (2012)
- 10 C.F.R. 51.109(c)
presiding officer in the adjudication will determine the extent to which adoption by the NRC of DOE's repository EIS and its supplements is practicable, which in turn will satisfy NRC's NEPA obligations; CLI-13-8, 78 NRC 232 (2013)
- 10 C.F.R. 51.120
contention that final environmental assessment fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-13-9, 78 NRC 61 (2013); LBP-15-11, 81 NRC 427 (2015)
contention that the draft environmental impact statement fails to demonstrate adequate technical sufficiency is inadmissible; LBP-13-9, 78 NRC 61 (2013)
- 10 C.F.R. Part 51, Subpart A, Appendix A
contention that final environmental assessment fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-15-11, 81 NRC 427 (2015)
contention that the draft environmental impact statement fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 61 (2013)
environmental impact statements must consider the alternative of no action; LBP-12-8, 75 NRC 567 (2012)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 4
as part of its NEPA analysis, NRC must provide information that addresses the purpose and need for the proposed action; LBP-11-26, 74 NRC 521 (2011)
when taking the requisite hard look at environmental consequences of the alternatives to the proposed licensing action, the environmental impact statement must discuss the no-action alternative; LBP-13-13, 78 NRC 507 (2013)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 5
alternatives analysis is the heart of the environmental impact statement; CLI-12-9, 75 NRC 473 (2012); CLI-15-13, 81 NRC 587 (2015); LBP-11-16, 73 NRC 699 (2011); LBP-12-17, 76 NRC 82 (2012)
environmental review identified an appropriate range of alternatives with respect to both alternative power sources and alternative sites, and adequately described the environmental impacts of each alternative; CLI-12-9, 75 NRC 474 (2012)
- 10 C.F.R. Part 51, Subpart A, Appendix A, § 7
regardless of their classification as direct, indirect, or cumulative, impacts that are reasonably foreseeable are to be assessed in an environmental impact statement; LBP-11-26, 74 NRC 546 (2011)
- 10 C.F.R. Part 51, Subpart A, Appendix B
Category 2 issues focus on severe accident mitigation, to further reduce severe accident risk (probability or consequences); CLI-12-19, 76 NRC 381 n.20 (2012)
environmental analysis of severe accidents is designated as a Category 2 site-specific issue for license renewal, and therefore the SAMA analysis normally is subject to challenge in a license renewal adjudicatory proceeding; CLI-13-7, 78 NRC 211 (2013)

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- NRC has resolved many environmental impacts for license renewal through a generic environmental impact statement and these issues need not be revisited in site-specific environmental impact statements; CLI-14-7, 80 NRC 6 n.13 (2014)
- purpose of the regulation is described; CLI-11-11, 74 NRC 449 (2011)
- rule waiver would be necessary to litigate the issue of potentially new and significant information pertaining to bird collisions in an adjudicatory proceeding; CLI-13-7, 78 NRC 213 (2013)
- severe accident mitigation alternatives analysis is a Category 2 issue; CLI-12-19, 76 NRC 381 (2012); LBP-12-15, 76 NRC 29 n.3 (2012)
- severe accidents in the spent fuel pools are Category 1 issues that do not need to be included in the severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 307 (2015)
- suspension of proceedings is not appropriate where petitioners seek revision of NRC's existing rules, and no regulatory gap currently exists with regard to those provisions; CLI-14-7, 80 NRC 9 n.32 (2014)
- to challenge a Category 1 issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 302 (2015)
- 10 C.F.R. Part 51, Subpart A, Appendix B, n.2
- Category 2 issues must be reviewed on a site-specific basis because they have not been determined to be essentially similar for all plants; LBP-11-13, 73 NRC 551 (2011); LBP-11-21, 74 NRC 132 (2011); LBP-15-5, 81 NRC 260 (2015)
- Commission has codified generic determinations for certain environmental issues, identified as Category 1 issues, for license renewal proceedings; LBP-11-13, 73 NRC 551 (2011)
- issues that require site-specific analysis are identified as Category 2 issues; LBP-11-13, 73 NRC 551 (2011)
- 10 C.F.R. Part 51, Subpart A, Appendix B, tbl. B-1
- all uranium fuel cycle and waste management issues, including low-level waste storage and disposal, mixed waste storage and disposal, onsite spent fuel storage, and transportation, are Category 1 issues with a small impact; LBP-11-2, 73 NRC 75-76 (2011)
- although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 569 (2012)
- although potential severe accident mitigation alternatives must be considered for license renewal, no site-specific severe accident impacts analysis needs to be done; CLI-12-15, 75 NRC 709 (2012)
- bird collisions have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term; CLI-13-7, 78 NRC 212 (2013); LBP-13-1, 77 NRC 67 (2013)
- Category 1 issues are environmental issues that NRC has resolved generically and therefore does not consider in specific license renewal proceedings; CLI-15-18, 82 NRC 139 n.15 (2015)
- consultation with appropriate agencies is needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected; LBP-12-10, 75 NRC 642 (2012)
- determination that, for any license renewal of a nuclear power plant, the probability-weighted consequences of a severe accident are small cannot be challenged; LBP-11-2, 73 NRC 46 (2011)
- endangered/threatened species is a Category 2 issue that requires site-specific analysis in the supplemental environmental impact statement; LBP-12-10, 75 NRC 644 (2012)
- environmental impacts of license renewal are classified as either Category 1, which are addressed by the NRC's generic environmental impact statement for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 21 (2011)
- environmental justice is a Category 2 issue, within the scope of a license renewal proceeding; CLI-15-6, 81 NRC 371 (2015); LBP-13-13, 78 NRC 524 (2013); LBP-15-5, 81 NRC 282 (2015)
- environmental report for license renewal must consider alternatives to mitigate severe accidents for all plants that have not considered such alternatives; LBP-15-5, 81 NRC 274 n.137 (2015)
- for a mitigation analysis, NEPA demands no fully developed plan or detailed examination of specific measures that will be employed to mitigate adverse environmental effects; LBP-11-23, 74 NRC 330 (2011)
- for all plants, onsite dry or pool storage can safely accommodate spent fuel accumulated from a 20-year license extension with small environmental effects; LBP-11-13, 73 NRC 570 (2011)

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- for Category 1 issues, mitigation of adverse impacts has already been generically analyzed and it has already been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation; LBP-11-13, 73 NRC 570 (2011)
- for generic analysis of severe accidents, the probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts of severe accidents are of small significance for all plants; CLI-11-5, 74 NRC 166 n.100 (2011)
- groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue; LBP-12-8, 75 NRC 552 (2012)
- if NRC Staff has not already considered site-specific severe accident mitigation alternatives for a facility, they must be considered as part of applicant's environmental report and ultimately as part of NRC Staff's supplemental EIS in a power reactor license renewal proceeding; LBP-11-17, 74 NRC 21 (2011)
- impacts to subsistence consumption must be evaluated as part of the site-specific environmental justice analysis; LBP-15-5, 81 NRC 384, 285 (2015)
- NRC has found, through its individual plant examination and individual plant examination for external events processes and other risk studies, that the severe accident risks are small for all U.S. licensed nuclear power plants; LBP-12-26, 76 NRC 568-69 (2012)
- offsite land use is a Category 2 impact because land-use changes may be perceived by some community members as adverse and by others as beneficial, and so, NRC Staff is unable to assess generically the potential significance of site-specific offsite land use impacts; LBP-13-13, 78 NRC 490 (2013)
- probability-weighted consequences of a severe accident (risk) are small in the context of a license renewal proceeding; CLI-15-6, 81 NRC 379 (2015); LBP-11-13, 73 NRC 566 n.203, 568 (2011); LBP-12-8, 75 NRC 565 (2012)
- risk from groundwater releases at ocean sites would be a small fraction of that from atmospheric releases; CLI-12-15, 75 NRC 726 n.112 (2012)
- severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; LBP-12-8, 75 NRC 551, 554 (2012); LBP-15-5, 81 NRC 260 (2015)
- very essence of severe accident mitigation analysis is to assess to what extent the probability-weighted consequences of the analyzed severe accident sequences would decrease if a specific SAMA were implemented; LBP-11-2, 73 NRC 63 (2011)
- 10 C.F.R. Part 51, Subpart A, Appendix B, tbl. B-1 n.2
- Category 1 issues are those resolved generically by the generic environmental impact statement and need not be addressed as part of license renewal; LBP-12-8, 75 NRC 549 (2012)
- Category 2 issues require plant-specific review as part of license renewal; LBP-12-8, 75 NRC 549 (2012)
- 10 C.F.R. Part 51, Subpart A, Appendix B, tbl. B-1, n.3
- as a tool for assessing the significance of potential impacts, NRC regulations establish a standard scheme; LBP-11-26, 74 NRC 546 (2011)
- definitions of "significance" are provided; LBP-11-4, 73 NRC 103 (2011)
- relative to an individual ISR facility, when NRC Staff formulates its draft and final supplemental environmental impact statement conclusions regarding the environmental impacts of a proposed action or alternative actions, it uses as guidance a standard scheme to categorize or quantify the impacts; LBP-15-3, 81 NRC 84 (2015)
- 10 C.F.R. Part 51, Subpart A, Appendix B, tbl. B-1, n.4
- shared transmission corridor is an offsite transmission line excluded from environmental impact analysis; LBP-15-5, 81 NRC 269 (2015)
- "small," "moderate," and "large" environmental impacts are defined; LBP-13-8, 78 NRC 20 (2013)
- 10 C.F.R. Part 51, Subpart A, Appendix B, tbl. B-1, § 3
- "small" is defined in NRC regulations as environmental impacts that are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource; LBP-13-13, 78 NRC 534 (2013)
- 10 C.F.R. Part 52
- stringent safety requirements apply to the construction and operation of reactor spent fuel pools and independent spent fuel storage installations; CLI-15-4, 81 NRC 240 (2015)

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- this part governs issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power facilities; LBP-11-21, 74 NRC 131 (2011)
- 10 C.F.R. 52.1(a)
an early site permit authorizes the use of a specific site for the construction and operation of a new nuclear power plant, with the actual construction and operation authorized by a subsequently issued combined license; LBP-11-10, 73 NRC 441 (2011)
- 10 C.F.R. Part 52, Subpart A
an ESP essentially allows an entity to bank a site for the possible future construction of a specified number of new nuclear power generation facilities; LBP-11-16, 73 NRC 650-51 (2011)
if applicant did not pursue an early site permit, all relevant site characteristics, including site geology, hydrology, seismology, and man-made hazards, as well as potential environmental impacts of the project, were studied as part of NRC Staff's combined license review and are within the scope of the Commission decision; CLI-15-13, 81 NRC 559 (2015)
- 10 C.F.R. 52.12
an early site permit authorizes the use of a specific site for the construction and operation of a new nuclear power plant, with the actual construction and operation authorized by a subsequently issued combined license; LBP-11-10, 73 NRC 441 (2011)
- 10 C.F.R. 52.17
information regarding control room habitability and ventilation system design is not required in a site safety analysis report at the early site permit stage; LBP-11-16, 73 NRC 668 (2011)
- 10 C.F.R. 52.17(b)(2), (3)
early site permit applicants may propose complete and integrated emergency plans for review and approval in conjunction with their application, but they are not required to do so; CLI-12-2, 75 NRC 103 n.237 (2012)
- 10 C.F.R. 52.18
to issue an early site permit, NRC must comply with the National Environmental Policy Act; LBP-11-10, 73 NRC 440 n.93 (2011)
- 10 C.F.R. 52.21
an uncontested early site permit proceeding is subject to mandatory hearing requirements; LBP-11-10, 73 NRC 436 (2011)
presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning the benefits assessment if those issues were not addressed by the applicant in the early site permit application; LBP-11-16, 73 NRC 696 (2011)
- 10 C.F.R. 52.23(a)
an early site permit is valid for 20 to 40 years from the date of issuance; LBP-11-16, 73 NRC 686 (2011)
- 10 C.F.R. 52.33
an early site permit is valid for 20 to 40 years from the date of issuance; LBP-11-16, 73 NRC 686 (2011)
- 10 C.F.R. 52.39
insofar as a contention requests consideration of a dry cooling design alternative, that matter must be considered resolved in the early site permit proceeding; LBP-11-10, 73 NRC 431 (2011)
- 10 C.F.R. 52.39(a)(2)
contention should be deemed resolved during the early site permit proceeding if the subject of the contention was actually litigated and decided during the ESP proceeding, or the subject of the contention, although not actually litigated, was decided by the Staff, was necessary for the Staff to resolve in the ESP proceeding, and was within the scope of that proceeding as defined in the *Federal Register* notice of opportunity for a hearing; LBP-11-10, 73 NRC 433 (2011)
if a matter is resolved in an early site permit proceeding, then it is considered resolved in a subsequent combined license proceeding when the COLA references the ESP, subject to certain exceptions; LBP-11-10, 73 NRC 433 (2011)
where seismic suitability of a site was evaluated at the early site permit stage, further litigation of the geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 522 (2014)

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- 10 C.F.R. 52.39(c)(1)
in any combined license proceeding referencing an early site permit, any significant environmental issue that was not resolved in the ESP proceeding, or any issue involving the impacts of construction and operation of the facility that was resolved in the ESP for which significant new information has been identified, may be litigated; LBP-11-10, 73 NRC 442 (2011)
in any combined license proceeding referencing an early site permit, contentions may be litigated on whether the nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit; LBP-11-10, 73 NRC 442 (2011)
- 10 C.F.R. 52.39(c)(1)(v)
matter resolved in an early site permit proceeding may be revisited in the combined license proceeding when new and significant information is presented; LBP-11-10, 73 NRC 431 (2011)
- 10 C.F.R. 52.47(a)
combined license applications must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components and of the facility as a whole; LBP-14-8, 79 NRC 525 (2014)
- 10 C.F.R. 52.47(a)(23), (27)
applications for certified reactor designs include a probabilistic risk assessment for severe accidents; LBP-11-38, 74 NRC 825 (2011)
- 10 C.F.R. 52.55(c)
combined license applicant may reference a docketed-but-not-yet-certified design in its application, but does so at its own risk; CLI-12-9, 75 NRC 429-30 (2012); LBP-11-10, 73 NRC 450 (2011)
- 10 C.F.R. 52.63
Commission administratively exempted, from the issue finality requirements, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 443 n.101 (2012)
- 10 C.F.R. 52.63(a)
where the combined license application references a certified design, elements of the licensing basis already have been established, and thus NRC would have to establish a regulatory basis for any change to the established design regardless of whether the COLs have issued; CLI-12-9, 75 NRC 438 n.87 (2012)
- 10 C.F.R. 52.63(a)(1)
challenging features of the AP1000 standard design is a matter for a design certification rulemaking, not a combined license proceeding; CLI-11-8, 74 NRC 230 (2011)
- 10 C.F.R. 52.63(a)(5)
challenging features of the AP1000 standard design is a matter for a design certification rulemaking, not a combined license proceeding; CLI-11-8, 74 NRC 230 (2011)
in making its combined license findings, the Commission will treat as resolved those matters resolved in the issuance of a design certification rule; LBP-11-7, 73 NRC 274 (2011); LBP-11-38, 74 NRC 844 n.186 (2011)
- 10 C.F.R. 52.63(b)(1)
exemption requests are subjected to the same level of litigation as other issues that could be admissibly raised in a COL proceeding; LBP-11-10, 73 NRC 451 n.157, 452 (2011)
grants of exemptions from referenced design certification rules are conditioned on the Commission's finding that the request complies with section 52.7 and that the special circumstances provided for section 52.7 outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; LBP-11-10, 73 NRC 451 (2011)
- 10 C.F.R. 52.73
applicants may incorporate a certified reactor design in a combined license application; LBP-11-10, 73 NRC 428 (2011)
combined license applications may reference a standard design certification and an early site permit; CLI-12-2, 75 NRC 67-68 (2012)
- 10 C.F.R. 52.75
any person except one excluded by section 50.38 may file an application for a combined license for a nuclear power facility; LBP-12-19, 76 NRC 191 (2012); LBP-14-3, 79 NRC 279 (2014)

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- foreign-owned, -controlled, or -dominated entity is ineligible to apply for, let alone obtain, a combined license; LBP-12-19, 76 NRC 201 (2012)
- 10 C.F.R. 52.75(a)
any person except one excluded by section 50.38 may file an application for a combined license for a nuclear power facility; CLI-13-4, 77 NRC 103 n.1 (2013); LBP-11-25, 74 NRC 395 n.91 (2011)
- 10 C.F.R. 52.79
although the combined license application is not expressly required to consider sea level rise, the board decides that the issue is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 236 (2010)
- applicant's plan to postpone most of its decisions about low-level radioactive waste disposal does not violate this section; LBP-11-31, 74 NRC 649 (2011)
- 10 C.F.R. 52.79(a)
information in the FSAR for controlling and limiting radioactive effluents and radiation exposures must be sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license; LBP-11-31, 74 NRC 649 (2011)
- motion for summary disposition is granted because there is no genuine issue or dispute as to any material fact and applicant's low-level radioactive waste plan satisfies the requirements of this section; LBP-11-31, 74 NRC 52.79(a) (2011)
- 10 C.F.R. 52.79(a)(3)
COL applications must include kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-11-6, 73 NRC 245 (2010); LBP-11-31, 74 NRC 649 (2011); LBP-12-4, 75 NRC 217, 223 (2012)
- combined license applications must provide a level of information on plans to manage and store low-level radioactive waste onsite sufficient to enable the Commission to conclude that the application will comply with 10 C.F.R. Part 20; CLI-11-10, 74 NRC 253 (2011)
- no quantity or time restrictions relative to onsite storage of low-level radioactive waste is specified; LBP-12-4, 75 NRC 218 (2012)
- whether offsite low-level radioactive waste storage and disposal facilities will ultimately be available is not material to summary disposition because applicant's FSAR provides an adequate contingency plan for long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available; LBP-12-4, 75 NRC 222-23(2012)
- 10 C.F.R. 52.79(a)(11)
combined license application must describe the programs, and their implementation, necessary to ensure that systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code and the ASME Code of Operation and Maintenance of Nuclear Power Plants in accordance with section 50.55a; CLI-11-8, 74 NRC 230 (2011)
- 10 C.F.R. 52.79(a)(21)
combined license applications must provide an emergency plan for the site; CLI-12-9, 75 NRC 455 (2012)
- 10 C.F.R. 52.79(a)(25)
combined license applicant's final safety analysis report must describe the quality assurance program applied to the design and to be applied to the fabrication, construction, and testing, of the structures, systems, and components of the facility; LBP-14-7, 79 NRC 475 (2014)
- 10 C.F.R. 52.79(d)(1)
applicants referencing a certified design must provide sufficient information for NRC Staff to determine whether the site's characteristics fall within the design's parameters; CLI-15-13, 81 NRC 570 n.89 (2015)
- 10 C.F.R. 52.80(d)
COL applications must include a description and plans for implementation of the guidance and strategies required by section 50.54(hh)(2) for severe accident mitigation; CLI-11-9, 74 NRC 238 (2011)
- combined license applications must include a description and plan for implementing the requirements for maintaining or restoring core cooling, containment, and spent fuel pool cooling capabilities; CLI-12-2, 75 NRC 100 (2012)

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- evaluation of existing dose projection models or a dose assessment is not required; CLI-11-9, 74 NRC 244 (2011)
- this section mandates compliance with the agency's loss-of-large-areas requirements in 10 C.F.R. 50.54(hh)(2), but does not apply to a license renewal proceeding; LBP-11-21, 74 NRC 131 (2011)
- 10 C.F.R. 52.83
where the combined license application references a certified design, elements of the licensing basis already have been established, and thus NRC would have to establish a regulatory basis for any change to the established design regardless of whether the COLs have issued; CLI-12-9, 75 NRC 438 n.87 (2012)
- 10 C.F.R. 52.87
independent assessment of the safety aspects of the combined license application is required; CLI-15-13, 81 NRC 559 (2015)
- 10 C.F.R. 52.93(a)(1)
combined license applicant incorporating a certified design may include in its COLA a request for an exemption from any part of a referenced design certification rule, which may be granted if NRC determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with 10 C.F.R. 52.63 if there are no applicable exemption provisions in the referenced design certification rule; LBP-11-10, 73 NRC 451 (2011)
NRC Staff review included evaluation of exemption criteria; CLI-12-2, 75 NRC 82 (2012)
- 10 C.F.R. 52.97
basis of NRC Staff's reasonable assurance finding on combined license applicant's squib valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 91 (2012)
determination the Commission must make is whether NRC Staff review of a combined license application has been adequate to support the findings found in this section; CLI-12-2, 75 NRC 74 (2012); CLI-12-9, 75 NRC 427-28 (2012)
extent and type of information required in a COL application regarding the question of long-term, onsite low-level radioactive waste storage is disputed; CLI-11-10, 74 NRC 255 (2011)
to authorize issuance of combined licenses, NRC must determine that applicable regulations have been met, there is reasonable assurance that the new reactors will be constructed and will operate in conformity with NRC regulations, and issuance of the licenses will not be inimical to the public health and safety; CLI-12-2, 75 NRC 125 (2012)
- 10 C.F.R. 52.97(a)
Commission concludes that NRC Staff's review has been adequate to support the findings set forth in this regulation; CLI-15-13, 81 NRC 557, 589 (2015)
safety issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 560 (2015)
- 10 C.F.R. 52.97(a)(1)(i)
NRC Staff may not issue a notice of violation for failure to satisfy Appendix B requirements during the preapplication period, but it may deny a combined license for failure to satisfy the standards and requirements of the Commission's regulations; LBP-14-7, 79 NRC 476 (2014)
- 10 C.F.R. 52.97(a)(1)(i)-(v)
scope of Commission examination of the adequacy of NRC Staff's safety review of a combined license application is described; CLI-12-2, 75 NRC 74-75 (2012)
- 10 C.F.R. 52.97(a)(1)(iv)
combined license applicant's status as a current power reactor licensee generally provides the necessary support for NRC Staff's finding that applicant is technically qualified for a new license; CLI-12-2, 75 NRC 83 (2012)
- 10 C.F.R. 52.97(a)(1)(v)
NRC Staff, incident to its preparation of the safety evaluation report, is obliged to ensure that applicant's design basis for the new units will protect public health and safety; LBP-11-6, 73 NRC 217 n.78 (2010)
- 10 C.F.R. 52.97(c)
in a combined license proceeding, the Commission may require implementation of mitigation measures it deems necessary and appropriate by imposing conditions in the license; LBP-12-18, 76 NRC 161 (2012)

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- 10 C.F.R. 52.98
licenses may be amended to add appropriate conditions, depending on whether the conditions are within the scope of the certified design; CLI-12-9, 75 NRC 438 (2012)
- 10 C.F.R. 52.98(a)
when NRC imposes new regulatory requirements that are important safety enhancements but not deemed necessary to ensure adequate protection of public health and safety, NRC often does not require existing licensees to implement them based on considerations such as whether they are cost-beneficial; CLI-12-2, 75 NRC 127 (2012)
- 10 C.F.R. 52.98(c)
final safety analysis reports must be updated so that NRC is aware of changes that are made that do not require prior NRC approval; CLI-12-2, 75 NRC 81 (2012)
- 10 C.F.R. 52.102, 52.103
decision of the board or Commission becomes the record of decision, which may also incorporate the final supplemental environmental impact statement; CLI-15-6, 81 NRC 376 (2015)
- 10 C.F.R. 52.103(a)
applicant is required to submit a report on its decommissioning funding assurance mechanism after combined licenses are issued and no later than 30 days after the NRC publishes notice of intended operation in the *Federal Register*; CLI-12-2, 75 NRC 83 (2012)
- 10 C.F.R. Part 52, Appendix A, §§ VI.B
all environmental issues concerning severe accident mitigation design alternatives associated with the information in NRC's final environmental assessment for certified reactor design are deemed resolved for plants referencing this appendix whose site parameters are within those specified in the technical support document; LBP-11-7, 73 NRC 274 n.135 (2011)
- 10 C.F.R. Part 52, Appendix A, § VI.B.7
issues surrounding severe accident mitigation design alternatives that have been resolved by regulation may not be challenged in a combined license adjudication; CLI-11-6, 74 NRC 205, 206 (2011)
NRC Staff's creation of a list of site parameters for use in the combined license proceeding cannot cure the absence of a list of site parameters in the technical support document, rendering it impossible to resolve SAMDA issues by rule; LBP-11-7, 73 NRC 275-76 (2011)
- 10 C.F.R. Part 52, Appendix D, § II.E
compliance with design-related information contained in the generic design control document that is approved but not certified (Tier 2 information) is required, but generic changes to and plant-specific departures from Tier 2 are governed by 10 C.F.R. Part 52, Appendix D, § VIII; CLI-12-2, 75 NRC 87 n.131 (2012)
- 10 C.F.R. Part 52, Appendix D, § II.F
"Tier 2*" means the portion of the Tier 2 information, designated as such in the generic design control document, that is subject to the change process in 10 C.F.R. Part 52, Appendix D, § VIII.B.6; CLI-12-2, 75 NRC 97 n.190 (2012)
- 10 C.F.R. Part 52, Appendix D, § IV.A.2
NRC Staff evaluated and approved exemption from regulatory requirements for organization and numbering of the combined license application; CLI-12-2, 75 NRC 82 (2012)
- 10 C.F.R. Part 52, Appendix D, § IV.A.2.d
because departure from the wet-bulb noncoincident temperature is considered Tier 1 information or part of the AP1000 certified design, a regulatory exemption is required; CLI-12-9, 75 NRC 445 (2012)
- 10 C.F.R. Part 52, Appendix D, § VIII
Commission administratively exempted, from the issue finality requirements, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 443 n.101 (2012)
- 10 C.F.R. Part 52, Appendix D, § VIII.A.4
because departure from the wet-bulb noncoincident temperature is considered Tier 1 information or part of the AP1000 certified design, a regulatory exemption is required; CLI-12-9, 75 NRC 445 (2012)
- 10 C.F.R. Part 52, Appendix D, § VIII.B.5.b
final safety analysis reports must be updated so that NRC is aware of changes that are made that do not require prior NRC approval; CLI-12-2, 75 NRC 81 (2012)

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- 10 C.F.R. Part 52, Appendix E
under its certified design, the Economic Simplified Boiling Water Reactor could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 271 (2015)
- 10 C.F.R. Part 54
nonpower reactors, including research and test reactors, differ as a class from nuclear power plants and are not covered by this part; CLI-11-11, 74 NRC 436 n.47 (2011)
this part governs the issuance of renewed operating license; LBP-11-21, 74 NRC 131 (2011)
- 10 C.F.R. 54.1
Part 54 governs issuance of renewed operating licenses and renewed combined licenses for nuclear power plants licensed pursuant to sections 103 or 104b of the Atomic Energy Act and Title II of the Energy Reorganization Act; CLI-11-11, 74 NRC 436 n.47 (2011)
- 10 C.F.R. 54.3
applicants must reassess any time-limited aging analyses to show either that the analyses will remain valid throughout the period of extended operation or that the effects of aging on the subject component will be managed during that time period; CLI-15-6, 81 NRC 349 n.34 (2015)
current licensing basis consists of license requirements, including license conditions and technical specifications, plant-specific design basis information, and any orders, exemptions, and licensee commitments that are part of the docket for the plant's license; LBP-13-13, 78 NRC 281 n.149 (2013)
current licensing basis includes applicant's commitments through incorporation of applicant's updated final safety analysis report supplement; LBP-13-13, 78 NRC 363 (2013)
current licensing basis includes licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports; LBP-11-21, 74 NRC 130 n.86 (2011)
facility's current licensing basis contains any license conditions; LBP-11-21, 74 NRC 131 (2011)
NRC's ongoing regulatory process ensures that the current licensing basis of an operating plant remains acceptably safe; LBP-11-21, 74 NRC 127 (2011)
operating license renewal applicants must reassess time-limited aging analyses made during the original license term and based upon the length of the original license term; LBP-11-21, 74 NRC 129 (2011)
- 10 C.F.R. 54.3(a)
commitments in the updated final safety analysis report and aging management plan are legally binding as part of the current licensing basis throughout the period of extended operation and can only be changed through the section 50.59 process; LBP-13-13, 78 NRC 366 (2013)
current licensing basis for an independent spent fuel storage installation includes plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report; LBP-12-24, 76 NRC 538 (2012)
current licensing basis includes NRC regulations contained in 10 C.F.R. Part 50 and appendices thereto; LBP-13-8, 78 NRC 12 (2013)
current licensing basis is the set of NRC requirements (including regulations, orders, technical specifications, and license conditions) applicable to a specific plant, and includes the licensee's written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; CLI-15-14, 81 NRC 744 n.19 (2015); LBP-11-17, 74 NRC 21 (2011); LBP-13-8, 78 NRC 12 n.17 (2013)
NRC's ongoing regulatory process ensures that the current licensing basis of an operating plant remains acceptably safe; LBP-15-5, 81 NRC 259 (2015)
- 10 C.F.R. 54.4
applicant for a renewed license must first identify all structures, systems, and components that serve a function relating directly or indirectly to safety, as defined by this regulation; CLI-15-6, 81 NRC 347 (2015)
safety significance of a structure, system, or component is defined in terms of its safety-related functions, and within the scope of license renewal are included those SSCs whose failure could prevent satisfactory accomplishment of the safety-related function; CLI-15-6, 81 NRC 347 n.25 (2015)
scope of license renewal is defined; CLI-15-21, 82 NRC 299, 305 (2015); LBP-11-20, 74 NRC 108 (2011)

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- scope of license renewal safety review is limited to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-11-2, 73 NRC 45 (2011); LBP-15-6, 81 NRC 321 (2015)
- 10 C.F.R. 54.4(a)
adequacy of plan to manage the effects of aging during the period of extended operation for buried pipes, tanks, and transfer canals that contain radioactive fluid is decided; LBP-13-13, 78 NRC 310-11 (2013)
focus of license renewal safety review is described; CLI-12-5, 75 NRC 303 (2012)
safety-related systems, structures, and components are those relied upon to remain functional during and following design-basis events to ensure specific functions; LBP-11-20, 74 NRC 110 (2011)
- 10 C.F.R. 54.4(a)(1)
scope of license renewal, including buried piping, addresses all safety-related structures, systems, and components that are relied upon to remain functional to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down and maintain the safe shutdown of the reactor, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite radiation exposures; LBP-13-13, 78 NRC 314 (2013)
- 10 C.F.R. 54.4(a)(1)-(3)
because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions, the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 60 (2011)
- 10 C.F.R. 54.4(a)(1)(iii)
buried structures, systems, and components must also control inadvertent radiological releases to ensure that dose exposures are below the regulatory limits; LBP-13-13, 78 NRC 368 (2013)
- 10 C.F.R. 54.4(a)(2)
plant systems, structures, and components within the scope of license renewal are all non-safety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of the capability to shut down the reactor and maintain it in a safe shutdown condition; LBP-13-13, 78 NRC 321 (2013); LBP-15-6, 81 NRC 322 n.46 (2015)
- 10 C.F.R. 54.4(a)(3)
for purposes of the license renewal rule, NRC Staff has determined that the plant system portion of the offsite power system that is used to connect the plant to the offsite power source should be included within the scope of the station blackout rule; CLI-12-5, 75 NRC 321 (2012)
- 10 C.F.R. 54.4(b)
buried structures, systems, and components must also control inadvertent radiological releases to ensure that dose exposures are below the regulatory limits; LBP-13-13, 78 NRC 368 (2013)
limited scope of the intended functions of structures, systems, and components subject to aging management review is described; CLI-12-5, 75 NRC 304 (2012)
- 10 C.F.R. 54.13(a)
information provided to NRC by an applicant must be complete and accurate in all material respects; LBP-11-32, 74 NRC 668 n.31 (2011)
- 10 C.F.R. 54.13(b)
applicants shall notify NRC of information identified by applicants as having, for the regulated activity, a significant implication for public health and safety or common defense and security; LBP-11-32, 74 NRC 668 n.31 (2011)
- 10 C.F.R. 54.17(c)
contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 244 (2013)
earliest that a license renewal application may be submitted is 20 years before the expiration date of the operating license in effect; CLI-13-7, 78 NRC 214 n.81 (2013); LBP-11-2, 73 NRC 52 (2011); LBP-13-12, 78 NRC 244 (2013)
time frame for SAMA analysis is inherent in NRC's regulatory scheme, which provides for a 40-year license term, with the possibility of license renewal for an additional 20-year period; CLI-13-7, 78 NRC 214 n.81 (2013)

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- 10 C.F.R. 54.21
adequacy of plan to manage effects of aging during the period of extended operation for buried pipes, tanks, and transfer canals that contain radioactive fluid is decided; LBP-13-13, 78 NRC 311 (2013)
contents of a license renewal application are set forth; CLI-15-21, 82 NRC 299, 305 (2015); LBP-11-20, 74 NRC 111 (2011)
integrated plant assessment must demonstrate that effects of aging will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-13-13, 78 NRC 374 (2013)
license renewal applicant is not required to identify safety-related incidents that have occurred during the current licensing term; LBP-13-8, 78 NRC 22 (2013)
- 10 C.F.R. 54.21(a)
aging management review consists of identifying the aging effects, and the aging management plans will manage aging effects and demonstrate that passive, long-lived SSCs will perform their intended functions during the period of extended operation; LBP-13-13, 78 NRC 280 (2013)
although the current licensing basis is not evaluated in the license renewal process, its provisions and protections remain in effect, complementing and supplementing any additional measures added due to aging management requirements; LBP-13-13, 78 NRC 281 (2013)
applicants must demonstrate that they have programs in place that will effectively manage the effects of aging for specific types of structures and components during the period of extended operation; LBP-13-13, 78 NRC 280 (2013)
each application must contain an integrated plant assessment that is a detailed assessment, conducted at a component and structure level, rather than at a more generalized system level; LBP-13-13, 78 NRC 280 (2013)
license renewal applications must include an integrated plant assessment demonstrating that effects of aging on plant systems, structures, and components will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 347-48 (2015); LBP-13-8, 78 NRC 10 (2013)
safety contention challenging aging management of electrical transformers is decided; LBP-13-13, 78 NRC 403 (2013)
safety contentions challenging aging management of non-environmentally qualified inaccessible medium-voltage cables and wiring are decided; LBP-13-13, 78 NRC 372 (2013)
scope of a license renewal safety review is limited to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-15-6, 81 NRC 321 (2015)
structures, systems, and components are passive if they perform their intended function without moving parts or without a change in configuration or properties and the effects of aging degradation for these components are not readily monitorable; LBP-13-13, 78 NRC 404 (2013)
- 10 C.F.R. 54.21(a)(1)
as a passive component with no moving parts, and no change in configuration, properties, or state, transformers must undergo aging management review; LBP-13-13, 78 NRC 449 (2013)
license renewal applicant is required to list structures and components subject to an aging management review; LBP-13-8, 78 NRC 22 (2013); LBP-13-13, 78 NRC 404 (2013)
with respect to the definition of "reasonable assurance," applicant is required to show that safety features will fulfill their intended function, not that every structure will maintain its current licensing basis throughout the renewal period; LBP-15-5, 81 NRC 294 (2015)
- 10 C.F.R. 54.21(a)(1)(i)
aging management review only covers systems, structures, and components that perform their intended function without moving parts or without a change in configuration or properties; CLI-12-5, 75 NRC 303-04 (2012); CLI-15-6, 81 NRC 352 (2015); LBP-11-2, 73 NRC 57 (2011); LBP-13-13, 78 NRC 280 (2013); LBP-15-6, 81 NRC 322 (2015)
an illustrative list of structures and components that are subject to aging management review is provided in this section; CLI-12-5, 75 NRC 316 n.91 (2012); CLI-15-6, 81 NRC 348, 352 (2015); LBP-15-6, 81 NRC 322 (2015)

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- board compared transformers with other types of components listed in this regulation as expressly subject to aging management review or expressly excluded from aging management review; CLI-15-6, 81 NRC 354 (2015); LBP-13-13, 78 NRC 444 (2013)
- board examined how a transformer performs its intended function to determine whether it undergoes a change in configuration or properties; CLI-15-6, 81 NRC 354 (2015)
- power transformers are active devices that do not require aging management review or an aging management program; LBP-13-13, 78 NRC 438 (2013)
- relay switches and snubbers are not subject to an aging management review; LBP-15-6, 81 NRC 322 (2015)
- static components such as transistors and battery chargers are specifically excluded from aging management review; CLI-15-6, 81 NRC 360 n.97 (2015)
- structures and components considered active and designated as excluded from aging management review are listed; LBP-13-13, 78 NRC 432 n.1281 (2013)
- structures and components considered passive and designated as subject to aging management review are listed; LBP-13-13, 78 NRC 432 n.1280 (2013)
- transformer is an active component because it undergoes a change in properties when it performs its intended function
- transformers are more closely aligned with those components that require aging management review; LBP-13-13, 78 NRC 444-45 (2013)
- transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded from aging management review; CLI-12-5, 75 NRC 318 n.99 (2012); CLI-15-6, 81 NRC 357, 359, 361 (2015); LBP-13-13, 78 NRC 432-33 (2013)
- variety of electrical and instrumentation and control components are excluded from an aging management review for license renewal; CLI-12-5, 75 NRC 317 (2012)
- 10 C.F.R. 54.21(a)(1)(ii)
- board reviews whether transformers are subject to replacement based on a qualified life or specified time period; LBP-13-13, 78 NRC 412 (2013)
- license renewal applicants must conduct aging management reviews of any structure, system, or component that performs one of these intended functions if the SSC is long-lived (not subject to replacement based on a qualified life or specified time period); CLI-12-5, 75 NRC 304 (2012)
- structures and components are subject to aging management review if they are not subject to routine replacement; CLI-15-6, 81 NRC 348 (2015)
- 10 C.F.R. 54.21(a)(3)
- applicant's aging management plan for flow-accelerated corrosion and the definition of flow-accelerated corrosion are discussed; LBP-13-13, 78 NRC 288 (2013)
- applicants must demonstrate reasonable assurance that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; CLI-12-5, 75 NRC 304 (2012); LBP-11-2, 73 NRC 60 (2011); LBP-15-6, 81 NRC 322-23 (2015)
- by a preponderance of the evidence, applicant has provided reasonable assurance that the effects of aging on buried pipes that contain or may contain radioactive fluids can be adequately managed during the period of extended operation; LBP-13-13, 78 NRC 372 (2013)
- contention that applicant has failed to establish in its aging management plan that the effects of aging will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 324 (2015)
- integrated plant assessment must demonstrate that effects of aging for each structure and component will be managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 348 n.31 (2015); LBP-13-8, 78 NRC 34 (2013); LBP-13-13, 78 NRC 280, 374 (2013)
- legal standards for license renewal applicant's flow-accelerated corrosion management plan stand as a condition precedent to relicensing; LBP-13-13, 78 NRC 290 (2013)
- license renewal applicant must provide a general description of the corporate-wide and plant-specific procedures sufficient to show that the ten elemental attributes of GALL have been addressed so as to

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- demonstrate that the effects of aging on buried pipes will be adequately managed throughout the period of extended operation; LBP-13-13, 78 NRC 324 (2013)
- license renewal applicant must provide reasonable assurance that the intended functions of buried pipes, tanks, and transfer canals that contain radioactive fluid will be maintained in accordance with the current licensing basis for the period of extended operation; LBP-13-13, 78 NRC 314 (2013)
- license renewal application must demonstrate that licensee will adequately manage effects of aging on passive, long-lived components so that their intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 352 (2015)
- operating license renewal applicants must demonstrate how they will adequately manage the effects of aging during the proposed renewal term; LBP-11-21, 74 NRC 129 (2011)
- preponderance of the evidence demonstrates that the elements of applicant's aging management plan for non-EQ inaccessible medium- and low-voltage cables are consistent with the corresponding elements of the GALL Report and, as such, that program provides the requisite reasonable assurance; LBP-13-13, 78 NRC 402-03 (2013)
- preponderance of the evidence supports the conclusion that applicant has demonstrated that the effects of aging from flow-accelerated corrosion on the intended functions of the piping and components susceptible to FAC will be adequately managed for the period of extended operation; LBP-13-13, 78 NRC 310 (2013)
- statements in the license renewal application promising to develop and implement an aging management plan that would be consistent with the NRC guidance document applicable at the time the application was submitted is insufficient; LBP-13-13, 78 NRC 324, 366, 368 n.818 (2013)
- structures and components associated only with active functions can be generically excluded from a license renewal aging management review; CLI-12-5, 75 NRC 304 (2012)
- 10 C.F.R. 54.21(b)
- applicant must update its license renewal application annually to reflect changes in its current licensing basis, but such updating does not explicitly extend to the environmental report; LBP-11-32, 74 NRC 665, 668 n.31 (2011)
- although the current licensing basis is not evaluated in the license renewal process, its provisions and protections remain in effect, complementing and supplementing any additional measures added due to aging management requirements; LBP-13-13, 78 NRC 281 (2013)
- reassessment of time-limited aging analyses must show that the earlier analysis will remain valid for the extended operation period or modify and extend the analysis to apply to a longer term, such as 60 years, or otherwise demonstrate that the effects of aging will be adequately managed in the renewal term; LBP-13-13, 78 NRC 280-81 (2013)
- 10 C.F.R. 54.21(c)
- applicants must reassess any time-limited aging analyses to show either that the analyses will remain valid throughout the period of extended operation or that the effects of aging on the subject component will be managed during that time period; CLI-15-6, 81 NRC 349 n.34 (2015)
- contention that license renewal application has failed to establish that the effects of aging on relay switches and snubbers will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 322 (2015)
- operating license renewal applicants must reassess time-limited aging analyses made during the original license term and based upon the length of the original license term; LBP-11-21, 74 NRC 129 (2011)
- scope of a license renewal safety review is limited to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-15-6, 81 NRC 321 (2015)
- 10 C.F.R. 54.21(c)(1)(iii)
- commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance; LBP-11-20, 74 NRC 104 n.73 (2011); LBP-13-13, 78 NRC 283 (2013)
- 10 C.F.R. 54.21(d)
- updated final safety analysis report supplement represents the capturing of the critical aspects of the program into the applicant's current licensing basis; LBP-13-13, 78 NRC 363, 364-65 (2013)

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- 10 C.F.R. 54.29
applicants must demonstrate that they have programs in place that will effectively manage the effects of aging for specific types of structures and components during the period of extended operation; LBP-13-13, 78 NRC 280 (2013)
findings that NRC Staff must make for issuance of a renewed license are set forth; CLI-15-21, 82 NRC 299, 305 (2015); LBP-13-13, 78 NRC 281-82 (2013); LBP-15-6, 81 NRC 324 (2015)
for license renewal, there must be reasonable assurance that applicant will manage the effects of aging on certain structures and components during extended operation; LBP-11-2, 73 NRC 60 n.195 (2011)
safety contention challenging aging management of electrical transformers is decided; LBP-13-13, 78 NRC 403 (2013)
safety contentions challenging aging management of non-environmentally qualified inaccessible medium-voltage cables and wiring are decided; LBP-13-13, 78 NRC 372 (2013)
- 10 C.F.R. 54.29(a)
adequacy of plan to manage effects of aging during the period of extended operation for buried pipes, tanks, and transfer canals that contain radioactive fluid is decided; LBP-13-13, 78 NRC 311 (2013)
if NRC concludes that an aging management program is consistent with the GALL Report, then it accepts applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance; CLI-12-5, 75 NRC 304 (2012)
legal standards for license renewal applicant's flow-accelerated corrosion management plan stand as a condition precedent to relicensing; LBP-13-13, 78 NRC 290 (2013)
narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; CLI-11-11, 74 NRC 433 n.27 (2011)
preponderance of the evidence demonstrates that the elements of applicant's aging management plan for non-EQ inaccessible medium- and low-voltage cables are consistent with the corresponding elements of the GALL Report and, as such, that program provides the requisite reasonable assurance; LBP-13-13, 78 NRC 402-03 (2013)
- 10 C.F.R. 54.29(a)(1)
among the limited issues within the scope of a license renewal proceeding are plans to manage the effects of aging on enumerated functions of certain systems, structures, and components during the period of extended operation; LBP-11-2, 73 NRC 45 (2011)
an operating license may be renewed if NRC finds, among other things, that actions have been identified and have been or will be taken to manage the effects of aging during the period of extended operation on the functionality of certain identified structures and components; CLI-11-11, 74 NRC 432 (2011)
structures and components associated only with active functions can be generically excluded from a license renewal aging management review; CLI-12-5, 75 NRC 304 (2012)
- 10 C.F.R. 54.29(a)(1)(i)
structures and components subject to aging management review include those that perform an intended function, as described in section 54.4; LBP-13-13, 78 NRC 404 (2013)
- 10 C.F.R. 54.29(a)-(b)
scope of reactor operating license renewal review is outlined; LBP-11-17, 74 NRC 21 (2011)
- 10 C.F.R. 54.29(b)
among the limited issues within the scope of a license renewal proceeding are alternatives for reducing adverse environmental impacts listed as Category 2 issues in Appendix B to Subpart A of 10 C.F.R. Part 51; LBP-11-2, 73 NRC 45 (2011); LBP-11-13, 73 NRC 550 (2011)
among the limited issues within the scope of a license renewal proceeding are cost-effective alternatives for mitigating severe accidents; LBP-11-2, 73 NRC 45 (2011)
license renewal cannot be granted unless and until all the applicable requirements of 10 C.F.R. Part 51 have been satisfied; LBP-11-17, 74 NRC 27 n.76 (2011); LBP-11-18, 74 NRC 37 (2011)
- 10 C.F.R. 54.30
although monitoring/inspections performed during current operations under Part 50 and the current licensing basis are excluded from review during license renewal, the mere fact that the intended function of transformers is being monitored in accordance with the CLB does not exempt them from

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- needing to be included in an aging management review program for license renewal; LBP-13-13, 78 NRC 449 (2013)
- matters relating to reasonable assurance of safety during the current license term are to be addressed under the current license and are outside the scope of a license renewal review; CLI-15-21, 82 NRC 300 (2015)
- only structures and components with active functions that are readily monitorable are excluded from aging management review; LBP-13-13, 78 NRC 412 (2013)
- 10 C.F.R. 54.30(b)
- allegations of noncompliance with already-issued, existing and open Commission orders are part of the current licensing basis and therefore cannot be challenged in a license renewal proceeding; LBP-15-5, 81 NRC 291 (2015)
- compliance with orders issued as part of NRC's ongoing oversight program are enforcement issues that are not within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 291 (2015)
- compliance with the current licensing basis is not within the scope of a license renewal proceeding; LBP-13-8, 78 NRC 12 (2013)
- enforcement orders are outside the scope of the license renewal proceeding; LBP-15-5, 81 NRC 292 (2015)
- if compliance with the current licensing basis cannot be fully achieved during the current licensing term and must be consummated during the period of extended operation, then a contention raising issues about such CLB compliance is within the scope of license renewal; LBP-13-8, 78 NRC 14 (2013)
- licensee's compliance with the obligation to take measures under its current license is not within the scope of the license renewal review; LBP-11-2, 73 NRC 56 n.168 (2011)
- 10 C.F.R. 54.31(c)
- if the renewed license is subsequently set aside on appeal, the previous operating license would be reinstated; LBP-12-16, 76 NRC 47 n.15 (2012)
- 10 C.F.R. 54.31(d)
- plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face general criticism that the passage of time between original licensing and renewal has rendered their SAMA analysis out of date upon application for a subsequent renewal term; CLI-13-7, 78 NRC 214 (2013)
- 10 C.F.R. 54.33
- all the information that applicant uses to support its license renewal application has to be maintained in an auditable and retrievable form; LBP-13-13, 78 NRC 323 (2013)
- 10 C.F.R. 54.33(c)
- current licensing basis of an operating license shall continue during the license renewal period, but these conditions may be supplemented or amended as necessary to protect the environment during the term of the renewed license and will be derived from information contained in the supplement to the environmental report, as analyzed and evaluated in the NRC record of decision; LBP-11-17, 74 NRC 22 (2011)
- 10 C.F.R. 54.35
- liquid released from a leaky pipe where the pressure boundary is maintained would not be sufficient to exceed the dose limits specified in 10 C.F.R. Part 54; LBP-13-13, 78 NRC 321 (2013)
- 10 C.F.R. 55.2
- any individual who manipulates the controls of any facility licensed under Parts 50, 52, or 54 of NRC's regulations is required to have an operator's license; LBP-14-2, 79 NRC 141 (2014)
- 10 C.F.R. 55.4
- "senior reactor operator" is any individual licensed under Part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators; LBP-13-3, 77 NRC 85 (2013); LBP-14-2, 79 NRC 142 (2014)
- 10 C.F.R. 55.31
- applicant who passes both a written examination and operating test and meets the other requirements specified in 10 C.F.R. Part 55 will be eligible to receive a senior reactor operator license; LBP-13-5, 77 NRC 236 (2013)

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- 10 C.F.R. 55.33
senior reactor operator licenses are subject to the satisfaction of other licensing requirements not considered in the adjudicatory proceeding, such as health, that the NRC Staff must assess before issuing a license; LBP-14-2, 79 NRC 139, 246 (2014)
- 10 C.F.R. 55.33(a)
to obtain a senior reactor operator license, applicant must pass both the written examination and the operating test and meet the other requirements specified in 10 C.F.R. Part 55; LBP-13-3, 77 NRC 85 (2013); LBP-14-2, 79 NRC 142 (2014)
- 10 C.F.R. 55.33(a)(2)
goal of senior reactor operator tests is to determine whether applicant's level of knowledge and understanding meets the minimum requirements to safely operate the facility for which the license is sought; LBP-14-2, 79 NRC 142 (2014)
- 10 C.F.R. 55.35(b)
NRC regional office has the discretion to grant a waiver for retesting on a passed test for a senior reactor operator applicant who has failed only one part of the test if it determines that sufficient justification is presented; LBP-14-2, 79 NRC 143 (2014)
senior reactor operator license applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused from reexamination on the portions of the examination or test that the applicant has passed; LBP-13-3, 77 NRC 85 (2013); LBP-14-2, 79 NRC 143 (2014)
- 10 C.F.R. 55.40
Commission shall use the criteria in NUREG-1021, Operator Licensing Examination Standards for Power Reactors, in effect 6 months before the examination date to prepare the written examinations required by sections 55.41 and 55.43 and the operating tests required by section 55.45; LBP-14-2, 79 NRC 142, 151 (2014)
- 10 C.F.R. 55.43, 55.45
applicant who passes both a written examination and operating test and meets the other requirements specified in 10 C.F.R. Part 55 will be eligible to receive senior reactor operator license; LBP-13-5, 77 NRC 236 (2013)
- 10 C.F.R. 57.71
contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 58 (2013)
- 10 C.F.R. 60.23
DOE may incorporate in its application for geologic repository information in previous reports filed with the Commission, provided that such references are clear and specific; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 61.55(a)(1) & (2)
NRC divides low-level radioactive waste into three classes (A, B, and C) based on the concentration and types of long-lived and short-lived radionuclides; LBP-12-4, 75 NRC 216 n.5 (2012); LBP-12-7, 75 NRC 505 n.5 (2012)
- 10 C.F.R. 70.4
applicant seeks an exemption from the requirements of this section to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 503-04 (2011)
"commencement of construction" is defined to include clearing of land, excavation, or other substantial action that would adversely affect the environment of the site; LBP-11-11, 73 NRC 506 (2011); LBP-11-26, 74 NRC 538 (2011)
- 10 C.F.R. 70.17(a)
NRC may grant an exemption from regulatory requirements if it determines such an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest; LBP-11-11, 73 NRC 497 (2011); LBP-12-21, 76 NRC 240 n.118 (2012)

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- 10 C.F.R. 70.21(c)
special nuclear material license applications may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission if the references are clear and specific; LBP-12-24, 76 NRC 518 n.69 (2012)
- 10 C.F.R. 70.22(a)(2)
uranium enrichment facility license applications must contain the place at which the activity is to be performed and the general plan for carrying out the activity as well as a description of equipment and facilities that will be used by applicant to protect health and minimize danger to life or property; LBP-12-21, 76 NRC 236-37 (2012)
- 10 C.F.R. 70.22(a)(3)
applicant must indicate the period of time for which a Part 70 license is requested; LBP-11-11, 73 NRC 503 (2011)
- 10 C.F.R. 70.22(a)(7)
uranium enrichment facility license applications must contain the place at which the activity is to be performed and the general plan for carrying out the activity as well as a description of equipment and facilities that will be used by applicant to protect health and minimize danger to life or property; LBP-12-21, 76 NRC 236-37 (2012)
- 10 C.F.R. 70.22(b)
applicant's program for control and accounting of special nuclear material must show how compliance with the requirements of section 74.51 will be accomplished; LBP-14-1, 79 NRC 51 n.56 (2014)
materials license amendment applications must contain a full description of the applicant's program for control and accounting of special nuclear material to show how it will comply with the 10 C.F.R. Part 74 requirements; LBP-11-9, 73 NRC 394 n.1 (2011)
NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 82 (2012)
- 10 C.F.R. 70.22(m)
application for a uranium enrichment facility is required to contain a description of the security program to protect against unauthorized disclosure of classified matter in accord with Part 95; LBP-11-11, 73 NRC 489, 490 (2011)
- 10 C.F.R. 70.23(a)(6)
applicant's proposed controls for strategic special nuclear material must be adequate to show compliance with material control and accounting regulations; LBP-14-1, 79 NRC 51 (2014)
- 10 C.F.R. 70.23(a)(7)
applicant seeks an exemption from the requirements of this section to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 503-04 (2011)
for a proposed nuclear materials-related activity, including uranium enrichment, commencement of construction relative to that activity prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-11, 73 NRC 506 (2011); LBP-11-26, 74 NRC 538 (2011)
preconstruction activities that are allowed under Part 50 are also allowed for materials licenses; LBP-11-26, 74 NRC 539 (2011)
- 10 C.F.R. 70.23a
NRC will hold a hearing under 10 C.F.R. Part 2, Subparts A, C, G, and I, on each application for issuance of a license for construction and operation of a uranium enrichment facility and will publish public notice of the hearing in the Federal Register at least 30 days before the hearing; LBP-12-21, 76 NRC 233 (2012)
- 10 C.F.R. 70.25(a)
depending on the quantity of material, Part 70 license applicants must submit either a decommissioning funding plan or a certification of financial assurance; CLI-11-4, 74 NRC 9 (2011)
- 10 C.F.R. 70.25(a)(1)
applicant seeking a specific license associated with a uranium enrichment facility must submit a decommissioning funding plan; CLI-11-4, 74 NRC 9 (2011)

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- 10 C.F.R. 70.25(a)-(b)
financial assurance requirements are structured according to the quantity of material that will be authorized for possession and use; CLI-11-4, 74 NRC 9 (2011)
- 10 C.F.R. 70.25(b)(1)-(2)
depending on the quantity of material, Part 70 license applicants must submit either a decommissioning funding plan or a certification of financial assurance; CLI-11-4, 74 NRC 9 (2011)
- 10 C.F.R. 70.25(b)(2)
certification of financial assurance may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material; CLI-11-4, 74 NRC 9 n.43 (2011)
certifications of financial assurance, which are used by applicants seeking to possess smaller quantities of material, are governed by this subsection; CLI-11-4, 74 NRC 9 (2011)
NRC Staff authorization permitting applicant to defer execution of any final letters of credit for decommissioning financial assurance until after a license is issued but before receipt of licensed material might be problematic; LBP-11-26, 74 NRC 518 (2011)
- 10 C.F.R. 70.25(d)
possession limits associated with a certification of financial assurance are set forth in this subsection; CLI-11-4, 74 NRC 9 (2011)
- 10 C.F.R. 70.25(e)
applicant seeking a specific license for a uranium enrichment facility is required to submit a decommissioning funding plan consistent with this subsection; CLI-11-4, 74 NRC 9 (2011)
applicant seeks authorization to provide financial assurance for decommissioning funding on a forward-looking, incremental basis; LBP-11-11, 73 NRC 503 (2011)
deferral of execution of the financial instruments until after the license has issued is not allowed for a uranium enrichment facility; CLI-11-4, 74 NRC 9 (2011)
each decommissioning funding plan must include a signed original of the instrument obtained to provide financial assurance for decommissioning at the time the plan is submitted; CLI-11-4, 74 NRC 9 (2011)
request for an exemption that would enable it to provide decommissioning funding on a forward-looking, incremental basis, at a rate proportional to the then-current decontamination and decommissioning liability is granted; CLI-11-4, 74 NRC 3 n.4 (2011)
- 10 C.F.R. 70.25(f)(2)
applicant's commitment to provide a letter of credit issued by a financial institution whose operations are regulated and examined by a federal or state agency is sufficient to satisfy decommissioning funding assurance requirements; CLI-11-4, 74 NRC 2 (2011); LBP-11-26, 74 NRC 517-18 (2011)
- 10 C.F.R. 70.25(f)(2)(ii)
an acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; CLI-11-4, 74 NRC 4 n.15 (2011)
because it has chosen a surety method, licensee must ensure that the letter of credit is payable to a trust established for decommissioning costs; CLI-11-4, 74 NRC 3 (2011)
- 10 C.F.R. 70.31(a), (b)(2)
NRC may issue a license to impose such additional conditions, requirements, and limitations as may be necessary to effectuate the purposes of the Atomic Energy Act and the agency's regulations; LBP-11-11, 73 NRC 497 (2011)
- 10 C.F.R. 70.31(e)
no license to construct and operate a uranium enrichment facility may be issued until a hearing pursuant to 10 C.F.R. Part 2, Subparts A, C, G, and I, is completed and decision issued on the application; LBP-12-21, 76 NRC 233 (2012)
- 10 C.F.R. 70.32(c)
if applicant decides to remove a method from the approved list of alarm resolution methods, it would have to follow the prescribed change process or the license amendment process; LBP-14-1, 79 NRC 103 n.342 (2014)
NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 82 (2012)

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- uranium enrichment facility license must have a condition requiring the licensee to maintain and follow a source material control and accounting program and maintain records of any MC&A program changes made without Commission approval for 5 years from the date of the change; LBP-11-11, 73 NRC 501-02 (2011)
- 10 C.F.R. 70.32(c)(2)
reports to the agency regarding unapproved changes made to the material control and accounting program must be filed no more than 6 months after the changes; LBP-11-11, 73 NRC 502 (2011)
- 10 C.F.R. 70.32(k)
although construction of a fuel cycle facility can begin as soon as the license authorizing the facility is granted, prior to the introduction of UF₆ into any EREF module, NRC must verify through inspection that the facility was constructed in accordance with the agency's regulatory requirements and license requirements; LBP-11-11, 73 NRC 502 (2011)
applicant is to provide an items-relied-on-for-safety boundary package to verify that a facility is constructed in accord with all license requirements; LBP-11-11, 73 NRC 500 (2011)
uranium enrichment facility cannot be operated until the agency verifies through inspection that the facility has been constructed in accordance with the license; LBP-11-11, 73 NRC 509 (2011); LBP-12-21, 76 NRC 259-60 (2012)
- 10 C.F.R. 70.34
if applicant decides to remove a method from the approved list of alarm resolution methods, it would have to follow the prescribed change process or the license amendment process; LBP-14-1, 79 NRC 103 n.342 (2014)
- 10 C.F.R. 70.40
this section applies only to enrichment facility licensee USEC and has no relevance to any other enrichment facility applicant; LBP-11-11, 73 NRC 488 n.16 (2011)
- 10 C.F.R. 70.59
Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 565 (2011)
uranium enrichment facility licensee must submit biannual reports to the NRC specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous 6 months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases; LBP-12-21, 76 NRC 338-39, 365 (2012)
- 10 C.F.R. 70.61
analysis of potential volcanic hazard at applicant's site raises the question whether the probability of such an event is sufficiently low to be considered "highly unlikely"; LBP-11-11, 73 NRC 518-19 (2011)
integrated safety analysis requirements for uranium enrichment facility licensing are detailed; LBP-12-21, 76 NRC 237 (2012)
under risk-informed performance-based requirements, applicants must ensure that each item relied on for safety will be available and reliable to perform its function when needed; LBP-11-11, 73 NRC 500 (2011)
- 10 C.F.R. 70.61(a)
applicant is required to evaluate and reduce the risk of events that could have significant impacts on workers or the public; LBP-12-21, 76 NRC 265 (2012)
- 10 C.F.R. 70.61(b), (c)
high-consequence events are required to be highly unlikely and intermediate-consequence events to be unlikely; LBP-12-21, 76 NRC 265 (2012)
- 10 C.F.R. 70.62
integrated safety analysis requirements for uranium enrichment facility licensing are detailed; LBP-12-21, 76 NRC 237 (2012)
level of design is sufficient to develop a safety basis for the facility that includes analysis of accident sequences, identification of IROFS, implementation of management measures to ensure the IROFS are available and reliable when needed, application of defense-in-depth measures, and commitment to codes and standards to support ongoing design and construction; LBP-12-21, 76 NRC 254 (2012)

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- 10 C.F.R. 70.62(c)
applicant for a Part 70 license is required to establish and maintain a safety program, which includes performing an integrated safety analysis; LBP-11-11, 73 NRC 480 (2011)
items relied on for safety that are a central focus of the integrated safety analysis process are the subject of three proposed license conditions; LBP-11-11, 73 NRC 500 (2011)
uranium enrichment facility applications must identify radiological and chemical hazards, facility hazards that could affect safety of licensed materials, potential accident sequences and their consequences and likelihood of occurrence, and each item relied on for safety; LBP-12-21, 76 NRC 237 (2012)
- 10 C.F.R. 70.62(c)(1)(iv)
applicant's integrated safety analysis must consider potential accident sequences caused either by deviations in the processes that will be conducted at the proposed facility or by credible external events, including natural phenomena; LBP-11-11, 73 NRC 480 (2011); LBP-12-21, 76 NRC 265 (2012)
- 10 C.F.R. 70.64(a)
design of new uranium enrichment facilities must provide for adequate protection against natural phenomena, fires and explosions, chemical risks produced from licensed material, facility conditions, and hazardous chemicals produced from licensed material; LBP-12-21, 76 NRC 237 (2012)
design of new uranium enrichment facilities must provide for emergency planning, continued operation of essential utility services, inspection, testing, and maintenance of items relied on for safety, and criticality control including adherence to the double contingency principle; LBP-12-21, 76 NRC 237 (2012)
- 10 C.F.R. 70.64(a)(2)
integrated safety analysis summary must assess potential accidents caused by credible external events and design the facility to protect against natural phenomena; LBP-12-21, 76 NRC 265 (2012)
- 10 C.F.R. 70.65(b)
along with the requirement to perform an integrated safety analysis is the requirement for applicant to provide the NRC Staff with an ISA summary, the content of which is specified; LBP-11-11, 73 NRC 481 (2011)
- 10 C.F.R. 70.65(b)
integrated safety analysis summary must accompany the uranium enrichment facility license application and contain a general description of the site and the facility with emphasis on factors that could affect safety and description of each process analyzed in the ISA; LBP-12-21, 76 NRC 237 (2012)
- 10 C.F.R. 70.72
deviations from the original design must be evaluated against the criteria in this regulation to determine if a license amendment is required or if applicant could make the change without NRC approval; LBP-12-21, 76 NRC 254, 259 (2012)
Staff proposes to include a condition in the license that incorporates a special authorization to permit applicant to make changes to its SAR without seeking prior NRC approval; LBP-11-11, 73 NRC 505 (2011)
uranium enrichment facility licensee must submit an annual update of the integrated safety analysis summary; LBP-12-21, 76 NRC 345 (2012)
- 10 C.F.R. 70.72(a)
applicant must establish and maintain a configuration management system to evaluate, implement, and track changes to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel; LBP-12-21, 76 NRC 254 (2012)
- 10 C.F.R. Part 72
stringent safety requirements apply to the construction and operation of reactor spent fuel pools and independent spent fuel storage installations; CLI-15-4, 81 NRC 240 (2015)
- 10 C.F.R. 72.42(a)(2)
applications for renewal of an ISFSI license must describe the aging management plan for management of issues associated with aging that could adversely affect structures, systems, and components important to safety; LBP-12-24, 76 NRC 525 (2012)
- 10 C.F.R. 72.50(a)
written consent from NRC is required for all license transfers; CLI-15-8, 81 NRC 502 (2015)

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- 10 C.F.R. 72.75
licensee assessed the structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS-HD dry cask storage systems for an earthquake and reviewed the event for reportability; DD-12-1, 75 NRC 595 (2012); DD-12-2, 76 NRC 401 (2012)
- 10 C.F.R. 72.104(a)-(c)
ISFSI licensees must limit releases of radioactive materials to as low as is reasonably achievable, and establish operational limits to prevent doses to the public that exceed the limits of this section; LBP-12-24, 76 NRC 529 (2012)
- 10 C.F.R. 72.106(b)
loss of spent fuel confinement would produce a dose of 0.15 rem at the nearest site boundary, which is less than the 5-rem limit; LBP-12-24, 76 NRC 529 (2012)
- 10 C.F.R. 72.122(l)
licensee must provide for ready retrieval of spent fuel from storage for further processing or disposal; LBP-12-24, 76 NRC 527 (2012)
- 10 C.F.R. 72.122(h)(1)
licensee must protect spent fuel cladding from degradation during storage or confine the fuel in such a way that degradation does not cause operational problems when removed from storage; LBP-12-24, 76 NRC 526-27 (2012)
- 10 C.F.R. 72.122(h)(4)
pressure monitoring system that functions to alert ISFSI operators of potential storage problems, specifically a leak of one of the seals, is intended to meet the requirements for monitoring of dry spent fuel storage; LBP-12-24, 76 NRC 523 (2012)
- 10 C.F.R. Part 72, Subpart K
general license may be granted to all Part 50 and Part 52 reactor licensees to store spent fuel in an independent spent fuel storage installation; CLI-15-4, 81 NRC 226 n.16 (2015)
- 10 C.F.R. Part 73
NRC defers to other agencies with greater expertise on an issue; CLI-11-4, 74 NRC 6 (2011)
- 10 C.F.R. 73.1
licensees must establish and maintain systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material; CLI-11-4, 74 NRC 6 (2011)
- 10 C.F.R. 73.54
cyber security plans must be submitted for NRC approval; CLI-12-2, 75 NRC 105 (2012)
- 10 C.F.R. 73.54(e)(1)
cyber security plans must take into account site-specific conditions; CLI-12-2, 75 NRC 105 (2012)
- 10 C.F.R. 73.54(f)
written policies, implementing procedures, site-specific analysis, and other supporting technical information developed to implement cyber security plans are subject to periodic inspection by NRC Staff; CLI-12-2, 75 NRC 105 (2012)
- 10 C.F.R. 73.56
it is well within NRC's discretion to impose specific requirements that clarify or go beyond those already established by regulations; LBP-14-4, 79 NRC 335 (2014)
licensees are permitted to develop their own individual access authorization programs, provided they satisfy this regulation; LBP-14-4, 79 NRC 336 (2014)
- 10 C.F.R. 73.56(a)(4)
access authorization rule leaves individual decisionmaking authority related to unescorted access to each licensee's discretion; LBP-14-4, 79 NRC 336 (2014)
- 10 C.F.R. 73.56(f)
contents of licensee's behavioral observation program cannot substitute for the duty of NRC Staff to be reasonably clear as to what is required of workers who are trying to comply with their legal obligation to report on their co-workers; LBP-14-4, 79 NRC 362 n.43 (2014)
reporting of observed behavior is the core concept of the behavioral observation program; LBP-14-4, 79 NRC 346 (2014)
reporting of observed conduct with a nexus to public health and safety or the common defense and security is required; LBP-14-4, 79 NRC 365 n.47 (2014)
there is no duty to report credible information; LBP-14-4, 79 NRC 346 (2014)

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- under an enforcement order, NRC requires that workers report any observed “illegal, unusual, or aberrant” behavior by their co-workers, words not appearing in this regulation; LBP-14-4, 79 NRC 346 (2014)
- 10 C.F.R. 73.56(f)(1)-(3)
contention alleges errors by NRC Staff in implementation of this regulation that fall within the zone of interests protected or regulated by those provisions; LBP-14-4, 79 NRC 356 (2014)
contention that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on the off-duty employees of licensee not otherwise required by the NRC to observe and report the offsite, off-duty conduct of fellow employees in inadmissible; LBP-14-4, 79 NRC 335 (2014)
licensee employees are protected against unnecessary or excessive restrictions on their conduct; LBP-14-4, 79 NRC 356 (2014)
- 10 C.F.R. 73.56(f)(2)
NRC’s enforcement order does not state that any reportable illegal, unusual, or aberrant behavior must have a nexus to public health and safety or the common defense and security in order to be reportable; LBP-14-4, 79 NRC 346 (2014)
- 10 C.F.R. 73.56(f)(3)
board finds that the terms endorsed in a confirmatory order provide more specificity than the applicable NRC regulation which rather broadly requires reporting of any questionable behavior patterns or activities; LBP-14-4, 79 NRC 336 (2014)
individuals who are subject to an access authorization program shall at a minimum, report any concerns arising from behavioral observation and are individually liable if they fail to do so; LBP-14-4, 79 NRC 344 (2014)
- 10 C.F.R. 73.80
NRC can issue an order suspending an individual from working anywhere in the nuclear industry who fails to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 345 (2014)
NRC can order an individual to pay civil penalties of up to \$100,000 for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 345 (2014)
- 10 C.F.R. 73.81
NRC can take criminal enforcement action against an individual for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 345 (2014)
- 10 C.F.R. Part 74
material control and accounting system is required for a fuel fabrication facility; LBP-14-1, 79 NRC 44 (2014)
- 10 C.F.R. 74.4
“alarm” is defined; LBP-14-1, 79 NRC 128 (2014)
“Category IA material” is defined as strategic special nuclear material directly usable in the manufacture of a nuclear explosive device; CLI-15-9, 81 NRC 516 n.20 (2015); LBP-14-1, 79 NRC 56 n.80, 128 (2014)
“Category IB material” is defined as all strategic special nuclear material other than Category IA; CLI-15-9, 81 NRC 516 n.20 (2015); LBP-14-1, 79 NRC 56 n.80, 128 (2014)
circumstances when an MC&A alarm exists are described; LBP-14-1, 79 NRC 96 n.295, 129 (2014)
“controlled access area” is any temporarily or permanently established area that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; CLI-15-9, 81 NRC 517 n.20 (2015); LBP-14-1, 79 NRC 56 n.80, 128 (2014)
definition of “power of detection” does not explicitly require a demonstration of data accuracy; LBP-14-1, 79 NRC 77 n.198 (2014)
“formula kilogram” means strategic special nuclear material in any combination in a quantity of 1000 grams computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium); CLI-15-9, 81 NRC 516 n.16 (2015); LBP-14-1, 79 NRC 128 (2014)
“item” means any discrete quantity or container of special nuclear material or source material, not undergoing processing, having a unique identity and also having an assigned element and isotope quantity; LBP-14-1, 79 NRC 56 n.83, 128 (2014)
“material access area” is any location that contains special nuclear material, within a vault or a building, the roof, walls, and floor of which constitute a physical barrier; CLI-15-9, 81 NRC 517 n.20 (2015)

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- “power of detection” means the probability that the critical value of a statistical test will be exceeded when there is an actual loss of a specific quantity of strategic special nuclear material; CLI-15-9, 81 NRC 517 n.20 (2015); LBP-14-1, 79 NRC 56 n.85, 128-29 (2014)
- “sealed source” means any special nuclear material that is physically encased in a capsule, rod, element, etc. that prevents the leakage or escape of the special nuclear material and that prevents removal of the special nuclear material without penetrations of the casing; LBP-14-1, 79 NRC 56 n.82, 129 (2014)
- special nuclear material “item” is any discrete quantity or container of special nuclear material or source material, not undergoing processing, having a unique identity, and also having an assigned element and isotope quantity; CLI-15-9, 81 NRC 516 n.20 (2015)
- “strategic special nuclear material” means uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium; CLI-15-9, 81 NRC 515 n.15 (2015); LBP-14-1, 79 NRC 44 n.1, 51 n.52, 129 (2014)
- “tamper-safing” refers to use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault; CLI-15-9, 81 NRC 518 n.29 (2015); LBP-14-1, 79 NRC 56 n.81, 129 (2014)
- “unit process” means an identifiable segment or segments of processing activities for which the amounts of input and output strategic special nuclear material are based on measurements; CLI-15-9, 81 NRC 516 n.16 (2015)
- “vault” is a windowless enclosure with walls, floor, roof, and door(s) designed and constructed to delay penetration from forced entry; CLI-15-9, 81 NRC 516 n.20 (2015); LBP-14-1, 79 NRC 56 n.80 (2014)
- 10 C.F.R. 74.31
NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 82 (2012)
- 10 C.F.R. 74.33(c)(5)
NRC Staff granted an exemption from applicable regulatory requirements subject to license conditions that require applicant to submit, for the Staff’s prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 230 (2012)
- 10 C.F.R. 74.41, & 74.51
NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 82 (2012)
- 10 C.F.R. 74.51(a)
applicants applying to possess 5 or more formula kilograms of strategic special nuclear material must maintain alarm resolution capabilities designed to achieve the performance objectives of this section; LBP-14-1, 79 NRC 96 (2014)
- NRC may issue a license to possess and use 5 or more formula kilograms of strategic special nuclear material only if applicant can establish, implement, and maintain a Commission-approved material control and accounting system that will achieve general performance objectives; LBP-11-9, 73 NRC 419 (2011); LBP-14-1, 79 NRC 51 (2014)
- section 74.55(b)(1) applies only to licensees that are authorized to possess 5 or more formula kilograms of strategic special nuclear material; LBP-14-1, 79 NRC 56 (2014)
- 10 C.F.R. 74.51(a)(1)
capability to resolve alarms within approved time periods is most clearly aimed at the prompt investigation of anomalies potentially indicative of SSNM losses; LBP-14-1, 79 NRC (2014)
- capability to verify presence is most clearly aimed at ongoing confirmation of the presence of strategic special nuclear material in assigned locations; LBP-14-1, 79 NRC 56 n.84 (2014)
- 10 C.F.R. 74.51(a)(1)-(5)
applicant for a license to possess and use strategic special nuclear material must establish, implement, and maintain an NRC-approved material control and accounting system that will address the loss or theft of such material; CLI-15-9, 81 NRC 515 (2015)
- 10 C.F.R. 74.51(a)(3)
capability to rapidly assess the validity of alleged thefts is aimed at the rapid determination of whether an actual loss of 5 or more formula kilograms occurred; LBP-14-1, 79 NRC 108 n.361 (2014)

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- rapid determination of SSNM theft assessment should be completed within an 8- or 72-hour timeline; LBP-14-1, 79 NRC 117 (2014)
- 10 C.F.R. 74.51(a)(4)
capability to verify integrity is most clearly aimed at the prompt investigation of anomalies potentially indicative of SSNM losses; LBP-14-1, 79 NRC 56 n.84 (2014)
- 10 C.F.R. 74.51(b)
to achieve strategic special nuclear material loss-related performance objectives, the material control and accounting system must provide the capabilities described in sections 74.55 and 74.57; LBP-14-1, 79 NRC 51 (2014)
- 10 C.F.R. 74.55
applicant's proposal to seal and design strategic special nuclear material item storage locations to be tamper-safed or equivalent to tamper-safing such that confirmation that the physical boundary of these locations has not been breached ensures the integrity of these items; LBP-14-1, 79 NRC 57 (2014)
regulation is not rendered superfluous by a reading that verifying the integrity of a storage area boundary will suffice to verify the integrity of the items contained therein; LBP-14-1, 79 NRC 76 (2014)
- 10 C.F.R. 74.55(a)
section 74.55(b)(1) applies only to licensees that are authorized to possess 5 or more formula kilograms of strategic special nuclear material; LBP-14-1, 79 NRC 56 (2014)
- 10 C.F.R. 74.55(b)
ability to detect the loss of plutonium in a timely manner, to allow for an effective response, is a crucial security requirement; LBP-11-9, 73 NRC 420 (2011)
definition of "power of detection" does not explicitly require a demonstration of data accuracy; LBP-14-1, 79 NRC 77 n.198 (2014)
licensees must satisfy the regulation's detection requirements for tamper-safed strategic special nuclear material items in order to achieve the performance objectives set out in section 74.51(a); LBP-14-1, 79 NRC 56 (2014)
licensees must verify on a statistical sampling basis, the presence and integrity of strategic special nuclear material items; CLI-15-9, 81 NRC 516 (2015)
meaning of "verify" in the context of item presence verification is discussed; CLI-15-9, 81 NRC 520 (2015)
requirement for 99% power of detection means that there must be a 99% probability that a missing item will be included within the sample chosen for inspection and would thus be detected; LBP-14-1, 79 NRC 56 n.85 (2014)
requirements for performance of applicant's material control and accounting system neither prescribe nor proscribe any methodology for achievement of those performance requirements; LBP-14-1, 79 NRC 52 (2014)
statistical sampling is to be used to achieve verification of item presence and integrity but the regulation does not prescribe a particular method of sampling, only that statistical sampling must result in at least 99% power of detecting losses that total 5 formula kg or more; LBP-14-1, 79 NRC 56 (2014)
- 10 C.F.R. 74.55(b)(1)
any statistical sampling plan for verifying the presence and integrity of strategic special nuclear material items must have at least 99% power of detecting item losses; CLI-15-9, 81 NRC 516 (2015)
applicant has demonstrated that its program of automated equipment, computer systems (and their verification), and the use of secured and tamper-safed item storage area boundaries, satisfactorily demonstrates the ability to verify the presence and integrity of all strategic special nuclear material items in storage; LBP-14-1, 79 NRC 46, 50 (2014)
applicant satisfies the requirement to verify, on a statistical sampling basis, the integrity of SSNM items, with at least a 99% power of detecting losses totaling 5 formula kilograms or more, within 30 days for Category IA and 60 days for Category IB items; LBP-14-1, 79 NRC 70 (2014)
applicant's daily reconciliation of the MMIS Perpetual Inventory Report and PLC mapping, as supported by its various accuracy-related programs and the MMIS verification procedure, provides reasonable assurance that it can verify the presence of all SSNM items in storage within the required 30- and 60-day time frames; LBP-14-1, 79 NRC 117 (2014)
applicant's sampling method, which examines data representative of the entire set of SSNM items, and not a limited subset, samples 100% of SSNM items and thus complies with the requirement to sample a

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- sufficient number of items to result in at least 99% power of detecting the specified losses; LBP-14-1, 79 NRC 70 (2014)
- applicant's SSNM item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 92 (2014)
- applicant's verification of the integrity of the SSNM vault boundaries on a daily basis exceeds the regulatory requirement to verify the integrity of the items every 30 or 60 days; LBP-14-1, 79 NRC 74 n.187 (2014)
- by verifying integrity of storage area boundaries, applicant can verify the integrity of all SSNM items in storage within the required 30- and 60-day time frames; LBP-14-1, 79 NRC 117 (2014)
- contention that applicant's revised material control and accounting plan is deficient because its item monitoring program does not have the capability to verify, on a statistical sampling basis, the presence and integrity of strategic special nuclear material losses that total 5 formula kilograms of plutonium or more, plantwide, within the time frames specified by the regulation is inadmissible; CLI-15-9, 81 NRC 514 (2015); LBP-14-1, 79 NRC 55-56 (2014)
- determination regarding item integrity refers to the ability to determine that a container holding SSNM items has not been breached and that the amount of SSNM within has not been altered; LBP-14-1, 79 NRC 70 (2014)
- intervenor fail to provide any information or support for their proposition that applicant's automated systems do not comply with the regulatory requirements and their challenges to applicant's item monitoring approach on these grounds fail; LBP-14-1, 79 NRC 70 (2014)
- neither the plain language of this section nor its regulatory history suggests that verifications of item integrity must be in any way physical; LBP-14-1, 79 NRC 75 (2014)
- no requirement to quantify the potential for an adversary to take measures to conceal any abnormalities in MMIS and PLC mapping can reasonably be found in (or implied by) the language of this rule; LBP-14-1, 79 NRC 93 (2014)
- quantitative accuracy of the MMIS/PLC computer system data must be considered in determining whether requirements of this section are satisfied by applicant's plans; LBP-14-1, 79 NRC 81 (2014)
- there is a general overarching requirement that applicant's SSNM item monitoring method be sufficiently accurate to provide reasonable assurance that the specific regulatory requirement is satisfied; LBP-14-1, 79 NRC 87 (2014)
- 10 C.F.R. 74.55(e)
- requirements for performance of applicant's material control and accounting system neither prescribe nor proscribe any methodology for achievement of those performance requirements; LBP-14-1, 79 NRC 52 (2014)
- 10 C.F.R. 74.57(a)
- applicants applying to possess 5 or more formula kilograms of SSNM must maintain alarm resolution capabilities designed to achieve the performance objectives of section 74.51(a); LBP-14-1, 79 NRC 96 (2014)
- 10 C.F.R. 74.57(b)
- ability to resolve within approved time periods the nature and cause of any materials control and accounting alarm signaling the possible loss or theft of strategic special nuclear material, to allow for an effective response, is a crucial security requirement; LBP-11-9, 73 NRC 420 (2011)
- applicant provides reasonable assurance that it can normally resolve an alarm within 3 days, fully satisfying regulatory requirements; LBP-14-1, 79 NRC 117 (2014)
- applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to resolve the nature and cause of any MC&A alarm within approved time periods in each of the four storage areas at issue; LBP-14-1, 79 NRC 46, 50 (2014)
- contention that applicant's revised material control and accounting plan is inadequate to satisfy the alarm resolution requirements is inadmissible; CLI-15-9, 81 NRC 514 (2015)
- licensee must provide reasonable assurance that it can achieve the performance objectives set out in this regulation; CLI-15-9, 81 NRC 526 (2015)
- licensees shall resolve the nature and cause of any MC&A alarm within approved time periods; LBP-14-1, 79 NRC 96 (2014)

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- MC&A alarms are not required to be resolved within any particular time frame, only that a time period be approved by NRC Staff; LBP-14-1, 79 NRC 99 (2014)
- petitioner provides no support for the proposition that applicant must demonstrate that each individual resolution method can be completed, by itself, within the approved time period; LBP-14-1, 79 NRC 99 (2014)
- 10 C.F.R. 74.57(c)
NRC must be notified within 24 hours of failure to resolve an alarm within the approved time period; LBP-14-1, 79 NRC 105 n.348 (2014)
- 10 C.F.R. 74.57(e)
applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to rapidly assess the validity of alleged thefts; LBP-14-1, 79 NRC 46, 50 (2014)
- contention challenging applicant's ability to rapidly assess the validity of alleged thefts is decided; LBP-14-1, 79 NRC 108 (2014)
- contention questioning whether applicant's theft assessment commitment satisfies the regulatory requirements even though it relies on an underlying assumption of 100% accuracy of applicant's MMIS/PLC computer records system is decided; LBP-14-1, 79 NRC 109 (2014)
- contention that applicant's revised material control and accounting plan fails to show how confirmation and verification of theft of plutonium will be carried out in the specified timelines is inadmissible; CLI-15-9, 81 NRC 514-15 (2015)
- licensee must be able to rapidly assess the validity of alleged thefts; CLI-15-9, 81 NRC 525 (2015)
- licensees are not required to conduct assessments of alleged thefts without the use of their records systems, or by first verifying the integrity and accuracy of those records systems; LBP-14-1, 79 NRC 116 (2014)
- under this performance-based regulation, licensee is simply required to provide the capability to rapidly assess the validity of alleged thefts; LBP-14-1, 79 NRC 112 (2014)
- using its MMIS and PLC mapping, applicant has capability to locate one SSNM item in 8 hours, and all SSNM items in vault storage in 72 hours and therefore provides reasonable assurance of its ability to rapidly assess the validity of an alleged theft; LBP-14-1, 79 NRC 117 (2014)
- 10 C.F.R. 75.55(b)
accuracy is an integral component of the portion of the regulatory requirement that addresses item presence verification; CLI-15-9, 81 NRC 524 n.73 (2015)
- 10 C.F.R. Part 95
relative to the issue of foreign ownership or control, NRC imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information; LBP-11-11, 73 NRC 489 (2011)
- Staff imposed a license condition to ensure that clearances are obtained before classified matter is processed, stored, reproduced, transmitted, handled, or accessed; LBP-11-11, 73 NRC 484-85 (2011)
- 10 C.F.R. 95.15
Pentapartite Agreement between the United States and four European governments to prevent new restricted data from being disseminated to European nationals will be a prerequisite to the NRC Staff issuing a facility clearance; LBP-11-11, 73 NRC 485 (2011)
- 10 C.F.R. 95.17
applicant must obtain a facility security clearance, which would include a determination that granting the clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made; LBP-11-11, 73 NRC 490 (2011)
- 10 C.F.R. 95.17(d)(1)
an enrichment facility security clearance requires a determination that granting the clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made; LBP-11-11, 73 NRC 489 (2011)
- 10 C.F.R. Part 100
acceptance criteria for Type A leak rate limits embodied in the technical specification are established to ensure that, in the event of a design-basis accident, the dose received by a member of the general public will not exceed the limits in this part; LBP-15-26, 82 NRC 168 n.4 (2015)

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- facility design and operation should ensure that radiological consequences of design basis events do not exceed 10 percent of dose limits; LBP-12-7, 75 NRC 518 (2012)
- 10 C.F.R. 100.20(b)
applicant must assess oil and gas wells and borings on and near the proposed site; LBP-11-16, 73 NRC 668 (2011)
- 10 C.F.R. 100.21
NRC Staff's steps in the geographic and demographic review in the final safety evaluation report to determine whether the COL applicant has proposed an acceptable site, including acceptable site boundaries, with appropriate consideration of nearby populations and natural and manmade features, are described; CLI-12-9, 75 NRC 450 (2012)
- 10 C.F.R. 100.21(e)
applicant must assess oil and gas wells and borings on and near the proposed site and include them in the site safety evaluation report; LBP-11-16, 73 NRC 668 (2011)
- 10 C.F.R. 100.23
investigation of geological, seismological, and engineering characteristics of a site is required; LBP-14-8, 79 NRC 525 (2014)
principal geologic and seismic considerations that guide the Commission in its evaluation of the suitability of a proposed site and adequacy of the design bases are set forth; LBP-11-16, 73 NRC 658 (2011)
- 10 C.F.R. 100.23(c)
applicant shall investigate all geologic and seismic factors (e.g., volcanic activity) that may affect the design and operation of the proposed nuclear power plant irrespective of whether such factors are explicitly included in this section; LBP-11-16, 73 NRC 660 (2011)
geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail; LBP-11-10, 73 NRC 452 (2011)
- 10 C.F.R. 100.23(d)
factors used for a site geological and seismological evaluation are stated; LBP-11-10, 73 NRC 452 n.160 (2011); LBP-11-16, 73 NRC 659 (2011)
geologic and seismic siting factors considered for design must include a determination of the safe shutdown earthquake ground motion for the site and the potential for surface tectonic and nontectonic deformations; LBP-11-16, 73 NRC 659 (2011)
sufficient geological, seismological, and geophysical data must be provided to clearly establish whether there is a potential for surface deformation; LBP-11-16, 73 NRC 659 (2011)
- 10 C.F.R. 100.23(d)(2)
applicant's site safety analysis report must provide sufficient data to enable the requisite determination of the potential for surface deformation as a result of growth faults at the site; LBP-11-16, 73 NRC 656, 658 (2011)
contention that applicant's site assessment has inadequately characterized the rate of movement of growth faults at the site, as it relates to its analysis of surface deformation is admissible; LBP-11-16, 73 NRC 663-64 (2011)
- 10 C.F.R. Part 100, Appendix A
applicant's site safety analysis report must provide sufficient data to enable the requisite determination of the potential for surface deformation as a result of growth faults at the site; LBP-11-16, 73 NRC 658 (2011)
application of the operating basis earthquake analysis is restricted to those features of a nuclear power plant that are safety-related, as opposed to the operability of structures, systems, and components necessary for power generation; LBP-11-16, 73 NRC 660 (2011)
design bases for earthquakes are to be determined through evaluation of the geologic and seismic history of the site and surrounding region; DD-12-1, 75 NRC 589 (2012)
even though a cooling pond is not a safety-related structure, knowledge of faulting under the pool and the impact this faulting might have on the pool's operation are required; LBP-11-16, 73 NRC 660 (2011)
none of the faults known to exist at the North Anna site are capable faults; DD-12-1, 75 NRC 597 (2012)
purpose of the seismic and geologic siting criteria is set forth; LBP-11-16, 73 NRC 660 (2011)

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- to demonstrate that no functional damage occurred as a result of the earthquake, licensee performed inspections, tests, and analyses to address the requirements of this regulation; DD-15-9, 82 NRC 278, 279 (2015)
- 10 C.F.R. Part 100, Appendix A, § V(a)(2)
before restart, licensee is required to demonstrate to NRC that no functional damage from seismic events has occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 576 (2012)
following an earthquake exceeding the design basis, the plant must remain shut down until licensee demonstrates to NRC that no functional damage occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 588 (2012); DD-12-2, 76 NRC 408-09 (2012); DD-15-9, 82 NRC 277, 278, 280 (2015)
licensee is required to shut down a nuclear power plant when the vibratory ground motion exceeds that of the operating basis earthquake; DD-12-1, 75 NRC 576 (2012); DD-12-2, 76 NRC 395, 399 (2012)
NRC's independent technical evaluation of information submitted by licensee to demonstrate that no functional damage occurred as a result of an earthquake is described; DD-15-9, 82 NRC 280-82 (2015)
- 10 C.F.R. Part 100, Appendix A, § V(d)(1)
plain language of this appendix speaks to the intention of the Commission to address other design conditions such as soil instability due to ground disruption not directly related to surface faulting; LBP-11-16, 73 NRC 660 (2011)
- 10 C.F.R. Part 100, Appendix A, § V(d)(3)
assurance of adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant; LBP-11-16, 73 NRC 671 (2011)
- 10 C.F.R. Part 100, Appendix A, § VI(b)(3)
design basis for surface faulting shall be taken into account in the design of the nuclear power plant by providing reasonable assurance that in the event of such displacement during faulting certain structures, systems, and components will remain functional; LBP-11-16, 73 NRC 659 (2011)
design provisions shall be based on an assumption that the design basis for surface faulting can occur in any direction and azimuth and under any part of the nuclear power plant unless evidence indicates this assumption is not appropriate, and shall take into account the estimated rate at which the surface faulting may occur; LBP-11-16, 73 NRC 659-60 (2011)
- 10 C.F.R. 110.32(f)(5)
NRC will issue a low-level radioactive waste export license if the receiving country has received a description of the equipment or material including the volume, physical and chemical characteristics, route of transit of shipment, and ultimate disposition (including forms of management or treatment) of the waste; CLI-11-3, 73 NRC 627 (2011)
- 10 C.F.R. 110.41(a)(8)
Department of State provides the Commission with Executive Branch views on the merits of import/export applications; CLI-11-3, 73 NRC 617 n.11 (2011)
NRC will issue a low-level radioactive Waste export license if it has been notified by the State Department that it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security; CLI-11-3, 73 NRC 627 (2011)
- 10 C.F.R. 110.41(b)(1)
NRC will issue a low-level radioactive waste export license if it has been notified by the State Department that it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security; CLI-11-3, 73 NRC 627 (2011)
- 10 C.F.R. 110.42(d)(1)
NRC will issue a low-level radioactive waste export license if it has made an independent judgment that the export will not be inimical to the common defense and security; CLI-11-3, 73 NRC 627 (2011)
- 10 C.F.R. 110.42(d)(2)
NRC will issue a low-level radioactive waste export license if the receiving country has found it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste and consents to the receipt of the radioactive waste; CLI-11-3, 73 NRC 627 (2011)
NRC will issue a low-level radioactive waste export license if the receiving country has received a description of the equipment or material including the volume, physical and chemical characteristics,

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- route of transit of shipment, and ultimate disposition (including forms of management or treatment) of the waste; CLI-11-3, 73 NRC 627 (2011)
- 10 C.F.R. 110.43(d)
Southeast Compact Commission for Low-Level Radioactive Waste Management had no comments with regard to the import/export applications; CLI-11-3, 73 NRC 618 (2011)
state reviewed the applications and the authorizations and found no technical reason to prohibit processing of imported waste; CLI-11-3, 73 NRC 618 (2011)
- 10 C.F.R. 110.45
Commission considers the adequacy of information in the application as well as written comments from the public in making an import or export licensing decision; CLI-11-3, 73 NRC 624 (2011)
- 10 C.F.R. 110.50(a)(3)
key action that will allow incineration of imported low-level-radioactive waste material is the domestic license authorizing such processing, not NRC's grant of an import license; CLI-11-3, 73 NRC 620 (2011)
- 10 C.F.R. 110.81
Commission considers the adequacy of information in the application as well as written comments from the public in making an import or export licensing decision; CLI-11-3, 73 NRC 624 (2011)
- 10 C.F.R. 110.82
intervention petition argues that a hearing should be held to address claimed deficiencies in import/export applications and public health, safety, security impacts and whether the applications set precedent; CLI-11-3, 73 NRC 618-19 (2011)
petitioner filed a timely request for hearing on the import/export license application to allow citizens of the area an opportunity to have their questions answered and raise any concerns in a public forum and to argue that every country should have the capability of processing its own nuclear waste; CLI-11-3, 73 NRC 618 (2011)
- 10 C.F.R. 110.83(a)
deadline for answer to hearing petition is specified; CLI-11-3, 73 NRC 619 (2011)
import/export license applicant argues that intervention petition should be denied because it was not served on all parties, petitioner does not have standing, and petitioner does not show that a discretionary hearing would be in the public interest or assist the Commission in making its required determinations; CLI-11-3, 73 NRC 618 (2011)
- 10 C.F.R. 110.83(b)
deadline for reply to an answer to a hearing petition is specified; CLI-11-3, 73 NRC 619 (2011)
- 10 C.F.R. 110.84(a)
discretionary hearing on an export or import license is allowed if a hearing would be in the public interest and would assist the Commission in making the statutory determinations required by the AEA; CLI-11-3, 73 NRC 624 (2011)
- 10 C.F.R. 110.111
petitioner requests a waiver from a 10 C.F.R. 51.22(c)(15); CLI-11-3, 73 NRC 619 (2011)
- 10 C.F.R. 110.111(a)
participant may petition that a Commission rule or regulation be waived with respect to the license application under consideration; CLI-11-3, 73 NRC 619 (2011)
- 10 C.F.R. 110.111(b)
to waive a Part 110 rule or regulation, petitioner must show that because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted; CLI-11-3, 73 NRC 619-20 (2011)
- 10 C.F.R. 110.111(d)
replies to waiver petitions are allowed; CLI-11-3, 73 NRC 619 (2011)
- 10 C.F.R. 140.13b
holders of a Part 40/70 uranium enrichment facility license are required to maintain adequate nuclear liability insurance, with proof of such insurance necessary prior to a license being issued; LBP-11-11, 73 NRC 498 (2011)
- 10 C.F.R. 150.20
except for ownership of NRC-licensed materials outlined in the settlement agreement, licensee will refrain from engaging in conducting radiography or a radiographer's duties, or assisting, directing, or

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- supervising such activities in an NRC jurisdiction under an NRC license or an agreement state license; LBP-11-3, 73 NRC 88 (2011)
- licensee is banned from engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations and must complete a formal radiation safety officer training course; LBP-15-21, 82 NRC 9 (2015)
- 10 C.F.R. 812.337(f)
because NRC's decision to grant the exemptions is a matter of public record, the board takes notice that the exemptions have now been approved; LBP-15-24, 82 NRC 81 n.78 (2015)
- 12 C.F.R. 3.14, 4.6, and Subpart E
federal financial regulatory agencies regularly examine banks within their jurisdiction, generally at 12- or 18-month intervals; CLI-11-4, 74 NRC 5 n.21 (2011)
- 15 C.F.R. 930.57(a)
applicant is required to submit its certification from the relevant state of jurisdiction, indicating that the project in question will comply with the Coastal Zone Management Act; LBP-11-16, 73 NRC 704 n.364 (2011)
- 15 C.F.R. 930.60(a)
state agency's 6-month review period of an applicant's consistency certification begins on the date the state agency receives the consistency certification; LBP-11-16, 73 NRC 704 n.365 (2011)
- 33 C.F.R. 320.4(a)(1), 323.3(g)
when reviewing an application for a 404 permit under the Clean Water Act, the Corps of Engineers evaluates whether issuance of the permit is in the public interest, weighing all relevant factors, including economic, environmental, and aesthetic concerns; LBP-14-9, 80 NRC 63 (2014)
- 33 C.F.R. 328.3(b)
"wetlands" are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and generally include swamps, marshes, bogs, and similar areas; LBP-13-4, 77 NRC 136 (2013)
- 33 C.F.R. 332.1(c)(2)
before being granted a Clean Water Act section 404 permit, applicant must demonstrate to the Corps of Engineers that it has taken all appropriate and practicable steps to avoid and minimize adverse impacts; LBP-15-23, 82 NRC 61 (2015)
- 33 C.F.R. 332.1(f)(1)
Uniform Mitigation Assessment Method code and Wetland Assessment Technique for Environmental Review code methods reflect the Corps of Engineers' preferred approach to compensatory mitigation under the Clean Water Act; LBP-15-23, 82 NRC 65 n.28 (2015)
- 33 C.F.R. 332.3(f)(1)
if impacts are unavoidable, applicant shall provide mitigation measures that must be, to the extent practicable, sufficient to replace lost aquatic resource functions; LBP-15-23, 82 NRC 61 (2015)
- 36 C.F.R. 60.4
federal agency must determine whether identified properties are eligible for listing on the National Register based on the criteria in this regulation; LBP-15-16, 81 NRC 638-39 (2015)
- historical/cultural resources are considered eligible for listing on the National Register of Historic Places if they meet one or more of four criteria; LBP-11-26, 74 NRC 576 (2011)
- 36 C.F.R. 800.1(a)
NRC Staff is required to consult with interested parties, including Indian Tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 17 n.33 (2014)
- 36 C.F.R. 800.2(c)(2)(ii)
individual tribal representative does not have standing to sue under NHPA § 106 consultation provisions; LBP-13-6, 77 NRC 277 n.12 (2013)
- NRC Staff is required to consult with interested parties, including Indian Tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 17 n.33 (2014)

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- 36 C.F.R. 800.2(c)(2)(ii)(A)
consultation must provide an Indian tribe with a reasonable opportunity to identify its concerns about historic properties, advise on their identification and evaluation, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects; LBP-15-16, 81 NRC 639, 640, 651 (2015)
- 36 C.F.R. 800.2(c)(2)(ii)(C)
consultation with Indian tribes must recognize the government-to-government relationship between the federal government and Indian tribes; LBP-15-16, 81 NRC 639, 651 (2015)
- 36 C.F.R. 800.2(c)(2)(ii)(D)
contention questioning the adequacy of NRC Staff's consultation efforts with Native American tribes is admissible; LBP-13-9, 78 NRC 51 (2013)
- 36 C.F.R. 800.2(d)(2)
agency officials must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input; LBP-12-23, 76 NRC 482-83 n.240 (2012)
- 36 C.F.R. 800.2(d)(3)
agencies shall plan for involving the public in the National Historic Preservation Act § 106 process but may use the agency's procedures for public involvement under NEPA if they provide adequate opportunities for public involvement; LBP-12-23, 76 NRC 481 (2012)
- 36 C.F.R. 800.3-800.6
procedures for an agency to follow in complying with National Historic Preservation Act § 106 are listed; LBP-12-23, 76 NRC 481 (2012)
- 36 C.F.R. 800.3(e)
agencies shall plan for involving the public in the National Historic Preservation Act § 106 process but may use the agency's procedures for public involvement under NEPA if they provide adequate opportunities for public involvement; LBP-12-23, 76 NRC 481 (2012)
in consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process; LBP-12-23, 76 NRC 483 n.240 (2012)
- 36 C.F.R. 800.4(b)
federal agency must make a reasonable and good-faith effort to identify historic properties; LBP-15-16, 81 NRC (2015)
- 36 C.F.R. 800.4(b)(2)
though the materials license has already been issued, the land disturbance in the project area will proceed in stages in compliance with National Historic Preservation Act § 106; LBP-15-16, 81 NRC 657 n.231 (2015)
- 36 C.F.R. 800.4(c), 800.5
federal agency must assess the effects of the undertaking on any eligible historic properties found; LBP-15-16, 81 NRC 639 (2015)
- 36 C.F.R. 800.5(c)
under National Historic Preservation Act, federal agency must avoid or mitigate any adverse effects of its undertaking; LBP-15-16, 81 NRC 639 (2015)
under National Historic Preservation Act, federal agency must determine whether the effect of its undertaking will be adverse; LBP-15-16, 81 NRC 639 (2015)
- 36 C.F.R. 800.8
agencies are encouraged to coordinate the NHPA § 106 process with the agency's process for complying with NEPA; LBP-12-23, 76 NRC 481 (2012)
- 36 C.F.R. 800.8(c)
agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with National Historic Preservation Act § 106 in lieu of the procedures set forth in sections 800.3-800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the regulatory standards are met; LBP-12-23, 76 NRC 486 n.262 (2012)
- 36 C.F.R. 800.8(c)(1)(v)
in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe

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- them in the [environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 639 n.110 (2015)
- 36 C.F.R. 800.9(a)
federal agency must assess the effects of the undertaking on any eligible historic properties found; LBP-15-16, 81 NRC 639 (2015)
- 36 C.F.R. 800.9(b)
under National Historic Preservation Act, federal agency must determine whether the effect of its undertaking will be adverse; LBP-15-16, 81 NRC 639 (2015)
- 36 C.F.R. 800.9(c)
under National Historic Preservation Act, federal agency must avoid or mitigate any adverse effects of its undertaking; LBP-15-16, 81 NRC 639 (2015)
- 36 C.F.R. 800.13, 800.14(b)(1)
programmatic agreement may be used to implement the NHPA § 106 process in situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking, such as where an applicant proposes a phased approach to developing its project; LBP-15-16, 81 NRC 640 (2015)
- 40 C.F.R. Part 50
EPA's National Ambient Air Quality Standards set maximum levels for air pollutants in the ambient air deemed to provide protection for human health and welfare; LBP-11-26, 74 NRC 555 (2011)
- 40 C.F.R. Part 61, Subpart W
radon emissions are regulated by EPA; LBP-15-16, 81 NRC 702 (2015)
- 40 C.F.R. 124.19
administrative challenges to EPA permits are to be filed 30 days after EPA's final permit decision; LBP-14-4, 79 NRC 373 n.66 (2014)
- 40 C.F.R. 146.4(b)(1)
in exempting an aquifer from MCLs, EPA has to find that the aquifer cannot and will not serve as a source of drinking water because it is mineral producing and can be demonstrated to contain minerals that, considering their quantity and location, are expected to be commercially producible; LBP-15-3, 81 NRC 119 n.47 (2015)
- 40 C.F.R. 147.1401
EPA-approved state permitting authority for Class I injection wells is the regulatory entity from which applicant must seek and obtain the permit necessary to allow it to operate a deep injection well at the site; LBP-13-6, 77 NRC 299 (2013)
- 40 C.F.R. 230.10(a), (c), (d)
Corps of Engineers may not issue a 404 permit if there exists a practicable alternative that would have less adverse impact on the aquatic system, the permit would cause significant degradation of the water of the United States, or appropriate and practicable mitigation has not been undertaken; LBP-14-9, 80 NRC 63 (2014)
- 40 C.F.R. 264.97(a)(1)(i)
determination of background groundwater quality to include sampling of wells that are hydraulically upgradient of the waste management area is not required if non-upgradient well sampling will provide an indication of background groundwater quality that is representative, or more representative, than that provided by upgradient wells; LBP-15-3, 81 NRC 95-96 (2015)
water samples taken from one well located hydrologically upgradient are part of the groundwater sampling protocol; LBP-15-3, 81 NRC 95 (2015)
- 40 C.F.R. 1500.1(c)
NEPA's fundamental purpose is helping public officials make decisions that are based on understanding of environmental consequences and that protect, restore, and enhance the environment; LBP-11-17, 74 NRC 27 (2011); LBP-11-23, 74 NRC 304, 329, 335 (2011)
- 40 C.F.R. 1501.4(e)(2)
NRC Staff may publish a draft finding of no significant impact for public comment, but it is not required to do in all cases; CLI-15-17, 82 NRC 41 n.53 (2015)
- 40 C.F.R. 1501.7
agency responsible for preparing an environmental impact statement must define the scope of the issues it will address; LBP-11-10, 73 NRC 440 (2011)

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- under NEPA, defining the scope of effects of a project requires engagement with governments of affected tribes through an early and open process aimed at identifying concerns, potential impacts, relevant effects of past actions, and possible alternative actions; LBP-15-16, 81 NRC 650 (2015)
- 40 C.F.R. 1502.4
- agencies shall use the criteria for scope in 40 C.F.R. 1508.25 to determine which proposal shall be the subject of a particular environmental impact statement; LBP-11-10, 73 NRC 440 (2011); LBP-14-6, 79 NRC 420 n.81 (2014); LBP-14-9, 80 NRC 40 (2014)
- proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement; LBP-14-9, 80 NRC 52 (2014)
- 40 C.F.R. 1502.4(a)
- agencies must make sure that the proposal that is the subject of an environmental impact statement is properly defined; LBP-13-10, 78 NRC 144 (2013)
- proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement; LBP-11-10, 73 NRC 440 (2011); LBP-12-12, 75 NRC 779 (2012); LBP-13-10, 78 NRC 144 (2013); LBP-14-6, 79 NRC 420 n.81 (2014); LBP-14-9, 80 NRC 40 (2014)
- 40 C.F.R. 1502.9(c)(1)(ii)
- agencies shall prepare supplements to either draft or final environmental impact statements if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-15-13, 81 NRC 471 n.89 (2015)
- environmental assessment cannot import previous environmental analyses without considering subsequent developments at the site and to hold otherwise would render meaningless NEPA's requirement to supplement an environmental impact statement or environmental assessment; CLI-15-25, 82 NRC 399 (2015); LBP-15-13, 81 NRC 471 n.89 (2015)
- supplement to a draft or final EIS must be prepared if significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts arise; LBP-12-18, 76 NRC 161 (2012)
- 40 C.F.R. 1502.14
- agencies must devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-12-17, 76 NRC 82 (2012)
- agencies must rigorously explore and objectively evaluate all reasonable alternatives and briefly discuss reasons for eliminating alternatives; LBP-12-17, 76 NRC 82 (2012); LBP-15-15, 81 NRC 607 n.57 (2015)
- consideration of alternatives is the heart of the environmental impact statement; CLI-12-9, 75 NRC 473 (2012); LBP-11-35, 74 NRC 750 (2011); LBP-14-9, 80 NRC 43 (2014)
- Council on Environmental Quality guidance does not bind NRC, but NRC gives it substantial deference; LBP-12-17, 76 NRC 82-83 (2012)
- environmental impacts of the proposal and the alternatives shall include appropriate mitigation measures; LBP-15-16, 81 NRC 687 n.434 (2015)
- federal agencies must rigorously explore and objectively evaluate all reasonable alternatives and devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-11-14, 73 NRC 605 n.92 (2011)
- 40 C.F.R. 1502.14(a)
- EPA requires federal agencies to rigorously explore and objectively evaluate all reasonable alternatives; LBP-12-17, 76 NRC 121 (2012); LBP-14-9, 80 NRC 43 (2014)
- for alternatives that were eliminated from detailed study, agencies are to briefly discuss the reasons for having eliminated them; LBP-14-9, 80 NRC 43 (2014)
- 40 C.F.R. 1502.14(b)
- when considering alternatives, agencies are to devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-14-9, 80 NRC 43 (2014)
- 40 C.F.R. 1502.16
- NEPA requires acknowledgment of tribal hunting and fishing rights, as well as an analysis of how the project will affect those rights; LBP-15-5, 81 NRC 282 (2015)

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- 40 C.F.R. 1502.16(e)
because federal agencies typically describe their consideration of the energy requirements of a proposed action, in the context of that analysis agencies should evaluate greenhouse gas emissions; LBP-11-26, 74 NRC 550 n.21 (2011)
- 40 C.F.R. 1502.16(h)
mitigation discussion is required only in environmental impact statements; LBP-15-11, 81 NRC 431 n.190 (2015)
NEPA requires that the draft environmental impact statement include and discuss means to mitigate adverse environmental impacts; LBP-13-9, 78 NRC 65 (2013)
scientific and analytical section backing up the proposal and alternatives section of NEPA document must discuss any means to mitigate adverse environmental impacts not previously covered; LBP-15-16, 81 NRC 687 n.434 (2015)
- 40 C.F.R. 1502.22
agency is required to do more than simply state that necessary information is unavailable; LBP-14-9, 80 NRC 62 n.206 (2014)
at the contention admissibility stage, it is simply not appropriate for boards to decide what additional information, if any, is necessary to cure a claimed deficiency in a license application; CLI-11-11, 74 NRC 439-40 (2011)
inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 298 (2015)
information may be unavoidably incomplete or unavailable, and under those circumstances, a final environmental impact statement can overcome this deficiency if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-11-11, 74 NRC 444 n.94 (2011)
probabilistic analysis of the risks posed by the Shoreline Fault is essential to the SAMA, and must be included unless the cost is exorbitant; CLI-11-11, 74 NRC 439 (2011)
Staff's ability to satisfy its NEPA obligations will be undermined if applicant either fails to include seismic information in its SAMA analysis, or, in omitting the information, fails to explain its absence and justify that the overall costs of obtaining it are exorbitant; CLI-11-11, 74 NRC 438, 439 (2011)
- 40 C.F.R. 1502.22(a)
when information relevant to a reasonably foreseeable environmental effect is incomplete or unavailable, an agency is required to obtain the unavailable information and include it in the environmental impact statement as long as the costs are not exorbitant; LBP-14-9, 80 NRC 42 (2014)
- 40 C.F.R. 1502.22(b)
environmental impact statements must address all reasonably foreseeable environmental impacts even if the probability of such an occurrence is low; LBP-14-9, 80 NRC 42 (2014)
if the cost of obtaining information is exorbitant, NRC must still include in the environmental impact statement a statement that the information is unavailable, the relevance of the unavailable information, a summary of existing credible scientific evidence, and the agency's evaluation of the impacts that might be caused; LBP-14-9, 80 NRC 42 (2014)
- 40 C.F.R. 1502.22(b)(1)
reasonably foreseeable environmental impacts that have catastrophic consequences, even if their probability of occurrence is low, must be considered in the environmental impact statement; LBP-11-23, 74 NRC 336 (2011)
- 40 C.F.R. 1502.23
weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations; LBP-11-7, 73 NRC 282 n.173 (2011)
- 40 C.F.R. 1503.1
although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final environmental impact statement stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 760 (2012)

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- 40 C.F.R. 1505.2
at the time of its decision, each agency shall prepare a concise public record of decision; LBP-15-16, 81 NRC 694 n.486 (2015)
- 40 C.F.R. 1505.2(c)
agency's record of decision must include a concise discussion of mitigation measures; LBP-15-16, 81 NRC 687 n.434 (2015)
for agency decisions such as a combined license that are based on an environmental impact statement, a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation; LBP-12-23, 76 NRC 462 (2012); LBP-15-16, 81 NRC 695 n.496, 696 (2015)
- 40 C.F.R. 1505.3
agencies may provide for monitoring to ensure that their decisions are carried out and should do so in important cases; LBP-15-16, 81 NRC 696 (2015)
- 40 C.F.R. 1505.3(c)
lead agency must make available to the public the results of relevant monitoring of mitigation measures; LBP-15-16, 81 NRC 695 n.497 (2015)
- 40 C.F.R. 1506.2(a)
NEPA encourages state participation when appropriate and authorized; LBP-15-11, 81 NRC 439 n.248 (2015)
- 40 C.F.R. 1506.2(b)
coordination between a federal agency and a state requires active involvement between the two in order for the federal agency to meet its independent review burden; LBP-15-11, 81 NRC 439 n.248 (2015)
- 40 C.F.R. 1506.5
agency conducting a NEPA review shall independently evaluate the information submitted and shall be responsible for its accuracy; LBP-15-11, 81 NRC 439 n.248 (2015)
- 40 C.F.R. 1506.6
NRC must make a diligent effort to involve the public in implementation of NEPA procedures; LBP-15-16, 81 NRC 695 n.497 (2015)
- 40 C.F.R. 1507.7
cumulative impact is defined; LBP-13-9, 78 NRC 79 (2013)
- 40 C.F.R. 1508.4
categorical exclusion is a generic finding that a category of actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 181 (2015)
- 40 C.F.R. 1508.7
"cumulative impact" is defined as the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions; LBP-12-24, 76 NRC 511 (2012); LBP-14-6, 79 NRC 418, 420 (2014); LBP-14-9, 80 NRC 43 (2014); LBP-15-16, 81 NRC 697 (2015)
cumulative impacts analysis is included within the scope of environmental impact statements; LBP-12-3, 75 NRC 201 (2012)
cumulative impacts can result from individually minor but collectively significant actions taking place over time; LBP-11-7, 73 NRC 301 n.314 (2011); LBP-11-26, 74 NRC 546 (2011); LBP-13-4, 77 NRC 120 (2013); LBP-14-6, 79 NRC 420 (2014)
in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the Council on Environmental Quality; LBP-11-7, 73 NRC 301 n.314 (2011)
irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation, NRC regulations categorize impacts into direct, indirect, and cumulative; LBP-11-26, 74 NRC 546 (2011)
projects that are not connected actions, but are physically related to the system, are cumulative actions and are subject to an examination of cumulative impacts; LBP-14-6, 79 NRC 422 (2014)
- 40 C.F.R. 1508.8
because federal agencies typically describe their consideration of the energy requirements of a proposed action, in the context of that analysis agencies should evaluate greenhouse gas emissions; LBP-11-26, 74 NRC 550 (2011)

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- direct impacts are those caused by the federal action, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-11-7, 73 NRC 301 n.314 (2011); LBP-11-26, 74 NRC 546 (2011)
- “effects” include both direct effects, which are caused by the action and occur at the same time and place, and indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-14-9, 80 NRC 42 (2014)
- “effects” include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative; LBP-14-9, 80 NRC 42 (2014)
- in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the Council on Environmental Quality; LBP-11-7, 73 NRC 301 n.314 (2011)
- irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation, NRC regulations categorize impacts into direct, indirect, and cumulative; LBP-11-26, 74 NRC 546 (2011)
- when information relevant to a reasonably foreseeable environmental effect is incomplete or unavailable, an agency is required to obtain the unavailable information and include it in the environmental impact statement as long as the costs are not exorbitant; LBP-14-9, 80 NRC 42 (2014)
- 40 C.F.R. 1508.8(a)
direct effects are caused by the action and occur at the same time and place; LBP-13-4, 77 NRC 120 (2013)
- 40 C.F.R. 1508.8(b)
adverse environmental effects that must be assessed under NEPA include aesthetic, historic, cultural, economic, social, or health effects; LBP-15-16, 81 NRC 637 (2015)
indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-13-4, 77 NRC 120 (2013)
within the rule of reason, an environmental impact statement must address both the direct and indirect effects or impacts; LBP-13-4, 77 NRC 120 (2013)
- 40 C.F.R. 1508.9, 1508.10, 1508.11, 1508.13
“environmental document” includes environmental assessment, environmental impact statement, finding of no significant impact, and notice of intent; LBP-15-16, 81 NRC 650 n.184 (2015)
- 40 C.F.R. 1508.20
mitigation under NEPA is defined; LBP-15-16, 81 NRC 687 (2015)
- 40 C.F.R. 1508.22
“environmental document” includes environmental assessment, environmental impact statement, finding of no significant impact, and notice of intent; LBP-15-16, 81 NRC 650 n.184 (2015)
- 40 C.F.R. 1508.23
preparation of an environmental impact statement on a proposal should be timed so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal; LBP-14-9, 80 NRC 46 n.116 (2014)
proposals may exist in fact as well as by agency declaration that one exists; LBP-14-9, 80 NRC 45 n.110 (2014)
- 40 C.F.R. 1508.25
agencies are to use the parameters laid out in this regulation when defining the scope of the environmental impact statement; LBP-13-10, 78 NRC 144 (2013)
for construction of a transmission corridor to constitute a connected action, three requirements must be met; LBP-14-9, 80 NRC 45 (2014)
in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the Council on Environmental Quality; LBP-11-7, 73 NRC 301 n.314 (2011)
irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation, NRC regulations categorize impacts into direct, indirect, and cumulative; LBP-11-26, 74 NRC 546 (2011)
non-NRC permits are interdependent parts of applicant’s proposed action and thus are connected actions; LBP-15-16, 81 NRC 700 (2015)
proposed action that is the subject of an agency environmental impact statement must include all connected actions as defined in this regulation; LBP-14-9, 80 NRC 52 (2014)

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- scope of an environmental impact statement is defined as the range of action, alternatives, and impacts to be considered in the EIS; LBP-12-12, 75 NRC 778 (2012); LBP-14-9, 80 NRC 40 (2014)
- when drafting an environmental impact statement, agency's scope of review must include analysis of any connected or cumulative actions to the central proposed action; LBP-15-16, 81 NRC 697 (2015)
- 40 C.F.R. 1508.25(a)
three types of actions (connected, cumulative, and similar) are to be considered in looking to the scope of an EIS; LBP-13-10, 78 NRC 147 (2013)
- 40 C.F.R. 1508.25(a)(1)
although NEPA does not direct any particular substantive result, all environmental consequences of the proposed action, including connected actions, must be fully evaluated in the FEIS; LBP-12-12, 75 NRC 780 (2012)
- in defining the scope of an environmental impact statement, all connected actions must be analyzed in one statement; LBP-11-10, 73 NRC 440 (2011); LBP-14-6, 79 NRC 420 (2014)
- once NRC has properly defined the scope of the proposed action, including any connected actions, the agency's environmental impact statement must evaluate the environmental effects of the proposed action; LBP-14-9, 80 NRC 42 (2014)
- pertinent to the question of whether a facility is a connected action is whether the facility lacks any independent utility in the absence of the completion of the other sites; LBP-13-10, 78 NRC 148-49 (2013)
- proposed action that is the subject of an environmental impact statement must include all connected actions; LBP-14-9, 80 NRC 41 (2014)
- when connected actions have been identified, the agency must evaluate any potential effects in the environmental impact statement; LBP-15-16, 81 NRC 697 (2015)
- 40 C.F.R. 1508.25(a)(1)(i)-(iii)
scope of an environmental impact statement includes connected actions, which means that they are closely related and therefore should be discussed in the same impact statement; LBP-15-16, 81 NRC 697 (2015)
- to determine whether actions are connected such that they should be discussed in the same environmental impact statement, an agency is to consider whether the actions automatically trigger other actions that may require an EIS, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification; LBP-13-10, 78 NRC 147 (2013)
- 40 C.F.R. 1508.25(a)(1)(ii) & (iii)
separate actions are connected if, among other things, they cannot or will not proceed unless other actions are taken previously or simultaneously, or they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-12-12, 75 NRC 779 (2012); LBP-14-6, 79 NRC 420-21, 423 (2014); LBP-14-9, 80 NRC 41 (2014)
- 40 C.F.R. 1508.25(a)(1)(iii)
although NRC may regard preconstruction activities as outside the scope of a combined license application, these activities are within the scope of the NEPA review because they are all connected actions; LBP-14-9, 80 NRC 35 (2014)
- for an environmental impact statement, separate actions may be considered connected if, among other things, they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-11-10, 73 NRC 441 (2011)
- 40 C.F.R. 1508.25(a)(2)
cumulative actions are those that, when viewed with other proposed actions, have cumulatively significant impacts so that they should be discussed in the same environmental impact statement; LBP-13-10, 78 NRC 147 (2013)
- projects that are not connected actions, but are physically related to the system, are cumulative actions and are subject to an examination of cumulative impacts; LBP-14-6, 79 NRC 422 (2014)
- 40 C.F.R. 1508.25(a)(3)
similar actions are those that, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental impacts together, such as common timing or geography, so that the agency may wish to analyze them together; LBP-13-10, 78 NRC 147 (2013)

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- 40 C.F.R. 1508.25(c)
an environmental impact statement must consider the direct, indirect, and cumulative impacts of an action; LBP-11-7, 73 NRC 301 n.314 (2011)
cumulative impacts analysis is included within the scope of environmental impact statements; LBP-12-3, 75 NRC 201 (2012)
scope of the term “impact” includes cumulative impacts; LBP-12-24, 76 NRC 513 (2012)
- 40 C.F.R. 1508.27
agencies should consider both the context and intensity of environmental impacts; LBP-11-26, 74 NRC 546 (2011)
in determining whether a federal action would significantly affect the environment, the agency should consider the degree to which the proposed action affects public health and safety; LBP-12-18, 76 NRC 160-61 (2012)
- 44 C.F.R. Part 350
radiological emergency response plan was developed by the State and approved by the Federal Emergency Management Agency to ensure that the State is prepared to handle the offsite effects of a radiological emergency; LBP-15-4, 81 NRC 165 (2015)
- 44 C.F.R. 350.2(g)-(i)
plume and ingestion exposure pathway EPZs for federal emergency management purposes are defined; LBP-11-15, 73 NRC 640 (2011)
- 50 C.F.R. 17.11
whooping crane and black-footed ferret are listed as threatened or endangered under the Endangered Species Act; LBP-15-11, 81 NRC 445 (2015)
- 50 C.F.R. 402.02
“major construction activity” is defined as a construction project, or other undertaking having similar physical impacts, that is a major federal action significantly affecting the quality of the human environment as referred to in NEPA; LBP-12-10, 75 NRC 640 n.42 (2012)
section 7 of the Endangered Species Act applies only where threatened and endangered species or critical habitats are present and impacts on a species are expected as a result of the proposed project; LBP-13-9, 78 NRC 96 (2013)
- 50 C.F.R. 402.06
preparation of the biological assessment may be consolidated with interagency cooperation procedures required by other statutes, such as NEPA; LBP-12-11, 75 NRC 736 (2012)
- 50 C.F.R. 402.06(a)
agencies are encouraged to incorporate consultation procedures on endangered/threatened species and essential fish habitat into their NEPA review; LBP-12-10, 75 NRC 644 n.69 (2012)
- 50 C.F.R. 402.10(a)
agencies are required to confer with the Fish and Wildlife Service on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat; LBP-13-9, 78 NRC 95 (2013)
conference is required on any action likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat; LBP-12-10, 75 NRC 672 n.21 (2012)
- 50 C.F.R. 402.12
clarification is provided on the requirements with respect to biological assessments; LBP-12-11, 75 NRC 736 (2012)
- 50 C.F.R. 402.12(a)
action agency’s biological assessment may be used by the federal agency in determining whether formal consultation or a conference is necessary; LBP-12-10, 75 NRC 672 (2012)
each agency proposing to take an action that might be covered by the Endangered Species Act is to review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat; LBP-12-10, 75 NRC 640 (2012)
formal consultation is only required if the acting agency determines that its action may affect listed species or critical habitat; LBP-12-10, 75 NRC 640 (2012)

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- 50 C.F.R. 402.12(a) & (b)(1)
where an acting agency is engaged in major construction activities, the acting agency is to evaluate, through preparation of a biological assessment, whether the action is likely to adversely affect species or habitat; LBP-12-10, 75 NRC 640 (2012)
- 50 C.F.R. 402.12(c), (d)
to prepare a biological assessment, the acting agency must first request from the Services a list of endangered or threatened species or habitat that may be present in the area of the action, or provide to the Services its own list for their review; LBP-12-10, 75 NRC 640-41 (2012)
- 50 C.F.R. 402.12(d)
candidate species have no legal status and are accorded no protection under the Endangered Species Act; LBP-12-10, 75 NRC 659 n.160 (2012)
- 50 C.F.R. 402.12(f)
content of the biological assessment is at the discretion of the federal agency; LBP-12-11, 75 NRC 736 (2012)
- 50 C.F.R. 402.12(j)
acting agency submits its completed biological assessment to the appropriate Service and awaits its determination of concurrence or nonconcurrence, which under the Services' regulations is to be returned within 30 days; LBP-12-10, 75 NRC 641 (2012)
- 50 C.F.R. 402.12(k)
action agency's biological assessment may be used by the federal agency in determining whether formal consultation or a conference is necessary; LBP-12-10, 75 NRC 672 (2012)
- 50 C.F.R. 402.12(k)(2)
even if the National Marine Fisheries Service disagrees with NRC's no-effect determination, it may only request that NRC enter formal consultation, but NRC is not required to consent to the request; LBP-12-10, 75 NRC 657 (2012)
if the acting agency makes a "likely to affect" determination in the biological assessment, it is required to enter into formal consultation with the appropriate Service; LBP-12-10, 75 NRC 641 (2012)
National Marine Fisheries Service may request that NRC initiate formal consultation if it finds this to be appropriate; LBP-12-10, 75 NRC 673 n.22 (2012)
- 50 C.F.R. 402.13
"informal" consultation is an optional process that includes all discussions, correspondence, etc., between the U.S. Fish and Wildlife Service and the federal agency designed to assist the federal agency in determining whether formal consultation or a conference is required with the Service under section 402.13; LBP-15-11, 81 NRC 445 n.298 (2015)
section 7 of the Endangered Species Act applies only where threatened and endangered species or critical habitats are present and impacts on a species are expected as a result of the proposed project; LBP-13-9, 78 NRC 96 (2013)
- 50 C.F.R. 402.13(a)
if NRC engages in an informal consultation with the Fish and Wildlife Service and it is determined that the project will not adversely affect listed species or critical habitat, it need not engage in formal consultation; LBP-13-9, 78 NRC 100 (2013)
"informal consultation" is any communication between the acting agency and one of the Services designed to assist the acting agency in determining whether formal consultation is required; LBP-12-10, 75 NRC 658 n.155, 672 n.20 (2012)
when engaging in informal consultation, an agency must provide its determination as to whether the proposed action will affect threatened and endangered species to U.S. Fish & Wildlife Service and request FWS concurrence; LBP-15-11, 81 NRC 444 (2015)
- 50 C.F.R. 402.14
consultation with U.S. Fish & Wildlife Service is legally mandated for any agency action that may affect listed species or critical habitat; LBP-15-11, 81 NRC 445 (2015)
- 50 C.F.R. 402.14(a)
each federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat; LBP-12-10, 75 NRC 672 n.20 (2012)

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- even if the National Marine Fisheries Service disagrees with NRC's no-effect determination, it may only request that NRC enter formal consultation, but NRC is not required to consent to the request; LBP-12-10, 75 NRC 657 (2012)
- if a determination is made that the action may affect listed species or critical habitat, formal consultation is required; LBP-12-10, 75 NRC 672 n.20 (2012)
- if the acting agency makes a "likely to affect" determination in the biological assessment, it is required to enter into formal consultation with the appropriate Service; LBP-12-10, 75 NRC 641 (2012)
- if the Service does not concur with the agency's "not likely to affect" determination, it may request that the acting agency enter into formal consultation; LBP-12-10, 75 NRC 641 (2012)
- National Marine Fisheries Service may request that NRC initiate formal consultation if it finds this to be appropriate; LBP-12-10, 75 NRC 673 n.22 (2012)
- only mandatory trigger for initiating formal consultation is if the acting agency itself determines that its action may affect listed species or critical habitat; LBP-12-10, 75 NRC 657 (2012)
- only species listed as threatened or endangered under the Endangered Species Act are covered by the act's formal consultation requirements; LBP-15-11, 81 NRC 445 (2015)
- when a request is made to a federal agency to enter into consultation, the Director shall forward to the federal agency a written explanation of the basis for the request; LBP-12-10, 75 NRC 672 n.20 (2012)
- 50 C.F.R. 402.14(b)
- federal agency need not initiate formal consultation if it determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat; LBP-12-10, 75 NRC 672 n.20 (2012)
- 50 C.F.R. 402.14(b)(1)
- concurrence by U.S. Fish and Wildlife Service discharges NRC's consultation responsibilities; LBP-15-11, 81 NRC 445 (2015)
- federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under section 402.12 or as a result of informal consultation with the FWS under section 402.13, the federal agency determines, with the written concurrence of the U.S. Fish and Wildlife Service Director, that the proposed action is not likely to adversely affect any listed species or critical habitat; LBP-15-11, 81 NRC 445 (2015)
- if the acting agency concludes in the biological assessment that the action is not likely to affect listed habitats or species, and the Service concurs, the acting agency need not enter formal consultation; LBP-12-10, 75 NRC 641 (2012)
- 50 C.F.R. 402.14(g)-(h)
- formal consultation includes preparation of a biological opinion by the Service, detailing the likely effects of the action on listed species or habitat as well as mitigation alternatives; LBP-12-10, 75 NRC 640 n.40, 641 n.46 (2012)
- 50 C.F.R. 600.905
- agencies are advised to consult with National Marine Fisheries Service as early as practicable for any federal action that may adversely affect essential fish habitats, including renewals of licenses; LBP-12-10, 75 NRC 677 (2012)
- all federal agencies must consult with the National Marine fisheries Service on any proposed actions that may adversely affect essential fish habitat; LBP-12-10, 75 NRC 677 (2012)
- 50 C.F.R. 600.905(a)(1)
- consultation duty on essential fish habitats applies to license renewals; LBP-12-10, 75 NRC 643 (2012)
- 50 C.F.R. 600.905(a)(3)
- consultation with the National Marine Fisheries Service on essential fish habitats should be initiated by the acting agency as early as practicable; LBP-12-10, 75 NRC 643 (2012)
- 50 C.F.R. 600.920(a)(1)-(3)
- agencies are advised to consult with National Marine fisheries Service as early as practicable for any federal action that may adversely affect essential fish habitats, including renewals of licenses; LBP-12-10, 75 NRC 677 (2012)
- agencies must provide a written assessment of the effects of their action on essential fish habitats; LBP-12-10, 75 NRC 677 (2012)
- all federal agencies must consult with the National Marine fisheries Service on any proposed actions that may adversely affect essential fish habitat; LBP-12-10, 75 NRC 677 (2012)

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- 50 C.F.R. 600.920(b)
agency with authority to implement conservation recommendations must consult with the National Marine Fisheries Service on implementation of any conservation recommendations; LBP-12-10, 75 NRC 677 (2012)
issues of concern relative to living marine resources and essential fish habitat would be most appropriately addressed through the EPA's National Pollutant Discharge Elimination System permit renewal process; LBP-12-10, 75 NRC 677 (2012)
National Marine Fisheries Service has the authority to consult with other agencies if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on essential fish habitat and that agency does not act as the lead agency; LBP-12-10, 75 NRC 660 n.166 (2012)
- 50 C.F.R. 600.920(e)
satisfying the requirements of other statutes does not in itself relieve a federal agency of its obligations to comply with the procedures set forth in the Endangered Species Act; LBP-12-10, 75 NRC 644 n.69 (2012)
- 50 C.F.R. 600.920(e)(1)
for any federal action that may adversely affect essential fish habitats, federal agencies must provide the National Marine Fisheries Service with a written assessment of the effects of that action; LBP-12-10, 75 NRC 643 (2012)
- 50 C.F.R. 600.920(e)(1)-(4)
agencies must provide a written assessment of the effects of their action on essential fish habitats; LBP-12-10, 75 NRC 677 (2012)
- 50 C.F.R. 600.920(e)(3)
essential fish habitat assessment must describe the action, its potential effects on EFH, and proposed mitigation activities, if any; LBP-12-10, 75 NRC 643 (2012)
- 50 C.F.R. 600.920(f)(1)
when preparation of the essential fish habitat assessment is consolidated with other environmental review procedures, the National Marine Fisheries Service is to have timely notification of actions that may adversely affect EFH, and whenever possible, at least 60 days' notice prior to a final decision on an action; LBP-12-10, 75 NRC 643 (2012)
- 50 C.F.R. 600.920(k)
federal agencies are not required to implement conservation recommendations where that agency does not have the statutory authority to implement those recommendations; LBP-12-10, 75 NRC 677 (2012)
- 50 C.F.R. 600.925(a)
agency with authority to implement conservation recommendations must consult with the National Marine Fisheries Service on implementation of any conservation recommendations; LBP-12-10, 75 NRC 677 (2012)
federal agencies are not required to implement conservation recommendations where that agency does not have the statutory authority to implement those recommendations; LBP-12-10, 75 NRC 677 (2012)
National Marine Fisheries Service will not recommend that federal agencies take actions beyond their statutory authority; LBP-12-10, 75 NRC 651 (2012)
- 50 C.F.R. 600.925(a)-(b)
National Marine Fisheries Service will not recommend that state or federal agencies take actions beyond their statutory authority; LBP-12-10, 75 NRC 643 (2012)

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- 28 U.S.C. § 2342
only a party aggrieved can seek judicial review; CLI-12-11, 75 NRC 532 n.47 (2012)
only final NRC action is subject to judicial review; CLI-12-11, 75 NRC 528 n.26 (2012)
- Administrative Procedure Act, 5 U.S.C. §§ 551-559
if NRC lacks sufficient information to reach an informed decision, then the agency has a duty to collect further information and conduct further analysis; CLI-13-1, 77 NRC 29 (2013)
- Administrative Procedure Act, 5 U.S.C. § 552(b)
purpose of notice of proposed rulemaking is not to set binding law or policy, but instead to provide interested members of the public an opportunity to comment in a meaningful way on the agency's proposal; LBP-15-15, 81 NRC 611 (2015)
- Administrative Procedure Act, 5 U.S.C. § 553
Continued Storage Rule and supporting generic environmental impact statement to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 537 (2015)
- Administrative Procedure Act, 5 U.S.C. § 553(b)(3)
agency need not submit a full draft of a rule in a notice of proposed rulemaking; LBP-15-15, 81 NRC 611 (2015)
even a statement of the subjects and issues involved in a proposed rulemaking can suffice as long as it provides notice to the public; LBP-15-15, 81 NRC 611 (2015)
- Administrative Procedure Act, 5 U.S.C. § 554(a)
this section applies in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing; LBP-11-8, 73 NRC 354-55 (2011)
- Administrative Procedure Act, 5 U.S.C. § 556(d)
proponent of a rule or order has the burden of proof; LBP-15-2, 81 NRC 57 n.63 (2015)
- Administrative Procedure Act, 5 U.S.C. § 558(c)
agencies must set and complete proceedings on license applications with due regard for the rights and privileges of all interested parties or adversely affected persons and within a reasonable time; CLI-12-6, 75 NRC 375 n.140 (2012)
each specific license expires at the end of the day on the expiration date stated in the license unless licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license; CLI-15-17, 82 NRC 38 n.30 (2015)
suspending a final decision indefinitely in an adjudicatory proceeding upon receipt of a claim of new and significant information runs counter to the goal of promoting fair and efficient resolution of disputes; CLI-14-7, 80 NRC 8 n.30 (2014)
when licensee has made timely and sufficient application for a license renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-11-30, 74 NRC 629 n.5 (2011); LBP-15-2, 81 NRC 50 n.10, 57 n.66 (2015); LBP-15-11, 81 NRC 404 n.2 (2015)
- Administrative Procedure Act, 5 U.S.C. § 702
allegation that agency conduct amounts to a legal wrong is sufficient to establish union's right to judicial review; LBP-14-4, 79 NRC 354 (2014)
person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof; LBP-14-4, 79 NRC 354 (2014)

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- Administrative Procedure Act, 5 U.S.C. § 706
NRC does not have authority to rule on challenges to Fish and Wildlife's compliance with the Endangered Species Act; CLI-12-21, 76 NRC 495 n.21 (2012)
- Administrative Procedure Act, 5 U.S.C. § 706(2)
agency's failure to adequately validate a quantitative model on which it relies may lead the reviewing court to conclude that the agency's decision is arbitrary, capricious, or contrary to law; LBP-15-20, 81 NRC 854 n.151 (2015)
- Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
arbitrary and unreasonable restrictions on the right to a hearing would violate the prohibition on agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; LBP-11-22, 74 NRC 282 (2011)
- American Indian Religious Freedom Act, Pub. L. No. 95-341, 92 Stat. 469 (1978) (codified at 42 U.S.C. § 1996 (2012)
federal policy supports special consideration where tribal religious exercise is threatened; LBP-15-16, 81 NRC 640-41 (2015)
- Archaeological Resources Protection Act, 16 U.S.C. § 470aa et seq.
historic properties may be protected under this statute; LBP-15-2, 81 NRC 52 (2015)
- Atomic Energy Act, 42 U.S.C. §§ 2011-2297h-13 (2012)
basis for NRC authority to regulate the use of special nuclear material in facilities such as nuclear power reactors is established; CLI-15-4, 81 NRC 231 n.47 (2015)
- Atomic Energy Act, 3d
the Purpose section specifically provides for creating a program to encourage widespread participation in order to achieve the policies set forth in the AEA; LBP-14-4, 79 NRC 372 n.60 (2014)
- Atomic Energy Act, 11e(2), 42 U.S.C. § 2014(e)(2)
"byproduct material" is categorized as tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-12-3, 75 NRC 174 n.1 (2012); LBP-15-11, 81 NRC 435 n.218 (2015); LBP-15-16, 81 NRC 626 n.2 (2015)
- Atomic Energy Act, 11z, 42 U.S.C. § 2014(z)
"source material" is defined; LBP-15-16, 81 NRC 626 (2015)
- Atomic Energy Act, 53, 42 U.S.C. § 2073
NRC has clear statutory authority to regulate the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 474 (2011); LBP-11-26, 74 NRC 518-19 (2011)
- Atomic Energy Act, 57, 42 U.S.C. § 2077
because the application for a uranium enrichment facility is governed by AEA §§ 53 and 63, 42 U.S.C. § 2073, 2093, foreign ownership and control issues would be evaluated under sections 57 and 69; LBP-11-11, 73 NRC 488 (2011)
this section prohibits the Commission from granting a license that would be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 488 (2011)
- Atomic Energy Act, 57c(2), 42 U.S.C. § 2077(c)(2)
adequacy finding on applicant's material control and accounting program requires the board to make a case-by-case determination, guided by the AEA mandate that no license to possess special nuclear material may be issued if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 51 (2014)
licensee must show with reasonable assurance that its proposed methodology for material control and accounting will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public; CLI-15-9, 81 NRC 517 (2015)
- Atomic Energy Act, 63, 42 U.S.C. § 2093
NRC has clear statutory authority to regulate the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 474 (2011); LBP-11-26, 74 NRC 518-19 (2011)
- Atomic Energy Act, 69, 42 U.S.C. § 2099
because the application for a uranium enrichment facility is governed by AEA §§ 53 and 63, 42 U.S.C. § 2073, 2093, foreign ownership and control issues would be evaluated under sections 57 and 69; LBP-11-11, 73 NRC 488 (2011)

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Atomic Energy Act, 101, 42 U.S.C. § 2131

it is imperative that terms of a reactor operating license be clear and unambiguous and that licensee scrupulously adhere to those terms, because it is unlawful for any person within the United States to use any utilization facility except under and in accordance with a license issued by NRC; LBP-13-7, 77 NRC 328 (2013)

licensees may not, under penalty of law, deviate from the terms of their reactor operating licenses; LBP-13-7, 77 NRC 331 (2013)

to determine whether an ongoing CAL process process constitutes a de facto license amendment proceeding, the board must determine whether the requested change in operating authority sought by licensee is strictly in accordance with the terms and technical specifications in its existing license; LBP-13-7, 77 NRC 333 (2013)

Atomic Energy Act, 102, 42 U.S.C. § 2132(a)

commercial licenses for utilization or production facilities for industrial or commercial purposes shall be issued according to the terms of section 103 of the AEA; LBP-11-25, 74 NRC 390 (2011); LBP-12-19, 76 NRC 191 (2012)

Atomic Energy Act, 102a, 42 U.S.C. § 2132(a)

licenses for utilization or production facilities for industrial or commercial purposes must comply with the terms of AEA § 103; LBP-14-3, 79 NRC 278-79 (2014)

Atomic Energy Act, 103, 42 U.S.C. § 2133

forty-year operating licenses can be renewed for an additional 20 years; LBP-13-13, 78 NRC 279-80 (2013)

NRC is prohibited from issuing a license if doing so would be inimical to the common defense and security or the health and safety of the public; CLI-15-4, 81 NRC 233 (2015)

statutory findings required by this section apply specifically to the proposed activities and activities under such licenses, but do not apply to disposal activities that might result from the operation of a licensed facility; CLI-15-4, 81 NRC 233 (2015)

the Commission is prohibited from granting a license that would be inimical to the common defense and security or the health and safety of the public, and prohibits the granting of a license if the Commission knows or has reason to believe the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; LBP-11-11, 73 NRC 488 (2011)

Atomic Energy Act, 103b, 42 U.S.C. § 2133(b)

NRC is authorized to accord protection from radiological injury to both health and property interests; LBP-15-17, 81 NRC 776 (2015)

Atomic Energy Act, 103d, 42 U.S.C. § 2133(d)

applicants are ineligible to obtain a license because they fail to meet the requirements of the AEA and NRC regulations regarding foreign ownership; LBP-12-22, 76 NRC 443 (2012)

Congress thought foreign ownership itself should be sufficient to require denial of a license in some circumstances; LBP-12-19, 76 NRC 196 (2012)

connection of the three prohibitions on foreign ownership with the conjunction “or” rather than “and” shows that a license may not be granted if *any* of the three prohibitions is violated; LBP-12-19, 76 NRC 195 (2012)

contention alleging that statutory and regulatory prohibitions on foreign ownership, control, or domination forbid the licensing of proposed units is decided; LBP-14-3, 79 NRC 271, 272, 273, 278, 281, 300, 303-04, 314 (2014)

no license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; LBP-11-25, 74 NRC 390-91 (2011)

no license may be issued to any person within the United States if, in the opinion of the Commission, issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public; LBP-14-3, 79 NRC 279, 307 (2014)

NRC has substantial discretion in determining the threshold percentage at which foreign ownership becomes too great, but that threshold must at a minimum include 100% foreign ownership or the prohibition in the Act would be rendered superfluous; LBP-12-19, 76 NRC 196 (2012)

NRC is prohibited from issuing a license for a nuclear power reactor if it would be inimical to the health or safety of the public; LBP-13-4, 77 NRC 217 (2013)

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- NRC is prohibited from issuing a license for a production and utilization facility to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-13-4, 77 NRC 102 n.1 (2013); CLI-15-7, 81 NRC 482, 485, 486 n.29, 491, 495 n.83 (2015); LBP-12-19, 76 NRC 191 (2012)
- perfection in plant construction and the facility construction quality assurance program is not a precondition for a license under either the Atomic Energy Act or the Commission's regulations; LBP-14-7, 79 NRC 471 (2014)
- Atomic Energy Act, 104, 42 U.S.C. § 2134
- the Commission is prohibited from granting a license that would be inimical to the common defense and security or the health and safety of the public, and prohibits the granting of a license if the Commission knows or has reason to believe the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; LBP-11-11, 73 NRC 488 (2011)
- Atomic Energy Act, 104d, 42 U.S.C. § 2134(d)
- absent a transfer, license renewal application will be denied where licensee remains under foreign ownership, control, or domination; CLI-14-5, 79 NRC 256 (2014)
- NRC is prohibited from issuing licenses for medical therapy and research and development facilities to any alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-15-7, 81 NRC 482 (2015)
- Atomic Energy Act, 42 U.S.C. §§ 2155, 2156, and 2157
- these sections do not apply to imports/exports involving waste that is contaminated with byproduct; CLI-11-3, 73 NRC 627 (2011)
- Atomic Energy Act, 161, 42 U.S.C. § 2201
- compliance with NRC requirements presumptively ensures adequate protection, but new information may reveal that additional requirements are warranted, and in such situations, the Commission may act in accordance with its statutory authority to require licensees and construction permit holders to take action in order to protect health and safety and common defense and security; LBP-12-18, 76 NRC 153 (2012)
- general scope of the NRC's authority is established, but it does not discuss spent fuel disposal; CLI-15-4, 81 NRC 233 (2015)
- the Commission is empowered to issue an order amending any license as it deems necessary to effectuate the provisions of the Act to promote the common defense and security or to protect health or to minimize danger to life or property; LBP-13-7, 77 NRC 329 (2013)
- Atomic Energy Act, 161b, 42 U.S.C. § 2201(b)
- NRC is authorized to accord protection from radiological injury to both health and property interests; LBP-15-17, 81 NRC 776 (2015)
- Atomic Energy Act, 161c, 42 U.S.C. § 2201(c)
- licensee's concerns about NRC's administration of FOIA cannot overcome the agency's duty to investigate alleged violations; CLI-13-5, 77 NRC 228 (2013)
- NRC has authority to conduct any investigations it deems necessary and proper to the administration or enforcement of its authority, which includes any regulations or orders issued pursuant to the AEA; CLI-13-5, 77 NRC 227 (2013)
- NRC is authorized to issue any necessary subpoenas; CLI-13-5, 77 NRC 227 (2013)
- Atomic Energy Act, 181, 42 U.S.C. § 2231
- board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 231 (2012)
- Atomic Energy Act, 182, 42 U.S.C. § 2232
- every license to operate a nuclear power reactor must contain a list of technical specifications necessary for adequate protection of public health and safety; LBP-12-25, 76 NRC 549 (2012)
- information is specified that must be provided by an applicant for a license and it has no reference to spent fuel disposal; CLI-15-4, 81 NRC 233-34 (2015)
- technical specifications must include information on the amount, kind, and source of special nuclear material, the place of use, and the particular characteristics of the facility; LBP-12-25, 76 NRC 549 (2012)

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- Atomic Energy Act, 182a, 42 U.S.C. § 2232(a)
applicants for nuclear power plant operating licenses are required to include technical specifications as part of the license; DD-13-3, 78 NRC 575 (2013)
license applications must specifically state information that NRC, by rule or regulation, may determine to be necessary to decide technical and financial qualifications of applicant; DD-15-8, 82 NRC 110 (2015)
licensee's concerns about NRC's administration of FOIA cannot overcome the agency's statutory obligation to protect the public health and safety; CLI-13-5, 77 NRC 228 (2013)
NRC can issue nuclear power reactor licenses to applicants only upon a finding that utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; CLI-15-4, 81 NRC 231 (2015)
perfection in plant construction and the facility construction quality assurance program is not a precondition for a license under either the Atomic Energy Act or the Commission's regulations; LBP-14-7, 79 NRC 471 (2014)
reactor operating licenses must include technical specifications that include specific characteristics of the facility and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization of special nuclear material will provide adequate protection to the health and safety of the public; LBP-13-7, 77 NRC 328-29 (2013)
the Commission may at any time before expiration of a license, require further written statements from licensee to determine whether a license should be modified; LBP-13-7, 77 NRC 329 (2013)
- Atomic Energy Act, 182c
notice of combined license applications must be published in the *Federal Register* for 4 consecutive weeks; CLI-12-2, 75 NRC 74 n.46 (2012)
- Atomic Energy Act, 42 U.S.C. § 2233
the Commission is empowered to issue an order amending any license as it deems necessary to effectuate the provisions of the Act to promote the common defense and security or to protect health or to minimize danger to life or property; LBP-13-7, 77 NRC 329 (2013)
- Atomic Energy Act, 184, 42 U.S.C. § 2234
licensee must obtain NRC's written consent prior to transferring an NRC license; CLI-15-26, 82 NRC 411 (2015)
written consent from NRC is required for all direct or indirect license transfers; CLI-15-8, 81 NRC 502 (2015)
- Atomic Energy Act, 185b, 42 U.S.C. § 2235(b)
in addition to contested hearings on combined licenses, where interested members of the public have the right to participate and air their concerns, uncontested safety and environmental issues are considered in a mandatory hearing; CLI-12-11, 75 NRC 527 (2012)
- Atomic Energy Act, 42 U.S.C. § 2237
the Commission is empowered to issue an order amending any license as it deems necessary to effectuate the provisions of the Act to promote the common defense and security or to protect health or to minimize danger to life or property; LBP-13-7, 77 NRC 329 (2013)
- Atomic Energy Act, 189a, 42 U.S.C. § 2239(a)
any amendment to an existing license as a result of NRC review of licensee seismic hazard reevaluations that leads to changes in the current licensing basis would be subject to a hearing opportunity; CLI-15-21, 82 NRC 308 n.70 (2015)
any person whose interest may be affected may request a hearing in a proceeding granting, suspending, revoking, or amending any license; CLI-13-2, 77 NRC 44 (2013)
Commission refers a limited portion of the hearing request to the licensing board to determine whether petitioner has identified an NRC activity that requires an opportunity to request an adjudicatory hearing; CLI-15-14, 81 NRC 730 (2015)
even in the absence of a contested hearing, NRC must hold an uncontested or mandatory hearing on a combined license application; CLI-12-9, 75 NRC 427 (2012)
hearing must be held on each application to construct a nuclear power plant, regardless of whether an interested member of the public requests a hearing on the application; CLI-15-13, 81 NRC 559-60 (2015)

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hearing rights are triggered when a licensee submits a license amendment request to NRC; LBP-15-27, 82 NRC 191 (2015)

in addition to contested hearings on combined licenses, where interested members of the public have the right to participate and air their concerns, uncontested safety and environmental issues are considered in a mandatory hearing; CLI-12-11, 75 NRC 527 (2012)

NRC has authority to define the scope of its proceedings, which, in enforcement proceedings, is to permit challenges solely on whether an order should be sustained; LBP-12-14, 76 NRC 5 (2012)

NRC has latitude to define who is an "affected person"; LBP-12-3, 75 NRC 189 n.27 (2012)

NRC needs to conduct only a single licensing action and adjudicatory proceeding to authorize construction and operation and a mandatory hearing regarding the application and the Staff's associated safety and environmental reviews, despite the absence of a petitioner challenging applicant's request; LBP-11-26, 74 NRC 519 (2011)

opportunity for a hearing on license amendments is provided; CLI-12-20, 76 NRC 440 (2012)

petitioner cannot create a hearing opportunity merely by claiming that a facility is improperly operating outside its licensing basis, but such claims are appropriately raised in a petition to initiate an enforcement proceeding; LBP-15-27, 82 NRC 192 (2015)

petitioner is not entitled to request a hearing where NRC has neither granted greater authority than that provided by its existing licenses nor otherwise altered the terms of those licenses; LBP-15-27, 82 NRC 186 (2015)

requirement for a hearing at the construction permit phase of new reactor generation facilities is stated; CLI-12-9, 75 NRC 427 (2012)

significant delays in NRC Staff's review potentially deprive an Indian tribe of its hearing rights; CLI-12-4, 75 NRC 155 (2012)

the statutory footing for the procedural precepts that apply to uranium enrichment facility licensing is provided; LBP-11-11, 73 NRC 474 (2011)

this section has been interpreted to require that the hearing must encompass all material factors bearing on the licensing decision raised by the requester; LBP-11-22, 74 NRC 269, 275, 276 (2011)

Atomic Energy Act, 189a(1)(A), 42 U.S.C. § 2239(a)(1)(A)

an uncontested early site permit proceeding is subject to mandatory hearing requirements; LBP-11-10, 73 NRC 436 (2011)

Congress intentionally limited the opportunity for a hearing to certain designated agency actions which do not include exemptions; LBP-15-18, 81 NRC 797 n.20 (2015); LBP-15-24, 82 NRC 76 n.38 (2015)

for an individual or organization to be deemed a "person whose interest may be affected by the proceeding," so as to have standing as of right such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must comply with 10 C.F.R. 2.309(d)(1)(i)-(iv); LBP-12-15, 76 NRC 23 (2012)

in any proceeding for the amending of any license, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding; LBP-13-7, 77 NRC 329 (2013)

license amendment requests trigger hearing rights; LBP-13-7, 77 NRC 331 (2013)

license denial letter that contained apparent boilerplate that was incomplete and perforce misleading does not accord with concepts of fundamental fairness and might well counter hearing rights granted under the Act; LBP-13-3, 77 NRC 96 (2013)

NRC must afford interested persons an opportunity for a hearing on the granting, suspending, revoking, or amending of any license; CLI-15-5, 81 NRC 334 (2015); LBP-15-16, 81 NRC 636 (2015); LBP-15-18, 81 NRC 797 n.19 (2015)

NRC must conduct a hearing on the uncontested environmental and safety aspects of the proposed plant; LBP-13-4, 77 NRC 220 n.99 (2013)

NRC must grant a hearing, as a matter of right, to any person whose interest may be affected by a proceeding for the granting of any license; CLI-11-3, 73 NRC 621 (2011); LBP-11-6, 73 NRC 168 (2010); LBP-11-8, 73 NRC 358 (2011)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-14-4, 79 NRC 341 (2014); LBP-15-17, 81 NRC 770 (2015)

NRC must provide an opportunity for hearing in any proceeding under this Act, for the granting, suspending, revoking, or amending of any license; LBP-15-27, 82 NRC 191 (2015)

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- organizations that seek to establish standing to intervene may do so by demonstrating either organizational standing or representational standing; LBP-12-10, 75 NRC 637 (2012)
- participation in a licensing proceeding requires a demonstration of standing; LBP-15-17, 81 NRC 769-70 (2015)
- petitioner must address its hearing request to a matter that triggers a hearing opportunity; CLI-15-5, 81 NRC 333 (2015)
- request for exemption from a rule, by itself, does not give rise to an opportunity for hearing; CLI-13-1, 77 NRC 10 (2013)
- requirement to demonstrate standing is derived from instruction to NRC to provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-15-5, 81 NRC 255 (2015)
- the Commission shall grant a hearing to and admit as a party to any licensing proceeding any person whose interest may be affected by the proceeding; LBP-11-22, 74 NRC 269 (2011); LBP-11-29, 74 NRC 615 (2011)
- the Commission, but not a licensing board, has the power to address a protracted delay in the proceeding and to direct appropriate remedial measures; LBP-11-30, 74 NRC 628 (2011)
- Atomic Energy Act, 193, 42 U.S.C. § 2243
- NRC needs to conduct only a single licensing action and adjudicatory proceeding to authorize construction and operation and a mandatory hearing regarding the application and the Staff's associated safety and environmental reviews, despite the absence of a petitioner challenging applicant's request; LBP-11-26, 74 NRC 519 (2011)
- the statutory footing for the procedural precepts that apply to uranium enrichment facility licensing are provided; LBP-11-11, 73 NRC 474 (2011)
- Atomic Energy Act, 193b(1), 42 U.S.C. § 2243(b)(1)
- the Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing or construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 471 n.4 (2011); LBP-12-21, 76 NRC 232-33 (2012)
- Atomic Energy Act, 193f
- the Commission is prohibited from granting a license that would be inimical to the common defense and security or the health and safety of the public, and prohibits the granting of a license if the Commission knows or has reason to believe that the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; LBP-11-11, 73 NRC 488 (2011)
- Atomic Energy Act, 274, 42 U.S.C. § 2021
- NRC is authorized to enter into agreements with the governor of any state providing for transfer of regulatory authority to the state over specified categories of nuclear material; CLI-11-12, 74 NRC 464 (2011)
- NRC is not permitted to retain jurisdiction over a site at a licensee's request where the state seeks to assume regulatory authority over the site and meets the "adequacy" and "compatibility" criteria; CLI-13-6, 78 NRC 158 (2013)
- prior to entering into an agreement with a state, NRC must find that a state's regulatory program is adequate to protect the public health and safety with respect to the materials the state seeks to regulate, and compatible with NRC's program for regulation of such materials; CLI-11-12, 74 NRC 464 (2011); CLI-13-6, 78 NRC 158 (2013)
- Atomic Energy Act, 274a(1), 42 U.S.C. § 2021(a)(1)
- the central purpose and policy animating the agreement-state legislation is to recognize the interests of the states in the peaceful uses of atomic energy; CLI-11-12, 74 NRC 473 (2011)
- the stated purpose of the legislation is to clarify the respective responsibilities under the AEA of the states and NRC with respect to the regulation of byproduct, source, and special nuclear materials; CLI-11-12, 74 NRC 471-72 (2011)
- Atomic Energy Act, 274a(3)
- the purpose of this act is to promote an orderly regulatory pattern between NRC and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials; CLI-11-12, 74 NRC 476 (2011)

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- Atomic Energy Act, 274b, 42 U.S.C § 2021(b)
NRC is authorized to enter into agreements with a state with respect to any one or more of a variety of classes of nuclear materials; CLI-11-12, 74 NRC 470 (2011)
- Atomic Energy Act, 274c(1), 42 U.S.C. § 2021(c)(1)
NRC has a clear statutory mandate to regulate the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 474 (2011); LBP-11-26, 74 NRC 518-19 (2011)
- Atomic Energy Act, 274c(2), 42 U.S.C. § 2021(c)(2)
NRC is responsible for authorizing the import of byproduct, source, and special nuclear material; CLI-11-3, 73 NRC 626, 627 (2011)
- Atomic Energy Act, 274d, 42 U.S.C § 2021(d)
this subsection is construed as providing the specific conditions under which the Commission shall exercise the general legal authority granted to it under subsection b; CLI-11-12, 74 NRC 472 (2011)
this subsection is construed as requiring NRC to enter into an agreement for state regulation of the particular categories of nuclear materials that a state certifies it both desires to regulate and has established a program for, provided that NRC finds the state's program for regulation of such materials to be adequate and compatible; CLI-11-12, 74 NRC 473 (2011)
- Atomic Energy Act, 274j, 42 U.S.C. § 2021(j) (2011)
NRC retains power to revoke agreements with states and to restore NRC regulatory authority; CLI-11-12, 74 NRC 498 (2011)
- Atomic Energy Act, 274l, 42 U.S.C. § 2021(l)
state's motion for cross-examination was granted, insofar as it would have a reasonable opportunity to examine witnesses pursuant to NRC regulations; LBP-13-13, 78 NRC 277-78 (2013)
- Bald and Golden Eagle Protection Act, 16 U.S.C. § 668-668c
contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 393-94 (2014)
- Clean Air Act, 42 U.S.C. § 7409(b)
EPA's National Ambient Air Quality Standards set maximum levels for air pollutants in the ambient air deemed to provide protection for human health and welfare; LBP-11-26, 74 NRC 555 (2011)
- Clean Air Act, 42 U.S.C. § 7410(a)(1)
EPA has granted authority to Idaho to implement, maintain, and enforce its own EPA-compliant air quality programs through State Ambient Air Quality Standards; LBP-11-26, 74 NRC 555 (2011)
- Clean Air Act, 42 U.S.C. § 7411
EPA possesses authority to set numerical standards for air pollutants from emission sources, which would include the proposed uranium enrichment facility; LBP-11-26, 74 NRC 555 (2011)
- Clean Water Act, 316(b), 33 U.S.C. § 1326(b)
a cooling tower and closed-cycle cooling system represent the best available technology and will reduce discharge temperature to the greatest extent possible; LBP-11-14, 73 NRC 597 (2011)
- Clean Water Act, 316(a), (b), 33 U.S.C. § 1326(a), (b)
license renewal applicants must submit documentation of their compliance with sections 316(a) and (b) of the Clean Water Act concerning thermal discharges; LBP-12-16, 76 NRC 53 (2012)
- Clean Water Act, 33 U.S.C. § 1371(c)(2)
NRC is precluded from second-guessing the conclusions in NPDES permits; LBP-12-16, 76 NRC 59 n.74 (2012)
- Clean Water Act, 401, 33 U.S.C. § 1341(a)
applicant for a federal discharge permit must provide a certification from the state that the proposed activity will not violate state water pollution control standards; LBP-12-16, 76 NRC 52 (2012)
- Clean Water Act, 404, 33 U.S.C. § 1344
combined license applicants must obtain permits from the U.S. Army Corps of Engineers in order to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 430 (2012)
in completing the environmental impact statement, the U.S. Army Corps of Engineers' mission is to protect the nation's aquatic resources, including wetlands; CLI-12-9, 75 NRC 472 (2012)
proposed plant will impact at least 668 acres of wetlands and therefore its construction and operation will require a permit from U.S. Army Corps of Engineers; LBP-13-4, 77 NRC 134-35 (2013)

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- the U.S. Army Corps of Engineers evaluates construction and maintenance activities to determine whether to issue permits; CLI-12-9, 75 NRC 465 n.250 (2012)
- when a proposed project would cause discharge of dredged or fill material into wetlands, applicant must seek a permit from the Corps of Engineers; LBP-15-23, 82 NRC 61 (2015)
- Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A)
- applicant is required to submit its certification from the relevant state of jurisdiction, indicating that the project in question will comply with this statute; LBP-11-16, 73 NRC 704 n.364 (2011)
- Comprehensive Environmental Compensation and Liabilities Act, 42 U.S.C. §§ 9601, 9675
- proper sampling plan for establishing baseline values is described; LBP-15-3, 81 NRC 92 (2015)
- Endangered Species Act, 16 U.S.C. § 1531(b) (1976 ed.)
- purposes of the act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, and to provide a program for the conservation of such species; LBP-12-10, 75 NRC 670 (2012)
- Endangered Species Act, 2(c), 16 U.S.C. § 1531(c) (1976 ed.)
- all federal departments and agencies shall seek to conserve endangered and threatened species; LBP-12-10, 75 NRC 670 (2012)
- Endangered Species Act, 16 U.S.C. § 1532(2)
- “conserve” means to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary; LBP-12-10, 75 NRC 670 (2012)
- Endangered Species Act, 16 U.S.C. § 1533
- Congress delegated broad administrative and interpretive power to the Secretary of the Interior; LBP-12-10, 75 NRC 640 n.37 (2012)
- Endangered Species Act, 7, 16 U.S.C. § 1536
- agencies are required to confer with the Fish and Wildlife Service on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat; LBP-13-9, 78 NRC 95 (2013)
- NRC Staff, not the applicant, has the legal duty to engage in consultation under the act; LBP-12-12, 75 NRC 761 (2012)
- the U.S. Fish & Wildlife Service and National Marine Fisheries Service perform strictly an advisory function, and the federal agency makes the ultimate decision as to whether its proposed action will satisfy the ESA requirements; LBP-12-10, 75 NRC 641 (2012)
- there is no requirement enumerating the contents of a draft environmental impact statement; LBP-12-12, 75 NRC 762 (2012)
- this section applies only where threatened and endangered species or critical habitats are present and impacts on a species are expected as a result of the proposed project; LBP-13-9, 78 NRC 96 (2013)
- Endangered Species Act, 7(a)(2), 16 U.S.C. § 1536(a)(2)
- agency must ensure that any action that it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of critical habitat of such species; CLI-15-13, 81 NRC 584 (2015)
- consultation with Fish and Wildlife Service is legally mandated for any agency action that may affect listed species or critical habitat; LBP-15-11, 81 NRC 443 (2015)
- federal agencies must ensure that any action that it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species; LBP-12-10, 75 NRC 639 (2012); LBP-12-11, 75 NRC 735 (2012); LBP-12-12, 75 NRC 761 (2012)
- in determining that a federal action is not likely to jeopardize species or modify habitat, the acting agency is to proceed in consultation with and with the assistance of the Secretary of the Interior or Commerce; LBP-12-10, 75 NRC 639 (2012)
- whether NRC Staff undertakes formal consultation with the Services in the event that they disagree with a finding by NRC of “no effect” or “not likely adversely to affect” depends upon NRC’s own regulations and its interpretation of its duty under the ESA to ensure that any action is not likely to jeopardize listed species or habitat; LBP-12-10, 75 NRC 642 (2012)

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- Endangered Species Act, 7(c), 16 U.S.C. § 1536(c)
if the Services advise that listed species are present, the acting agency is to prepare a biological assessment to identify any species that is likely to be affected by such action; LBP-12-11, 75 NRC 735-36 (2012)
the acting agency shall request of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service information whether any species that is listed or proposed to be listed may be present in the area of the action; LBP-12-11, 75 NRC 735 (2012)
where an acting agency is engaged in major construction activities, the acting agency is to evaluate, through preparation of a biological assessment, whether the action is likely to adversely affect species or habitat; LBP-12-10, 75 NRC 640 (2012)
- Endangered Species Act, 16 U.S.C. § 1536(c)(1)
a biological assessment of listed species shall be completed before any contract for construction is entered into and before construction is begun with respect to such action; LBP-12-12, 75 NRC 762 (2012)
federal agencies shall request information from the Secretary of the Interior whether any species listed or proposed to be listed may be present in the area of the proposed action; LBP-12-12, 75 NRC 761-62 (2012)
if the Secretary of the Interior advises that listed species may be present, the agency shall conduct a biological assessment for the purpose of identifying any species that is likely to be affected by the action; LBP-12-12, 75 NRC 761-62 (2012)
- Endangered Species Act, 16 U.S.C. § 1536(n)
NRC does not have authority to rule on challenges to Fish and Wildlife's compliance with the Act; CLI-12-21, 76 NRC 495 n.21 (2012)
- Endangered Species Act, 16 U.S.C. § 1538, 1539(b) (1976 ed.)
virtually all dealings with endangered species, including taking, possession, transportation, and sale, are prohibited, except in extremely narrow circumstances; LBP-12-10, 75 NRC 670 (2012)
- Endangered Species Act, 16 U.S.C. § 1540(f)
Congress delegated broad administrative and interpretive power to the Secretary of the Interior; LBP-12-10, 75 NRC 640 n.37 (2012)
- Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005)
Congress has left intact both NRC's and the court's interpretation of the Atomic Energy Act with respect to a spent fuel disposal safety finding at the time of reactor licensing; CLI-15-4, 81 NRC 228, 234 (2015)
- Energy Reorganization Act, 42 U.S.C. §§ 5801-5891 (2012)
basis for NRC authority to regulate the use of special nuclear material in facilities such as nuclear power reactors is established; CLI-15-4, 81 NRC 231 n.47 (2015)
- Energy Reorganization Act of 1974, 201, 42 U.S.C. § 5841
action of the Commission shall be determined by a majority vote of the members present; CLI-12-17, 76 NRC 213 (2012)
- Equal Access to Justice Act, 5 U.S.C. § 504(a)(1)
parties who prevail against the government in certain types of agency proceedings are allowed to recover attorneys' fees and other expenses incurred in connection with the proceeding unless the government's position was substantially justified, or other special circumstances render an award unjust; LBP-11-8, 73 NRC 354 (2011)
- Equal Access to Justice Act, 5 U.S.C. § 504(b)(1)(C)
"adversary adjudication" is defined as an adjudication under section 554 of the Administrative Procedure Act in which the position of the United States is represented by counsel or otherwise; LBP-11-8, 73 NRC 354 (2011)
the act applies to any adjudication required by statute to be determined on the record in which the government is represented by counsel; LBP-11-8, 73 NRC 354 (2011)
- Exec. Order No. 12898, 3 C.F.R. 859 (1995), *reprinted as amended* in 42 U.S.C. § 4321
federal agencies shall identify and consider whether their actions will cause disproportionate environmental impacts on minority, low-income, or other sensitive populations; LBP-12-24, 76 NRC 520 (2012)

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- NRC Staff examined special pathways of exposure that could lead to a higher level of radiation exposure in minority and low-income populations in the area, including subsistence consumption of fish, native vegetation, surface waters, sediments, and local produce; CLI-15-6, 81 NRC 373 (2015)
- order did not, in itself, create new substantive authority for federal agencies and thus NRC determined that it would endeavor to carry out the environmental justice principles as part of the agency's responsibilities under NEPA; CLI-15-6, 81 NRC 369 (2015)
- Exec. Order No. 13007, 61 Fed. Reg. 26,771 (May 24, 1996), *reprinted in* 42 U.S.C. § 1996 (2012)
- federal policy supports special consideration where tribal religious exercise is threatened; LBP-15-16, 81 NRC 640-41 (2015)
- Exec. Order No. 13175, 65 Fed. Reg. 67,249, 67,250 (Nov. 6, 2000)
- regular and meaningful consultation and collaboration with tribal officials is to take place through an accountable process at each agency; LBP-15-16, 81 NRC 640 (2015)
- Federal Records Act, 44 U.S.C. §§ 2101-18, 2901-09, 3101-07, 3301-24
- the Department of Energy has independent records retention obligations regarding creation, management, and disposal of records; CLI-11-13, 74 NRC 639 n.16 (2011)
- Federal Register Act, 44 U.S.C. § 1507
- publication in the Federal Register is legally sufficient notice to all affected people; LBP-15-5, 81 NRC 280 n.181 (2015)
- publication of a regulation in the *Federal Register* constitutes notice to all persons residing in the United States; LBP-13-3, 77 NRC 97 (2013)
- Florida Electrical Power Plant Siting Act, Fla. Stat. §§ 403.501-.518
- state water use permit is required for construction and operation of the nuclear units, associated facilities, and transmission lines and corridor; LBP-13-4, 77 NRC 135 (2013)
- Florida Electrical Power Plant Siting Act, Fla. Stat. § 403.507(2)(a)(2)
- applications for water use permits are evaluated by local governmental agencies; LBP-13-4, 77 NRC 135 (2013)
- Freedom of Information Act, 5 U.S.C. § 552
- agencies must make available certain records to members of the public upon specific request for those records except to the extent that the records (or portions of them) are exempt from public disclosure by one of the nine enumerated exemptions or are excluded from disclosure; CLI-13-5, 77 NRC 228 (2013)
- documents at issue are presumed to be public unless NRC Staff can demonstrate that they are protected by the deliberative process privilege; LBP-13-5, 77 NRC 242 (2013)
- NRC considers whether Exemption 7 would prevent public disclosure of allegation and investigation information from release; CLI-13-5, 77 NRC 228 n.25 (2013)
- Freedom of Information Act, 5 U.S.C. § 552(a)
- agencies must make available for public inspection a broad range of information, including the agency's organization, general methodology, rules of procedure, substantive rules, final opinions, and statements of policy and interpretation that have been adopted by the agency; LBP-13-5, 77 NRC 238 (2013)
- Freedom of Information Act, 5 U.S.C. § 552(a)(3)
- the government has the burden of proving that a requested document falls within one of FOIA's exemptions; LBP-13-5, 77 NRC 238 (2013)
- Freedom of Information Act, 5 U.S.C. § 552(b)
- agencies may avoid disclosing documents only if they prove that the documents fall within one of the exemptions; LBP-13-5, 77 NRC 238 (2013)
- nine categories of documents may be exempted from disclosure; LBP-13-5, 77 NRC 238 (2013)
- Freedom of Information Act, 5 U.S.C. § 552(b)(9)
- any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions which are exempt; LBP-11-5, 73 NRC 139 n.14 (2011)
- Freedom of Information Act, 5 U.S.C. § 552(c)
- documents are presumed to be available for public inspection if they do not fall within one of the nine exemptions; LBP-13-5, 77 NRC 238 (2013)

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- Low-Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b(9)(A)(i)-(ii)
low-level radioactive waste is defined as radioactive material that is not high-level radioactive waste, spent nuclear fuel, or byproduct material and is waste that NRC classifies as LLRW; LBP-12-4, 75 NRC 216 n.5 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801
goal of the act is to preserve commercial and recreational fishery resources through the protection of essential fish habitat; LBP-12-10, 75 NRC 642 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801(a)(9)
continuing loss of marine, estuarine, and other aquatic habitats warrants increased attention for the conservation and management of fishery resources of the United States; LBP-12-10, 75 NRC 676-77 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801(b)(7)
the purpose of this act is to promote protection of essential fish habitat in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat; LBP-12-10, 75 NRC 676 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1855(b)(1)(D), (b)(2)
a direct consultation obligation is imposed on NRC if NRC determines that approval of a requested license renewal may adversely affect any essential fish habitat; LBP-12-10, 75 NRC 642-43 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 305(b)(2), 16 U.S.C. § 1855(b)(3)
all federal agencies must consult with the National Marine fisheries Service on any proposed actions that may adversely affect essential fish habitat, and NMFS must implement these requirements and related procedures in its regulations; LBP-12-10, 75 NRC 677 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1855(b)(4)(A)
federal agencies are not required to implement conservation recommendations where that agency does not have the statutory authority to implement those recommendations; LBP-12-10, 75 NRC 677 (2012)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1855(d)
the Secretary of the Interior may promulgate such regulations as may be necessary to carry out any other provision of this act; LBP-12-10, 75 NRC 643 n.57 (2012)
- Michigan Natural Resources and Environmental Protection Act, Mich. Comp. Laws. § 324.32723
applicant must obtain a water withdrawal permit under the Michigan Natural Resources and Environmental Protection Act; LBP-12-12, 75 NRC 764 (2012)
- Michigan Natural Resources and Environmental Protection Act, Mich. Comp. Laws § 324.36501(f)
“take” is defined by Michigan law with respect to fish and wildlife as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct; LBP-14-7, 79 NRC 463 (2014)
- Michigan Natural Resources and Environmental Protection Act, Mich. Comp. Laws § 324.36505(1)(a)
individuals are prohibited from taking wildlife indigenous to the state that have been determined to be endangered or threatened; LBP-14-7, 79 NRC 463 (2014)
- Michigan Natural Resources and Environmental Protection Act, Mich. Comp. Laws § 324.36505(5)
upon good cause shown, endangered or threatened species found on the state list may be removed or captured, but only as authorized by a permit issued by the department; LBP-14-7, 79 NRC 463 (2014)
- Migratory Bird Conservation Act, 16 U.S.C. § 715 (2006)
the federal government could assert an implied water right on behalf of a wildlife refuge; LBP-11-16, 73 NRC 688 (2011)
- Migratory Bird Treaty Act, 16 U.S.C. §§ 701-712 (2006)
the federal government could assert an implied water right on behalf of a wildlife refuge; LBP-11-16, 73 NRC 688 (2011)
- Migratory Bird Treaty Act, 16 U.S.C. § 703-711
contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 393-94 (2014)

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- National Environmental Policy Act, 42 U.S.C. § 4321
NEPA promotes its sweeping commitment to prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action; LBP-12-1, 75 NRC 36 n.48 (2012)
where the information in the draft environmental impact statement is so different from the information in the environmental report that the DEIS dispenses with and moots the issues raised in the original contention, intervenor must file a new or amended contention against the DEIS; LBP-11-1, 73 NRC 26 (2011)
- National Environmental Policy Act, 42 U.S.C. §§ 4321-4370
contention that NRC has promulgated a regulation that violates the NEPA is inadmissible; LBP-13-12, 78 NRC 242 (2013)
- National Environmental Policy Act, 101, 42 U.S.C. § 4331
to ensure that the Act's broad national commitment to protect and promote environmental quality is infused in the actions of the federal government, NEPA establishes certain action-forcing procedures on each federal agency; LBP-13-4, 77 NRC 119 (2013)
- National Environmental Policy Act, 101a, 42 U.S.C. § 4331(a)
it is the continuing policy of the federal government to use all practicable means and measures to create and maintain conditions under which man and nature can exist in productive harmony; LBP-13-4, 77 NRC 217 (2013)
- National Environmental Policy Act, 42 U.S.C. § 4331(b)
federal agencies must pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-17, 76 NRC 81 (2012); LBP-12-18, 76 NRC 159 (2012); LBP-14-9, 80 NRC 40 (2014)
federal agencies must use all practicable means to avoid environmental degradation to the extent consistent with other essential considerations of national policy; LBP-14-9, 80 NRC 29 (2014)
- National Environmental Policy Act, 42 U.S.C. § 4331(b)(4)
agencies must take a hard look at preserving important historic and cultural aspects of our national heritage; LBP-15-16, 81 NRC 655 n.218 (2015)
- National Environmental Policy Act, 102, 42 U.S.C. § 4332
Continued Storage Rule and supporting generic environmental impact statement to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 537 (2015)
environmental impact statement's hard look must examine reasonably foreseeable environmental impacts emanating from the proposed action; LBP-11-7, 73 NRC 281 (2011); LBP-11-39, 74 NRC 868 (2011)
NEPA applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-11-32, 74 NRC 666 (2011)
NEPA's procedural obligation is carried out through an agency's issuance of an environmental impact statement documenting the agency's hard look at potential environmental impacts of the proposed action and reasonable alternatives thereto; LBP-11-39, 74 NRC 868 (2011)
nothing in NEPA, which applies to agencies of the federal government, can be read to require an applicant to update its environmental report; LBP-11-34, 74 NRC 697 (2011)
when agencies propose major federal actions significantly affecting the quality of the human environment, preparation of an environmental impact statement is required; LBP-12-18, 76 NRC 159 (2012); LBP-14-9, 80 NRC 40 (2014)
- National Environmental Policy Act, 102(2), 42 U.S.C. § 4332(2)
compliance with the act is ultimately the responsibility of NRC; CLI-12-13, 75 NRC 684 (2012)
every combined license application must be accompanied by an environmental report to aid the Commission in its preparation of an environmental impact statement; LBP-11-6, 73 NRC 172 (2010)
government agencies are required to comply with NEPA to the fullest extent possible; LBP-14-9, 80 NRC 50 (2014)
the scope of environmental concerns that must be considered in the environmental impact statement are discussed; LBP-11-6, 73 NRC 172 n.20 (2010)
- National Environmental Policy Act, 102(2)(A), 42 U.S.C. § 4332(2)(A)
agencies are required to use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in decisionmaking that may impact

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- the environment; CLI-12-2, 75 NRC 116 (2012); CLI-12-9, 75 NRC 473 (2012); CLI-15-13, 81 NRC 586 (2015)
- National Environmental Policy Act, 102(2)(A), (C), and (E), 42 U.S.C. § 4332(2)(A), (C), and (E) in mandatory proceedings, boards are to make independent environmental judgments with respect to certain NEPA findings; LBP-11-11, 73 NRC 476 n.10 (2011)
- National Environmental Policy Act, 102(2)(C), 42 U.S.C. § 4332(2)(C) agencies are required to create an environmental impact statement, and the moment at which an agency must have a final statement ready is the time at which it makes a recommendation or report on a proposal for federal action; LBP-13-10, 78 NRC 145 (2013)
- agencies must prepare an environmental impact statement before approving any major federal action that will significantly affect the quality of the human environment that describes the action, its effects, and alternatives to the proposed action; CLI-13-7, 78 NRC 210 (2013); LBP-11-7, 73 NRC 281 (2011); LBP-11-38, 74 NRC 830 (2011); LBP-12-5, 75 NRC 236 (2012); LBP-12-8, 75 NRC 549 (2012); LBP-12-17, 76 NRC 81 (2012); LBP-12-23, 76 NRC 453 (2012); LBP-13-13, 78 NRC 272, 284-85, 508, 524 (2013); LBP-15-16, 81 NRC 637 (2015)
- NEPA imposes procedural obligations on federal agencies proposing to take actions significantly affecting the quality of the human environment; LBP-11-39, 74 NRC 867-68 (2011)
- NRC Staff must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-11-26, 74 NRC 587 (2011); LBP-12-10, 75 NRC 644 n.70 (2012)
- requirement to prepare an environmental impact statement applies to major federal actions, not to private or state actions; LBP-14-9, 80 NRC 47 (2014)
- National Environmental Policy Act, 102(2)(C)(i), 42 U.S.C. § 4332(2)(C)(i) environmental impact of any proposed major federal action significantly affecting the quality of the human environment must be discussed; LBP-11-6, 73 NRC 198 (2010)
- in the area of impacts of combined licenses and limited work authorizations, NRC Staff, in its review of new and significant information, identified a change in impacts associated with terrestrial ecology; CLI-12-2, 75 NRC 117 (2012)
- license renewal applications are subject to an environmental review; CLI-12-5, 75 NRC 304 (2012)
- to the fullest extent possible, all federal agencies shall include in every major federal action significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-13-4, 77 NRC 119 (2013)
- National Environmental Policy Act, 102(2)(C)(i)-(iii), 42 U.S.C. § 4332(2)(C)(i)-(iii) an environmental impact statement must include a detailed statement by the responsible agency official on, among other things, the environmental impact of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action; LBP-11-10, 73 NRC 440 (2011)
- license renewal applicant's environmental report must address environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-5, 75 NRC 338 (2012)
- NRC Staff is required to issue a final environmental impact statement that thoroughly and objectively evaluates reasonable alternatives to the proposed action; LBP-12-17, 76 NRC 113 (2012)
- National Environmental Policy Act, 102(2)(C)(i), (ii), (v), 42 U.S.C. § 4332(2)(C)(i), (ii), (v) environmental impact statements must provide a detailed statement concerning environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-14-9, 80 NRC 58 (2014)
- National Environmental Policy Act, 102(2)(C)(ii), 42 U.S.C. § 4332(2)(C)(ii) environmental documents must include a detailed statement by the responsible official on any adverse environmental effects that cannot be avoided should the proposal be implemented; CLI-12-9, 75 NRC 474 (2012); LBP-15-16, 81 NRC 687 n.433 (2015)
- National Environmental Policy Act, 102(2)(C)(ii), (iii), 42 U.S.C. § 4332(2)(C)(ii), (iii) environmental reports submitted by license renewal applicants must address the environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-8, 75 NRC 397 (2012)

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- National Environmental Policy Act, 102(2)(C)(ii)-(v), 42 U.S.C. § 4332(2)(C)(ii)-(v)
NRC Staff must assess the relationship between local short-term uses and long-term productivity of the environment, consider alternatives, and describe the unavoidable adverse environmental impacts and the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-15-13, 81 NRC 587 (2015)
- National Environmental Policy Act, 102(2)(C)(iii), 42 U.S.C. § 4332(2)(C)(iii)
alternatives discussion need not include every possible alternative, but rather every reasonable alternative; LBP-15-3, 81 NRC 104 (2015)
among the limited issues within the scope of a license renewal proceeding are alternatives for reducing adverse environmental impacts listed as Category 2 issues in Appendix B to Subpart A of 10 C.F.R. Part 51 including cost-effective alternatives for mitigating severe accidents; LBP-11-2, 73 NRC 45 (2011); LBP-11-13, 73 NRC 550 (2011)
environmental impact statements are to include a detailed statement by the responsible official on alternatives to the proposed action; LBP-12-17, 76 NRC 82 (2012); LBP-14-9, 80 NRC 43 (2014)
license renewal applications are subject to an environmental review; CLI-12-5, 75 NRC 304 (2012)
where an assessment of alternatives to the proposed action was prepared at the early site permit stage and no new information in the areas of energy alternatives or system design alternatives had been identified at the combined license stage, conclusions made at the ESP stage remain valid; CLI-12-2, 75 NRC 117 (2012)
- National Environmental Policy Act, 102(2)(C)(iv), 42 U.S.C. § 4332(2)(C)(iv)
NRC is required to assess the relationship between local short-term uses of the environment and the long-term productivity of the environment; CLI-12-2, 75 NRC 118 (2012); CLI-12-9, 75 NRC 474 (2012)
- National Environmental Policy Act, 102(2)(C)(v), 42 U.S.C. § 4332(2)(C)(v)
NRC is required to consider the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-12-2, 75 NRC 118 (2012); CLI-12-9, 75 NRC 474 (2012); LBP-13-10, 78 NRC 137 (2013)
- National Environmental Policy Act, 42 U.S.C. § 4332(2)(D)
non-NEPA document, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 430 (2015)
- National Environmental Policy Act, 42 U.S.C. § 4332(2)(D)(ii)
NEPA encourages state participation when appropriate and authorized, but coordination between a federal agency and a state requires active involvement between the two in order for the federal agency to meet its independent review burden; LBP-15-11, 81 NRC 439 n.248 (2015)
- National Environmental Policy Act, 102(2)(E), 42 U.S.C. § 4332(2)(E)
agencies must study, develop, and describe appropriate alternatives to proposed actions; CLI-12-9, 75 NRC 473 (2012); CLI-15-13, 81 NRC 587 (2015)
applicant's alternatives analysis must be sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to the proposed action; LBP-11-13, 73 NRC 552 (2011)
applicant's environmental report must discuss appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-11-6, 73 NRC 197 n.50 (2010)
in the area of impacts of combined licenses and limited work authorizations, NRC Staff, in its review of new and significant information, identified a change in impacts associated with terrestrial ecology; CLI-12-2, 75 NRC 117 (2012)
- National Historic Preservation Act, 101(d)(6)(B)
agency official must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking; LBP-13-6, 77 NRC 277 n.12 (2013)
- National Historic Preservation Act, 106, 16 U.S.C. § 470
all adverse effects to any NRHP-eligible historic or cultural resource must be considered during any federal undertaking, such as an NRC licensing action for a proposed uranium enrichment facility; LBP-11-26, 74 NRC 576 (2011)
area of potential effect of a federal undertaking must be designated, and the lead federal agency must consult with the SHPO regarding the presence and protection of historic and cultural resources in the

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- designated area, as well as any federally recognized Native American groups with an ancestral interest in the property, to determine if resources important to the tribe are present; LBP-11-26, 74 NRC 576 (2011)
- National Historic Preservation Act, 106, 16 U.S.C. § 470a(b)(3)(E), (d)(2)
tribes have a procedural right to be consulted regarding historic preservation matters; LBP-13-6, 77 NRC 271 (2013)
- National Historic Preservation Act, 16 U.S.C. § 470a(d)(6)(B)
federal agencies must consult with any Indian tribe that attaches religious and cultural significance to the sites; LBP-15-16, 81 NRC 639, 651 (2015)
- National Historic Preservation Act, 106, 16 U.S.C. § 470f (2006)
before licensing any federally assisted undertaking, federal agencies must take into account the effect of the undertaking on any site that is included or eligible for inclusion in the National Register of Historic Places; LBP-12-23, 76 NRC 480 (2012); LBP-15-16, 81 NRC 639 (2015)
demolition of a historic unit will result in a finding of adverse effect under applicable criteria in 36 C.F.R. 800.5; CLI-15-13, 81 NRC 580-81 (2015)
NRC must also allow the federal Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to a combined license; LBP-12-23, 76 NRC 480 (2012)
NRC Staff is required to consult with interested parties, including Indian tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 17 n.33 (2014)
- National Historic Preservation Act, 16 U.S.C. § 470 et seq.
NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 52 (2015)
- Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq.
historic properties may be protected under this statute; LBP-15-2, 81 NRC 52 (2015)
- Nuclear Waste Policy Act of 1982, Pub. L. No. 97-425, 96 Stat. 2201 (1982)
Congress has left intact both NRC's and the court's interpretation of the Atomic Energy Act with respect to a spent fuel disposal safety finding at the time of reactor licensing; CLI-15-4, 81 NRC 228, 234 (2015)
- Nuclear Waste Policy Act of 1982, 114, 42 U.S.C. § 10134 (2012)
responsibility for constructing and operating a waste repository was assigned to the Department of Energy, not the NRC; CLI-15-4, 81 NRC 241-42 (2015)
- Nuclear Waste Policy Act, 114(f)(4), 42 U.S.C. § 10134(f)(4)
NRC is directed to adopt the DOE EIS to the extent practicable; CLI-13-8, 78 NRC 232 (2013)
- Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*,
admissibility of contention that environmental assessment fails to adequately describe and analyze the impacts of maintaining post-operational wellfields as long-term hazardous waste facilities is decided; LBP-15-15, 81 NRC 606 (2015)
proper sampling plan for establishing baseline groundwater values is described; LBP-15-3, 81 NRC 92 (2015)
- Rivers and Harbors Act of 1899, 10, 33 U.S.C. § 403
combined license applicants must obtain permits from the U.S. Army Corps of Engineers in order to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 430 (2012)
in completing the environmental impact statement, the U.S. Army Corps of Engineers' mission is to protect the nation's aquatic resources, including wetlands; CLI-12-9, 75 NRC 472 (2012)
- Safe Drinking Water Act, 1422, 42 U.S.C. § 1422
the EPA-approved state permitting authority for Class I injection wells is the regulatory entity from which applicant must seek and obtain the permit necessary to allow it to operate a deep injection well at the site; LBP-13-6, 77 NRC 299 (2013)
- Tex. Sess. Law Serv. Ch. 939 (West) (codified as Tex. Util. Code Ann. § 39.905(a)(3)(B), (C) (2007)
demand-side management programs require regulated utilities in the region and integrated utilities outside the region to offer DSM programs sufficient to offset 15% of the growth in demand by December 31, 2008, and 20% of the growth in demand by December 31, 2009; LBP-11-7, 73 NRC 286 n.199 (2011)

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Trade Secrets Act, 18 U.S.C. § 1905

NRC Staff and its counsel, like the board and its staff, are federal government employees and are thus subject to stringent sanctions for the unauthorized disclosure of the protected information or protected documents; LBP-11-5, 73 NRC 138-39 n.12 (2011)

Treaty of Fort Laramie with Sioux, Etc., Sept. 17, 1851, 11 Stat. 749

Indian tribe's treaty-based claims of ownership of mining site and international treaty-based claims cannot support admission of environmental assessment contention; LBP-15-11, 81 NRC 411 (2015)

Treaty with the Sioux — Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee — and Arapaho, Apr. 29, 1868, 15 Stat. 635

Indian tribe's treaty-based claims of ownership of mining site and international treaty-based claims cannot support admission of environmental assessment contention; LBP-15-11, 81 NRC 411 (2015)

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- Administrative Conference of the United States 1981 and 1985 Model Rules
language that would have extended Equal Access to Justice Act's applicability to proceedings in which an agency observes formal Administrative Procedure Act §554 procedures as a matter of discretion was rejected; LBP-11-8, 73 NRC 356 (2011)
- Black's Law Dictionary* 329 (9th ed. 2009)
no bright line is established between control or domination, on the one hand, and their absence, on the other; LBP-14-3, 79 NRC 307 (2014)
- Black's Law Dictionary* 454 (6th ed. 1990)
"dicta" is a court's opinion that goes beyond the facts before court and therefore are individual views of the author of the opinion and not binding in subsequent cases as legal precedent; LBP-14-4, 79 NRC 360 n.39 (2014)
- Black's Law Dictionary* 1310 (9th ed. 2009)
prima facie showing on a rule waiver request is not a final determination on the merits, but merely requires presentation of enough information to allow the board to infer (absent disproof) that special circumstances exist; LBP-14-16, 80 NRC 193-94 (2014)
- 128 Cong. Rec. S17506 (Sept. 11, 1959) (Remark of Sen. Anderson)
there would be confusion and possible conflict between federal and state regulations and uncertainty on the part of the industry and possible jeopardy to the public health and safety if the Atomic Energy Act had continued to remain silent as to the regulatory role of the states; CLI-11-12, 74 NRC 474 n.44 (2011)
- Council on Environmental Quality and California Governor's Office of Planning and Research, *NEPA Handbook, NEPA and CEQA: Integrating Federal and State Environmental Reviews* 17 (Feb. 2014), available at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/handbooks>
agencies can, consistent with NEPA regulations, incorporate by reference analyses and information from existing documents into an environmental assessment or environmental impact statement provided the material has been appropriately cited and described; LBP-15-11, 81 NRC 440 n.258 (2015)
- Fed. R. App. P. 18(a)(1)
although NRC has no specific rule governing stays of agency action pending judicial review, federal law requires parties seeking such stays in court to come to the agency first; CLI-12-11, 75 NRC 528 (2012)
- Fed. R. App. P. 28(j)
there is a difference between asserting genuinely new arguments and alerting the tribunal to new, additional support for an existing argument; LBP-15-27, 82 NRC 189 n.32 (2015)
- Fed. R. Civ. P. 12(d)
courts may treat motions to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)) and motions for judgment on the pleadings (under Rule 12(c)) as motions for summary judgment under Rule 56 if matters outside the pleadings are presented to and not excluded by the court; LBP-12-2, 75 NRC 162 (2012)
- Fed. R. Civ. P. 56
summary judgment movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law; LBP-12-23, 76 NRC 450 (2012)

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- Fed. R. Evid. 103(a)(1)
board considered evidence submitted with petitioner's reply to which opposing parties didn't object;
LBP-15-5, 81 NRC 289 n.252 (2015)
objection not timely made is waived; LBP-15-20, 81 NRC 859 n.184 (2015)
- Fed. R. Evid. 201
judicial notice may be taken of any fact not subject to reasonable dispute in that it is either generally
known within the territorial jurisdiction of the trial court or capable of accurate and ready
determination by resort to sources whose accuracy cannot reasonably be questioned; LBP-11-20, 74
NRC 101 n.56 (2011)
- Fed. R. Evid. 201(b), (f)
judicial notice may be taken at any stage of the proceeding; LBP-11-7, 73 NRC 290 n.231 (2011)
- Fed. R. Evid. 401
evidence is relevant if it has some tendency to make deliberative process privilege opponent's allegations
more or less likely; LBP-13-5, 77 NRC 248 (2013)
- Fed. R. Evid. 403
courts may exclude relevant evidence if its probative value is substantially outweighed by a danger of
unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly
presenting cumulative evidence; LBP-12-21, 76 NRC 248 n.171 (2012)
- Fed. R. Evid. 615
at the request of any party a court must order witnesses excluded so that they cannot hear other
witnesses' testimony; LBP-12-21, 76 NRC 249 (2012)
- Fed. R. Evid. 801(c)
out-of-court statements offered to prove the truth of a matter asserted are hearsay; LBP-11-14, 73 NRC
600 n.59 (2011)
- Fed. R. Evid. 1002-1003
best evidence rule provides that an original or duplicate writing, recording, or photograph is required in
order to prove its content unless an evidentiary rule or federal statute provides otherwise; CLI-13-5,
77 NRC 231 n.36 (2013)
- Federal-State Relationships in the Atomic Energy Field: Hearings Before the Joint Committee on Atomic
Energy*, 86th Cong. at 301 (1959) (Joint Committee Hearings) (testimony of Robert Lowenstein,
Atomic Energy Commission, Office of the General Counsel)
the stated purpose of AEA § 274 is to clarify the respective responsibilities under the AEA of the states
and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;
CLI-11-12, 74 NRC 472 (2011)
- Gov't Accountability Off., *Principles of Federal Appropriations Law*, Vol. I, at 2-21, GAO-04-261SP (3d ed.
2004)
existence of a specific appropriation for licensing activities prevents NRC, under well-settled principles of
appropriations law, from using its general appropriations for those activities; CLI-13-8, 78 NRC 235
(2013)
- Hearings Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong. 60
(1962) (letter of AEC Commissioner Loren K. Olsen)
the Atomic Energy Act requirement that NRC grant a hearing upon the request of any person whose
interest may be affected by certain agency proceedings is interpreted as requiring formal
Administrative Procedure Act § 554 on-the-record hearings; LBP-11-8, 73 NRC 358 (2011)
- H.R. Rep. No. 97-177, at 151 (1981)
Congress called upon the Commission to make fundamental changes in its public hearing process to
ensure that hearings adjudicate genuine, substantive safety and environmental issues placed in
contention by qualified intervenors; LBP-11-6, 73 NRC 171 (2010)
- Levin, R., *A Blackletter Statement of Federal Administrative Law*, 54 Admin. L. Rev. 1, 44-45 (2003)
agencies can reach exactly the same result on a remanded issue as long as they rely on the correct view
of a law that they previously misinterpreted, or as long as they explain themselves better or develop
better evidence for their position; CLI-11-12, 74 NRC 469 n.20 (2011)
- Mandelker, Daniel R., *NEPA Law & Litigation* § 9:11 (2006)
connected actions are distinguished from cumulative impacts; LBP-14-6, 79 NRC 419-20 n.76 (2014)

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- Mandelker, Daniel R., *NEPA Law and Litigation* §§ 1.1, 8.18 (2d ed. 2008)
NEPA applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-11-32, 74 NRC 666 (2011)
- 322 Mass. Code Regs. § 6.17(3)
it shall be unlawful for any person to harvest, possess, or sell river herring in the Commonwealth or in the waters under the jurisdiction of the Commonwealth; LBP-12-16, 76 NRC 55-56 (2012)
- Memorandum on Government-to-Government Relations with Native American Tribal Governments, 30 Weekly Comp. Pres. Doc. 936 (May 2, 1994)
agencies are to ensure that the federal government operates within a government-to-government relationship with federally recognized Native American tribes, reflecting respect for the rights of self-government due the sovereign tribal governments; LBP-15-16, 81 NRC 639-40 (2015)
- Model Rules of Professional Conduct R. 3.3(a)(3)
counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 127-28 n.6 (2014)
- 6 Moore, James Wm., et al., *Moore's Federal Practice* ¶ 56.22[2], at 2824-25 (2d ed. 1966)
no defense to an insufficient showing by summary disposition proponent is required; LBP-12-4, 75 NRC 219 (2012)
summary judgment movant has the burden to show that he is entitled to judgment under established principles, and if he does not discharge that burden, then he is not entitled to judgment; LBP-12-4, 75 NRC 219 (2012)
that a summary disposition opponent declines to oppose the motion does not mean that movant is entitled to a favorable judgment; LBP-12-4, 75 NRC 219 (2012)
- N.J. Admin. Code § 7:28-12.3
license termination is permitted under limited restricted use for sites where only institutional controls are used or restricted use for sites where both institutional controls and engineered controls are used; CLI-11-12, 74 NRC 494 (2011)
- N.J. Admin. Code §§ 7:28-6.1, 12.8, 12.9, 12.10, 12.11, and 12.12
because New Jersey has adopted more stringent criteria for license termination under restricted release than for unrestricted release, as well as more conservative criteria than NRC's, New Jersey's regulations are compatible with NRC's agreement-state policy; CLI-13-6, 78 NRC 164 (2013)
- N.J. Admin. Code § 7:28-6.1(a)
public doses for all Part 20 radiation protection programs must be as low as reasonably achievable and a basic radiation protection public dose standard of 100 mrem per year is required; CLI-11-12, 74 NRC 482 (2011)
- N.J. Admin. Code § 7:28-12.8, 12.9, 12.10
New Jersey has two restricted-release options that permit license termination under specified soil concentration levels; CLI-11-12, 74 NRC 494 (2011)
- N.J. Admin. Code § 7:28-12.8(a)(1), 12.9, 12.10, and 12.11
licensee is required to show, using concentration tables or dose modeling, that, for unrestricted use remedial action, limited restricted use remedial action, or a restricted use remedial action, the total effective dose equivalent to members of the public would not be more than 15 mrem per year; CLI-11-12, 74 NRC 482 (2011)
- N.J. Admin. Code § 7:28-12.8(b) and (c)
radioactively contaminated ground and surface water must be remediated in accordance with New Jersey water quality requirements; CLI-11-12, 74 NRC 483 (2011)
- N.J. Admin. Code § 7:28-12.10(d)
New Jersey has adopted license termination requirements that incorporate more conservative dose calculation methodologies than NRC requirements; CLI-11-12, 74 NRC 482-83 (2011)
- N.J. Admin. Code §§ 7:28-12.10(e), 7:28-12.11(e)
New Jersey has adopted license termination requirements that incorporate more conservative dose
- N.J. Admin. Code § 7:28-12.11
licensees may petition for restricted release using alternative remediation standards, under which license termination is based on dose modeling instead of soil concentration levels; CLI-11-12, 74 NRC 494 (2011)

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- N.J. Admin. Code § 7:28-12.11(e)
restricted-release decommissioning requires that doses to members of the public resulting from a simultaneous and complete failure of institutional and engineering controls not exceed 100 mrem per year; CLI-11-12, 74 NRC 495 (2011)
- Office of the Federal Register, *A Guide to the Rulemaking Process*, at 3-4 (2011), available at https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf
advance notice of proposed rulemaking is a formal invitation to participate in shaping the proposed rule; LBP-15-15, 81 NRC 612 n.100 (2015)
- Ohio Rules of Prof'l Conduct R. 3.3(a)(1) (2007)
a lawyer is prohibited from knowingly making a false statement of law or fact to a tribunal; LBP-11-13, 73 NRC 549 (2011)
an attorney who purports to represent a client without authorization is subject to disciplinary proceedings by the state bar association; LBP-11-13, 73 NRC 549 (2011)
- Pierce, Richard J., Jr., *Administrative Law* § 7.3 (5th Ed. 2010)
purpose of notice of proposed rulemaking is not to set binding law or policy, but instead to provide interested members of the public an opportunity to comment in a meaningful way on the agency's proposal; LBP-15-15, 81 NRC 611 & n.94 (2015)
requirement for a notice of proposed rulemaking is to sufficiently and fairly apprise interested parties of the issues involved, rather than to specify every precise proposal that the agency may ultimately adopt; LBP-15-15, 81 NRC 611 n.94 (2015)
- 2 Pierce, Richard J., Jr., *Administrative Law Treatise* § 10.1, at 910 (5th ed. 2010)
if licensing boards deem prefiled evidence to be of little or no value, they simply need not ask about it at the evidentiary hearing, and are free to accord such evidence little or no weight; LBP-12-21, 76 NRC 248 n.171 (2012)
process similar to jury trial in NRC proceedings would require creating one licensing board to review the evidence for purposes of admissibility and a second board to weigh the admitted evidence for the purpose of ruling on the merits, which is unnecessary in administrative proceedings; LBP-12-21, 76 NRC 248 n.171 (2012)
- Repka, David A., & Smith, Tyson R., *Proximity, Presumptions, and Public Participation: Reforming Standing at the Nuclear Regulatory Commission*, 62 Admin. L. Rev. 583, 590 (2010)
NRC's 50-mile proximity presumption is an example of NRC's great liberality in the arena of standing; LBP-14-4, 79 NRC 375 n.74 (2014)
- Report by the Joint Committee on Atomic Energy: Amendments to the Atomic Energy Act of 1954, as amended, with Respect to Cooperation with the States*, H.R. Rep. No. 86-1125, 86th Cong., 1st Sess. at 3
in enacting AEA § 274, Congress acknowledged the significant interest of the states in regulating radiation hazards that do not involve interstate, national, or international considerations; CLI-11-12, 74 NRC 473 (2011)
- Report by the Joint Committee on Atomic Energy: Amendments to the Atomic Energy Act of 1954, as amended, with Respect to Cooperation with the States*, H.R. Rep. No. 86-1125, 86th Cong., 1st Sess. at 8
in enacting AEA § 274, Congress acknowledged the significant interest of the states in regulating radiation hazards that are local and limited in nature; CLI-11-12, 74 NRC 473 (2011)
- S. Rep. No. 1677, 87th Cong., 2d Sess., reprinted in 1962 *U.S. Code Cong. & Admin. News* 2207, 2213
more formal procedures are required in contested cases, especially those involving compliance; LBP-11-8, 73 NRC 357 n.31 (2011)
- Schoenbaum, Thomas J., and Richard B. Stewart, *The Role of Mitigation and Conservation Measures in Achieving Compliance with Environmental Regulatory Statutes: Lessons from Section 316 of the Clean Water Act*, 8 N.Y.U. Envtl. L.J. 237, 276 (2000)
although NEPA does not mention mitigation, by administrative practice and regulation, mitigation plays an important role in the discharge by federal agencies of their procedural duty under NEPA to prepare an EIS; LBP-12-18, 76 NRC 159-60 (2012)

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- Selected Materials on Federal-State Cooperation in the Atomic Energy Field*, 86th Cong., 1st Sess. at 27 (1959)
- the Commission may enter into an agreement under AEA § 274a with any state if the conditions of state certification and Commission finding of adequacy and compatibility are met; CLI-11-12, 74 NRC 473 (2011)
- Sen. Doc. No. 248, 79 Cong. 200, 248 (1946)
- legislative history of the Administrative Procedure Act emphasized the notice requirement for proposed rulemaking in order to fairly apprise the public of the agency's potential action; LBP-15-15, 81 NRC 611 n.92 (2015)
- 2A Singer, Norman J., *Statutes and Statutory Construction* § 47:38, at 393-95 (6th ed. 2000)
- applying principles of statutory interpretation, the board declined to insert into the regulations a requirement to specify damage states or the number and magnitude of fires and explosions with Commission intent to the contrary and without a showing that such a requirement is unavoidable or imperatively required; CLI-11-9, 74 NRC 242 (2011)
- 1 Staff of Joint Committee on Atomic Energy, 87th Cong., 1st Sess., *Improving the AEC Regulatory Process* (Joint Comm. Print 1961)
- in cases involving license suspension or revocation, where the Atomic Energy Commission's staff is cast in an accusatory role, the precautions prescribed by the Administrative Procedure Act should be carefully observed; LBP-11-8, 73 NRC 357 n.31 (2011)
- it remains open to Congress to consider whether a ruling comports with actual legislative intent and, if appropriate, to enact clarifying legislation that, consistent with legislative history, mandates Administrative Procedure Act § 554 hearings in Atomic Energy Act enforcement proceedings; LBP-11-8, 73 NRC 358 n.31 (2011)
- U.S. Const. Art. III
- case or controversy limitation does not apply to NRC; LBP-14-4, 79 NRC 350 (2014)
- judicial concepts of standing limit the jurisdiction and power of federal courts to cases and controversies; LBP-14-4, 79 NRC 350 (2014) calculation methodologies than NRC requirements; CLI-11-12, 74 NRC 483 (2011)
- Webster's Third New International Dictionary of the English Language, Unabridged* 1945 (2002)
- "revolving credit" arrangement is one type of credit facility, and may be used repeatedly up to the limit specified after partial or total repayments have been made; CLI-13-1, 77 NRC 20 n.114 (2013)
- Webster's Third New International Dictionary* 106 (Philip B. Gove ed. in chief, unab. 1976)
- plain meaning of the word "approval," as "the act of approving" and "certification as to acceptability," which requires an affirmative action on the part of an approver, clearly establishes that requiring compliance is different from granting an approval; LBP-12-15, 76 NRC 34 (2012)
- 1 Wigmore, J., *Evidence* 18 (3d ed. 1940)
- in absence of objection, hearsay evidence is treated as being properly admitted and may be given such probative effect and value to which it is entitled; LBP-15-20, 81 NRC 859 n.184 (2015)
- 29 Wright, Charles Alan, & Gold, Victor James, *Federal Practice and Procedure: Evidence* § 6241 (1st ed. 1997)
- whenever a party requests it, exclusion of witnesses is now mandatory rather than a matter of discretion; LBP-12-21, 76 NRC 249-50 (2012)

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ABEYANCE OF APPEAL

given the posture of the case, the Commission declines to decide a petition for review but will allow petitioner to file a motion to reinstate its petition should the proceeding be reactivated at a future time; CLI-11-15, 74 NRC 815 (2011)

when a petition for review is filed with the Commission at the same time as a motion for reconsideration is filed with the board, the Commission will delay considering the petition for review until after the board has ruled; CLI-12-5, 75 NRC 301 (2012)

ABEYANCE OF CONTENTION

as an exercise of its inherent supervisory authority over adjudications, the Commission directed that waste confidence contentions and any related contentions that may be filed in the near term be held in abeyance pending further order; CLI-13-7, 78 NRC 199 (2013); LBP-12-24, 76 NRC 503 (2012); LBP-13-1, 77 NRC 57 (2013); LBP-13-4, 77 NRC 107 (2013); LBP-13-8, 78 NRC 1 (2013); LBP-13-13, 78 NRC 246 (2013); LBP-14-6, 79 NRC 404 (2014)

Commission directed all licensing boards to reject pending waste confidence contentions that had been held in abeyance, because the generic impact determinations have been the subject of extensive public participation in the rulemaking process and therefore are excluded from litigation in individual proceedings; LBP-15-1, 81 NRC 15 (2015)

Commission directed that all spent fuel storage contentions be held in abeyance; CLI-15-6, 81 NRC 340 (2015); LBP-15-1, 81 NRC 15 (2015)

Commission directed that licensing boards hold waste disposal contentions in abeyance pending further Commission order, which would be issued in conjunction with a then to-be-determined agency response to the District of Columbia Circuit's ruling; CLI-14-8, 80 NRC 71 (2014); LBP-14-12, 80 NRC 138 (2014)

Commission retained authority to provide ultimate direction on the waste confidence contentions being held in abeyance; LBP-14-8, 79 NRC 519 (2014)

contention concerning need under NEPA to include a discussion of the environmental impacts of spent fuel pool leakage, SFP fires, and the lack of a spent fuel repository is held in abeyance; LBP-12-26, 76 NRC 559 (2012)

contention concerning temporary storage and ultimate disposal of nuclear waste was held in abeyance pending further order from the Commission; LBP-14-7, 79 NRC 451 (2014)

following issuance of the board's final dispositive decision on contentions held in abeyance, and consistent with NRC procedural rules, applicant and intervenor will have the opportunity to appeal the board's decisions; CLI-14-3, 79 NRC 31 (2014)

in light of the vacatur of the Waste Confidence Decision and Temporary Storage Rule, environmental reports must consider the reasonably foreseeable impacts of permanent storage of spent fuel, and contentions concerning the failure of the ER to do so must be held in abeyance; LBP-12-24, 76 NRC 503 (2012)

in view of the special circumstances presented by waste confidence, the Commission directed that those contentions and any related contentions filed in the near term be held in abeyance pending our further order; CLI-14-3, 79 NRC 31 (2014); LBP-14-3, 79 NRC 267 (2014)

licensing boards were instructed to hold in abeyance any contentions on waste confidence matters until after the Commission's issuance of a new generic environmental impact statement; LBP-14-16, 80 NRC 183 (2014)

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new contention concerning continued storage of spent nuclear fuel is ordered held in abeyance pending further Commission order; LBP-14-14, 80 NRC 144 (2014)

NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the District of Columbia Circuit's remand is appropriately addressed; LBP-14-3, 79 NRC 267 (2014)

request for a protective stay to hold the proceeding in abeyance indefinitely pending potential future events is inconsistent with NRC's longstanding interest in sound case management and regulatory finality and would be unfair to the other parties; CLI-14-6, 79 NRC 445 (2014)

waste confidence and similar contentions are held in abeyance pending further order from the Commission; LBP-14-8, 79 NRC 519 (2014)

waste confidence contention's pendency creates some uncertainty as to whether petitioner may appeal the board's ruling on a proposed contention, or whether it must await resolution of the waste confidence issue; LBP-14-8, 79 NRC 519 (2014)

ABEYANCE OF PROCEEDING

agencies must set and complete proceedings on license applications with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time; CLI-12-6, 75 NRC 352 (2012)

because the Commission will have an opportunity to take a fresh look at concerns petitioners have expressed once the particulars of their rulemaking petition have been scrutinized by public comment and agency review, holding up proceedings is not necessary to ensure that the public will realize the full benefit of ongoing regulatory review; CLI-11-1, 73 NRC 1 (2011)

Commission generally has declined to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-11-1, 73 NRC 1 (2011)

Commission may consider requests to suspend or hold proceedings in abeyance pursuant to its inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 141 (2011)

even absent an express provision authorizing such relief, the Commission has occasionally considered requests to suspend proceedings or hold them in abeyance in the exercise of its inherent supervisory powers over proceedings; CLI-11-1, 73 NRC 1 (2011)

forcing a pro se intervenor to file monthly disclosures and closely follow a proceeding indefinitely solely to obtain a ruling on the merits of its claim would constitute significant unfairness and hardship; LBP-12-19, 76 NRC 184 (2012)

if NRC determines that changes to its current environmental assessment rules are warranted, it can revisit whether an individual licensing review or adjudication should be held in abeyance pending the outcome of a relevant rulemaking; CLI-14-7, 80 NRC 1 (2014)

in NEPA context, path that licensee and NRC Staff must follow relative to a license condition is sufficiently clear that continuing to hold the hearing open while it is completed would be an unnecessary extension of the adjudicatory process; LBP-15-3, 81 NRC 65 (2015)

longstanding NRC practice has been to limit orders delaying proceedings to the duration and scope necessary to promote the Commission's dual goals of public safety and timely adjudication; CLI-11-1, 73 NRC 1 (2011)

NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand is appropriately addressed; CLI-12-17, 76 NRC 207 (2012); LBP-12-21, 76 NRC 218 (2012)

ordinary burden on parties in pursuing litigation pending rulemaking does not justify disrupting ongoing license review; CLI-11-1, 73 NRC 1 (2011)

petitioner's request to hold the license renewal proceeding in abeyance until the Commission resolves petitioner's request to suspend the proceeding pending evaluation of the Fukushima accident is denied because the Commission has denied the suspension request; LBP-11-35, 74 NRC 701 (2011)

post-9/11 abeyance of a proceeding was denied where the proceeding was at an early stage, there was no risk of immediate threat to public health and safety, there were non-terrorism-related contentions to be considered, and the only harm to petitioner would be inevitable litigation costs; CLI-11-5, 74 NRC 141 (2011)

suspension of licensing proceedings is considered a drastic action that is not warranted absent immediate threats to public health and safety; CLI-11-1, 73 NRC 1 (2011)

See also Delay of Proceeding

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ABUSE OF DISCRETION

applicants may prevail against NRC Staff if they prove that a particular contested assessment of a deficiency was arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)

contention that NRC or licensee has abused or exceeded its lawful discretion with respect to nuclear safety programs is not admissible because it fails to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-14-4, 79 NRC 319 (2014)

NRC Staff improperly discharges its duties with respect to the grading of an operating test if the grading is inappropriate or unjustified or if the grading strays too far afield of the twin goals of equitable and consistent examination administration, thus becoming arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)

review of discretionary Staff actions not subject to a hearing opportunity is governed by an abuse of discretion standard; CLI-13-1, 77 NRC 1 (2013)

ACCESS AUTHORIZATION

individuals who are subject to an access authorization program shall, at a minimum, report any concerns arising from behavioral observation and are individually liable if they fail to do so; LBP-14-4, 79 NRC 319 (2014)

licensees are permitted to develop their own individual access authorization programs, provided they satisfy 10 C.F.R. 73.56; LBP-14-4, 79 NRC 319 (2014)

See also Controlled Access

ACCIDENTS

all credible accident sequences must be identified in the integrated Safety analysis summary as well as items relied on for safety and necessary safety controls; LBP-12-21, 76 NRC 218 (2012)

applicant's integrated safety analysis must consider potential accident sequences caused either by deviations in the processes that will be conducted at the proposed facility or by credible external events, including natural phenomena; LBP-11-11, 73 NRC 455 (2011)

contention that does not dispute any specific portion of applicant's fuel handling accident analysis is inadmissible for lack of a genuine dispute; LBP-15-18, 81 NRC 793 (2015)

criteria for limiting conditions for operation address aspects of reactor operation that contribute to prevention of accidents and provide the capability to provide immediate mitigation of accidents; DD-13-3, 78 NRC 571 (2013)

items relied upon for safety in uranium enrichment facilities should be described in sufficient detail to allow a Staff reviewer to understand the IROFS's functions in relation to the performance standards in section 70.61, which specifies limitations on the levels of risk for credible high- and intermediate-consequence accidents and nuclear criticality accidents; LBP-11-11, 73 NRC 455 (2011)

nonspeculative showing that increased traffic accidents could be another impact of increased road usage might establish standing; LBP-12-3, 75 NRC 164 (2012)

to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in this license renewal proceeding, the Commission must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 427 (2011)

uranium enrichment facility applications must identify radiological and chemical hazards, facility hazards that could affect safety of licensed materials, potential accident sequences and their consequences and likelihood of occurrence, and each item relied on for safety; LBP-12-21, 76 NRC 218 (2012)

See also Design Basis Accident; Fukushima Accident; Three Mile Island Accident

ACCIDENTS, LOSS-OF-COOLANT

establishing safety limits for stored irradiated fuel is not appropriate, but measures to prevent a significant loss of coolant inventory under accident conditions that could challenge the cooling of the stored fuel are documented in the updated final safety analysis report; DD-13-3, 78 NRC 571 (2013)

revision of 10 C.F.R. 50.63 to expand the coping capability to include cooling the spent fuel, preventing a loss-of-coolant accident, and preventing containment failure would be a significant benefit; LBP-12-18, 76 NRC 127 (2012)

ACCIDENTS, SEVERE

accident sequence with a probability conservatively estimated at 2.0×10^{-7} per reactor year is remote and speculative for the purposes of NEPA; LBP-11-38, 74 NRC 817 (2011)

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agency conducting a NEPA analysis must examine both the probability of a given harm occurring and the consequences of that harm if it does occur; CLI-15-6, 81 NRC 340 (2015)

although the likelihood of severe accidents occurring is lower than that for design basis accidents, consequences of severe accidents are generally greater; LBP-11-38, 74 NRC 817 (2011)

applications for certified reactor designs include a probabilistic risk assessment for severe accidents; LBP-11-38, 74 NRC 817 (2011)

because the generic environmental impact statement provides a severe accident impacts analysis that envelopes potential impacts at all existing plants, the environmental impacts of severe accidents during the license renewal term already have been addressed generically in bounding fashion; LBP-12-18, 76 NRC 127 (2012)

because the probability of a spent fuel pool accident causing significant harm is remote, there is no need for applicants to assess mitigation alternatives as part of license renewal; LBP-15-5, 81 NRC 249 (2015)

board improperly allowed petitioner to challenge the generic environmental impact statement's finding regarding severe accident consequences; CLI-15-6, 81 NRC 340 (2015)

claim that SAMA analysis is deficient for failing to address potential spent fuel pool accidents falls beyond the scope of NRC SAMA analysis and impermissibly challenges NRC regulations; LBP-11-13, 73 NRC 534 (2011)

COL applications must include a description and plans for implementation of the guidance and strategies required by section 50.54(hh)(2) for severe accident mitigation; CLI-11-9, 74 NRC 233 (2011)

Commission imposed a license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities following a beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink; CLI-12-9, 75 NRC 421 (2012)

Commission precedent interprets the term, "severe accidents," to encompass only reactor accidents and not spent fuel pool accidents; LBP-11-2, 73 NRC 28 (2011)

contention that in the event of a core-melt accident, applicant's emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks NRC's emergency planning regulation is inadmissible; LBP-11-15, 73 NRC 629 (2011)

contention that license renewal application lacks supporting documentation providing analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that the frequency of occurrence of severe accidents is erroneously underestimated should have been raised at the outset of the license renewal proceeding and thus is untimely; LBP-11-35, 74 NRC 701 (2011)

determination that, for any license renewal of a nuclear power plant, the probability-weighted consequences of a severe accident are small cannot be challenged; LBP-11-2, 73 NRC 28 (2011)

even if a site would not be totally evacuated, a fission product release from one unit would likely contaminate the entire site, with the result that both units could be out of operation for years; LBP-15-5, 81 NRC 249 (2015)

Fukushima accident does not significantly alter the overall environmental picture for severe reactor accidents at the site; CLI-12-15, 75 NRC 704 (2012)

Fukushima-related petitions for suspension of proceeding and rescission of regulations that make generic conclusions about environmental impacts of severe reactor and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings are denied; LBP-11-39, 74 NRC 862 (2011)

generic analysis remains appropriate for spent fuel pool accidents in license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

generic environmental impact statement findings with respect to severe accident consequences are not subject to challenge in individual license renewal proceedings; CLI-15-6, 81 NRC 340 (2015)

in response to the Fukushima accident in Japan, NRC is conducting a comprehensive safety review of the requirements and guidance associated with accident mitigation measures; CLI-12-1, 75 NRC 39 (2012)

in the event of a severe accident in an AP1000, squib valves, which are explosively activated, reduce pressure and inject water as needed into the reactor vessel; CLI-15-13, 81 NRC 555 (2015)

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license renewal provisions cover environmental issues relating to onsite spent fuel storage generically, and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities to address loss of large areas from fires or explosions that arise from a beyond-design-basis event; CLI-12-2, 75 NRC 63 (2012); DD-15-11, 82 NRC 361 (2015)

licensees of boiling water reactors with Mark I and II containments are required to design and install a venting system that provides venting capability from the wetwell during severe accident conditions; DD-15-1, 81 NRC 193 (2015)

merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-14-4, 79 NRC 249 (2014)

NRC guidance documents outline the process licensees use to define and deploy strategies to enhance their ability to cope with beyond-design-basis external events, including station blackout; DD-15-5, 81 NRC 877 (2015)

NRC has addressed pressure suppression containment system vulnerability to early failure under severe accident conditions, including overpressurization, in NUREG-0474; DD-15-1, 81 NRC 193 (2015)

NRC has found, through its individual plant examination and individual plant examination for external events processes and other risk studies, that the severe accident risks are small for all U.S. licensed nuclear power plants; LBP-12-26, 76 NRC 559 (2012)

NRC imposed requirements to provide makeup water independent of offsite power and the normal emergency a.c. power sources to maintain or restore spent fuel pool cooling capability in the event of an accident; DD-15-1, 81 NRC 193 (2015)

nuclear power reactors must have emergency plans in place to respond to accidents despite the fact that Table B-1 within 10 C.F.R. Part 51 concludes that the environmental impacts of both design basis and severe accidents at a nuclear reactor are small for all plants; LBP-13-13, 78 NRC 246 (2013)

only if the probability of a severe accident is so small as to be effectively zero could NRC Staff dispense with the consequences portion of the analysis; CLI-15-6, 81 NRC 340 (2015)

Part 51 treats all spent fuel pool accidents, whatever their cause, as generic, Category 1 events not suitable for case-by-case adjudication; LBP-11-2, 73 NRC 28 (2011)

petitioner's assertion that severe accidents from spent fuel pools must be considered in applicant's SAMA analysis is in direct conflict with NRC regulations; LBP-11-2, 73 NRC 28 (2011)

post-Fukushima spent fuel pool concerns are being addressed through rulemaking on mitigation of beyond-design-basis events; DD-15-1, 81 NRC 193 (2015)

probability-weighted consequences of a severe accident (risk) are small in the context of a license renewal proceeding; CLI-15-6, 81 NRC 340 (2015); LBP-11-13, 73 NRC 534 (2011)

request that licensee replace passive autocatalytic recombiners in the containment with electrically powered thermal hydrogen recombiners is denied; DD-13-1, 77 NRC 347 (2013)

request that NRC immediately revoke prior preapproval of the hardened vent system or direct torus vent system at each GE BWR Mark I unit has been addressed by an order modifying licenses; DD-15-1, 81 NRC 193 (2015)

risk is small for all plants; LBP-12-8, 75 NRC 539 (2012)

severe accidents are reactor accidents more severe than design basis accidents and involve substantial damage to the reactor core; LBP-11-38, 74 NRC 817 (2011)

spent fuel pool accidents are Category 1 issues that do not need to be included in the severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 249 (2015)

station blackout is a beyond-design-basis event and therefore regulations requiring emergency operating procedures do not apply, and so operators would follow a set of procedures required by 10 C.F.R. 50.63(c)(ii) & (iii); LBP-12-18, 76 NRC 127 (2012)

where initial decisions have been issued, the record should not be reopened to take evidence on some accident-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision; CLI-11-5, 74 NRC 141 (2011)

See also Fukushima Accident; Severe Accident Mitigation Alternatives; Severe Accident Mitigation Alternatives Analysis; Severe Accident Mitigation Design Alternatives Analysis

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ACCOUNTABILITY

regular and meaningful consultation and collaboration with tribal officials is to take place through an accountable process at each agency; LBP-15-16, 81 NRC 618 (2015)
to the extent that petitioner's counsel is blameworthy, petitioner may be held accountable; LBP-13-2, 77 NRC 71 (2013)

ACTIVE COMPONENTS

board examined how a transformer performs its intended function to determine whether it undergoes a change in configuration or properties; CLI-15-6, 81 NRC 340 (2015)
such components are excluded from aging management review on the basis of existing regulatory requirements for maintenance and monitoring of structures, systems, and components; CLI-15-6, 81 NRC 340 (2015)
transformer is an active component because it undergoes a change in properties when it performs its intended function; CLI-15-6, 81 NRC 340 (2015)

ADJUDICATORY HEARINGS

debating compliance with another agency's proposed policies before they have been finalized would subject administrative agencies to needless and repetitive litigation; LBP-15-15, 81 NRC 598 (2015)
final no significant hazards consideration determination allows the Commission to issue the challenged license amendment before the petitioner's request for a hearing is adjudicated; LBP-15-17, 81 NRC 753 (2015)
final no significant hazards consideration determination does not either prevent the adjudication from proceeding or restrict the licensing board's substantive determination on public health and safety issues; LBP-15-17, 81 NRC 753 (2015)
hearing can be closed if the Commission orders it; LBP-11-5, 73 NRC 131 (2011)
hearings on environmental issues addressed in the EIS may not commence before issuance of the final EIS; CLI-15-17, 82 NRC 33 (2015)
it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders; LBP-14-4, 79 NRC 319 (2014)
NRC hearings are not environmental impact statement editing sessions; LBP-11-2, 73 NRC 28 (2011)
NRC Staff is authorized to issue a license when it has completed its review during the pendency of a hearing as long as it provides the board and parties notice and an explanation why the public health and safety are protected and why the action is in accord with the common defense and security despite the pendency of the contested matter; CLI-15-17, 82 NRC 33 (2015)
NRC's hearing process is reserved for genuine, material controversies between knowledgeable litigants; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)
there is no fundamental right to participate in administrative adjudications; LBP-11-4, 73 NRC 91 (2011)
See also Closed Hearings; Evidentiary Hearings; Hearing Requests; Hearing Rights; Mandatory Hearings; Notice of Hearing; Operating License Amendment Proceedings; Operating License Renewal Proceedings; Public Hearings

ADJUDICATORY PROCEEDINGS

administrative agencies are allowed to address issues of general applicability through rulemaking instead of individual adjudications, and the choice made between proceeding by general rule or by individual, ad hoc, litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-14-16, 80 NRC 183 (2014)
"adversary adjudication" is defined as an adjudication under section 554 of the Administrative Procedure Act in which the position of the United States is represented by counsel or otherwise; LBP-11-8, 73 NRC 349 (2011)
agency has discretion to choose between rulemaking and adjudication; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)
although NRC Staff is free to carry on internecine warfare, it is not free to wage it in an adjudicatory proceeding where all elements of the NRC Staff appear as a single party; LBP-14-2, 79 NRC 131 (2014)
as an exercise of the Commission's inherent supervisory authority over agency proceedings, it need not address procedural issues that would merit further consideration in adjudications; CLI-12-16, 76 NRC 63 (2012)

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attorneys' fees may be awarded in adversary adjudications that are governed by Administrative Procedure Act § 554, but they may not be awarded in adversary adjudications that Congress did not subject to that section; LBP-11-8, 73 NRC 349 (2011)

board refused to let a matter turn on attempts by NRC Staff and applicant to label a controversial matter in a way that would avoid adjudication; LBP-14-1, 79 NRC 39 (2014)

choice between rulemaking and adjudication (i.e., issuing orders or other license revisions) is within the agency's discretion; LBP-11-11, 73 NRC 455 (2011)

Commission has inherent authority to supervise both NRC Staff's work and adjudicatory proceedings relating to license applications; CLI-14-1, 79 NRC 1 (2014)

Commission has the authority to set the scope of its own hearings; LBP-14-4, 79 NRC 319 (2014)

current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards, and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings; CLI-14-10, 80 NRC 157 (2014)

environmental impact statements are effectively amended through the adjudicatory process; LBP-12-17, 76 NRC 71 (2012)

hearing on environmental issues focus entirely on the adequacy of NRC Staff's work; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

hearing on environmental issues must await issuance of final environmental impact statement; LBP-15-3, 81 NRC 65 (2015)

NRC adjudication is not the appropriate forum for a challenge to a decision by a state regulatory agency; LBP-12-23, 76 NRC 445 (2012)

NRC generally applies contemporaneous judicial standing concepts in AEA § 189a proceedings; LBP-12-3, 75 NRC 164 (2012)

NRC has discretion to transact its business broadly, through rulemaking, or case by case, through adjudication; CLI-13-7, 78 NRC 199 (2013)

NRC has long preferred concentrating its resources on actual field inspections and related scientific and engineering work, as opposed to the conduct of legal proceedings; LBP-14-4, 79 NRC 319 (2014)

NRC licensing proceedings are limited to the scope of admitted contentions; CLI-15-9, 81 NRC 512 (2015)

NRC Staff's final environmental impact statement, in conjunction with the adjudicatory record, becomes the relevant record of decision for the environmental portion of the proceeding; LBP-12-17, 76 NRC 71 (2012)

NRC's policy of encouraging settlements specifically recognizes that settlements are not inviolate, and the presiding officer or Commission may order adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding; LBP-14-4, 79 NRC 319 (2014)

objectives of the NRC adjudicatory procedures and policies include producing an informed adjudicatory record that supports agency decisionmaking on public health and safety, the common defense and security, and the environment; LBP-15-20, 81 NRC 829 (2015)

once all contentions have been decided, the adjudicatory proceeding is terminated; CLI-14-6, 79 NRC 445 (2014)

party who neglects to fully participate in a proceeding is subject to sanctions including dismissal of its contention; CLI-14-2, 79 NRC 11 (2014)

precedence requires a licensing board to let EPA's rulemaking run its course, allowing intelligent resolution of any remaining claims instead of piecemeal and repetitive litigation; LBP-15-15, 81 NRC 598 (2015)

scope of an adjudicatory hearing is limited to the notice of hearing, which in licensing matters normally extends only to the application at issue; CLI-14-11, 80 NRC 167 (2014)

soundness of relocating certain surveillance frequencies from operating license technical specifications to licensee-controlled documents is better resolved in the context of a concrete dispute, where all of the parties have a stake in the outcome of the litigation; CLI-13-10, 78 NRC 563 (2013)

subject to exceptions, the presiding officer must adhere to the schedule set forth in 10 C.F.R. Part 2, Appendix D; CLI-13-8, 78 NRC 219 (2013)

See also Abeyance of Proceeding; Closed Hearings; Combined License Proceedings; Consolidation of Proceedings; Delay of Proceeding; Demand for Hearing; Dismissal of Proceeding; Enforcement

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Proceedings; Evidentiary Hearings; High-Level Waste Repository Proceeding; Independent Spent Fuel Storage Installation Proceedings; License Renewal Proceedings; License Transfer Proceedings; Licensing Proceedings; Mandatory Hearings; Materials License Amendment Proceedings; Materials License Proceedings; Notice of Hearing; Operating License Proceedings; Operating License Amendment Proceedings; Operating License Renewal Proceedings; Reactor Operator License Proceeding; Subpart L Proceedings; Suspension of Proceeding; Termination of Proceeding; Uranium Enrichment Facility Proceedings

ADMINISTRATIVE CONTROLS

licensee must implement managerial and administrative controls to ensure safe operation through implementation of the facility's quality assurance program; DD-13-3, 78 NRC 571 (2013)
request that NRC modify the administrative controls section of the standard technical specifications for each operating reactor design to reference the approved EOP technical guidelines for that plant design is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

ADMINISTRATIVE DISPUTE RESOLUTION

NRC Staff cannot defend its decision on a basis inconsistent with its own informal review; LBP-14-2, 79 NRC 131 (2014)
NRC Staff may not take a position or assert facts before the presiding officer contrary to a matter decided by the appeal board (i.e., the Staff itself) on applicant's informal appeal absent an explicit confession of error; LBP-14-2, 79 NRC 131 (2014)

ADMINISTRATIVE PROCEDURE ACT

"adversary adjudication" is defined as an adjudication under section 554 of the Administrative Procedure Act in which the position of the United States is represented by counsel or otherwise; LBP-11-8, 73 NRC 349 (2011)
attorneys' fees may be awarded in adversary adjudications that are governed by Administrative Procedure Act § 554, but they may not be awarded in adversary adjudications that Congress did not subject to that section; LBP-11-8, 73 NRC 349 (2011)
Continued Storage Rule and supporting generic environmental impact statement to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 535 (2015)
each specific license expires at the end of the day on the expiration date stated in the license unless licensee has filed an application for renewal not less than 30 days before that expiration date; CLI-15-17, 82 NRC 33 (2015)
Equal Access to Justice Act does not apply when an agency merely voluntarily chooses to abide by formal Administrative Procedure Act § 554 procedures, despite lacking a statutory mandate to do so; LBP-11-8, 73 NRC 349 (2011)
federal agency would be acting arbitrarily and capriciously if it did not look at relevant data and sufficiently explain a rational nexus between the facts found in its review and the choice it makes as a result of that review; LBP-11-17, 74 NRC 11 (2011)
if NRC lacks sufficient information to reach an informed decision, then the agency has a duty to collect further information and conduct further analysis; CLI-13-1, 77 NRC 1 (2013)
in cases involving license suspension or revocation, where the Atomic Energy Commission's staff is cast in an accusatory role, the precautions prescribed by the Administrative Procedure Act should be carefully observed; LBP-11-8, 73 NRC 349 (2011)
legislative history of the Act emphasized the notice requirement for proposed rulemaking in order to fairly apprise the public of the agency's potential action; LBP-15-15, 81 NRC 598 (2015)
no more than a description of the subjects and issues involved in a notice of proposed rulemaking is required; LBP-15-15, 81 NRC 598 (2015)
person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof; LBP-14-4, 79 NRC 319 (2014)
"preponderance of the evidence" standard is the one generally applied in proceedings under the APA; LBP-14-2, 79 NRC 131 (2014)
proponent of a rule or order has the burden of proof; LBP-15-2, 81 NRC 48 (2015)
"rule" is broadly defined to include nearly every statement an agency may make; LBP-15-15, 81 NRC 598 (2015)

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- suspending a final decision indefinitely in an adjudicatory proceeding upon receipt of a claim of new and significant information runs counter to the goal of promoting fair and efficient resolution of disputes; CLI-14-7, 80 NRC 1 (2014)
- when licensee has made timely and sufficient application for a renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-15-2, 81 NRC 48 (2015); LBP-15-11, 81 NRC 401 (2015)
- ADVISORY COMMITTEE ON REACTOR SAFEGUARDS**
- independent assessment by ACRS of the safety aspects of a combined license application is required; CLI-15-13, 81 NRC 555 (2015)
- ADVISORY COUNCIL ON HISTORIC PRESERVATION**
- Council on Environmental Quality and the ACHP regulations provide guidance on agency compliance with NEPA and are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-15-16, 81 NRC 618 (2015)
- NRC must also allow this federal council a reasonable opportunity to comment with regard to a combined license; LBP-12-23, 76 NRC 445 (2012)
- ADVISORY OPINIONS**
- Commission disfavours issuance of advisory opinions; CLI-13-10, 78 NRC 563 (2013); CLI-13-4, 77 NRC 101 (2013)
- if a board were to adjudicate either the admissibility of a moot contention or the standing of a petitioner who sought to adjudicate a moot contention, it would be issuing an advisory opinion in derogation of Commission precedent; LBP-13-7, 77 NRC 307 (2013)
- in view of the uncertainty surrounding the application at issue, the Commission is reluctant to engage in review when its opinion might constitute a mere academic exercise; CLI-13-4, 77 NRC 101 (2013)
- AESTHETIC IMPACTS**
- aesthetic harms may amount to an injury in fact sufficient for standing; CLI-12-12, 75 NRC 603 (2012)
- impacts of energy sources may vary according to individual location; LBP-11-4, 73 NRC 91 (2011)
- light pollution is a matter of concern as a proposed nuclear materials facility undergoes agency licensing review; LBP-12-3, 75 NRC 164 (2012)
- NRC must adequately consider impacts to visual and aesthetic resources in its NEPA review; LBP-12-3, 75 NRC 164 (2012)
- statement of supporting facts or expert opinion to establish how the project would impair the visual resources, rather than mere speculation, is required for an admissible contention; LBP-12-3, 75 NRC 164 (2012)
- visual impact of operation of a uranium enrichment facility on the quality of recreational experience is discussed; LBP-11-26, 74 NRC 499 (2011)
- AFFIDAVITS**
- absence of a competent affidavit deprives the board of the ability or opportunity to substantively consider whether a materially different result would be obtained as is required by the regulatory reopening standards; LBP-11-23, 74 NRC 287 (2011)
- all disclosures under section 2.336(c) must be accompanied by a certification in the form of a sworn affidavit that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification; LBP-14-2, 79 NRC 131 (2014)
- any request for a rule waiver or exception must be accompanied by an affidavit that identifies the subject matter of the proceeding as to which the application of the regulation would not serve the purposes for which the regulation was adopted, and the affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-11-16, 73 NRC 645 (2011)
- boards are in a better position than the Commission to consider any expert affidavit or affidavits that petitioner submits to support its motion to reopen; CLI-12-14, 75 NRC 692 (2012)
- each of the criteria for reopening a record must be separately addressed in an affidavit, with a specific explanation of why it has been met; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-10, 75 NRC 479 (2012); LBP-11-35, 74 NRC 701 (2011); LBP-12-10, 75 NRC 633 (2012)
- evidence in affidavits supporting a motion to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-12-3, 75 NRC 132 (2012); CLI-12-15, 75 NRC 704 (2012); LBP-15-14, 81 NRC 591 (2015)

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evidence in affidavits supporting a motion to reopen must meet the admissibility standards, i.e., be relevant, material, and reliable; CLI-12-3, 75 NRC 132 (2012); LBP-11-23, 74 NRC 287 (2011); LBP-15-14, 81 NRC 591 (2015)

expert's affidavit supporting a motion to reopen must supply the factual and legal foundation for assertions that the reopening criteria are satisfied; LBP-11-20, 74 NRC 65 (2011)

factual and/or technical bases for the claim that the reopening criteria have been met must address each of the criteria separately, with a specific explanation of why it has been met; LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011)

factual support is not necessary at the contention filing stage to show that a genuine dispute exists and need not be in affidavit or formal evidentiary form or of the quality necessary to withstand a summary disposition motion; LBP-15-11, 81 NRC 401 (2015)

failure of organization member to provide an exact address in her affidavit is not a limiting concern; LBP-15-17, 81 NRC 753 (2015)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion; LBP-12-18, 76 NRC 127 (2012)

licensing boards or presiding officers should not conduct a trial on affidavits; LBP-12-23, 76 NRC 445 (2012)

mere mention of the future filing of an affidavit does not satisfy the requirement of section 2.326(b); LBP-14-8, 79 NRC 519 (2014)

motion to admit a new contention must be supported by an affidavit that separately addresses each of the 2.326(a) criteria; LBP-14-8, 79 NRC 519 (2014)

motion to reopen will not be granted unless movant satisfies all three criteria in 10 C.F.R. 2.326(a) and the motion is accompanied by an affidavit that satisfies section 2.326(b); CLI-15-19, 82 NRC 151 (2015)

motions to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of 10 C.F.R. 2.326(a) have been satisfied; CLI-11-8, 74 NRC 214 (2011); CLI-12-3, 75 NRC 132 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-14, 75 NRC 692 (2012); CLI-12-15, 75 NRC 704 (2012); LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-10, 75 NRC 633 (2012); LBP-15-14, 81 NRC 591 (2015)

motions to reopen must be supported by affidavit, be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely if the evidence had been available; LBP-14-8, 79 NRC 519 (2014)

motions to reopen shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein; LBP-11-23, 74 NRC 287 (2011)

parties seeking a rule waiver must attach an affidavit that, among other things, states with particularity the special circumstances claimed to justify the waiver or exception requested; CLI-12-6, 75 NRC 352 (2012); LBP-14-16, 80 NRC 183 (2014)

person qualified to assert deliberative process privilege must be involved in the initial assertion of privilege; LBP-13-5, 77 NRC 233 (2013)

petitioner has some latitude to supplement or cure a standing showing in its reply pleading, but any additional arguments should be supported by either the declaration that accompanied the original hearing request or a supplemental affidavit; LBP-12-3, 75 NRC 164 (2012)

petitioner's assertion that recriticality is demonstrated by the relative quantities of radionuclides released is not self-evident and is clearly of the class of statements that must be supported by expert opinion; LBP-11-23, 74 NRC 287 (2011)

petitioning member's affidavit must be sufficiently specific to show frequent contact within 50 miles of the plant; LBP-15-17, 81 NRC 753 (2015)

protective order, and the good-faith representation and designation of documents as protected documents, serves in lieu of the requirement for marking and for an affidavit; LBP-11-5, 73 NRC 131 (2011)

qualified persons, such as head of a department or division, having both expertise and an overview-type perspective concerning the balance between the agency's duty of disclosure versus its need to conduct frank internal debate must sign an affidavit asserting deliberative process privilege; LBP-13-5, 77 NRC 233 (2013)

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rule waiver petitions must include an affidavit that states with particularity the special circumstances that justify waiver of the rule; CLI-13-7, 78 NRC 199 (2013); LBP-13-12, 78 NRC 239 (2013)

supporting affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-11-8, 74 NRC 214 (2011); LBP-11-35, 74 NRC 701 (2011)

to meet the waiver standard, the party seeking a waiver must attach an affidavit that, among other things, states with particularity the special circumstances claimed to justify the waiver or exception requested; CLI-11-11, 74 NRC 427 (2011)

to obtain waiver of a rule, the allegation of special circumstances must be set forth with particularity and supported by an affidavit or other proof; LBP-15-5, 81 NRC 249 (2015)

AGING MANAGEMENT

active components are not subject to an aging management review because existing regulatory programs, including required maintenance programs, can be expected to directly detect the effects of aging on active functions; CLI-15-6, 81 NRC 340 (2015); LBP-11-2, 73 NRC 28 (2011)

aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 11 (2011)

aging management review is required for components that function without moving parts and without a change in configuration or properties, and includes a non-exhaustive list of components that either do or do not fit this description; CLI-15-6, 81 NRC 340 (2015)

although commitment to implement an aging management plan consistent with the GALL Report is an acceptable method for compliance with 10 C.F.R. 54.21(c)(1)(iii), such a commitment does not absolve the applicant from demonstrating, prior to issuance of a renewed license, that the plan is indeed consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

amendment to aging management plan extended the AMP for medium-voltage cables to also cover low-voltage cables; LBP-11-20, 74 NRC 65 (2011)

applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation, at a detailed component and structure level, rather than at a more generalized system level; LBP-11-21, 74 NRC 115 (2011)

applicants must demonstrate reasonable assurance that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; CLI-12-5, 75 NRC 301 (2012)

applicants must demonstrate that they have programs in place that will effectively manage the effects of aging for specific types of structures and components during the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

applicants must reassess any time-limited aging analyses to show either that the analyses will remain valid throughout the period of extended operation or that the effects of aging on the subject component will be managed during that time period; CLI-15-6, 81 NRC 340 (2015)

applications for renewal of an ISFSI license must describe the aging management plan for management of issues associated with aging that could adversely affect structures, systems, and components important to safety; LBP-12-24, 76 NRC 503 (2012)

assertion by applicant that its aging management plan is consistent with the GALL Report does not immunize it against a challenge to the AMP; CLI-12-5, 75 NRC 301 (2012)

attempts by petitioners to challenge aspects of an aging management plan that they could have challenged earlier were rejected; LBP-15-1, 81 NRC 15 (2015)

because petitioner has not shown how a proposed plan would fail to ensure that buried pipes continue to fulfill their intended safety purposes, the contention is inadmissible; LBP-15-5, 81 NRC 249 (2015)

board compared transformers with other types of components listed in 10 C.F.R. 54.21(a)(1)(i) as expressly subject to or excluded from aging management review; CLI-15-6, 81 NRC 340 (2015)

buried pipelines, channels, and tanks that fall under aging management provide safety-related functions by maintaining adequate flow and pressure; LBP-11-2, 73 NRC 28 (2011)

by a preponderance of the evidence, applicant has provided reasonable assurance that the effects of aging on buried pipes that contain or may contain radioactive fluids can be adequately managed during the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

cables important to safety must be designed to meet their intended function for the environment that they are subjected to and if cables have been exposed to conditions for which they are not designed,

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licensees must demonstrate, through testing or monitoring, reasonable assurance that the cables can perform their intended design function for the licensed operating term; DD-13-2, 78 NRC 185 (2013)

challenges to section 50.54(hh)(2) are neither germane to age-related degradation nor unique to the license renewal period; LBP-11-21, 74 NRC 115 (2011)

claims in a contention that did not genuinely stem from the specific amendments to the aging management plan or from particular information in the revised GALL Report were untimely under standards for admission of new or amended contentions; CLI-12-10, 75 NRC 479 (2012)

Commission distinguishes between aging management issues, reviewed at the time of license renewal, and operational issues, reviewed at all times as part of the current licensing basis; LBP-15-5, 81 NRC 249 (2015)

commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance, but does not insulate such an approach from challenge by an intervenor, and is not binding on a licensing board in an adjudication; LBP-11-2, 73 NRC 28 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-13-13, 78 NRC 246 (2013)

commitments in the updated final safety analysis report and aging management plan are legally binding as part of the current licensing basis throughout the period of extended operation and can only be changed through the section 50.59 process; LBP-13-13, 78 NRC 246 (2013)

conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)

contention alleging that licensee had a repeated pattern of violations which could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)

contention that applicant had inadequately described aging management plan by relying on a promise of compliance with NRC orders instead of describing the plan is admissible; LBP-15-24, 82 NRC 68 (2015)

contention that ice condenser containments lack acceptable AMPs to adequately maintain critical components of the ice condenser containment for 20 years of additional operation is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that offers no explanation of how its assertions are directly relevant to applicant's ability to manage the effects of aging during the renewal term is inadmissible; LBP-13-8, 78 NRC 1 (2013)

critical aspects of an aging management plan such as a commitment for buried pipes can be captured in the updated final safety analysis report supplement; LBP-13-13, 78 NRC 246 (2013)

each reactor license renewal application must contain a list of structures and components subject to aging management review; LBP-13-13, 78 NRC 246 (2013)

effects of aging must be adequately managed so that intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-15-6, 81 NRC 314 (2015)

emergency planning is neither germane to age-related degradation nor unique to the period covered by a license renewal application; LBP-11-35, 74 NRC 701 (2011)

existing regulatory programs can be expected to directly detect the effects of aging on active functions; CLI-12-5, 75 NRC 301 (2012)

focus of the license renewal regulations in 10 C.F.R. Part 54 is to ensure that licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; CLI-15-6, 81 NRC 340 (2015)

for license renewal, there must be reasonable assurance that applicant will manage the effects of aging on certain structures and components during extended operation; LBP-11-2, 73 NRC 28 (2011)

goal of NRC's license renewal safety review is to ensure that licensee can successfully manage the detrimental effects of aging; CLI-15-6, 81 NRC 340 (2015)

if applicant uses a method other than that identified in NUREG-1801, Generic Aging Lessons Learned Report, for managing effects of aging at its plant, then applicant should demonstrate to NRC Staff reviewers that its program includes the ten elements cited in the GALL Report and will likewise be effective; LBP-13-13, 78 NRC 246 (2013)

illustrative list of structures and components that are subject to an aging management review is provided in 10 C.F.R. 54.21(a)(1)(i); CLI-12-5, 75 NRC 301 (2012)

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incorporation by reference of the applicable section of the GALL Report is permissible, but applicant must also provide sufficient plant-specific information to demonstrate that its aging management plan will be designed and implemented consistent with the report; LBP-13-13, 78 NRC 246 (2013)

inspection reports could be seen as objective evidence that applicant may not adequately manage aging in the future; CLI-11-11, 74 NRC 427 (2011)

integrated plant assessment must demonstrate that effects of aging for each structure and component will be managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 340 (2015); LBP-13-13, 78 NRC 246 (2013)

intervenors must point to the specific ways in which the shield building monitoring aging management plan is wrong or inadequate to raise a genuine dispute with applicant's license renewal application; LBP-12-27, 76 NRC 583 (2012)

intervenors' challenge to the aging management plan must consist of more than allegations that the AMP is deficient, but rather must point to specific ways the AMP is inadequate or wrong; LBP-12-27, 76 NRC 583 (2012)

intervenors' requests for more testing, more methods of testing, and more information, without an explanation of why the current program is inadequate, do not create a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)

it is not necessary or appropriate to throw open the full gamut of provisions in a facility's current licensing basis to reanalysis during the license renewal review, because the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-12-24, 76 NRC 503 (2012)

it makes no sense to spend the parties' and NRC's own valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging; LBP-15-6, 81 NRC 314 (2015)

key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 28 (2011)

later revisions to license renewal application that bring the plant into compliance with GALL-2 have generally been deemed acceptable; LBP-13-13, 78 NRC 246 (2013)

license renewal applicant is compelled to implement safety-related severe accident mitigation alternatives that deal with aging management; LBP-11-17, 74 NRC 11 (2011)

license renewal applicant is required to list structures and components subject to an aging management review; LBP-13-8, 78 NRC 1 (2013)

license renewal applicant must perform an integrated plant assessment to identify structures and components that are subject to aging management review; CLI-15-6, 81 NRC 340 (2015)

license renewal applicant must present an aging management plan with sufficient information that NRC will be able to draw its own independent conclusion as to whether the applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

license renewal applicant must provide a general description of the corporate-wide and plant-specific procedures sufficient to show that the ten elemental attributes of GALL have been addressed so as to demonstrate that the effects of aging on buried pipes will be adequately managed throughout the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

license renewal applicant's use of an aging management program identified in NUREG-1801, Generic Aging Lessons Learned Report, constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; LBP-13-13, 78 NRC 246 (2013)

license renewal applicants must conduct aging management reviews of any structure, system, or component that performs one of these intended functions if the SSC is passive (performs its intended function(s) without moving parts or without a change in configuration or properties); CLI-12-5, 75 NRC 301 (2012)

license renewal applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation, at a detailed component and structure level, rather than at a more generalized system level; LBP-15-5, 81 NRC 249 (2015)

license renewal applicants' use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-12-5, 75 NRC 301 (2012); CLI-12-10, 75 NRC 479 (2012)

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license renewal application must demonstrate that licensee will adequately manage effects of aging on passive, long-lived components so that their intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 340 (2015)

license renewal applications must include an integrated plant assessment demonstrating that effects of aging on plant systems, structures, and components will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-13-8, 78 NRC 1 (2013)

license renewal regulations serve exactly their intended purpose by focusing the proceeding on future-oriented aging issues; CLI-15-21, 82 NRC 295 (2015)

license renewal review is a limited one, focused on aging management issues; CLI-11-5, 74 NRC 141 (2011)

license renewal safety review and any associated license renewal adjudicatory proceeding focus on the detrimental effects of aging posed by long-term reactor operation; CLI-12-5, 75 NRC 301 (2012)

license renewal safety review is limited to the matters specified in 10 C.F.R. Part 54, which focus on the management of aging for certain systems, structures, and components, and the review of time-limited aging analyses; LBP-11-21, 74 NRC 115 (2011)

license renewal safety reviews are generally limited to aging-related issues because NRC recognizes that it has the ongoing responsibility to oversee the safety and security of operating nuclear reactors, and maintains an aggressive and ongoing program to oversee plant operation; LBP-13-13, 78 NRC 246 (2013)

licensee commitment to develop a program by the time the 20-year extension begins does not demonstrate that the effects of aging will be adequately managed; LBP-15-1, 81 NRC 15 (2015)

licensees must assess the condition of their components, monitor performance of structures, systems, and components to ensure that they can fulfill their intended functions, and establish a suitable test program to demonstrate that components will perform satisfactorily in service; DD-13-2, 78 NRC 185 (2013)

limited scope of the intended functions of structures, systems, and components subject to aging management review is described in 10 C.F.R. 54.4(b); CLI-12-5, 75 NRC 301 (2012)

many safety questions that relate to plant aging become important during the extended renewal term since the design of some components may have been based upon a service lifetime of only 40 years; LBP-11-21, 74 NRC 115 (2011)

mere fact that the intended function of transformers is being monitored in accordance with the current licensing basis does not exempt them from needing to be included in an aging management review program for license renewal; LBP-13-13, 78 NRC 246 (2013)

narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; CLI-11-11, 74 NRC 427 (2011)

NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-11-17, 74 NRC 11 (2011)

NRC Staff must draw its own independent conclusion as to whether applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's obligations under Part 51 and NEPA are not limited to only those severe accident mitigation alternatives that address aging management; LBP-11-17, 74 NRC 11 (2011)

NRC's license renewal process concerns a particularized and limited inquiry into the potential impacts of an additional 20 years of nuclear power plant operation, not day-to-day operational issues; LBP-11-21, 74 NRC 115 (2011)

only structures and components with active functions that are readily monitorable are excluded from aging management review; LBP-13-13, 78 NRC 246 (2013)

operating license may be renewed if NRC finds, among other things, that actions have been identified and have been or will be taken to manage the effects of aging during the period of extended operation on the functionality of certain identified structures and components; CLI-11-11, 74 NRC 427 (2011)

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passive systems, structures, and components are subject to an aging management review only if they are long-lived, that is, not subject to replacement based on a qualified life or specified time period; LBP-13-13, 78 NRC 246 (2013)

petitioners have the burden of going forward, which requires them to provide factual allegations or expert testimony to show a potential deficiency in applicant's aging management plan; LBP-15-5, 81 NRC 249 (2015)

plant systems, structures, and components within the scope of license renewal are all non-safety-related SSCs whose failure could prevent the capability to shut down the reactor and maintain it in a safe shutdown condition; LBP-15-6, 81 NRC 314 (2015)

"reasonable assurance" standard for aging management programs does not require a 95% confidence level of compliance; LBP-11-18, 74 NRC 29 (2011)

reference to an aging management plan in the GALL Report does not insulate that program from challenge in litigation; LBP-11-2, 73 NRC 28 (2011); LBP-13-13, 78 NRC 246 (2013)

review consists of identifying the aging effects, and whether the aging management plans will manage aging effects and demonstrate that passive, long-lived structures, systems, and components will perform their intended functions during the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

review only covers systems, structures, and components, that perform their intended function without moving parts or without a change in configuration or properties; LBP-13-13, 78 NRC 246 (2013)

safety contention challenging aging management of electrical transformers is decided; LBP-13-13, 78 NRC 246 (2013)

safety contentions challenging aging management of non-environmentally qualified inaccessible medium-voltage cables and wiring are decided; LBP-13-13, 78 NRC 246 (2013)

scope of a license renewal safety review is limited to plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; LBP-15-6, 81 NRC 314 (2015)

statements in the license renewal application promising to develop and implement an aging management plan that would be consistent with the NRC guidance document applicable at the time the application was submitted is insufficient; LBP-13-13, 78 NRC 246 (2013)

static components such as transistors and battery chargers are specifically excluded from aging management review; CLI-15-6, 81 NRC 340 (2015)

structures and components are subject to aging management review if they are not subject to routine replacement; CLI-15-6, 81 NRC 340 (2015)

structures and components are subject to aging management review if they perform an intended function without moving parts or without a change in configuration or properties; CLI-15-6, 81 NRC 340 (2015); LBP-11-2, 73 NRC 28 (2011)

structures and components associated only with active functions can be generically excluded from a license renewal aging management review; CLI-12-5, 75 NRC 301 (2012)

structures and components considered passive and designated as subject to aging management review are listed in 10 C.F.R. 54.21(a)(1)(i); LBP-13-13, 78 NRC 246 (2013)

structures and components subject to aging management review include those that perform an intended function, as described in section 54.4; LBP-13-13, 78 NRC 246 (2013)

structures, systems, and components are passive if they perform their intended function without moving parts or without a change in configuration or properties and the effects of aging degradation for these components are not readily monitorable; LBP-13-13, 78 NRC 246 (2013)

sufficiency of an aging management program that meets the GALL Report's recommendations can be challenged if the contention admissibility requirements are otherwise met; CLI-12-10, 75 NRC 479 (2012)

there was no prejudice to intervenor where the board considered licensee's supplement to the application, which contained the updated aging management plan, because intervenor could have sought to amend its contention to respond to the supplement; CLI-12-10, 75 NRC 479 (2012)

to evaluate an operating license renewal application, the NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the

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proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)

to grant a license renewal, NRC Staff must find that there is reasonable assurance that the effects of aging on relevant systems, structures, and components will be managed during the period of extended operation, that time-limited aging analyses have been identified for review, and that applicable environmental requirements have been met; LBP-15-6, 81 NRC 314 (2015)

transformer is an active component because it undergoes a change in properties when it performs its intended function; CLI-15-6, 81 NRC 340 (2015)

transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded from an aging management review; CLI-12-5, 75 NRC 301 (2012); CLI-15-6, 81 NRC 340 (2015); LBP-13-13, 78 NRC 246 (2013)

variety of electrical and instrumentation and control components are excluded from an aging management review for license renewal; CLI-12-5, 75 NRC 301 (2012)

whether petitioners have adequately raised an issue as to whether transformers constitute active or passive components survived a motion for summary disposition; LBP-11-2, 73 NRC 28 (2011)

See also Time Limited Aging Analyses

AGREEMENT STATE PROGRAMS

because New Jersey has adopted more stringent criteria for license termination under restricted release than for unrestricted release, as well as more conservative criteria than NRC's, New Jersey's regulations are compatible with NRC's agreement-state policy; CLI-13-6, 78 NRC 155 (2013)

Criterion 25 of NRC's policy statement does not relate to substantive standards or the regulatory outcome of a pending license application, even where a license application has been pending at the NRC for an extended period; CLI-11-12, 74 NRC 460 (2011)

if a regulated entity believes that a state's program, as implemented, is unlawful or contrary to public health and safety, it may raise its agreement-state performance concerns with NRC; CLI-11-12, 74 NRC 460 (2011)

litigation at NRC had actually reached the point of NRC approval of an onsite plan at the time of the transfer of authority to an agreement state; CLI-11-12, 74 NRC 460 (2011)

mandatory language used in Atomic Energy Act § 274d is construed as requiring NRC to enter into an agreement for state regulation of the particular categories of nuclear materials that a state certifies it both desires to regulate and has established a program for, provided NRC finds the state's program to be adequate and compatible; CLI-11-12, 74 NRC 460 (2011)

New Jersey's license termination regulations are not less protective than or incompatible with NRC's in making the terms of restricted release considerably more difficult than those for unrestricted release; CLI-11-12, 74 NRC 460 (2011)

NRC addresses agreement-state performance concerns through its Integrated Materials Performance Evaluation Program process or through an independent agreement-state performance concern evaluation, depending on the performance concern raised; CLI-11-12, 74 NRC 460 (2011)

NRC is authorized to enter into an agreement with the governor of any state if it finds that the state's regulatory program is adequate to protect the public health and safety with respect to the materials the state seeks to regulate and is compatible with NRC's program for regulation of such materials; CLI-11-12, 74 NRC 460 (2011); CLI-13-6, 78 NRC 155 (2013)

NRC is authorized to enter into an agreement with the governor of any state providing for transfer of regulatory authority to the state over specified categories of nuclear material; CLI-11-12, 74 NRC 460 (2011)

NRC is not permitted to retain jurisdiction over a site at a licensee's request where the state seeks to assume regulatory authority over the site and meets the "adequacy" and "compatibility" criteria; CLI-13-6, 78 NRC 155 (2013)

NRC may not, over the objections of a state desiring jurisdiction and for reasons other than health and safety or compatibility, retain regulatory authority over pending applications involving a nuclear materials category otherwise transferred to a state; CLI-11-12, 74 NRC 460 (2011)

NRC retains power under AEA § 274j to revoke agreements with states and to restore NRC regulatory authority; CLI-11-12, 74 NRC 460 (2011)

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NRC's transfer of regulatory authority to the State of New Jersey is now final and the licensing board no longer has the jurisdiction it had retained over the proceeding, and the board terminates the proceeding; LBP-15-10, 81 NRC 399 (2015)

purpose of Criterion 25 of NRC's policy statement is to ensure that licensing records are transferred to and received by the new agreement state in an orderly manner that ensures that no pending licensing actions will be significantly delayed or that no records will be lost or misplaced as a result of the transition of authority; CLI-11-12, 74 NRC 460 (2011)

state requests for limited agreements will be considered by NRC only if the state can identify discrete categories of material or classes of licensed activity that can be reserved to NRC authority without undue confusion to the regulated community or burden to NRC resources and can be applied logically and consistently to existing and future licensees over time; CLI-11-12, 74 NRC 460 (2011)

state's regulations are not inherently unfair because they may be designed to effectuate a state-desired regulatory outcome; CLI-11-12, 74 NRC 460 (2011)

AGREEMENT STATES

states should be provided with flexibility in program implementation to accommodate individual state preferences, state legislative direction, and local needs and conditions, including the flexibility to incorporate more stringent, or similar, requirements; CLI-11-12, 74 NRC 460 (2011)

AGREEMENTS

arrangements for requesting and effectively using assistance resources should be identified and supported by appropriate letters of agreement; LBP-15-18, 81 NRC 793 (2015)

Great Lakes Compact Agreement binds and imposes certain obligations on its member states, not on other governmental agencies or on utility companies; LBP-12-12, 75 NRC 742 (2012)

licensees and vendors are expected to adhere to any obligations and commitments addressed in confirmatory action letters that NRC Staff issues to licensees or vendors to emphasize and confirm a licensee's or vendor's agreement to take certain actions in response to specific issues; DD-12-2, 76 NRC 391 (2012)

Pentapartite Agreement between the United States and four European governments to prevent new restricted data from being disseminated to European nationals will be a prerequisite to the NRC Staff issuing a facility clearance; LBP-11-11, 73 NRC 455 (2011)

programmatic agreement may be used to implement the NHPA § 106 process in situations where the effects on historic properties cannot be fully determined prior to approval of an undertaking, such as where an applicant proposes a phased approach to developing its project; LBP-15-16, 81 NRC 618 (2015)

See also Nondisclosure Agreements; Settlement Agreements

AIR POLLUTION

AERMOD model for demonstrating compliance with EPA regulations and for state air quality protection planning is discussed; LBP-11-26, 74 NRC 499 (2011)

air quality impacts of particulate matter are discussed; LBP-11-26, 74 NRC 499 (2011)

contention that draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 401 (2015)

contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)

EPA also has granted authority to some states to implement, maintain, and enforce their own EPA-compliant air quality programs through State Ambient Air Quality Standards; LBP-11-26, 74 NRC 499 (2011)

EPA's National Ambient Air Quality Standards set maximum levels for air pollutants in the ambient air deemed to provide protection for human health and welfare; LBP-11-26, 74 NRC 499 (2011)

failure to show the final supplemental environmental impact statement's air emissions data represent new or materially different information renders a new contention inadmissible; LBP-14-5, 79 NRC 377 (2014)

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in parallel with NRC Staff's role under NEPA to assess environmental impacts, the Environmental Protection Agency possesses authority under the Clean Air Act to set numerical standards for air pollutants from emission sources; LBP-11-26, 74 NRC 499 (2011)

NRC Staff assesses air quality impacts as a matter of course, categorizing them as small, medium, or large; LBP-11-26, 74 NRC 499 (2011)

prediction of air dispersion based on defined parameters in the planetary boundary layer is discussed; LBP-11-26, 74 NRC 499 (2011)

source permit is an operating permit that the Clean Air Act requires major stationary sources of air pollution to obtain; LBP-11-13, 73 NRC 534 (2011)

surface roughness, albedo, and Bowen ratio inputs to the AERMOD model are discussed; LBP-11-26, 74 NRC 499 (2011)

ALARA

combined license application must identify the means for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable; LBP-11-6, 73 NRC 149 (2011)

dose limits for individual members of the public are 100 millirem in a year; DD-11-3, 73 NRC 375 (2011)

every reasonable effort must be made to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-11-12, 74 NRC 460 (2011)

ISFSI licensees must limit releases of radioactive materials to as low as is reasonably achievable, and establish operational limits to prevent doses to the public that exceed the limits of 10 C.F.R. 72.104(a)-(c); LBP-12-24, 76 NRC 503 (2012)

NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the dose objectives; DD-11-1, 73 NRC 7 (2011)

radiation protection requirements with which licensees must comply, such as procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable, are outlined in 10 C.F.R. 20.1101(b); LBP-12-4, 75 NRC 213 (2012)

requirement in section 20.1101(b) applies to the dose criteria for license termination; CLI-11-12, 74 NRC 460 (2011)

to have an alternate concentration limit approved, licensee must demonstrate that the hazardous constituent value is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the ACL is not exceeded; LBP-15-3, 81 NRC 65 (2015)

ALARA PRINCIPLE

as used in NRC regulations, ALARA does not mean as low as achievable as a comparison between achievable doses, but rather as low as reasonably achievable below the dose limits; CLI-11-12, 74 NRC 460 (2011)

either as a general regulatory principle or as used in NRC's license termination rule, the principle does not incorporate or call for any comparative analysis of doses from restricted and unrestricted release; CLI-11-12, 74 NRC 460 (2011)

nothing in NRC license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 155 (2013)

principle has been incorporated into the restricted-use portion of the license termination rule to screen out sites that should be removing contamination to achieve unrestricted use; CLI-11-12, 74 NRC 460 (2011)

section 20.1403(a) calls for a licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls; CLI-13-6, 78 NRC 155 (2013)

sites will be considered acceptable for license termination under restricted conditions if licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of section 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; CLI-13-6, 78 NRC 155 (2013)

small doses of radiation below dose limits, while safe and acceptable, may have some associated risk and should be reduced below limits when reasonable; CLI-11-12, 74 NRC 460 (2011)

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ALARM SYSTEMS

- applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to resolve the nature and cause of any MC&A alarm within approved time periods in each of the four storage areas at issue; LBP-14-1, 79 NRC 39 (2014)
- applicants applying to possess 5 or more formula kilograms of SSNM must maintain alarm resolution capabilities designed to achieve the performance objectives of section 74.51(a); LBP-14-1, 79 NRC 39 (2014)
- capability to resolve alarms within approved time periods is most clearly aimed at the prompt investigation of anomalies potentially indicative of SSNM losses; LBP-14-1, 79 NRC 39 (2014)
- if applicant decides to remove a method from the approved list of alarm resolution methods, it would have to follow the prescribed change process or the license amendment process; LBP-14-1, 79 NRC 39 (2014)
- licensees shall resolve the nature and cause of any MC&A alarm within approved time periods; LBP-14-1, 79 NRC 39 (2014)
- material control and accounting alarms are not required to be resolved within any particular time frame, only that a time period be approved by NRC Staff; LBP-14-1, 79 NRC 39 (2014)
- NRC must be notified within 24 hours of failure to resolve an alarm within the approved time period; LBP-14-1, 79 NRC 39 (2014)

ALGAL BLOOMS

- contention that environmental report failed to explain whether a discharge pipe with phosphoric acid as a corrosion inhibitor would increase algae production and potential for toxic algal blooms is admissible; LBP-15-5, 81 NRC 249 (2015)
- contention that NRC Staff's environmental assessment fails to consider that applicant's use of copper sulfate to control algae blooms will increase reactor operating temperatures in relation to waste is inadmissible; LBP-15-13, 81 NRC 456 (2015)
- harmful algae blooms from *Lyngbya wollei* are unlikely to form in unsheltered areas; LBP-15-5, 81 NRC 249 (2015)

ALTERNATE CONCENTRATION LIMITS

- admissibility of contention that environmental assessment fails to adequately describe and analyze aquifer restoration goals in light of new standards for determining ACLs is decided; LBP-15-15, 81 NRC 598 (2015)
- applicant's use of ACLs is a legal right; LBP-13-9, 78 NRC 37 (2013)
- bounding analysis provided in final supplemental environmental impact statement, as supplemented in the record, provides sufficient information about a reasonable range of hazardous constituent concentration values associated with potential post-operational ACLs so as to provide an appropriate NEPA assessment of the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits; LBP-15-3, 81 NRC 65 (2015)
- challenge to use of ACL is an impermissible challenge to an NRC regulation, which is not subject to attack in any adjudicatory proceeding; LBP-15-11, 81 NRC 401 (2015)
- claim that ACL could not be accurately generated until the post-operational decommissioning process did not account for the possible creation of a bounding analysis based on the historical experience at other ISR sites; LBP-13-10, 78 NRC 117 (2013)
- contention asserting that because no previous ISL/ISR mining operation has been able to restore groundwater to baseline standards, applicant will be required to request that the Commission set an alternate concentration limit for aqueous contaminants is admissible; LBP-12-3, 75 NRC 164 (2012)
- nineteen factors must be considered in making the "present and potential hazard" finding requisite to Commission approval of an ACL; LBP-15-3, 81 NRC 65 (2015)
- NRC regulations explicitly allow the use of ACLs for hazardous constituents; LBP-15-11, 81 NRC 401 (2015)
- purpose of ACLs is to address situations where restoring groundwater to baseline conditions or MCLs would not be practicable; LBP-13-9, 78 NRC 37 (2013)
- restoration to an ACL is permitted only when restoration to a primary or the secondary Table 5C standard is not practically achievable; LBP-15-3, 81 NRC 65 (2015)
- three alternative standards for groundwater restoration at ISR facilities are background concentrations, maximum values from chart 5C, or an ACL; LBP-13-9, 78 NRC 37 (2013)

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to have an ACL approved, licensee must demonstrate that the hazardous constituent value is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the ACL is not exceeded; LBP-15-3, 81 NRC 65 (2015)

AMENDMENT

board authority under section 2.338(i) is to approve or reject a settlement agreement, and so it cannot amend the agreement without consent of the parties; LBP-15-21, 82 NRC 1 (2015)

if NRC Staff detects deficiencies in an application before or after a notice of hearing opportunity is issued, the applicant will freely be given (outside the adjudicatory process) ample opportunity to amend it; LBP-11-9, 73 NRC 391 (2011)

permitting an application to be modified or improved throughout the NRC's review is compatible with the dynamic licensing process followed in Commission licensing proceedings; CLI-11-2, 73 NRC 333 (2011)

See also Operating License Amendments

AMENDMENT OF CONTENTIONS

after the section 2.309(b) deadline has passed for submitting an initial hearing petition with one or more accompanying contentions, petitioner/intervenor who wishes to amend an already submitted or admitted contention or gain admission of a new contention must file a motion for leave to file such a new or amended contention; LBP-13-10, 78 NRC 117 (2013)

amended contentions filed after the initial filing period has expired may be admitted only with leave of the licensing board if they satisfy the three criteria of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-9, 75 NRC 615 (2012)

amended contentions must satisfy general contention admissibility criteria and either the timeliness standards of section 2.309(f)(2) or the balancing test in section 2.309(c) for nontimely contentions; LBP-12-9, 75 NRC 615 (2012)

amendment or supplement to a contention is considered timely if filed within 60 days of the date when the material information on which it is based first becomes available to the moving party through service, publication, or any other means; LBP-12-27, 76 NRC 583 (2012)

appellants may not amend their contentions on appeal; CLI-11-8, 74 NRC 214 (2011)

applicant's change of legal position, its claims that such change no longer entails a need for an exemption from the regulations, and its identification of new means/systems to satisfy the regulations are all types of materially new information that can enable a contention to satisfy the timely new or amended contention requirements of 10 C.F.R. 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)

by filing proposed new or amended contention within the time specified in the initial scheduling order, petitioner satisfies timeliness requirements but would still have to satisfy the other requirements of section 2.309(f)(2) or the requirements of section 2.309(c), as well as the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-11-22, 74 NRC 259 (2011)

contention contesting applicant's environmental report generally may be viewed as a challenge to NRC Staff's subsequent draft environmental impact statement, but new claims must be raised in a new or amended contention; LBP-14-5, 79 NRC 377 (2014)

degree to which new/amended contentions will be considered timely submitted is generally defined by the presiding officer as a specific period following the triggering event that makes the previously unavailable/materially different information available so as to be the basis for the new/amended contention; LBP-13-10, 78 NRC 117 (2013)

eight-factor test that allowed a board to consider new or amended contentions that did not meet the three requirements for admissibility of late-filed contentions available under 10 C.F.R. 2.309(f)(2) is no longer available; LBP-15-1, 81 NRC 15 (2015)

filing of amended or new contentions is permitted only with leave of the board and upon a showing that it is based on information not previously available and materially different and the filing is timely; LBP-12-13, 75 NRC 784 (2012)

if a contention is rendered moot by information supplied by applicant or considered by Staff in a draft EIS, the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of the NRC Staff's treatment of the relevant issue; LBP-13-9, 78 NRC 37 (2013)

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if a motion for summary disposition is granted, then the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of NRC Staff's treatment of the relevant issue; LBP-14-5, 79 NRC 377 (2014)

if intervenors make reference to new material in the final supplemental environmental impact statement but do not address the six elements of 10 C.F.R. 2.309(f)(1), such references to new material do not give rise to either a new or an amended contention; LBP-14-5, 79 NRC 377 (2014)

if the reason that a motion to admit a new or amended contention was filed after the deadline does not relate to the substance of the filing itself, the standard in 10 C.F.R. 2.307 applies in determining whether the motion can be considered timely; LBP-13-9, 78 NRC 37 (2013)

insofar as applicant contends that NRC's requirements for self-guarantors are not useful or relevant in evaluating the financial condition of numerous similarly situated corporations, applicant may petition NRC to amend its rules at any time; LBP-12-6, 75 NRC 256 (2012)

intervenor attempting to litigate an issue based on expressed concerns about the draft environmental impact statement may need to amend the admitted contention or submit a new contention if the information in the DEIS is sufficiently different from the information in the environmental report that supported the original contention's admission; LBP-13-9, 78 NRC 37 (2013)

intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses; LBP-11-38, 74 NRC 817 (2011)

intervenor may need to amend an admitted environmental contention based on applicant's environmental report, or file a new contention altogether, challenging Staff's draft environmental impact statement; LBP-12-12, 75 NRC 742 (2012)

intervenor may propose new or amended contentions based on data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's environmental documents; LBP-11-1, 73 NRC 19 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-7, 73 NRC 254 (2011)

intervenors and potential intervenors have a period of time to file new or amended contentions in response to a draft environmental impact statement; LBP-13-9, 78 NRC 37 (2013)

intervenors may file new or amended contentions in response to the draft environmental impact statement if they can satisfy the test of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-12, 75 NRC 742 (2012)

motion to file new or amended contentions must address the motion to reopen standards after an intervention petition has been denied; LBP-11-20, 74 NRC 65 (2011)

motions to amend a contention must be based on new information that is materially different from information previously available and must be submitted in a timely fashion; LBP-12-27, 76 NRC 583 (2012)

new and amended contentions submitted after an intervenor's initial hearing request are evaluated under 10 C.F.R. 2.309(f)(2) for timeliness and, if found timely, their general admissibility is analyzed pursuant to section 2.309(f)(1); LBP-11-9, 73 NRC 391 (2011); LBP-11-10, 73 NRC 424 (2011)

new claims cannot be raised for the first time on appeal; CLI-12-1, 75 NRC 39 (2012)

new or amended contention is considered timely if it is filed within 60 days of the date when the material information first became available to the moving party through service, publication, or any other means; LBP-15-1, 81 NRC 15 (2015)

new or amended contentions are considered to be timely if filed within 60 days of any triggering event; LBP-11-9, 73 NRC 391 (2011)

new or amended contentions based on material information that has subsequently become available must meet the general contention admissibility requirements of 10 C.F.R. 2.309(f)(1) as well as the three requirements in section 2.309(c)(1); LBP-14-6, 79 NRC 404 (2014)

new or amended contentions filed after the initial filing period has expired may be admitted as timely only with leave of the licensing board if the contention meets the timeliness standards of 10 C.F.R. 2.309(f)(2); LBP-12-7, 75 NRC 503 (2012)

new or amended contentions generally must meet the six admissibility factors specified in section 2.309(f)(1); LBP-13-10, 78 NRC 117 (2013)

new or amended contentions may be filed after the deadline for requests for hearing and petitions to intervene if they satisfy the requirements of 10 C.F.R. 2.309(f)(2); LBP-12-12, 75 NRC 742 (2012)

SUBJECT INDEX

new or amended contentions must be based on information not previously available and materially different from previously available information and be submitted in a timely fashion based on the availability of the subsequent information; LBP-14-6, 79 NRC 404 (2014)

new or amended contentions must satisfy the substantive contention admissibility standards, and failure to meet any of them renders contentions inadmissible; LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)

newly proffered contention must satisfy either the timeliness standards in 10 C.F.R. 2.309(f)(2) or the standards in 10 C.F.R. 2.309(c)(1) for newly proffered nontimely contentions, and the contention admissibility standards in 10 C.F.R. 2.309(f)(1); LBP-11-15, 73 NRC 629 (2011)

NRC preserves the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-11-22, 74 NRC 259 (2011)

NRC proceedings would prove unmanageable and unfair to other parties if intervenor could freely change admitted contentions at will as litigation progresses; CLI-12-1, 75 NRC 39 (2012)

NRC rules contain ample provisions through which litigants may seek admission of new or amended contentions; CLI-12-13, 75 NRC 681 (2012)

once the deadline for filing petitions to intervene has passed, a party may file new or amended contentions if it is able to demonstrate good cause by meeting three requirements; LBP-15-1, 81 NRC 15 (2015)

petitioner may amend its contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or any supplements thereto, that differ significantly from the data or conclusions in applicant's documents; LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

petitioner may amend NEPA contentions or file new NEPA contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-12-12, 75 NRC 742 (2012)

petitioner or intervenor may file timely new or amended contentions, with leave of the board, if three requirements are met; LBP-11-9, 73 NRC 391 (2011)

proponents of new or amended contentions are required to demonstrate good cause for their filing, which includes a demonstration that the information on which the new or amended contention is based is materially different from information previously available; CLI-15-1, 81 NRC 1 (2015)

proposed new or amended contentions shall be deemed timely if filed within 60 days of the date when the document containing the new and material information first becomes available; LBP-12-12, 75 NRC 742 (2012)

reply briefs cannot be used to present entirely new facts or arguments in an attempt to reinvigorate thinly supported contentions; LBP-11-34, 74 NRC 685 (2011)

request to admit a new or amended contention requires petitioner to show that the information upon which it is based was not previously available and is materially different from information previously available; CLI-14-2, 79 NRC 11 (2014)

revised rules no longer require leave from the presiding officer to amend a contention or file a new contentions; LBP-12-27, 76 NRC 583 (2012)

seismic hazard reevaluations of all nuclear power reactors are not de facto license amendments; LBP-15-27, 82 NRC 184 (2015)

should NRC Staff provide a different analysis in its draft environmental impact statement, there will be ample opportunity to either amend or dispose of a contention challenging the environmental report; CLI-12-13, 75 NRC 681 (2012)

significant change in the nature of the purported NEPA imperfection, from one focusing on comprehensive information omission to one centered on a deficient analysis of subsequently supplied information, warrants issue modification by the complaining party because otherwise, absent any new pleading, the other parties would be left to speculate whether the concerns first expressed had been satisfied by the new information; LBP-12-5, 75 NRC 227 (2012)

standard for admission of new or amended contentions involves a balancing of eight factors; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

SUBJECT INDEX

there was no prejudice to intervenor where the board considered licensee's supplement to the application, which contained the updated aging management plan, because intervenor could have sought to amend its contention to respond to the supplement; CLI-12-10, 75 NRC 479 (2012)

time for submitting a new/amended contention motion based on information that would be newly available, materially different, and otherwise timely submitted given the information's availability can be extended if the extension request is based on good cause; LBP-13-10, 78 NRC 117 (2013)

to make additional claims in a contention, intervenor must provide a sufficient explanation of its concern and a concise statement of the alleged facts supporting its position; LBP-14-5, 79 NRC 377 (2014)

trigger point for timely submission of new or amended contentions is when new information becomes available, and NRC rules require the filing of contentions in a timely manner after such new information becomes available; CLI-12-13, 75 NRC 681 (2012); LBP-12-13, 75 NRC 784 (2012)

when good cause is shown, amendment of contentions and submission of new contentions are allowed; CLI-12-1, 75 NRC 39 (2012)

where a contention alleges omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by NRC Staff in a draft environmental impact statement, the contention is moot, and intervenors must timely file a new or amended contention to raise specific challenges regarding the new information; LBP-12-5, 75 NRC 227 (2012)

where an amended version of a dismissed contention was pending before the board, the board retains jurisdiction to decide whether to admit the proposed contention; LBP-11-22, 74 NRC 259 (2011)

AMENDMENT OF REGULATIONS

amended regulations apply to obligations and disputes that arise after the effective date of the regulation; LBP-15-1, 81 NRC 15 (2015)

amendment of 10 C.F.R. 2.309 in 2012 was to simplify the rules, not fundamentally change the rationale boards use to admit new/amended contentions; LBP-15-11, 81 NRC 401 (2015)

any interested person may petition the Commission to issue, amend, or rescind any regulation; CLI-12-19, 76 NRC 377 (2012)

applying principles of statutory interpretation, the board declined to insert addition requirements into the regulations to specify damage states or the number and magnitude of fires and explosions with Commission intent to the contrary and without a showing that such a requirement is unavoidable or imperatively required; CLI-11-9, 74 NRC 233 (2011)

contentions proposed after the filing deadline, which would have been allowable under the previous 10 C.F.R. 2.309(f)(2) requirements, will also be allowable under the current section 2.309(c)(1) requirements; LBP-15-11, 81 NRC 401 (2015)

definition of byproduct material in 10 C.F.R. 40.4 was clarified by adding the clause "including discrete surface wastes resulting from uranium solution extraction processes"; LBP-15-16, 81 NRC 618 (2015)

exemptions do not actually modify the regulations because the ability to request an exemption is part of the regulations themselves; LBP-15-24, 82 NRC 68 (2015)

if a board issues a scheduling order before the effective date of the final rule that incorporates 10 C.F.R. 2.336(d), which currently requires parties to update their disclosures every 14 days, that obligation would change to every month on a day specified by the board, unless the parties agree otherwise, once the effective date of the rule is reached; LBP-15-1, 81 NRC 15 (2015)

it is for the Commission, not licensing boards, to revise its rulings; LBP-15-18, 81 NRC 793 (2015)

NRC revised 10 C.F.R. 50.36 in 1995 and established clearer criteria as to what constitutes a technical specification that must be in the license; LBP-12-25, 76 NRC 540 (2012)

revision of 10 C.F.R. 50.63 to expand the coping capability to include cooling the spent fuel, preventing a loss-of-coolant accident, and preventing containment failure would be a significant benefit; LBP-12-18, 76 NRC 127 (2012)

AMICUS CURIAE

it is within Commission discretion to grant leave for participation as amicus curiae; CLI-15-1, 81 NRC 1 (2015)

state government may file an amicus brief within the time allowed to the party whose position the brief will support; CLI-15-2, 81 NRC 213 (2015)

SUBJECT INDEX

AMICUS PLEADINGS

although NRC rules do not provide for filing of amicus briefs in this circumstance, as a matter of discretion the Commission has reviewed the brief; CLI-15-5, 81 NRC 329 (2015)

although NRC rules do not provide for filing of amicus briefs on motions filed pursuant to 10 C.F.R. 2.323, as a matter of discretion, the Commission has reviewed both the brief and NRC Staff's opposition; CLI-13-9, 78 NRC 551 (2013); CLI-14-11, 80 NRC 167 (2014)

briefs are allowed for matters taken up at the Commission discretion under 10 C.F.R. 2.341 or sua sponte; CLI-13-9, 78 NRC 551 (2013); CLI-14-11, 80 NRC 167 (2014); CLI-15-23, 82 NRC 321 (2015); CLI-15-24, 82 NRC 331 (2015)

briefs may be filed for matters taken up at Commission discretion or sua sponte; CLI-15-4, 81 NRC 221 (2015); CLI-15-10, 81 NRC 535 (2015)

Commission considers amicus views as a matter of discretion; CLI-15-23, 82 NRC 321 (2015)

nonparties may file a brief if a matter is taken up by the Commission under 10 C.F.R. 2.341 or sua sponte; CLI-15-1, 81 NRC 1 (2015); CLI-15-5, 81 NRC 329 (2015)

APPEAL PANEL

although the Appeal Panel was abolished in 1991, the Commission explicitly directed that the decisions of its boards were still to carry precedential weight; LBP-11-8, 73 NRC 349 (2011)

although the Atomic Safety and Licensing Appeal Panel is no longer in existence, the decisions of its boards continue to be binding to the degree they concern a regulation or regulatory matter that has not been revised or otherwise materially altered; LBP-11-34, 74 NRC 685 (2011)

APPEALS

after a petition to review a final order has been filed with the Commission, the board no longer has jurisdiction to consider a motion to reopen and the motion is properly filed with the Commission; CLI-12-14, 75 NRC 692 (2012)

although a party who is not injured by a board's ruling has no right to appeal that ruling, it may file a supporting brief at the appropriate time; CLI-12-6, 75 NRC 352 (2012)

any other party to the proceeding may file an answer supporting or opposing Commission review; CLI-15-6, 81 NRC 340 (2015)

appeal as of right from a board's ruling on an intervention petition is permitted only upon denial of a petition to intervene and/or request for hearing, on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied; CLI-14-3, 79 NRC 31 (2014)

appeal as of right from a licensing board ruling on an intervention petition is permitted only in two limited circumstances; LBP-15-1, 81 NRC 15 (2015)

appeal as of right is allowed on the question whether a request for hearing should have been wholly denied; CLI-12-19, 76 NRC 377 (2012); CLI-15-18, 82 NRC 135 (2015)

appeal as of right on the question of whether an initial intervention petition should have been wholly denied or, alternatively, was granted improperly is governed by 10 C.F.R. 2.311; CLI-12-7, 75 NRC 379 (2012)

appeal of an order selecting a hearing procedure is permitted on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in section 2.310; CLI-14-3, 79 NRC 31 (2014)

appellants seeking oral argument must show how oral argument will assist the Commission in reaching a decision; CLI-11-8, 74 NRC 214 (2011)

applicants may prevail against NRC Staff if they prove that a particular contested assessment of a deficiency was arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)

automatic right exists to appeal a board decision on the question whether a petition to intervene should have been wholly denied; CLI-15-25, 82 NRC 389 (2015)

because the Commission's vacatur order does not address the merits, it need not address an argument that NRC Staff impermissibly raises objections to the merits of the board's decision without filing a petition for review; CLI-13-9, 78 NRC 551 (2013)

board order is appealable when it disposes of a major segment of the case or terminates a party's right to participate; CLI-11-10, 74 NRC 251 (2011)

board rulings on hearing requests, petitions to intervene, and access to certain nonpublic information are appealable under 10 C.F.R. 2.311(a); CLI-12-6, 75 NRC 352 (2012)

SUBJECT INDEX

Commission affirmed board's standing ruling, but declined to accept review of challenges to the board's admission of two contentions because petitioner had failed to perfect its appeal by challenging the validity of the board's admissibility rulings regarding other contentions; LBP-15-3, 81 NRC 65 (2015)

Commission enforces the 10-day deadline for filing appeals strictly and excuses only in unavoidable and extreme circumstances; LBP-12-12, 75 NRC 742 (2012)

contentions filed after the initial petition generally are not subject to appeal pursuant to section 2.311; CLI-12-7, 75 NRC 379 (2012)

controversy often ends during the pendency of appeals before the Commission or the Appeal Board; CLI-13-9, 78 NRC 551 (2013)

cursory assertions are insufficient to raise an issue for appeal; CLI-13-1, 77 NRC 1 (2013)

degree to which pendency of a new contention at the time of the board's ruling on an initial hearing petition tolled the time for filing any appeals from that decision regarding the admissibility of the contentions would be a matter for Commission determination; LBP-14-12, 80 NRC 138 (2014)

denial of hearing request on enforcement order is appealable as of right; CLI-13-2, 77 NRC 39 (2013)

dismissal of an appeal with prejudice, similar to termination of a proceeding with prejudice, generally implies that the Commission has ruled on the merits of the appeal and such ruling is reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general; CLI-13-10, 78 NRC 563 (2013)

following issuance of the board's final dispositive decision on contentions held in abeyance, and consistent with NRC procedural rules, applicant and intervenor will have the opportunity to appeal the board's decisions; CLI-14-3, 79 NRC 31 (2014)

for a hearing petitioner to take an appeal pursuant to section 2.311(c), petitioner must claim that, after considering all pending contentions, the board has erroneously denied a hearing; CLI-14-3, 79 NRC 31 (2014)

general proposition that an appeal is not moot if there is a possibility of similar acts recurring in the future applies to instances where the same litigants likely will be subject to similar future action; CLI-13-9, 78 NRC 551 (2013)

generally, once there has been an appeal or petition to review a Board order, jurisdiction passes to the Commission; CLI-12-14, 75 NRC 692 (2012)

grant of summary disposition where other contentions are pending is not a final decision, and is appealable only upon a showing that the standards for interlocutory review have been met; CLI-11-14, 74 NRC 801 (2011)

in an action under the Hobbs Act for review of an NRC final order, exhaustion of remedies is not a jurisdictional requirement; LBP-14-9, 80 NRC 15 (2014)

in its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-11-8, 74 NRC 214 (2011)

license applicant may take an appeal under 2.311(d)(1) if it contends that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-14-3, 79 NRC 31 (2014)

licensee challenged NRC Staff's use of immediately effective orders after fulfilling the underlying requirements of those orders; CLI-13-9, 78 NRC 551 (2013)

licensing board order granting a request for hearing on the question whether the request should have been wholly denied is appealable; CLI-15-23, 82 NRC 321 (2015)

motion to reply is denied because petitioner should have anticipated the arguments in the Staff's and applicant's answers, which were logical responses to petitioner's suspension motion; CLI-12-6, 75 NRC 352 (2012)

new claims cannot be raised for the first time on appeal; CLI-12-1, 75 NRC 39 (2012)

NRC rules of practice provide for an automatic right to appeal a licensing board decision deciding standing and contention admissibility, on the question whether a petition to intervene and request for hearing should have been granted, or denied in its entirety; CLI-12-8, 75 NRC 393 (2012); CLI-14-2, 79 NRC 11 (2014)

NRC Staff cannot defend its decision on a basis inconsistent with its own informal review; LBP-14-2, 79 NRC 131 (2014)

NRC Staff may not take a position or assert facts before the presiding officer contrary to a matter decided by the appeal board (i.e., the Staff itself) on applicant's informal appeal absent an explicit confession of error; LBP-14-2, 79 NRC 131 (2014)

SUBJECT INDEX

on appeal, intervenors must show that the board's resolution of the contested issue in favor of applicant is clearly erroneous; CLI-14-10, 80 NRC 157 (2014)

opposing party's litigation expenses do not provide a basis for departing from the usual rule that a dismissal should be without prejudice; CLI-13-10, 78 NRC 563 (2013)

parties may choose whether to submit a petition for review, an answer in support of the petition, or neither; CLI-11-14, 74 NRC 801 (2011)

petitioner may act to vindicate its own rights, but it has no standing to assert the rights of others; CLI-12-6, 75 NRC 352 (2012)

petitioner will have an opportunity to challenge the board's contention admissibility decision at the end of the case; CLI-12-13, 75 NRC 681 (2012)

petitioners have a right to reply to petitions for review subject to 10 C.F.R. 2.341; CLI-12-6, 75 NRC 352 (2012)

petitioners' request, though styled a petition for review, asked the Commission to reconsider its own prior ruling, and was therefore properly considered according to the standards governing a motion for reconsideration; CLI-12-17, 76 NRC 207 (2012)

petitions for review are allowed after a full or partial initial decision, both of which are considered final decisions; CLI-11-10, 74 NRC 251 (2011); CLI-11-14, 74 NRC 801 (2011)

petitions for review must be filed within 15 days; CLI-12-17, 76 NRC 207 (2012)

petitions for review of partial initial decisions and any answers shall conform to the requirements of 10 C.F.R. 2.341(b)(2)-(3); LBP-12-5, 75 NRC 227 (2012)

possibility that an issue may arise in the future is not grounds to continue with an appeal in a proceeding where no live controversy remains between the litigants; CLI-13-10, 78 NRC 563 (2013)

procedural rule governing appeals in a 10 C.F.R. Part 2, Subpart J proceeding provides for review only in the limited circumstances prescribed in the rule; CLI-11-13, 74 NRC 635 (2011)

replies to appeals filed pursuant to 10 C.F.R. 2.311 are not permitted; CLI-12-6, 75 NRC 352 (2012)

review of a board's dismissal of some contentions would normally await the end of the case; CLI-12-19, 76 NRC 377 (2012)

section 2.311(a) is applicable to an appeal of a board decision rejecting an intervention petition and a hearing request; CLI-14-6, 79 NRC 445 (2014)

section 2.311(d)(1) provides for appeals as of right on the question of whether a request for hearing should have been wholly denied; CLI-11-11, 74 NRC 427 (2011)

section 2.341 applies to appeals of rulings on new contentions filed after initial intervention petitions; CLI-12-7, 75 NRC 379 (2012)

should a suspended adjudication resume, the Commission will consider appeals in due course, consistent with relevant Subpart J rules; CLI-13-8, 78 NRC 219 (2013)

time for petitioning for review of any of a board's prior interlocutory rulings will run from the date of the Commission's ruling closing the record; CLI-12-14, 75 NRC 692 (2012)

to the extent that petitioner challenges the board's decision to apply the reopening standards strictly, its challenge constitutes an improper collateral attack on NRC regulations; CLI-11-2, 73 NRC 333 (2011)

under 10 C.F.R. 2.311, appeal of a ruling on contentions is allowed only if the order wholly denies an intervention petition or a party other than the petitioner alleges that a petition for leave to intervene or a request for hearing should have been wholly denied; CLI-12-7, 75 NRC 379 (2012)

when a petition for review is filed with the Commission at the same time as a motion for reconsideration is filed with the board, the Commission will delay considering the petition for review until after the board has ruled; CLI-12-5, 75 NRC 301 (2012)

See also Abeyance of Appeal; Appellate Review; Briefs, Appellate

APPEALS, INTERLOCUTORY

admission of a contention that might require further explanation of severe accident mitigation alternatives cost-benefit analysis did not have a pervasive and unusual effect on the litigation; CLI-11-6, 74 NRC 203 (2011)

allowing an environmental challenge to continue after the environmental impact statement has issued does not constitute a merits ruling that the Staff's review document is inadequate; CLI-11-6, 74 NRC 203 (2011)

SUBJECT INDEX

appeal under 10 C.F.R. 2.311 of a licensing board order holding various contentions inadmissible was premature because a waste confidence contention had been held in abeyance, and the board had therefore not yet granted or denied the hearing request; LBP-14-8, 79 NRC 519 (2014)

appeals from an order ruling on the admission of new or amended contentions is not permitted; LBP-14-5, 79 NRC 377 (2014)

appeals of contention admissibility rulings are available only upon denial of a petition to intervene and/or request for hearing on the question of whether it should have been granted or upon the grant of a petition to intervene and/or request for hearing on the question of whether it should have been wholly denied; CLI-13-3, 77 NRC 51 (2013)

appellate review of interlocutory licensing board orders is disfavored and will be undertaken as a discretionary matter only in extraordinary circumstances; CLI-11-10, 74 NRC 251 (2011)

applicant may file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-12-12, 75 NRC 603 (2012)

appropriate mechanism to challenge individual contention admissibility determinations following a ruling on an initial petition is a request for interlocutory review; CLI-12-12, 75 NRC 603 (2012)

because a board makes a disputed legal ruling does not necessarily warrant immediate Commission action; CLI-11-6, 74 NRC 203 (2011)

because the board granted a hearing request, its decision to reject some contentions may not be appealed until the end of the case; CLI-14-2, 79 NRC 11 (2014)

board's denial of a summary disposition motion did not constitute a de facto partial initial decision or a final decision on the merits, ripe for Commission review; CLI-11-6, 74 NRC 203 (2011)

broadening of issues for hearing caused by board's admission of a contention that applicant opposes does not constitute a pervasive and unusual effect on the litigation meriting interlocutory review; CLI-15-17, 82 NRC 33 (2015)

challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 379 (2012)

claim of violation of National Historic Preservation Act did not in itself establish irreparable harm warranting interlocutory review; CLI-15-17, 82 NRC 33 (2015)

Commission denies a petition for interlocutory review of a licensing board order granting a motion for cross-examination of witnesses; CLI-12-18, 76 NRC 371 (2012)

Commission discourages piecemeal appeals; CLI-12-12, 75 NRC 603 (2012)

Commission generally disfavors interlocutory review; CLI-15-17, 82 NRC 33 (2015)

Commission has considered whether to exercise pendent jurisdiction of otherwise nonappealable issues, such as where those issues are inextricably intertwined with a related legal question properly before it, or where consideration of the issues together has the potential to resolve the entire litigation; CLI-12-12, 75 NRC 603 (2012)

Commission may at its discretion grant a party's request for interlocutory review of a board decision; CLI-12-18, 76 NRC 371 (2012)

Commission may grant interlocutory review if the issue for which the party seeks review threatens the party adversely affected by it with immediate and serious irreparable impact which could not be alleviated through an appeal at the end of the case; CLI-15-17, 82 NRC 33 (2015)

Commission will consider taking discretionary interlocutory review where the requesting party shows that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 33 (2015)

contention admissibility decisions generally are not considered to be extraordinary for purposes of interlocutory appellate review, particularly where petitioner has been admitted as a party and has other contentions pending; CLI-13-3, 77 NRC 51 (2013)

denial of summary disposition does not constitute a full or partial initial decision warranting immediate Commission review; CLI-11-10, 74 NRC 251 (2011)

denial of summary disposition neither threatens NRC Staff with immediate and serious irreparable impact that could not be alleviated through a petition for review of the presiding officer's final decision nor affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-10, 74 NRC 251 (2011)

SUBJECT INDEX

discretionary interlocutory review is granted only where the party demonstrates that the issue for which it seeks review threatens it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through an appeal following the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-12-18, 76 NRC 371 (2012)

expansion of issues for litigation that results from a board action does not have a pervasive and unusual effect on the litigation; CLI-11-10, 74 NRC 251 (2011)

grant of summary disposition on a particular contention is an interlocutory ruling appealable at the end of the case; CLI-11-6, 74 NRC 203 (2011)

in light of the board's limited jurisdiction, it concludes that petitioner may appeal its decision immediately; LBP-14-8, 79 NRC 519 (2014)

incorrect legal ruling typically does not warrant interlocutory review because such rulings can be reviewed on appeal from partial initial decisions or a final decision; CLI-15-17, 82 NRC 33 (2015)

interlocutory review is allowed where the ruling threatens petitioner with immediate and serious irreparable harm, or has a pervasive and unusual effect on the basic structure of the proceeding; CLI-12-12, 75 NRC 603 (2012); CLI-12-13, 75 NRC 681 (2012)

interlocutory review is discretionary and will be granted only upon a showing that the issue for which review is sought threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-13-3, 77 NRC 51 (2013)

interlocutory review of a board's dismissal of a new contention is granted only upon a showing of extraordinary circumstances; CLI-12-13, 75 NRC 681 (2012)

interlocutory review of decisions and actions of a presiding officer may be available under 10 C.F.R. 2.341(f)(2); LBP-14-5, 79 NRC 377 (2014)

intervenor normally is not allowed to challenge a board's rejection of contentions where the board has granted a hearing on any contention; CLI-12-12, 75 NRC 603 (2012)

labor and expense of pursuing litigation that petitioner sought to curtail do not constitute irreparable harm; CLI-11-10, 74 NRC 251 (2011)

limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, that is, when it has admitted or rejected all proposed contentions; CLI-14-3, 79 NRC 31 (2014); LBP-14-8, 79 NRC 519 (2014); LBP-15-1, 81 NRC 15 (2015)

NRC Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 319 (2014)

partial initial decision is one rendered following an evidentiary hearing on one or more contentions, but that does not dispose of the entire matter; CLI-11-6, 74 NRC 203 (2011)

petition for interlocutory review that questions the very structure of the two-step licensing process is suitable for consideration; CLI-13-3, 77 NRC 51 (2013)

petition is considered under interlocutory review standard because neither NRC Staff's issuance of the license nor the board's denial of a stay of the effectiveness of that license constitutes final agency action; CLI-15-17, 82 NRC 33 (2015)

petitions to review interlocutory board orders typically are denied summarily, without engaging in extensive merits discussion; CLI-13-3, 77 NRC 51 (2013)

piecemeal review of licensing board decisions is disfavored, but boards may refer rulings that, although interlocutory, raise significant and novel legal or policy issues or require Commission resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 199 (2013)

piecemeal review of licensing board rulings during ongoing proceedings is disfavored; CLI-11-6, 74 NRC 203 (2011); CLI-13-3, 77 NRC 51 (2013)

rejection of contention where petitioner has other contentions pending for hearing does not constitute serious and irreparable harm or affect the structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 33 (2015)

review at the end of a case would be meaningless if the Commission could not later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-13-3, 77 NRC 51 (2013)

SUBJECT INDEX

review of board rulings is permitted when petitioner demonstrates either that the ruling threatens the petitioner with immediate and irreparable harm or the ruling has a pervasive and unusual effect on the structure of the proceeding; CLI-11-6, 74 NRC 203 (2011)

routine contention admissibility decisions do not affect the basic structure of a proceeding in a pervasive or unusual manner; CLI-12-13, 75 NRC 681 (2012)

routine contention admissibility determinations generally are not appropriate for interlocutory review; CLI-12-12, 75 NRC 603 (2012)

waste confidence contention's pendency creates some uncertainty as to whether petitioner may appeal the board's ruling on a proposed contention, or whether it must await resolution of the waste confidence issue; LBP-14-8, 79 NRC 519 (2014)

where an admitted contention is pending before the board, appeals do not lie under section 2.311, but rather under section 2.341(f)(2), which governs petitions for interlocutory review, including board rulings on new contentions; CLI-13-3, 77 NRC 51 (2013)

where the adverse impact of disclosure would occur immediately, the alleged harm is immediate for purpose of interlocutory review; CLI-13-3, 77 NRC 51 (2013)

APPELLATE BRIEFS

See Briefs, Appellate

APPELLATE REVIEW

absence of an error of law or abuse of discretion, the Commission generally defers to board contention admissibility rulings; CLI-12-5, 75 NRC 301 (2012); CLI-12-19, 76 NRC 377 (2012)

abuse of discretion standard of review is applicable to discretionary Staff actions not subject to a hearing opportunity; CLI-13-1, 77 NRC 1 (2013)

adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-11-6, 74 NRC 203 (2011); CLI-12-1, 75 NRC 39 (2012); LBP-12-17, 76 NRC 71 (2012)

although contention ultimately was resolved in NRC Staff's favor, Commission takes review as a matter of discretion because the board's ruling raises substantial questions of precedential importance; CLI-15-6, 81 NRC 340 (2015)

although NRC has no specific rule governing stays of agency action pending judicial review, federal law requires parties seeking such stays in court to come to the agency first; CLI-12-11, 75 NRC 523 (2012)

although the Commission has authority to undertake a de novo factual review, where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-13-1, 77 NRC 1 (2013)

amicus briefs are allowed for matters taken up at the Commission discretion under 10 C.F.R. 2.341 or sua sponte; CLI-15-23, 82 NRC 321 (2015)

appeals as of right are allowed on the question of whether an intervention petition should have been wholly denied; CLI-12-12, 75 NRC 603 (2012)

appeals as of right will be granted on the question whether a request for hearing or petition to intervene should have been granted; CLI-15-21, 82 NRC 295 (2015)

applicant satisfied the regulatory standards for discretionary review by identifying a substantial question as to whether the board decision reaches at least one necessary legal conclusion without governing precedent or addresses at least one substantial and important question of law, policy, or discretion; CLI-13-1, 77 NRC 1 (2013)

as a consequence of the Commission ruling that the board should have terminated the proceeding once it resolved all contentions, all of the board's earlier interlocutory orders become ripe for review; CLI-12-14, 75 NRC 692 (2012)

at its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review; CLI-12-12, 75 NRC 603 (2012)

basis for allowing immediate appellate review of partial initial decisions rests on prior appeal board decisions permitting review of a licensing board ruling that disposes of a major segment of the case or terminates a party's right to participate; CLI-11-14, 74 NRC 801 (2011)

because petitioners did not participate in the mandatory hearing, and were not parties to it, they may not challenge the mandatory hearing decision, as such, in court; CLI-12-11, 75 NRC 523 (2012)

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board is the appropriate arbiter of fact-specific questions of contention admissibility, and the Commission will not second-guess the board's evaluation of factual support for the contention, absent an error of law or abuse of discretion, even if support for the contention is weak; CLI-15-25, 82 NRC 389 (2015)

board rulings on standing are accorded substantial deference on appeal; CLI-12-12, 75 NRC 603 (2012); CLI-14-2, 79 NRC 11 (2014)

boards are appropriate arbiters of fact-specific questions of contention admissibility, and the Commission will not second-guess their evaluation of factual support, absent an error of law or abuse of discretion; CLI-12-5, 75 NRC 301 (2012)

Commission affords substantial deference to licensing boards' contention admission decisions; CLI-15-6, 81 NRC 340 (2015)

Commission considers amicus views as a matter of discretion; CLI-15-23, 82 NRC 321 (2015)

Commission defers to a board's contention admissibility rulings unless the appeal points to an error of law or abuse of discretion; CLI-14-2, 79 NRC 11 (2014)

Commission defers to board's factual findings unless they are clearly erroneous and generally steps in only to correct factual findings not even plausible in light of the record reviewed in its entirety, e.g., where it appears that the board has overlooked or misunderstood important evidence; CLI-15-6, 81 NRC 340 (2015)

Commission denies review of a board decision rejecting a challenge to the severe accident mitigation alternatives analysis; CLI-12-1, 75 NRC 39 (2012)

Commission generally declines to hold oral argument on appeals, absent a specific showing that oral argument will assist it in reaching a decision; CLI-12-12, 75 NRC 603 (2012)

Commission generally defers to board threshold rulings on contention admissibility, unless it finds an error of law or abuse of discretion; CLI-11-11, 74 NRC 427 (2011); CLI-12-12, 75 NRC 603 (2012); CLI-12-14, 75 NRC 692 (2012); CLI-12-15, 75 NRC 704 (2012)

Commission gives substantial deference to licensing board findings of fact, and will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-14-10, 80 NRC 157 (2014); CLI-15-9, 81 NRC 512 (2015)

Commission has declined to take interlocutory review with respect to case management decisions; CLI-15-24, 82 NRC 331 (2015)

Commission may grant a petition for review at its discretion, giving due weight to whether there exists a substantial question regarding the considerations in 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-11-9, 74 NRC 233 (2011); CLI-12-7, 75 NRC 379 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

Commission reviews board's legal rulings de novo and will reverse those rulings if they are contrary to established law; CLI-15-6, 81 NRC 340 (2015)

Commission reviews questions of law de novo, but defers to a board's findings with respect to the underlying facts unless they are clearly erroneous; CLI-15-9, 81 NRC 512 (2015)

Commission will defer to licensing board rulings on standing and contention admissibility absent error of law or abuse of discretion; CLI-15-18, 82 NRC 135 (2015); CLI-15-20, 82 NRC 211 (2015); CLI-15-25, 82 NRC 389 (2015)

Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations of 10 C.F.R. 2.341(b)(4); CLI-15-19, 82 NRC 151 (2015)

contention admissibility decisions generally are not considered to be extraordinary for purposes of interlocutory appellate review, particularly where petitioner has been admitted as a party and has other contentions pending; CLI-13-3, 77 NRC 51 (2013)

contentions filed after the initial petition are not subject to appeal pursuant to 10 C.F.R. 2.311; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

decisions on the admissibility of contentions will be affirmed where the Commission finds no error of law or abuse of discretion; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-8, 75 NRC 393 (2012); CLI-12-10, 75 NRC 479 (2012)

deference to a board's factual determinations is particularly high when they are based in significant part on its assessment of expert testimony and credibility of the witnesses offering that testimony; CLI-13-1, 77 NRC 1 (2013)

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deference to board rulings on contention admissibility is appropriate even where the Commission may consider that the support for the contention is weak, or where the claim's materiality presents a close question; CLI-14-2, 79 NRC 11 (2014)

deferential clear error standard is applied in analyzing a board's findings of fact; CLI-13-1, 77 NRC 1 (2013)

discretionary grant of a petition for review gives due weight to the existence of a substantial question with respect to one or more of the considerations under 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-12-6, 75 NRC 352 (2012)

expansion of issues for litigation from the board's denial of a motion for summary disposition had neither a pervasive and unusual effect on the litigation nor a serious and irreparable impact on movant; CLI-15-24, 82 NRC 331 (2015)

expense is not irreparable harm; CLI-15-24, 82 NRC 331 (2015)

filing of amicus briefs is permitted if a matter is taken up by the Commission under section 2.341 or sua sponte; CLI-15-24, 82 NRC 331 (2015)

for threshold issues such as contention admissibility, the Commission gives substantial deference to a board's determinations; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

four factors must be addressed when the Commission or presiding officer is asked to stay the effectiveness of a presiding officer's decision or action during pendency of an appeal; CLI-15-17, 82 NRC 33 (2015)

grant of discretionary review requires a showing that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-13-1, 77 NRC 1 (2013)

grant of interlocutory review requires a showing that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-15-24, 82 NRC 331 (2015)

if the Commission determines on appeal that information withheld under a protective order should have been publicly disclosed, it will direct that such information and the transcript of the related *in camera* session be made publicly available; CLI-15-24, 82 NRC 331 (2015)

important questions of law and material fact merit Commission review; CLI-15-6, 81 NRC 340 (2015)

in deciding motions seeking a stay of agency action pending judicial review, the Commission looks to the same four-part test that governs stays of licensing board decisions pending Commission review; CLI-12-11, 75 NRC 523 (2012)

in the absence of clear error or abuse of discretion, the Commission defers to its boards' rulings on such threshold issues; CLI-11-8, 74 NRC 214 (2011); CLI-11-9, 74 NRC 233 (2011)

increased litigation burden did not have a pervasive effect on the basic structure of the proceeding; CLI-15-24, 82 NRC 331 (2015)

interlocutory review is generally disfavored and requests for such review are granted only under extraordinary circumstances; CLI-15-24, 82 NRC 331 (2015)

interlocutory review of a board decision that denied reconsideration of a contention admissibility determination was declined; CLI-15-24, 82 NRC 331 (2015)

it is not the Commission's role to monitor rulings that deal with reception of evidence and procedural framework under which it will be admitted on a day-to-day basis; CLI-15-24, 82 NRC 331 (2015)

licensing board opinion on appealability of an order does not bind the Commission, which will make its own decision whether an appeal may be filed; LBP-14-8, 79 NRC 519 (2014)

licensing board rulings will be addressed by the Commission after the board has issued a final decision in a case, barring extraordinary circumstances; CLI-13-3, 77 NRC 51 (2013)

licensing boards must be vested with considerable latitude in determining the course of the proceedings that they are called upon to conduct, and the Commission will enter that arena only to the extent necessary to insure that no party has been denied a fair opportunity to advance its cause; LBP-15-29, 82 NRC 246 (2015)

litigants are not entitled to challenge a board ruling unless and until that ruling has worked a concrete injury to their personal interests; CLI-12-6, 75 NRC 352 (2012)

on appeal, Commission defers to board's rulings on contention admissibility absent an error of law or abuse of discretion; CLI-15-22, 82 NRC 310 (2015); CLI-15-23, 82 NRC 321 (2015)

only final NRC action is subject to judicial review; CLI-12-11, 75 NRC 523 (2012)

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parties seeking interlocutory review must show that the issue to be reviewed threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-14, 74 NRC 801 (2011)

petition falls short of satisfying 10 C.F.R. 2.341(b)(4) if it does not specify the subsections upon which it relies but merely sets forth a series of general grievances fundamentally going to the correctness of the board's decision; CLI-11-2, 73 NRC 333 (2011)

petition for interlocutory review that questions the very structure of the two-step licensing process is suitable for consideration; CLI-13-3, 77 NRC 51 (2013)

petition for review will be granted at Commission discretion upon a showing that petitioner has raised a substantial question as to any of the five factors of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-11-2, 73 NRC 333 (2011); CLI-12-3, 75 NRC 132 (2012); CLI-12-21, 76 NRC 491 (2012); CLI-14-10, 80 NRC 157 (2014); CLI-15-2, 81 NRC 213 (2015); CLI-15-9, 81 NRC 512 (2015)

petitions to review interlocutory board orders typically are denied summarily, without engaging in extensive merits discussion; CLI-13-3, 77 NRC 51 (2013)

possibility that a board may have made an incorrect legal ruling can be reviewed, if necessary, on appeal from a partial initial decision or other final appealable order; CLI-15-24, 82 NRC 331 (2015)

procedural rulings involving discovery rarely meet the standard for interlocutory review; CLI-15-24, 82 NRC 331 (2015)

question before the Commission is not whether it would have made different factual findings than those of the board but whether the board's findings of fact are so lacking in record support as to be clearly erroneous; CLI-13-1, 77 NRC 1 (2013)

requests to stay effectiveness of future licensing action pending judicial appeal are more appropriately styled motions to reconsider and motions to hold in abeyance; CLI-12-11, 75 NRC 523 (2012)

results of judicial review of rulemaking petition denial would be implemented in a meaningful way where petitioner had timely taken every conceivable procedural step to ensure that the ultimate outcome of its rulemaking petition would inform the NEPA analysis of the licensing proceedings; CLI-14-6, 79 NRC 445 (2014)

review at the end of a case would be meaningless if the Commission could not later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-13-3, 77 NRC 51 (2013)

review is granted where petitions for review raise substantial questions of law and procedure; CLI-15-6, 81 NRC 340 (2015)

review of a board's certified question that raises a significant and novel issue whose early resolution will materially advance the orderly disposition of the proceeding is granted; CLI-11-4, 74 NRC 1 (2011)

review of the majority of presiding officer decisions is governed by 10 C.F.R. 2.341(a)(1); CLI-12-6, 75 NRC 352 (2012)

section 2.342 does not apply to requests for stays of Commission decisions pending judicial review; CLI-12-11, 75 NRC 523 (2012)

settlements approved by a presiding officer are subject to Commission review; LBP-15-21, 82 NRC 1 (2015)

standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or an abuse of discretion; CLI-12-7, 75 NRC 379 (2012)

standard for showing clear error is difficult to meet, requiring that intervenors demonstrate that the board's determination is not even plausible in light of the record as a whole; CLI-15-9, 81 NRC 512 (2015)

standard of review of a board's determination on standing is deferential and the Commission will uphold the decision absent a clear misapplication of facts or law; CLI-15-25, 82 NRC 389 (2015)

stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 551 (2013)

where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-12-1, 75 NRC 39 (2012)

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where issues in a case have been sharply contested, the Commission will explain its view of the case in some detail; CLI-13-1, 77 NRC 1 (2013)

where the adverse impact of disclosure would occur immediately, the alleged harm is immediate for purpose of interlocutory review; CLI-13-3, 77 NRC 51 (2013)

where the Commission has a thorough written record containing adequate information on which to base a decision, there is no need for oral argument; CLI-11-8, 74 NRC 214 (2011)

whether the board erred in its treatment of evidence is a matter that can be addressed following an initial decision; CLI-15-24, 82 NRC 331 (2015)

with the board's termination of the proceeding, the board's interlocutory rulings on contention admissibility became ripe for appeal; CLI-11-9, 74 NRC 233 (2011)

See also Appeals

APPLICANTS

absent information to the contrary, NRC may properly assume that an applicant or licensee will comply with concrete and enforceable conditions and requirements imposed by statutes, regulations, licenses, or permits issued by competent federal, state, or local governmental entities; LBP-13-4, 77 NRC 107 (2013)

although applicant has the ultimate burden of proof on any issues upon which a hearing is held, hearings are held on only those issues that an intervenor brings to the fore; LBP-11-4, 73 NRC 91 (2011)

although environmental contentions ultimately challenge NRC's compliance with NEPA, applicant is free to support positions set forth in the environmental impact statement that are under challenge; LBP-14-7, 79 NRC 451 (2014)

applicant in a licensing proceeding must meet its burden of proof by a preponderance of the evidence; LBP-11-38, 74 NRC 817 (2011)

"applicant" means a person or entity applying for a license; LBP-14-7, 79 NRC 451 (2014)

applicant must establish and implement its own quality assurance program when it enters into a contract for the conduct of safety-related combined license application activities and to retain overall control of safety-related activities performed by the contractor; CLI-14-10, 80 NRC 157 (2014)

as proponent of the agency action at issue, applicant generally has the burden of proof in a licensing proceeding; LBP-15-3, 81 NRC 65 (2015)

board refused to let a matter turn on attempts by NRC Staff and applicant to label a controversial matter in a way that would avoid adjudication; LBP-14-1, 79 NRC 39 (2014)

boards cannot assume that applicants will not comply with its regulatory responsibilities, including its license conditions; LBP-15-3, 81 NRC 65 (2015)

burden of fulfilling the National Historic Preservation Act's consultation requirements rests exclusively with the NRC, not with the applicant; LBP-12-23, 76 NRC 445 (2012)

burden of proof in a combined license proceeding is borne by applicant; LBP-14-3, 79 NRC 267 (2014)

burden of providing reasonable assurance that the current licensing basis will be maintained throughout the renewal period falls on applicant; LBP-15-5, 81 NRC 249 (2015)

combined license applicant's status as a current power reactor licensee generally provides the necessary support for NRC Staff's finding that applicant is technically qualified for a new license; CLI-12-2, 75 NRC 63 (2012)

DOE may incorporate, in its geologic repository application, information in previous reports filed with the Commission, provided that such references are clear and specific; LBP-12-24, 76 NRC 503 (2012)

environmental contentions ultimately challenge NRC's compliance with NEPA, but applicant is free to support positions set forth in the environmental impact statement that are under challenge; LBP-12-17, 76 NRC 71 (2012)

federal trust responsibility to Indian tribes rests solely with the federal government and cannot be discharged by applicants; LBP-12-24, 76 NRC 503 (2012)

if intervenors provide sufficient evidence to support the claims made, applicant has the burden of demonstrating by a preponderance of the evidence that it has met the relevant NRC regulations and that the board should therefore reject each contention on the merits; LBP-14-1, 79 NRC 39 (2014)

in assessing whether applicant/licensee adequately carries out a licensing directive, boards are to assume that NRC Staff will be fair and judge the matter of applicant/licensee's compliance on the merits; LBP-15-3, 81 NRC 65 (2015)

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- in denying an exemption request, Staff is required to inform applicant of the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)
- in the absence of some showing of substantial prior misdeeds, applicant/licensee will be presumed to follow the agency's regulatory requirements, including the directives in its license; LBP-15-3, 81 NRC 65 (2015)
- interlocutory appeal of board orders admitting contentions may be filed only if the appeal challenges the admissibility of all admitted contentions; CLI-12-12, 75 NRC 603 (2012)
- it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)
- license applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but applicant retains responsibility for the QA program; LBP-12-23, 76 NRC 445 (2012)
- license applicant may take an appeal under 10 C.F.R. 2.311(d)(1) if it contends that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-14-3, 79 NRC 31 (2014)
- licensing boards may not assume that applicants will violate NRC regulations; LBP-12-3, 75 NRC 164 (2012)
- NRC Staff, not applicant, bears the ultimate burden of establishing compliance with NEPA; LBP-14-7, 79 NRC 451 (2014)
- NRC Staff, not applicant, has the legal duty to engage in consultation under the Endangered Species Act; LBP-12-12, 75 NRC 742 (2012)
- on safety issues, applicant has the burden of establishing that it is entitled to the applied-for license by a preponderance of the evidence; LBP-12-5, 75 NRC 227 (2012); LBP-14-3, 79 NRC 267 (2014)
- petitioner impermissibly assumes that applicant will violate applicable state law regarding its treatment of wells at the site; LBP-11-16, 73 NRC 645 (2011)
- proponent of the agency action, applicant generally has the burden of proof in a licensing proceeding; LBP-15-16, 81 NRC 618 (2015)
- regardless of issuance of the license, the burden at hearing remains on applicant and, with respect to NEPA compliance, on NRC Staff; CLI-15-17, 82 NRC 33 (2015)
- relative to factual matters, to carry burden of proof, NRC Staff and/or applicant must establish that its position is supported by a preponderance of the evidence; LBP-15-3, 81 NRC 65 (2015)
- there is no duty to address the federal government's trust responsibility in applicant's environmental report; LBP-14-6, 79 NRC 404 (2014)
- there is nothing in the record to suggest that applicant or NRC Staff will not act in good faith to ensure that applicant's regulatory responsibilities, including its license conditions, are honored, and the board cannot assume noncompliance; LBP-15-11, 81 NRC 401 (2015)
- time for applicant to request a hearing should be tolled until notice is issued if NRC Staff fails to provide the notice and hearing opportunity mandated by 10 C.F.R. 2.103(b); LBP-11-19, 74 NRC 61 (2011)
- unless the presiding officer otherwise orders, applicant or the proponent of an order has the burden of proof; LBP-15-2, 81 NRC 48 (2015)
- APPROPRIATIONS**
- existence of a specific appropriation for licensing activities prevents NRC, under well-settled principles of appropriations law, from using its general appropriations for those activities; CLI-13-8, 78 NRC 219 (2013)
- if Congress does not appropriate enough money to meet the needs of a class of beneficiaries prescribed by Congress, and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications; CLI-13-8, 78 NRC 219 (2013)
- NRC is ordered to promptly resume the licensing process for the high-level radioactive waste repository construction authorization application unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining; CLI-13-8, 78 NRC 219 (2013)
- APPROVAL OF LICENSE**
- adjudicatory proceeding on license amendment is not terminated by issuance of the amendment; CLI-15-17, 82 NRC 33 (2015)
- exemption from regulations will only be issued if the license is granted; LBP-15-24, 82 NRC 68 (2015)

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final no significant hazards consideration determination allows the Commission to issue the challenged license amendment before the petitioner's request for a hearing is adjudicated; LBP-15-17, 81 NRC 753 (2015)

NEPA requires that agencies take a hard look at the environmental effects of actions even after a proposal has received initial approval; LBP-15-16, 81 NRC 618 (2015)

NRC Staff is authorized to issue a license when it has completed its review during the pendency of a hearing as long as it provides the board and parties notice and an explanation why the public health and safety are protected and why the action is in accord with the common defense and security despite the pendency of the contested matter; CLI-15-17, 82 NRC 33 (2015)

NRC Staff is instructed to promptly issue its approval or denial of an application consistent with its findings, despite the pendency of a hearing; LBP-15-16, 81 NRC 618 (2015)

though the materials license has already been issued, the land disturbance in the project area will proceed in stages in compliance with National Historic Preservation Act § 106; LBP-15-16, 81 NRC 618 (2015)

AQUATIC IMPACTS

licensing board finds no material dispute concerning the effect of calcium contained in the thermal effluent stream on the potential proliferation of *Lyngbya wollei*; LBP-12-23, 76 NRC 445 (2012)

ARCHAEOLOGICAL RESOURCES PROTECTION ACT

NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)

ASME CODE

after the rulemaking is completed, licensees for new reactors will be required to comply with the ASME code preservice and inservice surveillance provisions for squib valves; CLI-15-13, 81 NRC 555 (2015)

applicants must implement the edition and addendum of the ASME Code for Operation and Maintenance of Nuclear Plants incorporated by reference in 10 C.F.R. 50.55a 12 months before fuel loading; CLI-12-2, 75 NRC 63 (2012)

basis of NRC Staff's reasonable assurance finding on combined license applicant's squib valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 63 (2012)

Code for Operation and Maintenance of Nuclear Power Plants is incorporated by reference in NRC regulations; CLI-12-9, 75 NRC 421 (2012)

combined license application must describe the programs, and their implementation, necessary to ensure that systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code and the ASME Code of Operation and Maintenance of Nuclear Power Plants in accordance with 10 C.F.R. 50.55a; CLI-11-8, 74 NRC 214 (2011)

if part of a reactor pressure vessel is expected to fall below the 50 ft-lb standard, licensee must demonstrate that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by the ASME Boiler and Pressure Vessel Code; LBP-15-20, 81 NRC 829 (2015)

inservice visual inspection of containment system must comply with ASME Boiler and Pressure Vessel Code Section XI; LBP-15-26, 82 NRC 163 (2015)

latest edition and addenda of the ASME Boiler and Pressure Vessel Code has been incorporated by reference in 10 C.F.R. 50.55a(b)(2); LBP-15-20, 81 NRC 829 (2015)

minimum frequency with which surveillance capsules must be tested is set by ASTM Standard E 185 (1982 version), which is incorporated into Appendix H; LBP-15-20, 81 NRC 829 (2015)

NRC Staff is incorporating the 2012 edition of the ASME Code by reference into 10 C.F.R. 50.55a; CLI-15-13, 81 NRC 555 (2015)

requirements of section XI of the ASME Boiler and Pressure Vessel Code on inservice inspections are incorporated by reference in 10 C.F.R. 50.55a(b) and 50.55a(g)(4); CLI-11-8, 74 NRC 214 (2011)

ASSESSMENT

capability to rapidly assess the validity of alleged thefts is aimed at the rapid determination of whether an actual loss of 5 or more formula kilograms of strategic special nuclear material has occurred; LBP-14-1, 79 NRC 39 (2014)

contention challenging applicant's ability to rapidly assess the validity of alleged thefts is decided; LBP-14-1, 79 NRC 39 (2014)

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licensees are not required to conduct assessments of alleged thefts of strategic special nuclear material without use of their records systems, or by first verifying the integrity and accuracy of those records systems; LBP-14-1, 79 NRC 39 (2014)
rapid determination of strategic special nuclear material theft assessment should be completed within an 8- or 72-hour timeline; LBP-14-1, 79 NRC 39 (2014) See also Environmental Assessment; Probabilistic Risk Assessment; Risk Assessment

ASSUMPTION OF COMPLIANCE

absent documentary support, NRC has declined to assume that licensees will contravene its regulations; LBP-15-24, 82 NRC 68 (2015)
absent information to the contrary, NRC may properly assume that an applicant or licensee will comply with concrete and enforceable conditions and requirements imposed by statutes, regulations, licenses, or permits issued by competent federal, state, or local governmental entities; LBP-13-4, 77 NRC 107 (2013)
if a federal or state environmental agency issues a permit to the operator of a nuclear power plant that imposes numerical limits on the amount of pollution that the plant may emit, then NRC's final environmental impact statement may reasonably assume that the company's emissions will comply with those numerical limits; LBP-13-4, 77 NRC 107 (2013)
in setting license conditions, NRC Staff may assume that a licensee will comply with all requirements imposed by the license; LBP-15-16, 81 NRC 618 (2015)
NRC generally presumes that licensees will comply with its regulations; LBP-15-16, 81 NRC 618 (2015)
there is nothing in the record to suggest that applicant or NRC Staff will not act in good faith to ensure that applicant's regulatory responsibilities, including its license conditions, are honored, and the board cannot assume noncompliance; LBP-15-11, 81 NRC 401 (2015)

ATOMIC ENERGY ACT

absent a transfer, license renewal application will be denied where licensee remains under foreign ownership, control, or domination; CLI-14-5, 79 NRC 254 (2014)
actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA; LBP-15-27, 82 NRC 184 (2015)
adequacy finding on applicant's material control and accounting program requires the board to make a case-by-case determination, guided by the AEA's mandate that no license to possess special nuclear material may be issued if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 39 (2014)
AEA is designed to regulate the radiological safety aspects involved in the construction and operation of a nuclear plant; LBP-11-6, 73 NRC 149 (2011)
agency actions not formally labeled as license amendments nevertheless can constitute de facto license amendments and accordingly trigger hearing rights for the public under section 189a; CLI-15-5, 81 NRC 329 (2015)
agency approval or authorization is a necessary component of NRC action that affords a hearing opportunity under AEA § 189a, but not all agency approvals granted to licensees constitute de facto license amendments; CLI-14-11, 80 NRC 167 (2014)
all hearings will be public; LBP-11-5, 73 NRC 131 (2011)
although a SAMA analysis considers safety issues, it is actually an environmental review that must be judged under NEPA's rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 246 (2015)
although pertinent language of the AEA is written in present tense, a board's inquiry does not end with evaluating foreign ownership, control, or domination concerns posed only by the current corporate structure and financing; LBP-14-3, 79 NRC 267 (2014)
any amendment to an existing license as a result of NRC review of licensee seismic hazard reevaluations that leads to changes in the current licensing basis would be subject to a hearing opportunity; CLI-15-21, 82 NRC 295 (2015)
any license issued for a utilization or production facility for industrial or commercial purposes must meet the requirements set out in section 103; LBP-12-19, 76 NRC 184 (2012)
any person whose interest may be affected may request a hearing in a proceeding granting, suspending, revoking, or amending any license; CLI-13-2, 77 NRC 39 (2013)

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applicants are ineligible to obtain a license because they fail to meet the requirements of the AEA and NRC regulations regarding foreign ownership; LBP-12-22, 76 NRC 443 (2012)

applicants for nuclear power plant operating licenses must include technical specifications as part of the license; DD-13-3, 78 NRC 571 (2013)

argument that applying heightened late-filing standards to contentions triggered by the NRC Staff's review documents violates a petitioner's AEA hearing rights has been considered and rejected; CLI-12-14, 75 NRC 692 (2012)

basis for NRC authority to regulate use of special nuclear material in facilities such as nuclear power reactors is established; CLI-15-4, 81 NRC 221 (2015)

because the application for a uranium enrichment facility is governed by AEA §§ 53 and 63, 42 U.S.C. § 2073, 2093, foreign ownership and control issues are evaluated under sections 57 and 69; LBP-11-11, 73 NRC 455 (2011)

board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 218 (2012)

board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 437 (2012)

boards may exclude the public from adjudicatory hearings or actions that involve restricted data, defense information, safeguards information protected from disclosure under the authority of AEA § 147, or information protected from disclosure under the authority of section 148; LBP-11-5, 73 NRC 131 (2011)

"byproduct material" refers to the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content; LBP-15-16, 81 NRC 618 (2015)

commercial licenses for utilization or production facilities for industrial or commercial purposes shall be issued according to the terms of section 103; LBP-11-25, 74 NRC 380 (2011)

Commission, but not a licensing board, has the power to address a protracted delay in the proceeding and to direct appropriate remedial measures; LBP-11-30, 74 NRC 627 (2011)

Commission cannot restrict the opportunity for a hearing so much that it effectively removes from the hearing issues that are material to the licensing decision; CLI-12-14, 75 NRC 692 (2012)

Commission is required to grant a hearing upon the request of any person whose interest may be affected by certain agency proceedings; LBP-11-6, 73 NRC 149 (2011); CLI-11-3, 73 NRC 613 (2011); LBP-11-8, 73 NRC 349 (2011); LBP-11-22, 74 NRC 259 (2011); LBP-11-29, 74 NRC 612 (2011); LBP-14-4, 79 NRC 319 (2014)

Commission refers a limited portion of the hearing request to the licensing board to determine whether petitioner has identified an NRC activity that requires an opportunity to request an adjudicatory hearing; CLI-15-14, 81 NRC 729 (2015)

Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011)

Congress did not intend to require a demonstration that nuclear wastes could safely be disposed of before licensing of nuclear plants was permitted; CLI-15-4, 81 NRC 221 (2015)

Congress has vested NRC with authority to issue subpoenas in conjunction with investigations that the NRC deems necessary to protect public health or to minimize danger to life or property in matters involving nuclear materials; CLI-13-5, 77 NRC 223 (2013)

Congress intentionally limited the opportunity for a hearing to certain designated agency actions which do not include exemptions; LBP-15-24, 82 NRC 68 (2015)

Congress thought foreign ownership itself should be sufficient to require denial of a license in some circumstances; LBP-12-19, 76 NRC 184 (2012)

connection of the three prohibitions on foreign ownership with the conjunction "or" rather than "and" shows that a license may not be granted if *any* of the three prohibitions is violated; LBP-12-19, 76 NRC 184 (2012)

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determination of what constitutes adequate protection under the Atomic Energy Act, absent specific guidance from Congress, is just such a situation in which NRC should be permitted to have discretion to make case-by-case judgments; LBP-14-1, 79 NRC 39 (2014)

enrichment facilities are to be licensed pursuant to AEA §§ 53 and 63; LBP-12-21, 76 NRC 218 (2012)

every license to operate a nuclear power reactor must contain a list of technical specifications necessary for adequate protection of public health and safety; LBP-12-25, 76 NRC 540 (2012)

extreme delay in the completion of Staff's environmental review, and thus the equal delay in hearing the intervenors' claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act; LBP-11-30, 74 NRC 627 (2011)

finding of reasonable assurance that highly hazardous and long-lived radioactive materials can be disposed of safely is not a prerequisite to licensing; CLI-15-4, 81 NRC 221 (2015)

for an individual or organization to be deemed a "person whose interest may be affected by the proceeding," so as to have standing as of right such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must comply with 10 C.F.R. 2.309(d)(1)(i)-(iv); LBP-12-15, 76 NRC 14 (2012)

general scope of NRC's authority is established in section 161, but it does not discuss spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

hearing must be held on each application to construct a nuclear power plant, regardless of whether an interested member of the public requests a hearing on the application; CLI-15-13, 81 NRC 555 (2015)

hearing rights are provided in licensing actions concerning the granting, suspending, revoking, or amending of any license upon the request of any person whose interest may be affected by the proceeding; CLI-15-5, 81 NRC 329 (2015); LBP-15-16, 81 NRC 618 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-18, 81 NRC 793 (2015)

if AEA § 189a is to serve its intended purpose, parties in interest must be afforded a meaningful opportunity to request a hearing before the Commission retroactively reinvents the terms of an extant license by voiding its implicit limitations on the licensee's conduct; LBP-13-7, 77 NRC 307 (2013)

if licensee sought to relocate its surveillance frequencies from its operating license to a licensee-controlled document, then it would need to request a license amendment, which would trigger an opportunity for a member of the public to request a hearing; CLI-13-10, 78 NRC 563 (2013)

impact of a proposed action on public safety is an issue that must be considered under both the National Environmental Policy Act and the AEA; LBP-12-18, 76 NRC 127 (2012)

in any proceeding for the amending of any license, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding; LBP-13-7, 77 NRC 307 (2013)

in context of license renewal, NRC's safety review under Part 54 does not compromise or limit the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)

in context with the other provisions of AEA § 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security; LBP-14-3, 79 NRC 267 (2014)

in determining whether intervention petitioner has alleged an interest that may be affected by the proceeding within the meaning of section 189a of the Act, contemporaneous judicial concepts of standing should be used; LBP-14-4, 79 NRC 319 (2014)

in ruling that NRC had appropriately interpreted the AEA to include regulatory authority over attendant transmission lines, the court did not decide whether NEPA is an independent source of substantive jurisdiction; LBP-14-9, 80 NRC 15 (2014)

information is specified in section 182 that must be provided by license applicant and it has no reference to spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

intent of Congress in the Act is to prohibit relationships where an alien has the power to direct the actions of the licensee; LBP-14-3, 79 NRC 267 (2014)

intervenors litigated whether the performance-based licensing complies with the Atomic Energy Act and National Environmental Policy Act, and whether undue discretion was accorded to licensee; LBP-15-16, 81 NRC 618 (2015)

intervention petitioners must establish standing by demonstrating the nature of their right under the Atomic Energy Act to be made a party to the proceeding, nature and extent of their interest in the proceeding, and possible effect of any decision in the proceeding on their interest; LBP-12-24, 76 NRC 503 (2012)

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it is fair to read the AEC and NRC history as a de facto acquiescence in and ratification of the Commission's licensing procedure by Congress; CLI-15-4, 81 NRC 221 (2015)

it would be impermissible to construe the prohibition of foreign ownership so as to make it redundant or otherwise deprive it of operative effect; LBP-12-19, 76 NRC 184 (2012)

language of the National Environmental Policy Act indicates that Congress did not intend that it be precluded by the AEA; LBP-12-18, 76 NRC 127 (2012)

license amendments are not contingent upon any additional safety determination regarding spent fuel storage; CLI-15-4, 81 NRC 221 (2015)

license amendments are subject to a hearing opportunity; CLI-13-9, 78 NRC 551 (2013)

license applications must specifically state information that NRC, by rule or regulation, may determine to be necessary to decide technical and financial qualifications of applicant; DD-15-8, 82 NRC 107 (2015)

license denial letter that contained apparent boilerplate that was incomplete and perforce misleading does not accord with concepts of fundamental fairness and might well counter hearing rights granted under the Act; LBP-13-3, 77 NRC 82 (2013)

licensee must obtain NRC's written consent prior to transferring an NRC license; CLI-15-26, 82 NRC 408 (2015)

licensee must show with reasonable assurance that its proposed methodology for material control and accounting will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public; CLI-15-9, 81 NRC 512 (2015)

licenses for utilization or production facilities for industrial or commercial purposes must comply with the terms of AEA § 103; LBP-14-3, 79 NRC 267 (2014)

licensing actions that alter the terms of a license or otherwise authorize additional operating activities trigger hearing rights for the public under section 189a; CLI-15-5, 81 NRC 329 (2015)

mandatory hearings, which are required by section 189a, do not involve public participation, regardless of whether a contested hearing with public participation has occurred; CLI-12-11, 75 NRC 523 (2012)

mandatory language used in AEA § 274d is construed as requiring NRC to enter into an agreement for state regulation of the particular categories of nuclear materials that a state certifies it both desires to regulate and has established a program for, provided NRC finds the state's program to be adequate and compatible; CLI-11-12, 74 NRC 460 (2011)

materials license suspension proceeding is not an adversary adjudication for purposes of the Equal Access to Justice Act because the AEA does not require such a hearing to be on the record pursuant to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 349 (2011)

mitigation measures assessed in the SAMA analysis under the National Environmental Policy Act are supplemental to those already required under NRC safety regulations for reasonable assurance of safe operation and likewise to those NRC may order or require under ongoing regulatory oversight over reactor safety, pursuant to the AEA; CLI-12-15, 75 NRC 704 (2012)

National Environmental Policy Act and AEA and the regulations promulgated under each must be viewed in pari materia; LBP-14-9, 80 NRC 15 (2014)

neither licensee activities nor NRC inspection of or inquiry about those activities provides the opportunity for a hearing under the AEA because those activities only concern compliance with the terms of an existing license; CLI-14-11, 80 NRC 167 (2014)

no license may be issued to any person within the United States if, in the opinion of the Commission, issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public; LBP-14-3, 79 NRC 267 (2014)

NRC can issue nuclear power reactor licenses to applicants only upon a finding that utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; CLI-15-4, 81 NRC 221 (2015)

NRC cannot look to the sufficiency of safety standards enacted under the AEA to avoid its NEPA obligations; LBP-12-18, 76 NRC 127 (2012)

NRC has a clear statutory mandate to regulate the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

NRC has authority to conduct any investigations it deems necessary and proper to the administration or enforcement of its authority, which includes any regulations or orders issued pursuant to the AEA; CLI-13-5, 77 NRC 223 (2013)

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NRC has authority to define the scope of its proceedings, which, in enforcement proceedings, is to permit challenges solely on whether an order should be sustained; LBP-12-14, 76 NRC 1 (2012)

NRC has discretion in specifying the level of foreign ownership that would constitute a violation of the AEA; LBP-12-19, 76 NRC 184 (2012)

NRC has latitude to define who is an “affected person” within the meaning of AEA § 189a, 42 U.S.C. § 2239(a); LBP-12-3, 75 NRC 164 (2012)

NRC has long interpreted its statutory authority under the AEA to include conditioning approval of nuclear power plant licenses on environmentally acceptable routing of transmission lines; LBP-14-9, 80 NRC 15 (2014)

NRC is authorized to enter into agreements with the governor of any state providing for transfer of regulatory authority to the state over specified categories of nuclear material; CLI-11-12, 74 NRC 460 (2011)

NRC is authorized to enter into an agreement with the governor of any state if it finds that the state’s regulatory program is adequate to protect the public health and safety with respect to the materials the state seeks to regulate and is compatible with NRC’s program for regulation of such materials; CLI-13-6, 78 NRC 155 (2013)

NRC is authorized to issue any necessary subpoenas; CLI-13-5, 77 NRC 223 (2013)

NRC is not granted the discretion to eliminate from the hearing, material issues in its licensing decision; LBP-11-22, 74 NRC 259 (2011)

NRC is not permitted to retain jurisdiction over a site at a licensee’s request where the state seeks to assume regulatory authority over the site and meets the “adequacy” and “compatibility” criteria; CLI-13-6, 78 NRC 155 (2013)

NRC is not required, as a precondition to issuing or renewing operating licenses for nuclear power plants, to make definitive findings concerning technical feasibility of a repository for the disposal of spent nuclear fuel; CLI-15-4, 81 NRC 221 (2015)

NRC is prohibited from issuing a license for a production and utilization facility to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-13-4, 77 NRC 101 (2013); CLI-15-7, 81 NRC 481 (2015); LBP-12-19, 76 NRC 184 (2012)

NRC is prohibited from issuing a license to a nuclear power reactor if it would be inimical to the health or safety of the public; LBP-13-4, 77 NRC 107 (2013)

NRC is required to provide an opportunity to request a hearing under the Atomic Energy Act on a license amendment; CLI-15-21, 82 NRC 295 (2015)

NRC may not, over the objections of a state desiring jurisdiction and for reasons other than health and safety or compatibility, retain regulatory authority over pending applications involving a nuclear materials category otherwise transferred to a state; CLI-11-12, 74 NRC 460 (2011)

NRC must afford interested persons an opportunity for a hearing on the granting, suspending, revoking, or amending of any license; CLI-14-11, 80 NRC 167 (2014); LBP-15-27, 82 NRC 184 (2015)

NRC retains power under section 274j to revoke agreements with states and to restore NRC regulatory authority; CLI-11-12, 74 NRC 460 (2011)

NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-12-21, 76 NRC 218 (2012)

NRC Staff oversight activities normally conducted to ensure that licensees comply with existing NRC requirements and license conditions do not typically trigger an opportunity for a hearing; CLI-15-5, 81 NRC 329 (2015)

NRC Staff review procedures used to evaluate applications for issuance or transfer of control of a production or utilization facility license in light of the prohibitions in AEA §§ 103d and 104d and in 10 C.F.R. 50.38 against foreign ownership or control are described; LBP-12-19, 76 NRC 184 (2012)

opportunity for a hearing on license amendments is provided; CLI-12-20, 76 NRC 437 (2012)

orders issued under 10 C.F.R. 2.202 alter the requirements of a license and therefore fall generally under the terms of AEA § 189a; CLI-13-2, 77 NRC 39 (2013)

“owned, controlled, or dominated” refers to relationships in which the will of one party is subjugated to the will of another; CLI-15-7, 81 NRC 481 (2015); LBP-14-3, 79 NRC 267 (2014)

participation in a licensing proceeding requires a demonstration of standing; LBP-15-17, 81 NRC 753 (2015)

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petitioner failed to demonstrate the existence of a licensing action subject to hearing rights under section 189a of the Atomic Energy Act; CLI-15-21, 82 NRC 295 (2015)

petitioner is not entitled to request a hearing where NRC has neither granted greater authority than that provided by its existing licenses nor otherwise altered the terms of those licenses; LBP-15-27, 82 NRC 184 (2015)

petitioner must address its hearing request to a matter that triggers a hearing opportunity; CLI-15-5, 81 NRC 329 (2015)

petitioners asserted that NRC actions following the events of September 11, 2001, and the accident at Fukushima Dai-ichi were insufficient to satisfy NRC's general obligation to protect public health and safety; CLI-15-4, 81 NRC 221 (2015)

private parties are not guaranteed the right to have NRC Staff studies as a sort of precomplaint discovery tool; CLI-12-14, 75 NRC 692 (2012)

Purpose section specifically provides for creating a program to encourage widespread participation in order to achieve the policies set forth in the Act; LBP-14-4, 79 NRC 319 (2014)

reactor operating licenses must include technical specifications that include specific characteristics of the facility and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization of special nuclear material will provide adequate protection to the health and safety of the public; LBP-13-7, 77 NRC 307 (2013)

regulation of offsite transmission lines is within NRC's authority under section 101 and nothing in the AEA precludes NRC from implementing, through issuance of conditional licenses, NEPA's environmental mandate; LBP-14-9, 80 NRC 15 (2014)

requirement to demonstrate standing is derived from instruction to NRC to provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-15-5, 81 NRC 249 (2015)

rule exemption requests are not entitled to a hearing under AEA § 189a; CLI-13-1, 77 NRC 1 (2013)

section 189a has been interpreted to require that the hearing must encompass all material factors bearing on the licensing decision raised by the requester; LBP-11-22, 74 NRC 259 (2011)

severe accident mitigation alternatives analysis is not part of the agency's safety review for license renewal under the AEA, but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)

"source material" is defined as uranium being extracted through the ISL process; LBP-15-16, 81 NRC 618 (2015)

specific structure for the mandatory hearing requirement is not specified in the Act, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case; LBP-12-21, 76 NRC 218 (2012)

statutory findings required by section 103 do not apply to disposal activities that might result from operation of a licensed facility; CLI-15-4, 81 NRC 221 (2015)

substance of the NRC action determines entitlement to a section 189a hearing, not the particular label that NRC chooses to assign to its action; LBP-13-7, 77 NRC 307 (2013)

terminating an adjudication has significant implications for the rights of intervenors under section 189a; LBP-11-22, 74 NRC 259 (2011)

to determine whether an ongoing CAL process constitutes a de facto license amendment proceeding, the board must determine whether the requested change in operating authority sought by licensee is strictly in accordance with the terms and technical specifications in its existing license; LBP-13-7, 77 NRC 307 (2013)

to evaluate an operating license renewal application, NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011)

under AEA, NRC can issue conditional licenses for regulatory purposes, and thus there can be no objection to its use of the same means to achieve environmental ends as well; LBP-14-9, 80 NRC 15 (2014)

unless the safety findings prescribed by the Act and the regulations can be made, the reactor does not obtain a license, no matter how badly it is needed; CLI-15-4, 81 NRC 221 (2015)

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written consent from NRC is required for all direct or indirect license transfers; CLI-15-8, 81 NRC 500 (2015)

ATTORNEY CONDUCT

experienced litigator should have expected that NRC Staff might challenge its interpretation of an NRC regulation regarding appeals; LBP-15-28, 82 NRC 233 (2015)
to the extent that petitioner's counsel is blameworthy, petitioner may be held accountable; LBP-13-2, 77 NRC 71 (2013)

ATTORNEYS' FEES AND EXPENSES

award of attorneys' fees under the Equal Access to Justice Act can include fees paid by a third-party liability insurer; LBP-11-8, 73 NRC 349 (2011)
both union employees and the insured can be viewed as having incurred legal fees insofar as they have paid for legal services in advance as a component of the union dues or insurance premiums; LBP-11-8, 73 NRC 349 (2011)
claimant with a legally enforceable right to full indemnification of attorney fees from a solvent third party cannot be deemed to have incurred that expense for purposes of the Equal Access to Justice Act, and hence is not eligible for an award of fees; LBP-11-8, 73 NRC 349 (2011)
denying Equal Access to Justice Act awards in insurance contexts would undermine the dual purposes of EAJA by both maintaining financial deterrents for those who would want to challenge unjust government action and not deterring unreasonable government actions; LBP-11-8, 73 NRC 349 (2011)
Equal Access to Justice Act applies to any adjudication required by statute to be determined on the record in which the government is represented by counsel; LBP-11-8, 73 NRC 349 (2011)
Equal Access to Justice Act renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity, and any such waiver must be strictly construed in favor of the United States; LBP-11-8, 73 NRC 349 (2011)
fee-deterrent-removal purpose of the Equal Access to Justice Act would not be served by an award of fees to an individual whose fees are fully paid by a ineligible organization; LBP-11-8, 73 NRC 349 (2011)
fees may be awarded in adversary adjudications that are governed by Administrative Procedure Act § 554, but they may not be awarded in adversary adjudications that Congress did not subject to that section; LBP-11-8, 73 NRC 349 (2011)
for a prevailing applicant to recover attorneys' fees and expenses, the applicant must have incurred those fees and expenses in connection with the adversary adjudication in question; LBP-11-8, 73 NRC 349 (2011)
in an actuarial sense the cost of the defense, to the extent borne by the insurance company, is a cost that the insured paid for, just as he would have paid a lawyer for his defense had he had no insurance; LBP-11-8, 73 NRC 349 (2011)
inasmuch as litigants against the government manifestly have no constitutional right to be compensated out of public funds for their attorneys' fees, it cannot be doubted that Congress has the power to limit the reach of the Equal Access to Justice Act; LBP-11-8, 73 NRC 349 (2011)
"incur" within the context of Equal Access to Justice Act means that an individual who is a prevailing party meeting the financial qualification of the EAJA is ineligible to receive an EAJA award when that individual was not responsible for the costs of the attorney's fees; LBP-11-8, 73 NRC 349 (2011)
nothing in the Equal Access to Justice Act suggests a purpose to prevent a contractual agreement, or more broadly, to discourage the purchase of liability insurance; LBP-11-8, 73 NRC 349 (2011)
parties who prevail against the government in certain types of agency proceedings are allowed to recover attorneys' fees and other expenses incurred in connection with the proceeding unless the government's position was substantially justified, or other special circumstances render an award unjust; LBP-11-8, 73 NRC 349 (2011)
presence of an attorney-client relationship suffices to entitle prevailing litigants to receive fee awards; LBP-11-8, 73 NRC 349 (2011)
prevailing party is not entitled to an award for attorneys' fees and expenses if the position of the Commission over which the applicant has prevailed was substantially justified; LBP-11-8, 73 NRC 349 (2011)

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when a third party who has no direct interest in the litigation pays fees on behalf of a taxpayer, the taxpayer incurs the fees so long as he assumes an absolute obligation to repay the fees or a contingent obligation to pay the fees in the event that he is able to recover them; LBP-11-8, 73 NRC 349 (2011)

where a pro bono attorney forgives a fee to a client unable to afford legal expenses, that client is eligible for an Equal Access to Justice Act award on the basis of that arrangement with the attorney; LBP-11-8, 73 NRC 349 (2011)

within 30 days of the Commission's decision upholding the board majority decision setting aside the NRC Staff's immediately effective enforcement order, petitioner applied for an award of over \$250,000 in attorneys' fees; LBP-11-8, 73 NRC 349 (2011)

BACKFITTING

Commission administratively exempted, from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 421 (2012)

Commission relied on the exception to the Backfit Rule that applies when regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public; LBP-12-18, 76 NRC 127 (2012)

Commission requests briefing from NRC Staff on the circumstances, if any, Staff would judge a potentially cost-beneficial mitigation alternative to warrant further NRC consideration outside of license renewal review, either via a backfit analysis or as part of another process; CLI-15-3, 81 NRC 217 (2015)

compliance with NRC requirements presumptively ensures adequate protection, but new information may reveal that additional requirements are warranted, and in such situations, the Commission may act in accordance with its statutory authority to require licensees and construction permit holders to take action in order to protect health and safety and common defense and security; LBP-12-18, 76 NRC 127 (2012)

exception to the backfit rule is provided if the Commission determines that regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; CLI-12-9, 75 NRC 421 (2012)

modification of or addition to systems, structures, components, or designs of a facility are included; LBP-11-17, 74 NRC 11 (2011)

NRC could require modifications to the inservice testing program pursuant to compliance backfit provisions; CLI-12-2, 75 NRC 63 (2012)

NRC may impose new requirements defined as "backfitting" on previously licensed power reactors only if the agency finds that there will be a substantial increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection; LBP-11-17, 74 NRC 11 (2011); LBP-12-18, 76 NRC 127 (2012)

NRC Staff has authority to require implementation of non-aging-management severe accident mitigation alternatives through its current licensing basis backfit review under Part 50 or through setting conditions of the license renewal; LBP-11-17, 74 NRC 11 (2011)

BALD AND GOLDEN EAGLE PROTECTION ACT

contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 377 (2014)

BENEFIT-COST ANALYSIS

accounting for the meteorological patterns, atmospheric transport modeling, and data issues raised by intervenor cannot credibly alter which severe accident mitigation alternatives are potentially cost-beneficial to implement; LBP-11-18, 74 NRC 29 (2011)

adequacy of a SAMDA analysis is judged not by whether plainly better assumptions or methodologies could have been used or the analysis refined further but whether it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMDA analysis; LBP-11-38, 74 NRC 817 (2011)

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admission of a contention that might require further explanation of severe accident mitigation alternatives cost-benefit analysis did not have a pervasive and unusual effect on the litigation; CLI-11-6, 74 NRC 203 (2011)

ALARA analysis required under section 20.1403(a) calls for a licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls; CLI-13-6, 78 NRC 155 (2013)

although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action; LBP-11-7, 73 NRC 254 (2011)

assertion that other severe accident mitigation alternatives might become cost-effective if implemented, without indication of any particular positive or negative environmental impact from any such implementation fails to present an exceptionally grave issue; LBP-12-1, 75 NRC 1 (2012)

because a need-for-power assessment necessarily entails forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, need-for-power assessments are properly conservative; LBP-11-7, 73 NRC 254 (2011); LBP-12-5, 75 NRC 227 (2012)

Commission requests briefing from NRC Staff on the circumstances, if any, NRC Staff would judge a potentially cost-beneficial mitigation alternative to warrant further NRC consideration outside of the license renewal review, either via a backfit analysis or as part of another process; CLI-15-3, 81 NRC 217 (2015)

Commission requests briefing from NRC Staff on the level of uncertainty that NRC Staff considers acceptable for the implementation cost portion of the cost-benefit analysis, and why; CLI-15-3, 81 NRC 217 (2015)

Commission requests briefing from NRC Staff on whether it has a process in place to follow up with licensee to determine which potentially cost-beneficial mitigation alternatives ultimately were found by licensee to be cost-beneficial, if any, and which alternatives, if any, licensee implemented; CLI-15-3, 81 NRC 217 (2015)

contention that alleges an omission, not an inadequacy, of an environmental report's analysis of socioeconomic impacts raises an issue that is not material to any finding NRC must make in an early site permit proceeding; LBP-11-16, 73 NRC 645 (2011)

contention that population used for analysis might underestimate the exposed population in a severe accident and, in turn, underestimate the benefit achieved in implementing a severe accident mitigation alternatives analysis is admissible; LBP-15-5, 81 NRC 249 (2015)

contention that severe accident mitigation alternatives analysis does not accurately reflect decontamination and cleanup costs is decided; LBP-13-13, 78 NRC 246 (2013)

contentions concerning benefits assessment shall not be admitted if the applicant does not address those issues in the early site permit application; LBP-11-16, 73 NRC 645 (2011)

contributions of the uranium fuel cycle must be evaluated and added to the environmental costs of a proposed new nuclear power plant; LBP-11-26, 74 NRC 499 (2011)

cost-effective candidate severe accident mitigation alternatives are identified by comparing the annualized cost of the mitigation measure with the benefit as determined by the averted cost of severe accidents (consequences), as weighted by the probability of the accidents' occurrence; LBP-11-13, 73 NRC 534 (2011)

costs and benefits of the energy-efficient building code are essential to determine whether the adoption of the code should be included as an alternative; LBP-11-21, 74 NRC 115 (2011)

demand for electricity is the justification for building any power plant, and satisfaction of that demand is the principal beneficial factor weighed against the environmental costs in striking the balance that NEPA requires; LBP-11-7, 73 NRC 254 (2011)

discussion of the economic costs and benefits of the proposed action and alternatives is required if such costs and benefits are essential for a determination regarding the inclusion of an alternative in the range of alternatives considered; LBP-11-21, 74 NRC 115 (2011)

draft environmental impact statement must consider the economic, technical, and other benefits and costs of the proposed action; LBP-11-7, 73 NRC 254 (2011)

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- eligibility test in section 20.1403(a) postulates a cost-benefit inquiry that is modeled on a traditional ALARA cost-benefit analysis, but that serves a different regulatory purpose; CLI-13-6, 78 NRC 155 (2013)
- environmental impact statement need not always contain a formal or mathematical cost-benefit analysis; LBP-11-7, 73 NRC 254 (2011)
- environmental impact statements serve as an environmental full disclosure law providing agency decisionmakers, as well as the President, the Congress, the Council on Environmental Quality, and the public the environmental cost-benefit information that Congress thought they should have about each qualifying federal action; LBP-13-13, 78 NRC 246 (2013)
- extent to which operation and maintenance costs of a solar facility may present a comparative benefit is immaterial since the four-part combination of alternative energy sources is not environmentally preferable to two new nuclear units; LBP-11-4, 73 NRC 91 (2011)
- for a proposed nuclear materials-related activity, commencement of construction relative to that activity prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)
- given the legal responsibility imposed upon a public utility to provide at all times adequate, reliable service, and the severe consequences that may attend upon a failure to discharge that responsibility, the most that can be required is that need-for-power forecasts be reasonable in the light of what is ascertainable at the time made; LBP-12-5, 75 NRC 227 (2012)
- goal of a severe accident mitigation alternatives analysis is to identify potential changes to a nuclear power plant or its operations that might reduce the risk or likelihood or impact, or both, of a severe reactor accident for which the benefit of implementing the changes outweighs the cost of the implementation; LBP-11-18, 74 NRC 29 (2011)
- if demand for power turns out to be less than predicted, it cannot be argued that the cost of the unneeded generating capacity may turn up in customers' electric bills because the surplus can be profitably marketed to other systems or the new capacity can replace older, less efficient units; LBP-12-5, 75 NRC 227 (2012)
- if important factors in the cost-benefit balancing cannot be quantified, they may be discussed qualitatively; LBP-11-7, 73 NRC 254 (2011)
- if licensee demonstrates, through either of the two cost-benefit approaches, that removing radioactive contamination to the unrestricted-use level would not be cost-beneficial, then licensee must show that, with the addition of engineered barriers and institutional controls, the average annual dose to the public will not exceed 25 mrem per year *and* is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)
- if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-18, 76 NRC 127 (2012); LBP-13-4, 77 NRC 107 (2013)
- if the cost of implementing a particular severe accident mitigation alternative is greater than its estimated benefit, the SAMA is not considered cost-beneficial to implement; LBP-11-33, 74 NRC 675 (2011)
- initial eligibility for restricted release is determined; CLI-11-12, 74 NRC 460 (2011)
- it is sufficient if the need-for-power analysis is at a level of detail that reasonably characterizes the costs and benefits associated with proposed licensing actions; LBP-11-7, 73 NRC 254 (2011)
- it must be genuinely plausible that revising the severe accident mitigation alternatives analysis would change the outcome so that one or more of the SAMA candidates that applicant evaluated and rejected would become cost-beneficial; LBP-15-5, 81 NRC 249 (2015)
- license renewal applicant need not include analyses of the environmental impacts of Category 1 issues in its environmental report because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 377 (2012)
- licensees, in determining whether levels are ALARA, are to consider detriments, such as traffic accidents; CLI-13-6, 78 NRC 155 (2013)
- licensing board's inquiry should not be whether there are plainly better methodologies or whether the severe accident mitigation alternatives analysis can be refined further, but rather whether the SAMA

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- analysis resulted in erroneous conclusions on which SAMAs and SAMDAs are found cost-beneficial to implement; LBP-11-7, 73 NRC 254 (2011)
- need-for-power assessment must only be at a level of detail sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-12-5, 75 NRC 227 (2012)
- need-for-power assessment need not precisely identify future market conditions and energy demand, or develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power; LBP-11-7, 73 NRC 254 (2011); LBP-12-5, 75 NRC 227 (2012)
- need for power is a shorthand expression for the benefit side of the cost-benefit balance that NEPA mandates for a proceeding considering the licensing of a nuclear power plant; LBP-11-6, 73 NRC 149 (2011)
- NEPA itself does not mandate a cost-benefit analysis, but the statute is generally regarded as calling for some sort of a weighing of the environmental costs against the economic, technical, or other public benefits of a proposal; LBP-11-6, 73 NRC 149 (2011)
- NEPA requires that NRC take a hard look at alternatives, including severe accident mitigation alternatives, and to provide a rational basis for rejecting alternatives that are cost-effective; LBP-12-8, 75 NRC 539 (2012)
- NRC authority to review offsite impacts of transmission lines goes beyond merely factoring them into a final cost-benefit balance and includes as well the authority, where necessary, to impose license conditions to minimize those impacts; LBP-11-6, 73 NRC 149 (2011)
- NRC generally reviews severe accident mitigation alternatives using a cost-benefit analysis, and SAMAs that are not cost-beneficial need not be implemented by licensee; LBP-12-18, 76 NRC 127 (2012)
- NRC may impose new requirements defined as “backfitting” on previously licensed power reactors only if the agency finds that there will be a substantial increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection; LBP-12-18, 76 NRC 127 (2012)
- NRC Staff is to consider and weigh the environmental, technical, and other costs and benefits of a proposed action and alternatives, and, to the fullest extent practicable, quantify the various factors considered; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff may accord substantial weight to the stated purpose of the project, i.e., to provide additional baseload electrical generation capacity for use in the owner’s current markets and/or for potential sale on the wholesale market; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff must weigh unavoidable adverse environmental impacts and resource commitments (costs) against the project’s benefits; CLI-15-13, 81 NRC 555 (2015)
- NRC’s position is that it need not compare the costs of alternatives to a proposed action if its FEIS does not identify an environmentally preferable alternative; LBP-12-18, 76 NRC 127 (2012)
- offsite land use is a Category 2 impact because land use changes may be perceived by some community members as adverse and by others as beneficial, and so, NRC Staff is unable to assess generically the potential significance of site-specific offsite land use impacts; LBP-13-13, 78 NRC 246 (2013)
- one cost that must be weighed by decisionmakers is the cost of uncertainty; LBP-15-3, 81 NRC 65 (2015)
- one of the benefits of removing enough radioactivity to cross the 25-mrem threshold is that the value of the affected property is likely to increase, and it is in this sense that NRC guidelines contemplate, as part of the ALARA analysis, a comparison between restricted release and unrestricted release; CLI-13-6, 78 NRC 155 (2013)
- petitioner must approximate the relative cost and benefit of a challenged SAMA or provide at least some ballpark consequence and implementation costs should the SAMA be performed; CLI-11-11, 74 NRC 427 (2011)
- petitioner need not rerun applicant’s own cost-benefit calculations, but must do more than merely suggest that additional factors be evaluated or that different analytical techniques be used; LBP-15-5, 81 NRC 249 (2015)
- petitioner’s failure to address applicant’s supplemental economic analyses, demonstrate specific knowledge of the analyses, and not indicate, even broadly that the SAMA economic cost-benefit conclusions are not sufficiently conservative renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

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petitioners have not established that use of another source term would identify additional cost-beneficial severe accident mitigation alternatives; LBP-11-13, 73 NRC 534 (2011)

preponderance of the evidence supports conclusion that NRC Staff's reasoned, qualitative approach to weighing the costs and benefits of plant shutdown on property values and the local community is reasonable and satisfies regulatory requirements; LBP-13-13, 78 NRC 246 (2013)

purpose of SAMA analyses is to identify safety enhancements that would be cost-beneficial to adopt; LBP-15-29, 82 NRC 246 (2015)

qualitative benefits and costs in the cost-benefit analysis for the uranium enrichment facility are estimated to be small, moderate, or large, using the same general definitions found in the regulations of Part 51; LBP-12-21, 76 NRC 218 (2012)

question of material impacts hinges upon whether a severe accident mitigation alternative may be cost-beneficial to implement; LBP-13-13, 78 NRC 246 (2013)

quibbling over the details of an economic analysis would effectively stand NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-11-7, 73 NRC 254 (2011); LBP-12-5, 75 NRC 227 (2012)

record of decision must discuss relevant factors including economic and technical considerations among alternatives; LBP-11-7, 73 NRC 254 (2011)

relevant issue is whether any additional SAMA should have been identified as potentially cost beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; LBP-15-29, 82 NRC 246 (2015)

required level of demonstration by petitioners of cost-effectiveness of other severe accident mitigation alternatives is case and issue specific; LBP-11-35, 74 NRC 701 (2011)

SAMA analysis is an analysis of a class of SAMA candidates using probabilistic risk assessment techniques to determine whether any of the SAMA candidates would be cost-beneficial; LBP-13-1, 77 NRC 57 (2013)

SAMA contention is admissible only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-11-7, 73 NRC 254 (2011); LBP-11-13, 73 NRC 534 (2011)

scaling severe accident mitigation design alternatives implementation costs (inflation rate, regional cost-of-living adjustment, risk reduction factor) and implementation benefits (discount rate, power pricing data, power market effects, consumer impacts, power price spikes, loss of grid) is discussed; LBP-11-38, 74 NRC 817 (2011)

sea-breeze effect and hot-spot effect must cause the expected average offsite damages to increase by at least a factor of 2 for the next most costly severe accident mitigation alternative to be cost-effective; LBP-11-18, 74 NRC 29 (2011)

severe accident mitigation alternatives analysis for license renewal is a cost-benefit analysis, weighing a particular mitigation measure's estimated degree of risk reduction against its estimated cost of implementation; CLI-12-8, 75 NRC 393 (2012)

severe accident mitigation alternatives analysis is a cost-benefit analysis, not a direct safety analysis, and thus does not raise any exceptionally grave issues; LBP-11-23, 74 NRC 287 (2011)

severe accident mitigation alternatives analysis is a probability-weighted assessment of the benefits and costs of mitigation alternatives that can be used to reduce the risks of potential severe accidents at nuclear power plants; CLI-12-1, 75 NRC 39 (2012); CLI-12-15, 75 NRC 704 (2012)

severe accident mitigation alternatives analysis is a quantitative cost-benefit analysis, assessing whether the cost of implementing a specific enhancement outweighs its benefit; CLI-15-18, 82 NRC 135 (2015)

severe accident mitigation alternatives analysis is a quantitative cost-benefit analysis, comparing the costs of a mitigation measure against its benefits; LBP-13-13, 78 NRC 246 (2013)

severe accident mitigation alternatives analysis is governed by NEPA's rule of reason; LBP-11-13, 73 NRC 534 (2011)

sufficiency of the NRC's hard look at the benefits of severe accident mitigation alternatives in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 11 (2011)

supplemental environmental impact statements for license renewal are not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 246 (2013)

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- there can be no “hard look” at the costs and benefits of a proposed action unless all costs are disclosed; LBP-12-18, 76 NRC 127 (2012)
- to demonstrate that a revised SAMA analysis would produce a materially different result, intervenor should indicate how much the mean consequences of the severe accident scenarios could reasonably be expected to change as well as cost of implementing other SAMAs it believes might become cost-effective; LBP-12-1, 75 NRC 1 (2012)
- to the extent that applicant proposes modifications to the facility in response to a request for information, NEPA also requires the consideration of the effectiveness and relative costs of a range of alternatives for satisfying the NRC’s concerns; LBP-12-15, 76 NRC 14 (2012)
- ultimate concern in a SAMA contention is whether any additional SAMA should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; LBP-11-13, 73 NRC 534 (2011)
- unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions and models may change the cost-benefit conclusions for the severe accident mitigation alternative candidates evaluated, no purpose would be served to further refine the SAMA analysis; CLI-12-5, 75 NRC 301 (2012); LBP-15-5, 81 NRC 249 (2015)
- weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations; LBP-11-7, 73 NRC 254 (2011)
- when NRC imposes new regulatory requirements that are important safety enhancements but not deemed necessary to ensure adequate protection of public health and safety, NRC often does not require existing licensees to implement them based on considerations such as whether they are cost-beneficial; CLI-12-2, 75 NRC 63 (2012)
- whether a SAMA may be worthwhile to implement is based upon a weighing of the cost to implement with the reduction in risks to public health, occupational health, and offsite and onsite property; LBP-11-2, 73 NRC 28 (2011)
- whether a severe accident mitigation alternative is worthy of more detailed analysis in an environmental report or supplemental environmental impact statement hinges on whether it may be cost-beneficial to implement; CLI-12-3, 75 NRC 132 (2012)
- BIOLOGICAL ASSESSMENT**
- acting agency submits its completed biological assessment to the appropriate Service and awaits its determination of concurrence or nonconcurrence, which under the Services’ regulations is to be returned within 30 days; LBP-12-10, 75 NRC 633 (2012)
- assessment of listed species shall be completed before any contract for construction is entered into and before construction is begun with respect to such action; LBP-12-12, 75 NRC 742 (2012)
- clarification is provided in 50 C.F.R. 402.12 on the requirements with respect to biological assessments; LBP-12-11, 75 NRC 731 (2012)
- content of the biological assessment is at the discretion of the federal agency; LBP-12-11, 75 NRC 731 (2012)
- federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under section 402.12 or as a result of informal consultation with FWS under section 402.13, the federal agency determines, with the written concurrence of the U.S. Fish and Wildlife Service Director, that the proposed action is not likely to adversely affect any listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)
- formal consultation follows only if a biological assessment shows that the action may affect listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)
- formal consultation includes preparation of a biological opinion by the Service, detailing the likely effects of the action on listed species or habitat as well as mitigation alternatives; LBP-12-10, 75 NRC 633 (2012)
- if the acting agency concludes in the biological assessment that the action is not likely to affect listed habitats or species, and the Service concurs, the acting agency need not enter formal consultation; LBP-12-10, 75 NRC 633 (2012)
- if the acting agency makes a “likely to affect” determination in the biological assessment, it is required to enter into formal consultation with the appropriate Service; LBP-12-10, 75 NRC 633 (2012)

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if the Secretary of the Interior advises that listed species may be present, the agency shall conduct a biological assessment for the purpose of identifying any species that is likely to be affected by the action; LBP-12-12, 75 NRC 742 (2012)

if the Service does not concur with the agency's "not likely to affect" determination, it may request that the acting agency enter into formal consultation; LBP-12-10, 75 NRC 633 (2012)

if the Services advise that listed species are present, the acting agency is to prepare a biological assessment to identify any species that is likely to be affected by such action; LBP-12-11, 75 NRC 731 (2012)

preparation of the biological assessment may be consolidated with interagency cooperation procedures required by other statutes, such as NEPA; LBP-12-11, 75 NRC 731 (2012)

to prepare a biological assessment, the acting agency must first request from the Services a list of endangered or threatened species or habitat that may be present in the area of the action, or provide to the Services its own list for their review; LBP-12-10, 75 NRC 633 (2012)

where an acting agency is engaged in major construction activities, the acting agency is to evaluate, through preparation of a biological assessment, whether the action is likely to adversely affect species or habitat; LBP-12-10, 75 NRC 633 (2012)

whether NRC Staff undertakes formal consultation with the Services in the event that they disagree with a finding by the NRC of "no effect" or "not likely adversely to affect" depends upon the NRC's own regulations and its interpretation of its duty under the ESA to ensure that any action is not likely to jeopardize listed species or habitat; LBP-12-10, 75 NRC 633 (2012)

BOILING-WATER REACTORS

applicability of 10 C.F.R. Part 50, Appendix A, GDC 44 to boiling water reactor spent fuel pools is discussed; DD-15-11, 82 NRC 361 (2015)

as part of the NRC post-Fukushima lessons-learned activities, NRC is requiring all licensees to reevaluate seismic hazards at their sites, and to this end, issued a request for information; DD-15-1, 81 NRC 193 (2015)

contention that environmental report fails to accurately and thoroughly conduct severe accident mitigation alternatives analysis to design vulnerability of GE Mark I BWR pressure suppression containment system and environmental consequences of a to-be-anticipated severe accident post-Fukushima Daiichi fails to present a genuine material dispute; LBP-15-5, 81 NRC 249 (2015)

environmental reports must discuss new SAMAs addressed in more recent reports for other nuclear power plants of the same or similar BWR Mark II design; LBP-14-15, 80 NRC 151 (2014)

existing containment vent systems at BWRs with Mark I containments provide a capability to vent the containment under design-basis conditions; DD-15-1, 81 NRC 193 (2015)

licensees of boiling water reactors with Mark I and II containments are required to design and install a venting system that provides venting capability from the wetwell during severe accident conditions; DD-15-1, 81 NRC 193 (2015)

NRC addressed concerns about flooding at GE Mark I and II BWRs through a request for information; DD-15-1, 81 NRC 193 (2015)

parameters from which ERDS transmits data points for BWRs are identified in 10 C.F.R. Part 50, App. E, § VI.2(a)(ii); LBP-15-4, 81 NRC 156 (2015)

request for additional instrumentation for all Mark I spent fuel storage pools has been addressed through an order modifying licenses with regard to reliable spent fuel pool instrumentation; DD-15-1, 81 NRC 193 (2015)

request that NRC immediately revoke prior preapproval of the hardened vent system or direct torus vent system at each GE BWR Mark I unit has been addressed by an order modifying licenses with regard to reliable hardened containment vents capable of operation under severe accident conditions; DD-15-1, 81 NRC 193 (2015)

request that NRC order licensees to include a reliable hardened vent in boiling-water reactor Mark I and Mark II containments is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order the immediate suspension of the operating licenses of all General Electric BWRs that use the Mark I primary containment system, citing the Fukushima Dai-ichi accident in Japan as its rationale basis, is resolved; DD-15-1, 81 NRC 193 (2015)

structural integrity of GE Mark I BWR spent fuel pools and spent fuel management in dry storage casks are discussed; DD-15-1, 81 NRC 193 (2015)

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BRIEFS

- Commission directs litigants to provide either a joint stipulation that local union's appeal should be dismissed or briefing on the question whether the appeal should be dismissed as moot and the proceeding terminated; CLI-15-16, 81 NRC 810 (2015)
- Commission exercises its discretion to consider briefs that were not filed via the agency's E-Filing system; LBP-15-4, 81 NRC 156 (2015)
- electronic filing is required, unless the presiding officer grants an exemption permitting an alternative filing method for good cause shown, or unless the filing falls within the scope of an exception; CLI-13-9, 78 NRC 551 (2013)
- filings not otherwise authorized by NRC rules are permitted only where necessity or fairness dictates; CLI-14-3, 79 NRC 31 (2014)
- judges are not like pigs, hunting for truffles buried in briefs; LBP-11-6, 73 NRC 149 (2011); LBP-11-14, 73 NRC 591 (2011)
- parties are expected to adhere to page-limit requirements, or timely seek leave for an enlargement of the page limitation; CLI-11-14, 74 NRC 801 (2011)
- See also Briefs, Appellate; Reply Briefs

BRIEFS, APPELLATE

- although a party who is not injured by a board's ruling has no right to appeal that ruling, it may file a supporting brief at the appropriate time; CLI-12-6, 75 NRC 352 (2012)
- although the entire record is considered on appeal, including pleadings that appellants ask to be adopted by reference, the Commission's decision responds to the arguments made explicitly in the appellate brief; CLI-11-8, 74 NRC 214 (2011)
- appellants may not amend their contentions on appeal; CLI-11-8, 74 NRC 214 (2011)
- appellants must clearly identify the errors in the decision below and ensure that their brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for their claims; CLI-11-8, 74 NRC 214 (2011)
- arguments made for the first time on appeal will not be considered; CLI-12-3, 75 NRC 132 (2012)
- arguments made on appeal must be comprehensive, concise, and self-contained and incorporation of pleadings or arguments by reference is discouraged; CLI-12-3, 75 NRC 132 (2012)
- arguments not raised before the board or not clearly articulated in the petition for review are deemed waived; LBP-15-5, 81 NRC 249 (2015)
- briefs are limited to 30 pages, absent Commission order directing otherwise; CLI-11-8, 74 NRC 214 (2011)
- briefs on appeal must conform to the requirements stated in section 2.341(c)(2); CLI-11-8, 74 NRC 214 (2011)
- burden of setting forth a clear and coherent argument is on petitioner, and it should not be necessary to speculate about what a pleading is supposed to mean; CLI-11-2, 73 NRC 333 (2011)
- Commission declines to consider new arguments raised on appeal that the board did not have the opportunity to consider; CLI-15-17, 82 NRC 33 (2015)
- Commission requests briefing from NRC Staff on the circumstances, if any, NRC Staff would judge a potentially cost-beneficial mitigation alternative to warrant further NRC consideration outside of the license renewal review, either via a backfit analysis or as part of another process; CLI-15-3, 81 NRC 217 (2015)
- Commission requests briefing from NRC Staff on whether it has a process in place to follow up with licensee to determine which potentially cost-beneficial mitigation alternatives ultimately were found by licensee to be cost-beneficial, if any, and which alternatives, if any, licensee implemented; CLI-15-3, 81 NRC 217 (2015)
- Commission should not be expected to sift unaided through earlier briefs or other documents filed before the board to piece together and discern a party's argument and the grounds for its claims; CLI-12-8, 75 NRC 393 (2012)
- conclusory statement that appellants proved their position is not sufficient to show clear error or abuse of discretion on the part of the board; CLI-11-8, 74 NRC 214 (2011)
- intervenor's motion for an enlargement of the page limit for their petition for review is granted; CLI-14-10, 80 NRC 157 (2014)

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issue on appeal is not properly briefed by incorporating by reference papers filed with the licensing board; CLI-11-8, 74 NRC 214 (2011)

page limit for appellate briefs excludes tables of contents and citations, appropriate exhibits, and statutory or regulatory extracts; CLI-11-8, 74 NRC 214 (2011)

parties are directed to provide further briefing on questions relating to severe accident decontamination time values and costs used in the SAMA analysis; CLI-15-2, 81 NRC 213 (2015)

petition for review falls short of satisfying 10 C.F.R. 2.341(b)(4) if it does not specify the subsections upon which it relies but merely sets forth a series of general grievances fundamentally going to the correctness of the board's decision; CLI-11-2, 73 NRC 333 (2011)

petitioner's appellate argument must pass regulatory muster under the rigorous standards of 10 C.F.R. 2.326(a)(3); CLI-11-2, 73 NRC 333 (2011)

references to affidavits and other exhibits supporting petitioner's claims should include page citations; CLI-12-8, 75 NRC 393 (2012)

BURDEN OF PERSUASION

absent an obvious potential for harm, to obtain standing, it is petitioner's burden to show how harm will or may occur; LBP-14-4, 79 NRC 319 (2014)

at the contention admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application; CLI-11-9, 74 NRC 233 (2011)

burden is on the proponent of a contention to show that the Staff's analysis or methodology is unreasonable or insufficient; CLI-12-6, 75 NRC 352 (2012)

case law test for rule waiver establishes an appreciably higher burden for would-be waiver seekers than does 10 C.F.R. 2.335(b); LBP-14-16, 80 NRC 183 (2014)

heavier burden applies to motions to reopen than to proponents of contentions in ongoing proceedings; CLI-11-5, 74 NRC 141 (2011)

intervention petitioner bears the burden of providing facts sufficient to establish its standing; LBP-11-21, 74 NRC 115 (2011)

litigant asking for consolidation of proceedings has the burden of showing that it will be conducive to the proper dispatch of the NRC's business and to the ends of justice and will be conducted in accordance with the other provisions of Subpart C; CLI-14-5, 79 NRC 254 (2014)

litigants seeking to reopen a closed record necessarily face a heavy burden; CLI-12-6, 75 NRC 352 (2012); LBP-12-10, 75 NRC 633 (2012)

NRC rules deliberately place a heavy burden on proponents of contentions, who must challenge aspects of license applications with specificity, backed up with substantive technical support, mere conclusions or speculation being insufficient; CLI-11-5, 74 NRC 141 (2011)

petitioner bears the burden for setting forth a clear argument for its contention; CLI-12-5, 75 NRC 301 (2012)

petitioner bears the burden to provide facts sufficient to establish standing; LBP-12-3, 75 NRC 164 (2012)

petitioner's burden on a contention of omission is to identify the omission and the supporting reasons for petitioners' belief that the application fails to contain information on a relevant matter as required by law; LBP-15-5, 81 NRC 249 (2015)

rule waiver petitioners face a substantial burden; CLI-13-7, 78 NRC 199 (2013)

satisfying the reopening requirements is a heavy burden, and proponents must meet all of the requirements; LBP-11-20, 74 NRC 65 (2011)

stay movant has the burden on the four factors of 10 C.F.R. 2.1213(d); LBP-15-2, 81 NRC 48 (2015)

summary disposition movant bears the initial burden of showing the absence of a genuine issue as to any material fact and that it is entitled to judgment as a matter of law; LBP-12-19, 76 NRC 184 (2012)

to meet its burden to establish standing, petitioner must provide plausible factual allegations that satisfy each element of standing; LBP-12-3, 75 NRC 164 (2012)

BURDEN OF PROOF

although an applicant has the ultimate burden of proof on any issues upon which a hearing is held, hearings are held on only those issues that an intervenor brings to the fore; LBP-11-4, 73 NRC 91 (2011)

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although applicant carries the burden on safety issues, intervenors have the initial burden of going forward with each contention and must provide sufficient evidence to support the claims made; LBP-14-1, 79 NRC 39 (2014)

although deliberative process privilege is a qualified privilege and the agency claiming the privilege bears the initial burden of demonstrating that it is applicable, once this demonstration is made, the moving party can only defeat the privilege by a demonstration of an overriding need for the material; LBP-13-5, 77 NRC 233 (2013)

applicant bears the burden of proof in licensing proceedings; LBP-14-1, 79 NRC 39 (2014); LBP-14-3, 79 NRC 267 (2014)

applicant for an exemption bears the burden of proof on all issues; LBP-12-6, 75 NRC 256 (2012)

applicant has the burden of proof on safety issues in a licensing proceeding; LBP-13-13, 78 NRC 246 (2013)

applicant in a licensing proceeding bears the burden of proof by a preponderance of the evidence on safety issues that it is entitled to the applied-for license; LBP-12-17, 76 NRC 71 (2012)

applicant may bear the burden of proof on contentions asserting deficiencies in its environmental report and where the applicant becomes a proponent of a particular challenged position set forth in the environmental impact statement; LBP-11-38, 74 NRC 817 (2011)

applicant retains the burden of proof on the question whether the license should be issued; CLI-15-17, 82 NRC 33 (2015); CLI-15-19, 82 NRC 151 (2015)

as proponent of the agency action, applicant generally has the burden in a licensing proceeding; LBP-15-2, 81 NRC 48 (2015); LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

because draft documents are not presumptively privileged, the Staff must provide specific information to justify withholding them from disclosure; LBP-13-5, 77 NRC 233 (2013)

because NRC Staff relies heavily on applicant's environmental report in preparing the environmental impact statement, should applicant become a proponent of a particular challenged position set forth in the EIS, applicant also has the burden on that matter; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

burden at hearing with respect to NEPA compliance is on NRC Staff; CLI-15-17, 82 NRC 33 (2015); LBP-15-2, 81 NRC 48 (2015); LBP-15-3, 81 NRC 65 (2015)

burden of proving prejudicial error by a federal agency rests with the party challenging the agency's action, but this is not a particularly onerous requirement; LBP-14-2, 79 NRC 131 (2014)

burden of satisfying the reopening requirements is a heavy one, and it rests with the party moving to reopen; CLI-15-19, 82 NRC 151 (2015)

cursory and conclusory assertions that merely paraphrase the standards applicable to the deliberative process privilege without explaining how they apply to any specific document in dispute will not suffice to carry the government's burden of proof in defending FOIA cases; LBP-13-5, 77 NRC 233 (2013)

for NEPA contentions, the burden of proof falls on NRC Staff because NRC, not the applicant, bears the ultimate responsibility for complying with NEPA's dictates; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

government has the burden of proving that a requested document falls within one of FOIA's exemptions; LBP-13-5, 77 NRC 233 (2013)

government officials acting in their official capacities are presumed to have properly discharged their duties and, to rebut this presumption, petitioner's burden of proof involves presentation of clear evidence to the contrary; LBP-14-2, 79 NRC 131 (2014)

if intervenors provide sufficient evidence to support the claims made, applicant has the burden of demonstrating by a preponderance of the evidence that it has met the relevant NRC regulations and that the board should therefore reject each contention on the merits; LBP-14-1, 79 NRC 39 (2014)

if summary disposition movant fails to make the requisite showing to satisfy that initial burden, then the board must deny the motion even if the opposing party chooses not to respond or its response is inadequate; LBP-12-23, 76 NRC 445 (2012)

if summary disposition proponent meets its burden, opponent must counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation and cannot rely on mere allegations or denials, or the facts in controversy will be deemed admitted; LBP-12-23, 76 NRC 445 (2012)

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if, considering only the summary disposition movant's support for its motion, the board determines that it has met its burden, the board then looks to whether an opponent of the motion has overcome the movant's case by showing a genuine dispute on a material issue of fact; LBP-11-4, 73 NRC 91 (2011)

licensee generally bears the ultimate burden of proof, but intervenors must give some basis for further inquiry; LBP-15-5, 81 NRC 249 (2015)

NRC Staff has the overall burden of complying with NEPA; LBP-13-13, 78 NRC 246 (2013)

NRC Staff, not applicant, bears the ultimate burden of establishing compliance with NEPA; LBP-12-17, 76 NRC 71 (2012) ; LBP-14-7, 79 NRC 451 (2014)

on safety issues, applicant has the burden of establishing that it is entitled to the applied-for license by a preponderance of the evidence; LBP-12-5, 75 NRC 227 (2012); LBP-14-3, 79 NRC 267 (2014)

once challenged, there is no presumption that an environmental report is correct or accurate, with applicant, as the proponent of the license, bearing the burden of proof; LBP-15-2, 81 NRC 48 (2015)

party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 71 (2013)

petitioner has the burden of going forward with a sufficient factual basis, but the ultimate burden of proof is not shifted from applicant to petitioner, nor do the rules require petitioner to prove its case at the contention admission stage; LBP-12-18, 76 NRC 127 (2012)

petitioner, rather than the licensing board, bears the burden of establishing the admissibility of proffered contentions; CLI-14-2, 79 NRC 11 (2014)

petitioners are not required to demonstrate their asserted injury with certainty at the contention admissibility stage of the proceeding; CLI-12-12, 75 NRC 603 (2012)

petitioners have the burden of going forward, which requires them to provide factual allegations or expert testimony to show a potential deficiency in applicant's aging management plan; LBP-15-5, 81 NRC 249 (2015)

proponent of a motion to reopen a closed record necessarily faces a heavy burden; CLI-12-3, 75 NRC 132 (2012)

relative to factual matters, to carry burden of proof, NRC Staff and/or applicant must establish that its position is supported by a preponderance of the evidence; LBP-15-3, 81 NRC 65 (2015)

summary disposition movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law, even if the motion is unopposed; LBP-11-14, 73 NRC 591 (2011); LBP-12-23, 76 NRC 445 (2012); LBP-12-26, 76 NRC 559 (2012)

to the extent petitioner is challenging the adequacy of computer modeling of plume variability, petitioner bears the burden of providing evidence specific to the license renewal application; LBP-15-5, 81 NRC 249 (2015)

under the Equal Access to Justice Act, the government bears the burden of establishing that its position was substantially justified; LBP-11-8, 73 NRC 349 (2011)

unless the presiding officer otherwise orders, applicant or proponent of an order has the burden; LBP-14-2, 79 NRC 131 (2014)

when NEPA contentions are involved, the burden of proof shifts to NRC Staff; LBP-15-16, 81 NRC 618 (2015)

when the issue on which summary judgment is sought is one on which the nonmoving party bears the burden of proof, the burden on the moving party may be discharged by showing that there is an absence of evidence to support the nonmoving party's case; LBP-11-4, 73 NRC 91 (2011)

without indicating any specific, policy-oriented communication or proffering any cogent reason for protecting it, the bare assertion that internal agency discussions will be "chilled" is nothing but a legal platitude asserted in the abstract; LBP-13-5, 77 NRC 233 (2013)

BURIED STRUCTURES, SYSTEMS, AND COMPONENTS

by a preponderance of the evidence, applicant has provided reasonable assurance that the effects of aging on buried pipes that contain or may contain radioactive fluids can be adequately managed during the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

inadvertent radiological releases must be controlled to ensure that dose exposures are below regulatory limits; LBP-13-13, 78 NRC 246 (2013)

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BYPRODUCT MATERIALS

- “byproduct material” is categorized as tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-15-11, 81 NRC 401 (2015) ; LBP-15-16, 81 NRC 618 (2015)
- byproduct materials category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites; LBP-12-3, 75 NRC 164 (2012)
- contention that the draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- definition of byproduct material was clarified in 10 C.F.R. 40.4 by adding the clause “including discrete surface wastes resulting from uranium solution extraction processes”; LBP-15-16, 81 NRC 618 (2015)
- policies set forth by NEPA prevent NRC Staff from segmenting the disposal issues from the inquiry into whether applicant will be allowed to create 11e(2) byproduct material in the first instance; LBP-13-9, 78 NRC 37 (2013)
- section 11e(2) byproduct materials are tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-12-3, 75 NRC 164 (2012)

BYPRODUCT MATERIALS LICENSES

- applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an environmental report with its application; LBP-15-3, 81 NRC 65 (2015)
- application may incorporate information contained in previous applications, statements, or reports filed with the Commission, provided that the reference is clear and specific; LBP-12-24, 76 NRC 503 (2012)
- grounds for license denial exist if, prior to issuance of a license to possess and use source and byproduct materials for uranium milling, there is commencement of construction by an applicant; LBP-12-3, 75 NRC 164 (2012)
- license applications will be approved if, in addition to other requirements met, applicant is qualified by training and experience to use the material for the purpose requested in such manner as to protect health and minimize danger to life or property; DD-14-4, 79 NRC 506 (2014)
- NRC Staff must prepare an environmental impact statement in connection with a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery; LBP-15-3, 81 NRC 65 (2015)

CABLES

- amendment to aging management plan extended the AMP for medium-voltage cables to also cover low-voltage cables; LBP-11-20, 74 NRC 65 (2011)
- cables important to safety must be designed to meet their intended function for the environment that they are subjected to and if cables have been exposed to conditions for which they are not designed, licensees must demonstrate, through testing or monitoring, reasonable assurance that the cables can perform their intended design function for the licensed operating term; DD-13-2, 78 NRC 185 (2013)
- cables subject to the environmental qualification standards of 10 C.F.R. 50.49 are important to the safety of a nuclear power plant and are required to function during an accident when exposed to harsh environmental conditions; LBP-13-13, 78 NRC 246 (2013)
- environmentally qualified cable is defined in 10 C.F.R. 50.49; LBP-13-13, 78 NRC 246 (2013)
- inspection to determine effects of wet or underwater conditions on underground safety-related electrical cables is discussed; DD-15-1, 81 NRC 193 (2015)
- lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 65 (2011)
- request for enforcement action to address concerns about operability of the submerged and/or wetted non-environmentally qualified inaccessible cables is denied; DD-13-2, 78 NRC 185 (2013)
- safety contentions challenging aging management of non-environmentally qualified inaccessible medium-voltage cables and wiring is decided; LBP-13-13, 78 NRC 246 (2013)

CANADA

- although NRC regulations do not require NRC Staff to analyze the environmental impacts of NRC licensing actions on the environment of foreign nations, the Staff extended its outreach to international

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- organizations to inform its analysis of the potential environmental impacts of the project; CLI-15-13, 81 NRC 555 (2015)
- First Nations in Canada must receive invitations to participate in the environmental impact statement scoping process when there are transboundary environmental impacts from a project; LBP-12-12, 75 NRC 742 (2012)
- NEPA regulations do not apply to any environmental effects that NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations; LBP-12-12, 75 NRC 742 (2012)
- proximity of the nuclear power plant site to the Canadian border is considered in the contexts of environmental and safety reviews; CLI-15-13, 81 NRC 555 (2015)
- CANCER**
- license renewal contention alleging higher cancer death rates in local counties than the state average is inadmissible because it is based on unsupported speculation; LBP-13-8, 78 NRC 1 (2013)
- CASE MANAGEMENT**
- although boards are accorded considerable discretion to manage proceedings before them, they need not exercise it; LBP-15-15, 81 NRC 598 (2015)
- Atomic Energy Act does not grant NRC the discretion to eliminate from the hearing, material issues in its licensing decision; LBP-11-22, 74 NRC 259 (2011)
- Atomic Energy Act does not prescribe a specific structure for the mandatory hearing requirement, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case; LBP-12-21, 76 NRC 218 (2012)
- because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petitions and motions itself; CLI-14-9, 80 NRC 147 (2014)
- boards are given broad discretion in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case-management decisions; LBP-15-15, 81 NRC 598 (2015)
- boards have the power to take necessary and appropriate actions consistent with the Atomic Energy Act to conduct a fair hearing; LBP-15-15, 81 NRC 598 (2015)
- boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; LBP-11-6, 73 NRC 149 (2011); LBP-15-17, 81 NRC 753 (2015)
- boards must exercise all the powers necessary to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-11-22, 74 NRC 259 (2011)
- boards must use the applicable Model Milestones in 10 C.F.R. Part 2, Appendix B as a starting point for the schedule, but the board shall make appropriate modifications based upon the circumstances of each case; LBP-11-22, 74 NRC 259 (2011)
- boards should develop schedules that will provide a fair and expeditious procedure for resolving new or amended contentions that might be proposed during the course of the proceeding, not just those already admitted; LBP-11-22, 74 NRC 259 (2011)
- broad discretion is given to NRC licensing boards in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case management decisions; CLI-14-10, 80 NRC 157 (2014)
- Commission generally defers to the board on case management issues; CLI-11-13, 74 NRC 635 (2011)
- Commission has declined to take interlocutory review with respect to case management decisions; CLI-15-24, 82 NRC 331 (2015)
- if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 184 (2012)
- licensing board may modify or waive the provisions of its scheduling orders as it deems appropriate in the interest of sound case management; LBP-15-29, 82 NRC 246 (2015)
- licensing boards are expected to set procedures to ensure the case is managed efficiently, in a manner that is fair to all of the parties; CLI-14-10, 80 NRC 157 (2014)
- licensing boards have broad powers to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-15-30, 82 NRC 339 (2015)
- licensing boards must be vested with considerable latitude in determining the course of the proceedings that they are called upon to conduct, and the Commission will enter that arena only to the extent

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- necessary to insure that no party has been denied a fair opportunity to advance its cause; LBP-15-29, 82 NRC 246 (2015)
- neither new procedures nor a separate timetable for raising new issues related to the Fukushima events is warranted; CLI-12-15, 75 NRC 704 (2012)
- NRC may impose reasonable requirements on new contentions when those requirements are related to legitimate agency goals such as avoiding needless duplication and delay; LBP-11-22, 74 NRC 259 (2011)
- NRC Rules of Practice provide the board with substantial authority to regulate hearing procedures; CLI-14-10, 80 NRC 157 (2014)
- one fundamental purpose of the prehearing conference and the scheduling order is expediting the disposition of the proceeding; LBP-12-19, 76 NRC 184 (2012)
- parties filed proposed questions for the board to ask at the evidentiary hearing; LBP-13-13, 78 NRC 246 (2013)
- presiding officers have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to avoid delay and to maintain order, and they have all the powers necessary to those ends; CLI-14-10, 80 NRC 157 (2014); LBP-11-22, 74 NRC 259 (2011)
- purpose of scheduling orders is to ensure proper case management, with the objective of expediting disposition of the proceeding, establishing early and continuing control so that the proceeding will not be protracted because of lack of management, and discouraging wasteful prehearing activities; LBP-15-29, 82 NRC 246 (2015)
- request for a protective stay to hold the proceeding in abeyance indefinitely pending potential future events is inconsistent with NRC's longstanding interest in sound case management and regulatory finality and would be unfair to the other parties; CLI-14-6, 79 NRC 445 (2014)
- shortly after a hearing request has been granted, the board must set a schedule to govern the proceeding; LBP-11-22, 74 NRC 259 (2011)
- unfettered ability to file a late contention may significantly undermine the efficiency of a proceeding even if the contention is based on newly discovered information; CLI-12-14, 75 NRC 692 (2012)
- unless a schedule is so onerous or unfair that it deprives a party of procedural due process, scheduling is a matter of licensing board discretion; LBP-15-29, 82 NRC 246 (2015)
- when establishing a schedule, boards are to consider NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication, along with other factors; LBP-11-22, 74 NRC 259 (2011)
- where the board allowed petitioners to file a corrected version of an expert declaration that contained numerous typographical errors, and where some of petitioners' corrections clearly went beyond what the board expected, the board did not try to parse which changes were authorized and did not consider or rely on the corrected version; LBP-11-2, 73 NRC 28 (2011)
- CASE OR CONTROVERSY**
- absent compelling reasons, the Commission adheres to the case or controversy doctrine in its adjudicatory proceedings; LBP-13-7, 77 NRC 307 (2013)
- case or controversy limitation does not apply to NRC because it is not an Article III court; LBP-14-4, 79 NRC 319 (2014)
- Constitution permits the Supreme Court to decide legal questions only in the context of actual cases or controversies; CLI-13-9, 78 NRC 551 (2013)
- judicial concepts of standing limit the jurisdiction and power of federal courts to cases and controversies; LBP-14-4, 79 NRC 319 (2014)
- justiciable controversy must involve parties who raise questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process; LBP-13-7, 77 NRC 307 (2013)
- when petitioner obtains the relief it is seeking before the admissibility of its contention is resolved, the admissibility *vel non* of the contention is no longer justiciable, because it no longer presents a live controversy involving a true clash of interests that is susceptible to meaningful adjudicative relief; LBP-13-7, 77 NRC 307 (2013)

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CATEGORICAL EXCLUSION

- actions that the Commission, by rule or regulation, has declared to be a categorical exclusion do not individually or cumulatively have a significant effect on the human environment; LBP-14-6, 79 NRC 404 (2014)
- any interested person may challenge use of a categorical exclusion by presenting special circumstances; LBP-15-26, 82 NRC 163 (2015)
- cask certification for transportation poses such a minimal environmental impact that it merits a categorical exclusion from NEPA; LBP-14-6, 79 NRC 404 (2014)
- categorical exclusion is a generic finding that a category of actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 163 (2015)
- categories of actions are exempt from NEPA review where NRC has made a generic finding that the actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 163 (2015)
- challenge to NRC Staff's environmental analysis, which may come in the form of a categorical exclusion, may be filed as a timely motion to add a new contention once that analysis is complete; LBP-15-24, 82 NRC 68 (2015)
- license amendment request is not categorically exempt from environmental review if it involves a significant hazards consideration that excludes it from the exemption pursuant to criteria in section 51.22(c)(9)(i); LBP-15-26, 82 NRC 163 (2015)
- recordkeeping or administrative procedures are categorically excluded from environmental review; LBP-15-24, 82 NRC 68 (2015)

CERTIFICATE OF COMPLIANCE

- given that legally binding monitoring and mitigation measures have been imposed via a certificate of compliance issued by the appropriate state and local agencies, board has reasonable assurance that these measures will be implemented and that these agencies will actively monitor and enforce appropriate compliance with these environmental monitoring and mitigation measures; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff's reference to, and reliance in its draft environmental impact statement on, state issuance of a site certification order and associated certificate of compliance on groundwater use does not dispense with NRC's duty under NEPA to conduct an independent hard look at environmental impacts related to active dewatering during operations at a nuclear plant; LBP-11-1, 73 NRC 19 (2011)

CERTIFICATE OF SERVICE

- service of a filing is not complete until accompanied by a certificate of service and a request for oral argument; LBP-11-21, 74 NRC 115 (2011)

CERTIFICATION

- all disclosures under section 2.336(c) must be accompanied by a certification (in the form of a sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification; LBP-14-2, 79 NRC 131 (2014)
- all motions must include a certification that movant has made a sincere effort to contact other parties in the proceeding and resolve the issue raised in the motion, and that the movant's efforts to resolve the issue have been unsuccessful; LBP-11-2, 73 NRC 28 (2011); LBP-11-15, 73 NRC 629 (2011)
- applicant is required to submit its certification from the relevant state of jurisdiction, indicating that the project in question will comply with this statute; LBP-11-16, 73 NRC 645 (2011)
- cask certification for transportation poses such a minimal environmental impact that it merits a categorical exclusion from NEPA; LBP-14-6, 79 NRC 404 (2014)
- depending on the quantity of material, Part 70 license applicants must submit either a decommissioning funding plan or a certification of financial assurance; CLI-11-4, 74 NRC 1 (2011)
- docketing of certification of shutdown and defueling means that licensee's Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel; DD-14-3, 79 NRC 500 (2014)
- financial assurance certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material; CLI-11-4, 74 NRC 1 (2011)
- financial assurance certifications, which are used by applicants seeking to possess smaller quantities of material, are governed by 10 C.F.R. 70.25(b)(2); CLI-11-4, 74 NRC 1 (2011)

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- following an evidentiary proceeding, presiding officer certifies the record of the proceeding to the Commission for its final decision; LBP-14-10, 80 NRC 85 (2014)
- licensee must provide certifications to NRC Staff that it has permanently ceased power operations and that all fuel has been permanently removed from the reactor vessel; DD-14-3, 79 NRC 500 (2014)
- licensee must provide certifications to NRC Staff that it has permanently ceased power operations; DD-15-7, 82 NRC 257 (2015)
- licensee must provide certifications to NRC Staff that it has permanently removed fuel from its reactors; DD-15-7, 82 NRC 257 (2015)
- licensee must provide certifications when a nuclear power station has permanently ceased power operations and all fuel has been permanently removed from the reactor vessel and placed in the spent fuel pool; DD-15-1, 81 NRC 193 (2015)
- licensees must submit, with each operating license application, certification specifying how financial assurance for decommissioning will be provided; DD-15-8, 82 NRC 107 (2015)
- licensing board initially determines, based on the record, whether a prima facie showing has been made by petitioner for its rule waiver request, and then the board must certify the matter directly to the Commission for a final determination; LBP-14-16, 80 NRC 183 (2014)
- motions to admit new contentions must be rejected if they do not include a certification by movant's attorney or representative that movant has made a sincere effort to contact other parties and resolve the issues raised in the motion, and that movant's efforts have been unsuccessful; LBP-11-34, 74 NRC 685 (2011); LBP-12-27, 76 NRC 583 (2012)
- possession limits associated with a certification of financial assurance are set forth in 10 C.F.R. 70.25(d); CLI-11-4, 74 NRC 1 (2011)
- record of licensing board evidentiary hearing on license transfer application must be certified to the Commission; CLI-15-26, 82 NRC 408 (2015)
- state agency's 6-month review period of an applicant's consistency certification begins on the date the state agency receives the consistency certification; LBP-11-16, 73 NRC 645 (2011)
- where petitioner has successfully made a prima facie showing for rule waiver, the board shall, before ruling on the petition, certify the matter directly to the Commission, and the Commission shall determine whether to grant or deny the waiver request; LBP-13-1, 77 NRC 57 (2013)
- where the Commission does not preside over a license transfer proceeding, the presiding officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented; CLI-14-5, 79 NRC 254 (2014)
- See also Design Certification
- ### CERTIFIED QUESTIONS
- if on the basis of the petition, affidavit, and any response provided for in 2.758(b), the presiding officer determines that a prima facie showing has been made, the presiding officer shall, before ruling thereon, certify the matter directly to the Commission; CLI-11-11, 74 NRC 427 (2011)
- presiding officer may certify questions or refer rulings to the Commission for decision; CLI-14-5, 79 NRC 254 (2014)
- referred rulings or certified questions must raise significant and novel legal or policy issues or issues whose early resolution would materially advance the orderly disposition of the proceeding; CLI-15-1, 81 NRC 1 (2015)
- review of a board's certified question that raises a significant and novel issue whose early resolution will materially advance the orderly disposition of the proceeding is granted; CLI-11-4, 74 NRC 1 (2011)
- should a licensing board decision raise novel legal or policy questions, boards are to certify to the Commission those questions that would benefit from Commission consideration; CLI-11-5, 74 NRC 141 (2011); LBP-11-32, 74 NRC 654 (2011)
- ### CHANGE REQUESTS
- every change request is reviewed against the criteria in the license application and the criteria in 10 C.F.R. 70.72 to determine whether NRC approval is required prior to implementing the change; LBP-12-21, 76 NRC 218 (2012)
- if applicant decides to remove a method from the approved list of alarm resolution methods, it would have to follow the prescribed change process or the license amendment process; LBP-14-1, 79 NRC 39 (2014)

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CHEMICAL SPILLS

contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

CIVIL PENALTIES

assessment of monetary penalty against U.S. Army for possession of depleted uranium without a license is denied; DD-11-5, 74 NRC 399 (2011)

NRC can order an individual to pay civil penalties of up to \$100,000 for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC's policy of imposing graduated civil penalties takes into account the gravity of the violation as the primary consideration and the ability to pay as a secondary consideration; DD-15-3, 81 NRC 713 (2015)

petitioner's request to impose a \$10 million fine on licensee is denied; DD-15-3, 81 NRC 713 (2015)

CLASSIFIED INFORMATION

application for a uranium enrichment facility is required to contain a description of the security program to protect against unauthorized disclosure of classified matter in accord with Part 95; LBP-11-11, 73 NRC 455 (2011)

CLEAN AIR ACT

in parallel with NRC Staff's role under NEPA to assess environmental impacts, the Environmental Protection Agency possesses authority under the Act to set numerical standards for air pollutants from emission sources; LBP-11-26, 74 NRC 499 (2011)

source permit is an operating permit that the Clean Air Act requires major stationary sources of air pollution to obtain; LBP-11-13, 73 NRC 534 (2011)

CLEAN WATER ACT

applicant for a federal discharge permit must provide a certification from the state that the proposed activity will not violate state water pollution control standards; LBP-12-16, 76 NRC 44 (2012)

before being granted a section 404 permit, applicant must demonstrate to the Corps of Engineers that it has taken all appropriate and practicable steps to avoid and minimize adverse impacts; LBP-15-23, 82 NRC 55 (2015)

blanket reliance by NRC Staff on Clean Water Act permits is not permitted; LBP-14-9, 80 NRC 15 (2014)

compliance with the CWA does not negate the requirement for NRC to weigh all environmental effects of a proposed action; LBP-12-16, 76 NRC 44 (2012)

Congress has severely limited the scope of NRC's inquiry into Clean Water Act §316(a) determinations; LBP-12-16, 76 NRC 44 (2012)

contention alleging deficiencies in Corp of Engineers' compensatory mitigation methods under the Clean Water Act lack alleged facts or expert opinions; LBP-15-23, 82 NRC 55 (2015)

contention asserting that draft environmental impact statement must include the Corps of Engineers 404 permit analysis in order to satisfy NEPA fails to raise a material issue; LBP-15-23, 82 NRC 55 (2015)

failure of decision underlying section 404 permit to analyze cumulative impacts reasonably foreseeable from the expected addition of a second generation unit at the plant is one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)

license renewal applicants must submit documentation of compliance with sections 316(a) and (b) of the Clean Water Act concerning thermal discharges; LBP-12-16, 76 NRC 44 (2012)

NEPA is not violated when an agency issues a supplemental environmental impact statement before the Corps of Engineers completes a section 404 permit review; LBP-15-23, 82 NRC 55 (2015)

section 404 permit review can be conducted after issuance of a final environmental impact statement; LBP-15-23, 82 NRC 55 (2015)

that the section 404 permit review is conducted after issuance of the final environmental impact statement does not impact an agency's duty under NEPA, but rather serves to highlight the distinction between NEPA and the CWA; LBP-15-23, 82 NRC 55 (2015)

Uniform Mitigation Assessment Method code and Wetland Assessment Technique for Environmental Review code methods reflect the Corps of Engineers' preferred approach to compensatory mitigation under the CWA; LBP-15-23, 82 NRC 55 (2015)

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when a proposed project would cause discharge of dredged or fill material into wetlands, applicant must seek a permit from the Corps of Engineers; LBP-15-23, 82 NRC 55 (2015)

when an agency otherwise complies with NEPA's requirement of a reasonably thorough mitigation analysis, there is no error in the agency's reliance on the section 404's substantive requirements as mitigation measures even though the permit review is not yet complete; LBP-15-23, 82 NRC 55 (2015)

when reviewing an application for a 404 permit under the Clean Water Act, the Corps of Engineers evaluates whether issuance of the permit is in the public interest, weighing all relevant factors, including economic, environmental, and aesthetic concerns; LBP-14-9, 80 NRC 15 (2014)

while CWA imposes substantive restrictions on agency action, NEPA imposes procedural requirements aimed at integrating environmental concerns into the very process of agency decisionmaking; LBP-15-23, 82 NRC 55 (2015)

CLIMATE CHANGE

although the combined license application is not expressly required to consider sea level rise, the board decides that the issue is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)

applicant's environmental report for an early site permit application must address climate change because it is considered an environmental impact; LBP-11-16, 73 NRC 645 (2011)

cumulative impacts of water withdrawals, climate change, and saltwater intrusion on wetlands are discussed; LBP-13-4, 77 NRC 107 (2013)

if impacts are remote or speculative, the environmental impact statement need not discuss them, including greenhouse gas emissions; LBP-11-7, 73 NRC 254 (2011)

CLOSED HEARINGS

adjudicatory hearing can be closed if the Commission orders it; LBP-11-5, 73 NRC 131 (2011)

board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 218 (2012)

boards have closed their hearings even when they were concerned with less sensitive (i.e., nonpublic but unclassified) types of information; LBP-12-21, 76 NRC 218 (2012)

boards may exclude the public from adjudicatory hearings or actions that involve restricted data, defense information, safeguards information protected from disclosure under the authority of Atomic Energy Act § 147, or information protected from disclosure under the authority of section 148; LBP-11-5, 73 NRC 131 (2011)

COASTAL ZONE MANAGEMENT ACT

applicant is required to submit its certification from the relevant state of jurisdiction, indicating that the project in question will comply with this statute; LBP-11-16, 73 NRC 645 (2011)

COLLATERAL ESTOPPEL

affirmative misconduct means an affirmative misrepresentation or affirmative concealment of a material fact by the government, although it does not require that the government intended to mislead a party; LBP-12-16, 76 NRC 44 (2012)

claimant must prove a false representation by the government, that the government had the intent to induce the plaintiff to act on the misrepresentation, plaintiff's lack of knowledge or inability to obtain the true facts, and plaintiff's reliance on the misrepresentation to his detriment; LBP-12-16, 76 NRC 44 (2012)

claims must rely on its adversary's conduct in such a manner as to change his position for the worse, and that reliance must have been reasonable in that the party claiming the estoppel did not know nor should it have known that its adversary's conduct was misleading; LBP-12-16, 76 NRC 44 (2012)

doctrine is invoked to avoid injustice in particular cases; LBP-12-16, 76 NRC 44 (2012)

elements of a showing of estoppel against the government are described; LBP-12-16, 76 NRC 44 (2012)

fundamental fairness requires that applicant and NRC Staff be estopped from asserting that petitioners' contention is untimely; LBP-12-16, 76 NRC 44 (2012)

government may not be estopped on the same terms as any other litigant; LBP-12-16, 76 NRC 44 (2012)

relitigation of an issue previously decided by a licensing board or the Commission may also be barred by the doctrine of collateral estoppel; LBP-11-10, 73 NRC 424 (2011)

there is a clear presumption against invoking the doctrine against government actors in any but the most extreme circumstances; LBP-12-16, 76 NRC 44 (2012)

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COLOCATED UNITS

admissibility of contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is decided; LBP-15-5, 81 NRC 249 (2015)

even if a site would not be totally evacuated, a fission product release from one unit would likely contaminate the entire site, with the result that both units could be out of operation for years; LBP-15-5, 81 NRC 249 (2015)

“synergistic” refers to the joint action of different parts or sites which, acting together, enhance the effects of one or more individual sites; LBP-15-5, 81 NRC 249 (2015)

COMBINED LICENSE APPLICATION

absent a licensed low-level radioactive waste disposal facility that will accept waste from a combined license applicant’s facility, it is reasonably foreseeable that LLRW generated by normal operations will be stored at the site for a longer term than is currently envisioned in that COLA; LBP-12-4, 75 NRC 213 (2012)

although NRC may regard preconstruction activities as outside the scope of a combined license application, these activities are within the scope of the NEPA review because they are all connected actions; LBP-14-9, 80 NRC 15 (2014)

although the COLA is not expressly required to consider sea level rise, the board decides that the issue is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)

although the Commission found NRC Staff’s review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 555 (2015)

any person except one excluded by section 50.38 may file an application for a combined license for a nuclear power facility; LBP-12-19, 76 NRC 184 (2012)

any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity that NRC knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license; LBP-12-19, 76 NRC 184 (2012)

applicant has described the kinds and quantities of radioactive materials expected to be produced in the operation to the extent its COLA references a standardized design; LBP-11-6, 73 NRC 149 (2011)

applicant may reference a docketed-but-not-yet-certified design in its application, but does so at its own risk; CLI-12-9, 75 NRC 421 (2012); LBP-11-10, 73 NRC 424 (2011)

applicant must describe the programs, and their implementation, necessary to ensure that systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code and the ASME Code of Operation and Maintenance of Nuclear Power Plants in accordance with section 50.55a; CLI-11-8, 74 NRC 214 (2011)

applicant must identify the means for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable; LBP-11-6, 73 NRC 149 (2011)

applicant must include an emergency plan that contains, in the event of a reactor emergency resulting in a radiological release, a range of protective actions for the public located within about a 10-mile radius from the plant; LBP-11-15, 73 NRC 629 (2011)

applicant must provide a level of information on plans to manage and store low-level radioactive waste onsite sufficient to enable the Commission to conclude that the application will comply with 10 C.F.R. Part 20; CLI-11-10, 74 NRC 251 (2011)

applicant will have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-11-10, 73 NRC 424 (2011)

applicant will have to determine whether it will adopt in toto the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-11-10, 73 NRC 424 (2011)

applicant’s emergency plan must contain and describe adequate provisions for emergency facilities and equipment, including at least one onsite and one offsite communication system, each of which shall have a backup power source; LBP-11-15, 73 NRC 629 (2011)

applicant’s environmental report must describe reasonably foreseeable environmental impacts, discussed in proportion to their significance, and adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-11-6, 73 NRC 149 (2011)

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applicants may incorporate a certified reactor design in a combined license application; LBP-11-10, 73 NRC 424 (2011)

applicants must obtain permits from the Army Corps of Engineers in order to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

applicants referencing a certified design must provide sufficient information for NRC Staff to determine whether the site's characteristics fall within the design's parameters; CLI-15-13, 81 NRC 555 (2015)

basis of NRC Staff's reasonable assurance finding on combined license applicant's scub valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 63 (2012)

COLAs contain information pertaining to how applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20, including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 213 (2012)

COLAs may reference a standard design certification and an early site permit; CLI-12-2, 75 NRC 63 (2012)

COLAs must include a description and plans for implementation of the guidance and strategies required by section 50.54(hh)(2) for severe accident mitigation; CLI-11-9, 74 NRC 233 (2011)

COLAs must include kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-12-4, 75 NRC 213 (2012)

comments and questions generated by a state agency that is examining a state application to determine compliance with state legal and technical standards do not, in and of themselves, demonstrate a material deficiency in the application; LBP-11-6, 73 NRC 149 (2011)

Commission does not review combined license application de novo, but rather considers the sufficiency of NRC Staff's review of the application; CLI-15-13, 81 NRC 555 (2015)

Commission must determine whether NRC Staff review of a combined license application has been adequate to support the findings listed in 10 C.F.R. 52.97 and 51.107(a) for each of the licenses to be issued and in 10 C.F.R. 50.10 and 51.107(d) with respect to the limited work authorizations; CLI-12-2, 75 NRC 63 (2012)

commitments in the revised COLA restrict foreign ownership share to no more than 10% and require NRC consent for any change in foreign ownership of 5% or more; LBP-14-3, 79 NRC 267 (2014)

compliance with design-related information contained in the generic design control document that is approved but not certified (Tier 2 information) is required, but generic changes to and plant-specific departures from Tier 2 are governed by 10 C.F.R. Part 52, App. D, § VIII; CLI-12-2, 75 NRC 63 (2012)

cyber security plans must be submitted for NRC approval; CLI-12-2, 75 NRC 63 (2012)

cyber security plans must take into account site-specific conditions; CLI-12-2, 75 NRC 63 (2012)

emergency plan for the site must be provided; CLI-12-9, 75 NRC 421 (2012)

environmental report is required; CLI-11-5, 74 NRC 141 (2011)

environmental report must contain an analysis of the cumulative impacts of the activities to be authorized; LBP-11-6, 73 NRC 149 (2011)

environmental report must discuss environmental impacts in proportion to their significance; LBP-11-6, 73 NRC 149 (2011)

evaluation of existing dose projection models or a dose assessment is not required by 10 C.F.R. 52.80(d) and 50.54(hh)(2); CLI-11-9, 74 NRC 233 (2011)

every COLA must be accompanied by an environmental report, the purpose of which is to aid NRC Staff in its preparation of an environmental impact statement; LBP-11-6, 73 NRC 149 (2011); LBP-12-9, 75 NRC 615 (2012)

exemption from any part of a referenced design certification rule may be granted if NRC determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with 10 C.F.R. 52.63 if there are no applicable exemption provisions in the referenced rule; LBP-11-10, 73 NRC 424 (2011)

exemption requests are subjected to the same level of litigation as other issues that could be admissibly raised in a COL proceeding; LBP-11-10, 73 NRC 424 (2011)

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factors used for a site geological and seismological evaluation are stated in 10 C.F.R. 100.23(d); LBP-11-10, 73 NRC 424 (2011)

final safety analysis report must describe the facility and present the design bases, limits on its operation, and safety analysis of structures, systems, and components and the facility as a whole; LBP-14-8, 79 NRC 519 (2014)

final safety analysis report must describe the quality assurance program applied to the design and to be applied to the fabrication, construction, and testing, of the structures, systems, and components of the facility; LBP-14-7, 79 NRC 451 (2014)

geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail; LBP-11-10, 73 NRC 424 (2011)

grants of exemptions from referenced design certification rules are conditioned on the Commission's finding that the request complies with section 52.7 and that the special circumstances provided for section 52.7 outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; LBP-11-10, 73 NRC 424 (2011)

hearing must be held on each application to construct a nuclear power plant, regardless of whether an interested member of the public requests a hearing on the application; CLI-15-13, 81 NRC 555 (2015)

if and when applicants file a revision of their application, NRC Staff should renote the application as to its foreign ownership aspect; CLI-13-4, 77 NRC 101 (2013)

impact determinations in the Continued Storage generic environmental impact statement shall be deemed incorporated into the associated environmental impact statements; CLI-15-10, 81 NRC 535 (2015)

impacts of the possible routes that applicant will use for its transmission lines must be analyzed for applicant to give the NRC the requisite information to make an informed decision on its license application; LBP-11-6, 73 NRC 149 (2011)

independent assessment of the safety aspects of the combined license application is required; CLI-15-13, 81 NRC 555 (2015)

information is specified in Atomic Energy Act § 182 that must be provided by applicant for a license and it has no reference to spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

inservice testing and inspection program for squib valves in combined license applications is discussed; CLI-15-13, 81 NRC 555 (2015)

intervention petitioners may not challenge the adequacy of the safety evaluation report, but may file contentions challenging the combined license application based on new information in the SER; LBP-11-22, 74 NRC 259 (2011)

level of low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to applicant's particular plans for compliance through design, operational organization, and procedures; LBP-12-4, 75 NRC 213 (2012)

licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities to address loss of large areas from fires or explosions that arise from a beyond-design-basis event; CLI-12-2, 75 NRC 63 (2012)

mere existence of a letter of intent to ship low-level radioactive waste to a disposal facility does not answer questions as to whether such a plan will ultimately result in a transfer of LLRW title and permanent offsite disposition of the LLRW and whether nontransfer of title will result in environmental impacts; LBP-11-6, 73 NRC 149 (2011)

mere existence of comments and questions generated by NRC Staff do not, in and of themselves, demonstrate a material deficiency in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011)

notice of COLAs must be published in the Federal Register for 4 consecutive weeks; CLI-12-2, 75 NRC 63 (2012)

NRC must address any purported need for additional power during its environmental review of a combined license application; LBP-11-7, 73 NRC 254 (2011)

NRC must also allow the federal Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to a combined license; LBP-12-23, 76 NRC 445 (2012)

NRC Staff considers FEMA's findings on emergency plans in making its necessary finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; CLI-12-9, 75 NRC 421 (2012)

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- NRC Staff evaluated and approved exemption from regulatory requirements for organization and numbering of the combined license application; CLI-12-2, 75 NRC 63 (2012)
- NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 63 (2012)
- NRC Staff found acceptable combined license applicant's plan to use a single technical support center for existing and proposed units, to be collocated in the basement of the new nuclear operations building, between the protected areas of the three units, which is a departure from the AP1000 DCD; CLI-12-9, 75 NRC 421 (2012)
- NRC Staff review included evaluation of exemption criteria; CLI-12-2, 75 NRC 63 (2012)
- NRC Staff review relative to regulatory actions that NRC has taken in response to lessons learned from the Fukushima Dai-ichi accident is discussed; CLI-15-13, 81 NRC 555 (2015)
- NRC Staff's steps in the geographic and demographic review in the final safety evaluation report to determine whether the COL applicant has proposed an acceptable site, including acceptable site boundaries, with appropriate consideration of nearby populations and natural and manmade features, are described; CLI-12-9, 75 NRC 421 (2012)
- NRC's analysis, in its final environmental impact statement, of issues relating to dewatering associated with construction and operation of the proposed plants is adequate and satisfies the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)
- NRC's review of a COL application is the type of proposed action obliging Staff to prepare an environmental impact statement or a supplement thereto; LBP-11-39, 74 NRC 862 (2011)
- operational procedures to minimize contamination of the facility and environment, facilitate eventual decommissioning, and minimize generation of radioactive waste must be included; CLI-12-2, 75 NRC 63 (2012)
- past violations of NRC regulations would indicate a deficiency in an application only if they are directly germane to the licensing action, rather than being of simply historical interest; CLI-12-2, 75 NRC 63 (2012)
- postponing choice between several options for radioactive waste management, each of which is concretely stated and compliant with 10 C.F.R. 52.79(a), does not violate the regulation; LBP-11-31, 74 NRC 643 (2011)
- quibbling over details of an economic analysis would effectively stand NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-12-5, 75 NRC 227 (2012)
- scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that is tied to applicant's particular plans for compliance through, but not necessarily the details of, design, operational organization, and procedures associated with any contingent long-term LLRW facility; LBP-12-4, 75 NRC 213 (2012)
- waste confidence undergirds new reactor licensing and power reactor license renewal; CLI-14-8, 80 NRC 71 (2014)
- where the COLA references a certified design, elements of the licensing basis already have been established, and thus NRC would have to establish a regulatory basis for any change to the established design regardless of whether the COLs have issued; CLI-12-9, 75 NRC 421 (2012)
- whether offsite low-level radioactive waste storage and disposal facilities will ultimately be available is not material to summary disposition because applicant's FSAR provides an adequate contingency plan for long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available; LBP-12-4, 75 NRC 213 (2012)
- COMBINED LICENSE PROCEEDINGS**
- applicant bears the burden of proof by a preponderance of the evidence on safety issues that it is entitled to the applied-for license; LBP-12-17, 76 NRC 71 (2012); LBP-14-3, 79 NRC 267 (2014)
- applicant bears the burden of proof in licensing proceedings; LBP-14-3, 79 NRC 267 (2014)
- because petitioners did not participate in the mandatory hearing, and were not parties to it, they may not challenge the mandatory hearing decision, as such, in court; CLI-12-11, 75 NRC 523 (2012)
- board accepted written limited appearance statements from members of the public in connection with the hearing; LBP-14-3, 79 NRC 267 (2014)

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challenges to a combined license applicant's failure to provide information on long-term storage of Greater-Than-Class-C radioactive waste are outside the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)

Commission addresses the sufficiency of NRC Staff's review of a combined license application rather than a making a de novo review; CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012)

Commission considers safety issues pursuant to the Atomic Energy Act and environmental issues as required by the National Environmental Policy Act; CLI-12-9, 75 NRC 421 (2012)

Commission examines whether the Staff's safety review of the combined license application under 10 C.F.R. 52.97(a)(1)(i)-(v) has been adequate to support its findings; CLI-12-9, 75 NRC 421 (2012)

Commission imposed license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities following a beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink; CLI-12-9, 75 NRC 421 (2012)

Commission may require implementation of mitigation measures it deems necessary and appropriate by imposing conditions in the license; LBP-12-18, 76 NRC 127 (2012)

contention alleging that statutory and regulatory prohibitions on foreign ownership, control, or domination forbid the licensing of proposed units is decided in applicant's favor; LBP-14-3, 79 NRC 267 (2014)

contention should be deemed resolved during the early site permit proceeding if the subject of the contention was actually litigated and decided during the ESP proceeding, or, although not actually litigated, was decided by the Staff, was necessary for the Staff to resolve in the ESP proceeding, and was within the scope of that proceeding as defined in the Federal Register notice of opportunity for a hearing; LBP-11-10, 73 NRC 424 (2011)

contention that wastewater contains chemical contaminants that are not discussed in the environmental report, and that when the wastewater is discharged via deep injection wells, the chemicals might migrate to an aquifer is within the scope of the proceeding; LBP-11-6, 73 NRC 149 (2011)

contested hearing is not required if no petitioner has satisfied the criteria for intervention; LBP-11-22, 74 NRC 259 (2011)

discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 COL proceeding; LBP-12-15, 76 NRC 14 (2012)

environmental issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 555 (2015)

generic analyses of the environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 221 (2015)

hearing must be held on each application to construct a nuclear power plant, regardless of whether an interested member of the public requests a hearing on the application; CLI-15-13, 81 NRC 555 (2015)

hearing procedures in Subpart L of 10 C.F.R. Part 2 will ordinarily be used in proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits; LBP-11-6, 73 NRC 149 (2011)

in a mandatory proceeding, the Commission considers safety issues pursuant to Atomic Energy Act § 189a and environmental issues as required by National Environmental Policy Act § 102(2)(A), (C), and (E); CLI-12-2, 75 NRC 63 (2012)

in addition to contested hearings on combined licenses, where interested members of the public have the right to participate and air their concerns, uncontested safety and environmental issues are considered in a mandatory hearing; CLI-12-11, 75 NRC 523 (2012)

in any COL proceeding referencing an early site permit, contentions may be litigated on whether the nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit; LBP-11-10, 73 NRC 424 (2011)

in making its findings, the Commission will treat as resolved those matters resolved in the issuance of a design certification rule; LBP-11-38, 74 NRC 817 (2011)

insofar as a contention requests consideration of a dry cooling design alternative, that matter must be considered resolved in the early site permit proceeding; LBP-11-10, 73 NRC 424 (2011)

intervenor's participation in COL adjudications is limited to their admitted contentions, and they are barred from participating in the uncontested portion of the hearing; CLI-12-11, 75 NRC 523 (2012)

issues surrounding severe accident mitigation design alternatives that have been resolved by regulation may not be challenged in a combined license adjudication; CLI-11-6, 74 NRC 203 (2011)

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- it is in the public interest for adjudications to proceed, except for contentions associated with waste confidence issues; CLI-12-16, 76 NRC 63 (2012)
- licensing board's hearing arguably allows for additional and a more rigorous public scrutiny of the final environmental impact statement than does the usual circulation for comment; LBP-14-9, 80 NRC 15 (2014)
- mandatory hearings, which are required by section 189a of the Atomic Energy Act, do not involve public participation, regardless of whether a contested hearing with public participation has occurred; CLI-12-11, 75 NRC 523 (2012)
- matter resolved in an early site permit proceeding may be revisited in the COL proceeding when new and significant information is presented; LBP-11-10, 73 NRC 424 (2011)
- Notice of Hearing for an uncontested COL proceeding sets the parameters for the Commission's review; CLI-12-2, 75 NRC 63 (2012)
- NRC must conduct a hearing on the uncontested environmental and safety aspects of the proposed plant; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff's creation of a list of site parameters for use in the combined license proceeding cannot cure the absence of a list of site parameters in the technical support document, rendering it impossible to resolve SAMDA issues by rule; LBP-11-7, 73 NRC 254 (2011)
- petitioner fails to demonstrate that the issue of radiation dispersal due to site inundation is material to the findings the NRC must make to support approving a combined license application; LBP-12-7, 75 NRC 503 (2012)
- petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of the NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 149 (2011)
- petitions requesting suspension of all combined license decisions regarding pending completion of actions associated with the Fukushima accident are granted in part and denied in part; CLI-12-2, 75 NRC 63 (2012)
- presiding officer must determine whether the license should be issued, denied, or appropriately conditioned to protect environmental values; LBP-13-4, 77 NRC 107 (2013)
- proceeding is terminated because applicants have failed to provide information to show that they have changed their ownership situation so as to satisfy foreign ownership, control, and domination requirements; LBP-12-22, 76 NRC 443 (2012)
- proper mechanism for raising Fukushima-related, application-specific concerns in ongoing combined license cases is to file a new contention, consistent with the applicable procedural rules; CLI-11-5, 74 NRC 141 (2011)
- purpose of a mandatory hearing is to determine whether NRC Staff's review of the application has been adequate to support the required regulatory findings; CLI-12-11, 75 NRC 523 (2012)
- safety issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 555 (2015)
- to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to the testing program for squib valves; CLI-12-9, 75 NRC 421 (2012)
- to satisfy requirements of NEPA, the Commission independently considers the final balance among conflicting factors in the record; CLI-12-9, 75 NRC 421 (2012)
- where seismic suitability of a site was evaluated at the early site permit stage, further litigation of a geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 519 (2014)
- whether the safe shutdown earthquake exceedance in applicant's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in this proceeding; LBP-11-10, 73 NRC 424 (2011)
- with respect to the environmental impacts of a combined license, the Commission determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and 10 C.F.R. 51.107(a)(1)-(4) have been met; CLI-12-9, 75 NRC 421 (2012)
- COMBINED LICENSES**
- any person except one excluded by section 50.38 may file an application for a combined license for a nuclear power facility; CLI-13-4, 77 NRC 101 (2013); LBP-14-3, 79 NRC 267 (2014)

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- any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity that NRC knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license; LBP-12-19, 76 NRC 184 (2012)
- applicant is required to submit a report on its decommissioning funding assurance mechanism after combined licenses are issued and no later than 30 days after NRC publishes notice of intended operation in the Federal Register; CLI-12-2, 75 NRC 63 (2012)
- applicant's negation action plan is part of its final safety analysis report and therefore part of the licensing basis of the facility; LBP-14-3, 79 NRC 267 (2014)
- applicant's status as a current power reactor licensee generally provides the necessary support for NRC Staff's finding that applicant is technically qualified for a new license; CLI-12-2, 75 NRC 63 (2012)
- applicants are found ineligible to obtain a combined license because they are owned by a U.S. corporation that is 100% owned by a foreign corporation; LBP-12-19, 76 NRC 184 (2012); LBP-12-22, 76 NRC 443 (2012)
- application included a request for a departure from the wet-bulb noncoincident temperature, which is considered Tier 1 information and part of the certified design and thus a regulatory exemption is required; CLI-12-9, 75 NRC 421 (2012)
- applications for water use permits are evaluated by local governmental agencies; LBP-13-4, 77 NRC 107 (2013)
- before issuing a combined license, NRC must conclude that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-11-6, 73 NRC 149 (2011)
- challenges in maintaining knowledge gained during the combined license review if construction is delayed are discussed; CLI-15-13, 81 NRC 555 (2015)
- Commission administratively exempted, from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 421 (2012)
- early site permit authorizes the use of a specific site for the construction and operation of a new nuclear power plant, with the actual construction and operation authorized by a subsequently issued COL; LBP-11-10, 73 NRC 424 (2011)
- final safety analysis report must include information regarding the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in Part 20; LBP-11-6, 73 NRC 149 (2011)
- for agency decisions that are based on an environmental impact statement, a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation; LBP-12-23, 76 NRC 445 (2012)
- if an assessment of alternatives to the proposed action was prepared at the early site permit stage and no new information in the areas of energy alternatives or system design alternatives has been identified at the combined license stage, conclusions made at the ESP stage remain valid; CLI-12-2, 75 NRC 63 (2012)
- if applicant did not pursue an early site permit, all relevant site characteristics, including site geology, hydrology, seismology, and man-made hazards, as well as potential environmental impacts of the project, were studied as part of NRC Staff's combined license review and are within the scope of the Commission decision; CLI-15-13, 81 NRC 555 (2015)
- if combined licenses issue without including license conditions, NRC regulations relevant to the finality of decisions could result in some additional administrative requirements to satisfy in imposing new requirements on licensee; CLI-12-9, 75 NRC 421 (2012)
- in making the findings required for issuance of a combined license, finality is afforded to those matters resolved in connection with a design certification; LBP-11-7, 73 NRC 254 (2011)
- in the area of impacts of combined licenses and limited work authorizations, NRC Staff, in its review of new and significant information, identified a change in impacts associated with terrestrial ecology; CLI-12-2, 75 NRC 63 (2012)

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inasmuch as NRC Staff relies on the benefits of proposed units to satisfy an otherwise unmet need for power, the adequacy of the need-for-power assessment is material to granting the proposed combined license; LBP-11-7, 73 NRC 254 (2011)

issuance of a combined license is a major federal action significantly affecting the quality of the human environment and requires an environmental impact statement; LBP-13-4, 77 NRC 107 (2013)

issuance of an early site permit and the subsequent authorization of construction and operation of a new nuclear power plant qualify as connected actions under 40 C.F.R. 1508.25 and should be evaluated in one environmental impact statement; LBP-11-10, 73 NRC 424 (2011)

license cannot be issued until the foreign ownership issue is properly corrected and then applicants may move to reopen the record; LBP-12-19, 76 NRC 184 (2012)

license holder under Part 50 or a combined license under Part 52 shall follow and maintain the effectiveness of an emergency plan that meets the requirements in Part 50, Appendix E; LBP-15-4, 81 NRC 156 (2015)

license will not be issued where applicants are 100% owned by a foreign corporation, which is 85% owned by the French government, and the foreign corporation has the power to exercise ownership, control, or domination over applicants, and the Negation Action Plan submitted by applicants does not negate this situation; LBP-12-19, 76 NRC 184 (2012)

licensee who has obtained an early site permit is not required to apply for a combined license or to actually construct and operate a nuclear power plant at the authorized site; LBP-11-10, 73 NRC 424 (2011)

NEPA only requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-11-7, 73 NRC 254 (2011)

not all license commitments must be converted into license conditions to be enforceable; LBP-14-3, 79 NRC 267 (2014)

NRC has authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-8, 74 NRC 214 (2011); CLI-11-10, 74 NRC 251 (2011)

NRC has authority to impose environmental restrictions on new transmission lines intended to serve new nuclear power plants; LBP-14-9, 80 NRC 15 (2014)

NRC has long interpreted its statutory authority under the Atomic Energy Act to include conditioning approval of nuclear power plant licenses on environmentally acceptable routing of transmission lines; LBP-14-9, 80 NRC 15 (2014)

NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 15 (2014)

NRC is prohibited from issuing a license to a nuclear power reactor applicant if it would be inimical to the health or safety of the public; LBP-13-4, 77 NRC 107 (2013)

NRC is required to consider severe accident mitigation alternatives in issuing a new operating license; LBP-11-7, 73 NRC 254 (2011)

NRC Staff may not issue a notice of violation for failure to satisfy Appendix B requirements during the preapplication period, but it may deny a combined license for failure to satisfy the standards and requirements of the Commission's regulations; LBP-14-7, 79 NRC 451 (2014)

proposed plant will impact at least 668 acres of wetlands and therefore its construction and operation will require a permit from U.S. Army Corps of Engineers; LBP-13-4, 77 NRC 107 (2013)

radiation protection requirements with which licensees must comply, such as procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable, are outlined in 10 C.F.R. 20.1101(b); LBP-12-4, 75 NRC 213 (2012)

request that NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions is premature; LBP-12-18, 76 NRC 127 (2012)

section 50.54(hh)(2) applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52; LBP-11-21, 74 NRC 115 (2011)

sheltering must be considered in developing the recommended range of protective actions in an emergency plan; LBP-11-6, 73 NRC 149 (2011)

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state water use permit is required for construction and operation of the nuclear units, associated facilities, and transmission lines and corridor; LBP-13-4, 77 NRC 107 (2013)

there is generally no specific ownership percentage above which the NRC Staff would conclusively determine that an applicant is per se controlled by foreign interests, but a 100% foreign ownership has formed the basis for the licensing board's grant of summary disposition in favor of the intervenors; LBP-14-3, 79 NRC 267 (2014)

to authorize issuance of combined licenses, NRC must determine that applicable regulations have been met, there is reasonable assurance that the new reactors will be constructed and will operate in conformity with NRC regulations, and issuance of the licenses will not be inimical to the public health and safety; CLI-12-2, 75 NRC 63 (2012)

to issue a combined license or entertain an application for a COL, the Commission cannot know or have reason to believe applicant is controlled by an alien, a foreign corporation, or a foreign government; LBP-11-25, 74 NRC 380 (2011)

to the extent NRC's review of the Fukushima accident leads to new rules applicable to any pending application, the Commission has sufficient authority and time to apply them to any new license that may be issued; CLI-11-5, 74 NRC 141 (2011)

waste confidence undergirds certain agency licensing decisions, in particular new reactor licensing and reactor license renewal; CLI-12-16, 76 NRC 63 (2012)

when an environmental impact statement is prepared at the early site permit stage, NRC Staff must prepare a supplemental EIS for the COL focusing on issues related to the impacts of construction and operation for which new and significant information has been identified; CLI-12-2, 75 NRC 63 (2012)

with respect to new reactor licenses, the Commission has authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-6, 74 NRC 203 (2011)

COMMENTS

NRC must allow the federal Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to a combined license; LBP-12-23, 76 NRC 445 (2012)

COMMISSIONERS, AUTHORITY

action of the Commission shall be determined by a majority vote of the members present; CLI-12-17, 76 NRC 207 (2012)

Commission, but not a licensing board, has the power to address a protracted delay in the proceeding and to direct appropriate remedial measures; LBP-11-30, 74 NRC 627 (2011)

Commission disfavors requests to invoke its inherent supervisory authority over adjudications; CLI-11-13, 74 NRC 635 (2011)

COMMON DEFENSE AND SECURITY

adequacy finding on applicant's material control and accounting program requires the board to make a case-by-case determination, guided by the Atomic Energy Act's mandate that no license to possess special nuclear material may be issued if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 39 (2014)

even substantial foreign funding or involvement where a foreign entity contributes 50% or more of the costs of constructing a reactor or participates in the project review and is consulted on policy and costs issues does not require a finding of foreign control, where safeguards ensure U.S. national defense and security; LBP-11-25, 74 NRC 380 (2011)

foreign ownership, control, or domination analysis should be given an orientation toward safeguarding the national defense and security; CLI-15-7, 81 NRC 481 (2015)

in context with the other provisions of the Atomic Energy Act § 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security; LBP-14-3, 79 NRC 267 (2014)

licensee must show with reasonable assurance that its proposed methodology for material control and accounting will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public; CLI-15-9, 81 NRC 512 (2015)

materials license regulations contain no express prohibition on foreign ownership, but require Staff to make a finding that license issuance will not be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)

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- no imminent risk to public health and safety or to the common defense and security post-Fukushima necessitates suspensions; LBP-12-18, 76 NRC 127 (2012)
- NRC can issue nuclear power reactor licenses to applicants only upon a finding that utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection of public health and safety; CLI-15-4, 81 NRC 221 (2015)
- NRC may deny uranium enrichment facility applicant a license based on foreign ownership, control, or domination concerns to the extent it concludes granting such a license would be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)
- NRC's enforcement order does not state that any reportable illegal, unusual, or aberrant behavior must have a nexus to public health and safety or the common defense and security in order to be reportable; LBP-14-4, 79 NRC 319 (2014)
- pertinent language in 10 C.F.R. 70.31(d) and 40.32(d) tracks the statutory language identically, i.e., "inimical to the common defense and security or the health and safety of the public"; LBP-11-11, 73 NRC 455 (2011)
- protecting against the threat of air attacks is not within licensees' responsibilities because a private security force cannot reasonably be expected to defend against such attacks and adequate protection is ensured through the actions of other federal agencies with defense capabilities and air-safety expertise; CLI-11-4, 74 NRC 1 (2011)
- requesting authorization from the Commission for the board, on its own motion, to examine and decide the serious safety or common defense and security matters underlying contentions is allowed to be used for matters that were initially raised by a party, where that party later withdrew; LBP-11-9, 73 NRC 391 (2011)
- to be inimical to the common defense and security or to the health and safety of the public, control or domination must be of such a degree that the will of the licensee is subjugated to the will of the foreign entity, and the foreign entity must have the power to direct the actions of the licensee; LBP-14-3, 79 NRC 267 (2014)
- COMMON-MODE FAILURES**
- admissibility of contention that common-mode failures and/or mutually exacerbating catastrophes are entitled to severe accident mitigation alternatives analysis is decided; LBP-15-5, 81 NRC 249 (2015)
- COMMUNICATIONS**
- adequate provisions must exist for prompt communications among principal response organizations to emergency personnel and to the public; LBP-15-4, 81 NRC 156 (2015)
- combined license applicant's emergency plan must contain and describe adequate provisions for emergency facilities and equipment, including at least one onsite and one offsite communications system, each of which shall have a backup power source; LBP-11-15, 73 NRC 629 (2011)
- request that NRC order licensees to provide means to power communications equipment needed to communicate onsite and offsite during a prolonged station blackout until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- COMPLIANCE**
- activities associated with, and data coming from, prelicensing groundwater monitoring activities are associated with compliance with the dictates of 10 C.F.R. Part 40, Appendix A, Criterion 7; LBP-15-3, 81 NRC 65 (2015)
- after the rulemaking is completed, licensees for new reactors will be required to comply with the ASME code preservice and inservice surveillance provisions for squib valves; CLI-15-13, 81 NRC 555 (2015)
- agencies of the government must scrupulously observe the rules, regulations, or procedures that it has established; LBP-14-2, 79 NRC 131 (2014); LBP-14-4, 79 NRC 319 (2014)
- allegations of noncompliance with already-issued, existing, and open Commission orders are part of the current licensing basis and therefore cannot be challenged in a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)
- allowing licensee to propose its own strategies for coming into compliance with an enforcement order rather than mandating a certain set of plant alterations does not change the fundamental character of the order and transform it into an approval; LBP-12-15, 76 NRC 14 (2012)
- although a standard review plan lacks the legal force of regulations, it is to be given special weight as a guidance document that has been approved by the Commission but is nonbinding guidance; LBP-14-3, 79 NRC 267 (2014)

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although NRC guidance documents are not legally binding, and compliance with them is not required, they describe an acceptable approach to compliance with NRC rules; CLI-11-4, 74 NRC 1 (2011)

although NUREGs are not legally binding, they are guidance documents and applicant's failure to comply with such documents can potentially give rise to an admissible contention; LBP-11-6, 73 NRC 149 (2011)

applicant's program for control and accounting of special nuclear material must show how compliance with the requirements of section 74.51 will be accomplished; LBP-14-1, 79 NRC 39 (2014)

boards cannot assume that applicants will not comply with their regulatory responsibilities, including their license conditions; LBP-15-3, 81 NRC 65 (2015)

Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; LBP-15-4, 81 NRC 156 (2015)

commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance; LBP-11-20, 74 NRC 65 (2011)

comprehensive system of planned and periodic audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine effectiveness of the program; LBP-14-7, 79 NRC 451 (2014)

conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)

contention that applicant had inadequately described aging management plan by relying on a promise of compliance with NRC orders instead of describing the plan is admissible; LBP-15-24, 82 NRC 68 (2015)

current reactor licensees comply with the requirements of section 50.54(hh)(2) through conditions on their operating licenses; LBP-11-21, 74 NRC 115 (2011)

debating compliance with another agency's proposed policies before they have been finalized would subject administrative agencies to needless and repetitive litigation; LBP-15-15, 81 NRC 598 (2015)

government agencies are required to comply with NEPA to the fullest extent possible; LBP-14-9, 80 NRC 15 (2014)

if compliance with the current licensing basis cannot be fully achieved during the current licensing term and must be consummated during the period of extended operation, then a contention raising issues about such CLB compliance is within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)

if petitioner has a credible basis to question the adequacy of licensee's compliance with 10 C.F.R. 50.54(q)(3), it may petition for enforcement action; LBP-15-4, 81 NRC 156 (2015)

in assessing whether applicant/licensee adequately carries out a licensing directive, boards are to assume that NRC Staff will be fair and judge the matter of applicant/licensee's compliance on the merits; LBP-15-3, 81 NRC 65 (2015)

in the absence of some showing of substantial prior misdeeds, applicant/licensee will be presumed to follow the agency's regulatory requirements, including the directives in its license; LBP-15-3, 81 NRC 65 (2015)

it is imperative that terms of a reactor operating license be clear and unambiguous and that licensee scrupulously adhere to those terms, because it is unlawful for any person within the United States to use any utilization facility except under and in accordance with a license issued by NRC; LBP-13-7, 77 NRC 307 (2013)

legislative history and case law require compliance with NEPA unless compliance is impossible, or another statute specifically prohibits compliance with NEPA; LBP-12-18, 76 NRC 127 (2012)

license denial letter that contained apparent boilerplate that was incomplete and perforce misleading does not accord with concepts of fundamental fairness and might well counter hearing rights granted under the Atomic Energy Act; LBP-13-3, 77 NRC 82 (2013)

license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to ongoing compliance oversight activity; CLI-11-11, 74 NRC 427 (2011); LBP-13-8, 78 NRC 1 (2013)

licensee is not required to list an enforcement order and its compliance with the order's terms in the environmental report supporting its operating license renewal application; LBP-12-15, 76 NRC 14 (2012)

SUBJECT INDEX

licensee's compliance with the current licensing basis is not within the scope of a license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

licensees may follow regulatory guides to determine equivalent safety margins, or may use any other methods, procedures, or selection of materials data and transients to demonstrate compliance; LBP-15-20, 81 NRC 829 (2015)

merely pointing to a government compliance program is insufficient to demonstrate compliance with NEPA's requirement that agencies take a hard look at the environmental consequences of their proposed actions; LBP-12-23, 76 NRC 445 (2012)

merely pointing to the compliance program is in no way sufficient to support a scientific finding that spent fuel pools will not cause a significant environmental impact during the extended storage period; LBP-14-9, 80 NRC 15 (2014)

no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance with NEPA; LBP-14-9, 80 NRC 15 (2014)

noncompliance with orders issued as part of NRC's ongoing oversight program are enforcement issues that are not within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

NRC guidance documents are not legally binding, and compliance with them is not required; LBP-15-20, 81 NRC 829 (2015)

NRC is ultimately responsible for compliance with the National Environmental Policy Act; CLI-12-13, 75 NRC 681 (2012)

NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-11-11, 74 NRC 427 (2011)

petitioners can raise compliance issues only under 10 C.F.R. 2.206, which would allow them to petition NRC to take an enforcement action; LBP-15-5, 81 NRC 249 (2015)

plain meaning of the word "approval," as "the act of approving" and "certification as to acceptability," which requires an affirmative action on the part of an approver, clearly establishes that requiring compliance is different from granting an approval; LBP-12-15, 76 NRC 14 (2012)

plants licensed to operate before January 1, 1979, must meet fire safety regulations; DD-12-3, 76 NRC 416 (2012)

post-licensing, preoperational activities conducted to comply with Part 40, Appendix A, Criterion 7 are associated with compliance with the dictates of 10 C.F.R. Part 40, Appendix A, Criteria 5B and 7A; LBP-15-3, 81 NRC 65 (2015)

"reasonable assurance" standard for aging management programs does not require a 95% confidence level of compliance; LBP-11-18, 74 NRC 29 (2011)

request that NRC order licensees to comply with twelve specific recommendations in the Near-Term Task Force Report is addressed; DD-14-2, 79 NRC 489 (2014)

satisfying the requirements of other statutes does not in itself relieve a federal agency of its obligations to comply with the procedures set forth in the Endangered Species Act; LBP-12-10, 75 NRC 633 (2012)

to consider any or all of NRC Staff documents as "approvals" by reason of the fact that they request information that will be used to assess compliance with agency requirements would impose an unintended reporting encumbrance; LBP-12-15, 76 NRC 14 (2012)

See also Assumption of Compliance; Certificate of Compliance; Procedure Compliance

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT

proper sampling plan for establishing baseline values is described; LBP-15-3, 81 NRC 65 (2015)

COMPRESSED AIR ENERGY STORAGE

technology and its potential to produce baseload power in combination with other renewable sources are discussed; LBP-12-17, 76 NRC 71 (2012)

COMPUTER CODE

applicant's use of the MAAP code to generate fission product source terms for use in its severe accident mitigation alternatives analysis is reasonable under NEPA; LBP-12-26, 76 NRC 559 (2012)

citation of studies indicating that source terms from the Modular Accident Analysis Progression (MAAP) code are lower than results from Source Term Code Package or NUREG-1150 satisfies the requirements of 10 C.F.R. 2.309(f)(1)(v); LBP-11-2, 73 NRC 28 (2011)

SUBJECT INDEX

Gaussian plume model's incorporation in the MACCS2 code and the wide, customary use of the code are not a sufficient grounds to exclude the code's integral dispersion model from all challenge if adequate support is provided for a contention; LBP-11-2, 73 NRC 28 (2011)

it is not possible simply to plug in and run a different atmospheric dispersion model in the MACCS2 code; LBP-11-2, 73 NRC 28 (2011)

petitioners did not demonstrate that the issue of whether the MACCS2 was subject to quality assurance is material to the findings the NRC must make under NEPA to support the requested license extension; LBP-11-13, 73 NRC 534 (2011)

petitioners do not provide any alleged facts or expert support indicating that the river valley is within the geographic area for which applicant was required to model atmospheric dispersion; LBP-11-13, 73 NRC 534 (2011)

petitioners' assertions that the MACCS2 code was not subjected to quality assurance requirements is deficient because a SAMA analysis is not subject to such requirements; LBP-11-2, 73 NRC 28 (2011)

COMPUTER MODELING

although petitioners are not required to run their own computer models at the contention admissibility stage, a contention challenging a SAMA analysis nonetheless must be tethered to the computer modeling and mathematical aspects of the analysis; CLI-12-15, 75 NRC 704 (2012)

applicant's severe accident mitigation alternatives analysis is sufficiently site specific and its use and NRC Staff's approval of the NUREG-1150 TIMDEC and CDNFRM input values is reasonable and appropriate and satisfies the requirements under NEPA; LBP-13-13, 78 NRC 246 (2013)

appropriate inquiry under NEPA is not whether there are alternative models that NRC could have used, or whether the analysis could have been refined, or improved by gathering additional data, but whether the NRC's chosen methodology is reasonable; LBP-13-4, 77 NRC 107 (2013)

because the severe accident mitigation alternatives analysis is largely quantitative, resting on inputs used in computer modeling, it will always be possible to propose that the analysis use one or more other inputs; LBP-13-13, 78 NRC 246 (2013)

concern about methodology used to calculate groundwater quantity impacts is inadmissible as lacking sufficient factual or expert support and as failing to establish a material factual or legal dispute; LBP-12-3, 75 NRC 164 (2012)

modeling of salt drift from cooling towers is discussed; LBP-13-4, 77 NRC 107 (2013)

nonstatic nature of a website, in the absence of a stand-alone compact disc/digital video disc that would allow the board or parties to run a locked-down version of the website application, prevents consideration as evidence; LBP-15-3, 81 NRC 65 (2015)

regional groundwater flow modeling is discussed; LBP-13-4, 77 NRC 107 (2013)

to the extent petitioner is challenging the adequacy of computer modeling of plume variability, petitioner bears the burden of providing evidence specific to the license renewal applicant; LBP-15-5, 81 NRC 249 (2015)

CONDITIONS

boards have authority to impose reasonable conditions on voluntary withdrawals in appropriate circumstances; LBP-15-28, 82 NRC 233 (2015)

boards set conditions on voluntary withdrawals on a case-by-case basis, with any conditions tailored to address the particular circumstances of that proceeding; LBP-15-28, 82 NRC 233 (2015)

dismissal of license amendment request is conditioned on requirement that licensee provide notice to petitioner of submission of a similar LAR so that petitioner has a fair opportunity to relitigate issues previously found admissible; LBP-15-28, 82 NRC 233 (2015)

narrowly tailored condition will afford petitioner an opportunity to dispute a specific decommissioning fund disbursement via a letter to the NRC or a petition for enforcement action; LBP-15-28, 82 NRC 233 (2015)

purpose of the rule to dismiss proceedings on conditions is primarily to prevent voluntary dismissals that unfairly affect the other side, and to permit the imposition of curative conditions; LBP-15-28, 82 NRC 233 (2015)

when the board has issued a Notice of Hearing, withdrawal of a license amendment request shall be on such terms as the presiding officer may prescribe; LBP-15-28, 82 NRC 233 (2015)

SUBJECT INDEX

CONDUCT OF PARTIES

every participant in NRC adjudicative proceedings has the duty to fulfill the obligations imposed by and in accordance with applicable law, and when participant fails to meet its obligations, a licensing board should consider the imposition of sanctions against the offending party; LBP-13-2, 77 NRC 71 (2013)

fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations; LBP-13-2, 77 NRC 71 (2013)

licensing boards may impose on contumacious parties or their representatives reprimands, censures, or suspensions from proceedings; LBP-13-2, 77 NRC 71 (2013)

CONFIDENTIAL INFORMATION

appeals of board rulings on hearing requests, petitions to intervene, and access to certain nonpublic information are governed by 10 C.F.R. 2.311(a); CLI-12-6, 75 NRC 352 (2012)

boards can request that a document for which a deliberative process privilege is claimed be provided to it for *in camera* inspection; LBP-13-5, 77 NRC 233 (2013)

confidential commercial information, release of which likely would lead to substantial competitive harm, is entitled to protection; CLI-15-24, 82 NRC 331 (2015)

flooded hazard reevaluation report contains security-related information, and so a portion of the document is not publicly available; DD-15-5, 81 NRC 877 (2015)

if the Commission determines on appeal that information withheld under a protective order should have been publicly disclosed, it will direct that such information and the transcript of the related *in camera* session be made publicly available; CLI-15-24, 82 NRC 331 (2015)

in camera hearing sessions may be held when information sought to be withheld from public disclosure is offered into evidence; CLI-15-24, 82 NRC 331 (2015)

NRC Staff must supply the board with precise and certain reasons for maintaining the confidentiality of requested documents; LBP-13-5, 77 NRC 233 (2013)

petitioners have an affirmative obligation to request confidential and proprietary information that has not been made publicly available in order to support a proposed contention; LBP-11-9, 73 NRC 391 (2011)

privilege logs that contain only cursory statements are inadequate to permit a court to decide whether the privilege was properly claimed; LBP-13-5, 77 NRC 233 (2013)

requests for protected documents shall be filed within 60 days of the listing of the document on the privilege log and, in any event, no later than 10 days after the deadline for filing rebuttal testimony; LBP-11-5, 73 NRC 131 (2011)

requirements and exemptions under FOIA reflect a balancing of public disclosure with confidentiality, but this balancing does not affect the NRC's authority to obtain requested information; CLI-13-5, 77 NRC 223 (2013)

SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)

under certain circumstances, a licensee or vendor might be required to disclose confidential ECP information (including the identity of a concerned individual) at the behest of a government agency (including the NRC), or in response to a subpoena; CLI-13-5, 77 NRC 223 (2013)

CONFIDENTIALITY

although NRC regulations mandate that a petition contain the name, address, and telephone number of petitioner, the Commission's hearing notice advises prospective petitioners not to include personal privacy information, such as home addresses or home phone numbers, in their filings; LBP-11-21, 74 NRC 115 (2011)

disclosure to intervenors of the names of power plant employees who provided NRC with information during the course of its investigation would be inappropriate, even with a protective order in place; CLI-13-5, 77 NRC 223 (2013)

factors that boards should consider in balancing applicant's need for disclosure against the agency's interest in confidentiality are described; LBP-13-5, 77 NRC 233 (2013)

government may withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of the law; CLI-13-5, 77 NRC 223 (2013)

SUBJECT INDEX

CONFIRMATORY ACTION LETTER

analytic framework for assessing whether a CAL process constitutes a de facto license amendment proceeding is provided; LBP-13-7, 77 NRC 307 (2013)

board determined that confirmatory action letter was a de facto license amendment, which allows for public intervention; LBP-14-1, 79 NRC 39 (2014)

board is directed to consider whether a CAL issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 437 (2012)

criteria of 10 C.F.R. 50.59 were used as an analytical tool to address the question of whether a confirmatory action letter issued to the licensee by the NRC Staff constituted a de facto license amendment that would be subject to a hearing opportunity; LBP-13-11, 78 NRC 177 (2013)

issuance of a CAL is an enforcement process that does not allow for public intervention; LBP-14-1, 79 NRC 39 (2014)

licensees and vendors are expected to adhere to any obligations and commitments addressed in CALs that NRC Staff issues to licensees or vendors to emphasize and confirm a licensee's or vendor's agreement to take certain actions in response to specific issues; DD-12-2, 76 NRC 391 (2012)

NRC Staff inspections and CALs are oversight activities normally conducted to ensure that licensees comply with existing NRC requirements and license conditions and therefore do not typically trigger the opportunity for a hearing under the AEA; CLI-15-5, 81 NRC 329 (2015)

process and method for closing out a CAL are described; LBP-13-7, 77 NRC 307 (2013)

to determine whether a CAL process constitutes a de facto license amendment proceeding, a licensing board must look beyond the CAL itself and consider the entire process, including the documents generated incident to that process; LBP-13-7, 77 NRC 307 (2013)

to determine whether an ongoing CAL process constitutes a de facto license amendment proceeding, the board must determine whether the requested change in operating authority sought by licensee is strictly in accordance with the terms and technical specifications in its existing license; LBP-13-7, 77 NRC 307 (2013)

when an order is warranted to address a specific issue, a CAL is used to confirm initial, agreed upon, short-term actions covering the interval period prior to the actual issuance of the order; LBP-13-7, 77 NRC 307 (2013)

CONFIRMATORY ORDER

admissibility of contention asserting that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on licensee's off-duty employees not otherwise required by 10 C.F.R. 73.56(f)(1)-(3) is argued; LBP-14-4, 79 NRC 319 (2014)

before any hearing is granted on an order issued pursuant to 10 C.F.R. 2.202, a threshold question, intertwined with both standing and contention admissibility issues, is whether the hearing requests are within the scope of the proceeding; CLI-13-2, 77 NRC 39 (2013)

board finds that the terms endorsed in a confirmatory order provide more specificity than the applicable NRC regulation which rather broadly requires reporting of any questionable behavior patterns or activities; LBP-14-4, 79 NRC 319 (2014)

challenges to NRC enforcement orders are limited to whether the order should be sustained; LBP-14-4, 79 NRC 319 (2014)

contention that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on licensee's off-duty employees, not otherwise required by NRC, to observe and report offsite, off-duty conduct of fellow employees is inadmissible; LBP-14-4, 79 NRC 319 (2014)

contention that considers the terms of a confirmatory order warranted or unwarranted is irrelevant if they fall within NRC's authority to impose; LBP-14-4, 79 NRC 319 (2014)

hearing on a confirmatory order is limited solely to whether, on the basis of matters set forth in the order, the order should be sustained; LBP-14-4, 79 NRC 319 (2014)

if licensee or other person to whom an order is issued consents to its issuance, or the order confirms actions agreed to by the licensee or such other person, that consent or agreement constitutes a waiver by the licensee or such other person of a right to a hearing and any associated rights; LBP-14-4, 79 NRC 319 (2014)

SUBJECT INDEX

interested stakeholders who stand to benefit from a confirmatory order's safety measures may intervene in a contested enforcement proceeding to protect its interest in ensuring that the order is upheld as issued; CLI-13-2, 77 NRC 39 (2013)

issue to be determined at hearing is whether the order should be sustained or denied, not whether the order should be enhanced; CLI-13-2, 77 NRC 39 (2013)

it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders; LBP-14-4, 79 NRC 319 (2014)

nonlicensee with purely economic interest has an automatic right to demand a hearing under section 2.202(a)(3) without showing standing or proffering an admissible contention; LBP-14-4, 79 NRC 319 (2014)

nonparty petitioners may not challenge a confirmatory order embodying a settlement if the order improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

NRC's notice of opportunity for hearing on a confirmatory order provides the public a safety valve because conceivably the order might remove a restriction upon a licensee or otherwise have the effect of worsening the safety situation; LBP-14-4, 79 NRC 319 (2014)

orders issued under 10 C.F.R. 2.202 alter the requirements of a license and therefore fall generally under the terms of Atomic Energy Act § 189a; CLI-13-2, 77 NRC 39 (2013)

petitioner may obtain a hearing on a section 2.202 order only if the measures to be taken under the order would, *in themselves*, harm the petitioner; CLI-13-2, 77 NRC 39 (2013)

standing to challenge a confirmatory order exists only when a petitioner credibly alleges that a settlement somehow actually reduces safety; LBP-14-4, 79 NRC 319 (2014)

terms of section 2.202 orders often have been negotiated with the affected licensees, who would have little incentive to negotiate if so doing would expose them to formal litigation over additional terms or requirements that third-party petitioners would like to see imposed; CLI-13-2, 77 NRC 39 (2013)

union's argument that it may demand a hearing on a confirmatory order without complying with intervention requirements of section 2.309(a) is incorrect; LBP-14-4, 79 NRC 319 (2014)

whether licensee employees, as represented by a union, have a right to demand a hearing because they are persons adversely affected by a confirmatory order is discussed; LBP-14-4, 79 NRC 319 (2014)

CONFLICT OF INTEREST

if an examiner is assigned to a reactor operator examination that might appear to present a conflict of interest, the examiner shall inform his or her immediate supervisor of the potential conflict; LBP-14-2, 79 NRC 131 (2014)

NRC regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicant's retake of the operating test; LBP-14-2, 79 NRC 131 (2014)

NUREG-1021 includes conflict of interest provisions that address the assignment of examiners to an examination team; LBP-14-2, 79 NRC 131 (2014)

when informed of a potential conflict, the supervisor of a reactor operator test examiner must apply sound judgment to the facts of each case and, if any doubt exists, consult with regional management and/or the NRR operator licensing program office to resolve the issue; LBP-14-2, 79 NRC 131 (2014)

CONNECTED ACTIONS

action lacks independent utility when it would be irrational or unwise to pursue the action without the presence of the EIS-generating central action; LBP-15-16, 81 NRC 618 (2015)

action with potential impacts subsequent to the initial federal action may not constitute a proposed action if it is insufficiently certain; LBP-14-9, 80 NRC 15 (2014)

although NRC may regard preconstruction activities as outside the scope of a combined license application, these activities are within the scope of the NEPA review because they are all connected actions; LBP-14-9, 80 NRC 15 (2014)

connected actions are closely related and therefore should be discussed in the same environmental impact statement; LBP-15-16, 81 NRC 618 (2015)

connected actions are distinguished from cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

"connected actions" include those that lack independent utility; LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)

construction of a road to facilitate logging and the sale of timber from the logging are "connected actions" that have to be addressed in a single environmental impact statement; LBP-14-9, 80 NRC 15 (2014)

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contention alleging that final supplemental environmental impact statement fails to consider connected actions is admissible; LBP-14-5, 79 NRC 377 (2014)

contention questioning whether future anticipated use of MOX fuel is sufficiently definite to constitute a proposal under the law, with a connection, cumulative impact, interdependence, or similar relationship to matters at issue in a license renewal proceeding to warrant being addressed in the supplemental environmental impact statement is admissible; LBP-14-6, 79 NRC 404 (2014)

contention that the draft supplemental environmental impact statement fails to consider connected actions is admissible; LBP-13-9, 78 NRC 37 (2013)

cumulative impact analysis is required for reasonably foreseeable future actions and test for connected actions in CEQ regulation 40 C.F.R. 1508.25 need not be satisfied; LBP-14-6, 79 NRC 404 (2014)

definition of "connected actions" in 40 C.F.R. 1508.25 is also adopted by NRC regulations; LBP-14-9, 80 NRC 15 (2014)

environmental impact statements must address interdependent projects when the dependency is such that it would be irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken; LBP-14-9, 80 NRC 15 (2014)

environmental impact statements must include all connected actions; LBP-14-6, 79 NRC 404 (2014)

environmental impact statements should be issued to include other related actions only when those related actions have been formally proposed and are pending before the relevant agency; LBP-13-10, 78 NRC 117 (2013)

failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)

for an action such as a transmission corridor that will not be constructed by or expressly permitted by the federal agency preparing an environmental impact statement, there must be sufficient federal control and responsibility that the action qualifies as a federal action; LBP-14-9, 80 NRC 15 (2014)

for construction of a transmission corridor to constitute a connected action, three requirements must be met; LBP-14-9, 80 NRC 15 (2014)

grounds were found for litigation regarding defendants' assertion that treatment of highway interchanges and village development as cumulative impacts in the final environmental impact statement was sufficient under NEPA even if these actions should have been treated as connected actions under the statute's implementing regulations; LBP-14-9, 80 NRC 15 (2014)

multiple projects are often deemed connected actions despite being undertaken by separate entities; LBP-14-9, 80 NRC 15 (2014)

NEPA does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions; LBP-13-10, 78 NRC 117 (2013)

no language is included in 10 C.F.R. 51.45(c) to the effect that a proposed action that is the subject of an agency environmental impact statement must include all connected actions as defined in 40 C.F.R. 1508.25; LBP-14-9, 80 NRC 15 (2014)

non-NRC permits are interdependent parts of applicant's proposed action and thus are connected actions; LBP-15-16, 81 NRC 618 (2015)

pertinent to the question of whether a facility is a connected action is whether the facility lacks any independent utility in the absence of the completion of the other sites; LBP-13-10, 78 NRC 117 (2013)

power plants without transmission lines are like airplanes that can't fly; LBP-14-9, 80 NRC 15 (2014)

projects lack independent utility when it would be irrational, or at least unwise, to build one without the other; LBP-14-9, 80 NRC 15 (2014)

projects that are not connected actions, but are physically related to the system, are cumulative actions and are subject to an examination of cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement; LBP-13-10, 78 NRC 117 (2013); LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)

separate actions are "connected" if, among other things, they cannot or will not proceed unless other actions have been taken previously or simultaneously, or they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)

three types of actions (connected, cumulative, and similar) are to be considered in looking to the scope of an EIS; LBP-13-10, 78 NRC 117 (2013)

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- to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-13-10, 78 NRC 117 (2013)
- to determine whether actions are connected such that they should be discussed in the same environmental impact statement, an agency is to consider whether the actions automatically trigger other actions that may require an EIS, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification; LBP-13-10, 78 NRC 117 (2013)
- to determine whether interdependence exists among the various actions at issue, courts generally have looked to see whether the first action has independent utility; LBP-13-10, 78 NRC 117 (2013)
- when developing an environmental impact statement, an agency must consider the impact of other proposed projects only if the projects are so interdependent that it would be unwise or irrational to complete one without the other; LBP-13-10, 78 NRC 117 (2013)
- when drafting an environmental impact statement, agency's scope of review must include analysis of any cumulative actions or actions connected to the central proposed action; LBP-15-16, 81 NRC 618 (2015)
- CONSIDERATION OF ALTERNATIVES
- admissibility of contention that final environmental assessment fails to satisfy NRC's requirement for an environmental impact statement when there are unresolved conflicts concerning reasonable alternatives is decided; LBP-15-15, 81 NRC 598 (2015)
- admissible contention challenging consideration of alternatives must show that a particular alternative was not discussed in the draft environmental impact statement and provide some support that the alternative is reasonable; LBP-13-9, 78 NRC 37 (2013)
- aesthetic impacts of energy sources may vary according to individual location; LBP-11-4, 73 NRC 91 (2011)
- agencies are not permitted to define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives; LBP-12-17, 76 NRC 71 (2012)
- agencies are required to study, develop, and describe appropriate alternatives; CLI-12-9, 75 NRC 421 (2012)
- agencies are to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; LBP-12-17, 76 NRC 71 (2012); LBP-14-9, 80 NRC 15 (2014)
- agencies must consider the environmental impacts of major federal actions significantly affecting the quality of the human environment, as well as alternatives to the proposed action, in an environmental impact statement; LBP-12-23, 76 NRC 445 (2012)
- agencies must devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-12-17, 76 NRC 71 (2012)
- agencies need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequentially small; LBP-12-5, 75 NRC 227 (2012)
- agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; LBP-11-13, 73 NRC 534 (2011)
- agencies should take into account the needs and goals of the parties involved in the application; LBP-12-17, 76 NRC 71 (2012)
- agency is required to consider all reasonable alternatives under the National Environmental Policy Act; LBP-15-15, 81 NRC 598 (2015)
- agency's consideration of three alternative routes is sufficient to meet its NEPA obligations to consider reasonable transmission line route alternatives; LBP-11-6, 73 NRC 149 (2011)
- allegation that multiple, unrelated sources of electricity ought to be evaluated collectively is inadmissible; LBP-11-2, 73 NRC 28 (2011)
- allowing agencies to avoid a NEPA violation through a subsequent, conclusory statement that it would not have reached a different result even with the proper analysis would significantly undermine the statutory scheme; LBP-12-17, 76 NRC 71 (2012)
- alternative energy sources that will be dependent on future environmental safeguards and technological developments may be excluded from the NEPA alternatives discussion; LBP-15-3, 81 NRC 65 (2015)
- alternative that fails to meet the purpose of the project does not need to be further examined in the environmental report; LBP-11-6, 73 NRC 149 (2011)

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alternatives analysis is the heart of the environmental impact analysis; LBP-11-16, 73 NRC 645 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-17, 76 NRC 71 (2012) ; LBP-14-9, 80 NRC 15 (2014)

alternatives discussion need not include every possible alternative, but rather every reasonable alternative; LBP-15-3, 81 NRC 65 (2015)

alternatives might not be feasible for a variety of reasons, including a failure of an alternative to meet the project's purpose and need; LBP-13-9, 78 NRC 37 (2013)

although NEPA establishes a national policy in favor of protecting the human environment, NEPA does not require the agency to select the most environmentally benign alternative, but rather merely prohibits uninformed rather than unwise agency action; LBP-13-4, 77 NRC 107 (2013)

although there are many possible combinations of wind and solar power, storage, and natural gas, it is not necessary to examine every possible combination; LBP-11-4, 73 NRC 91 (2011)

analysis and response to state's extensive comments to the draft supplemental environmental impact statement regarding state-specific energy conservation and efficiency as a replacement alternative fulfills NRC Staff's obligation to take a hard look at alternatives; LBP-13-13, 78 NRC 246 (2013)

applicant is to provide in its environmental report an analysis of alternatives to the proposed action that is sufficiently complete to aid NRC Staff in developing and exploring its own set of alternatives; LBP-12-8, 75 NRC 539 (2012)

applicant is to provide in its environmental report an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-12-8, 75 NRC 539 (2012)

applicant must provide a discussion of the no-action alternative in its environmental report; LBP-12-8, 75 NRC 539 (2012)

applicant need only consider those alternatives that are reasonable; LBP-12-15, 76 NRC 14 (2012)

applicant's alternatives analysis must be sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to the proposed action; LBP-11-13, 73 NRC 534 (2011)

applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 534 (2011)

applicant's environmental report must address both the impacts of the proposed renewal and alternatives to those impacts; LBP-12-8, 75 NRC 539 (2012)

applicant's environmental report must discuss appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-11-6, 73 NRC 149 (2011)

applicant's environmental report need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

applicant's obligation is to consider alternatives as they exist and are likely to exist; LBP-11-2, 73 NRC 28 (2011)

applicants must evaluate alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-11-16, 73 NRC 645 (2011)

application-specific NEPA review represents a snapshot in time, and although NEPA requires that NRC conduct its environmental review with the best information available at that time, it does not require that NRC wait until inchoate information matures into something that later might affect its review; LBP-12-10, 75 NRC 633 (2012)

because a single wind turbine cannot provide continuous production of electricity at or near full capacity, it does not constitute a source of baseload power; CLI-12-5, 75 NRC 301 (2012)

because a solely wind- or solar-powered facility could not satisfy the project's purpose, there was no need to compare the impact of such facilities to the impact of the proposed nuclear plant; LBP-11-7, 73 NRC 254 (2011)

because NEPA is premised on a rule of reason, NRC need only consider reasonable alternatives to a proposed action; LBP-11-26, 74 NRC 499 (2011)

before implementing any major federal action significantly affecting the quality of the human environment, NRC must prepare an environmental impact statement that describes the action, its effects, and alternatives to the proposed action; LBP-12-10, 75 NRC 633 (2012)

blindly adopting applicant's statement of the purpose of the action is a losing position because it does not allow for the full consideration of alternatives required by NEPA; LBP-12-17, 76 NRC 71 (2012)

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- boards are required to consider alternatives as they exist and are likely to exist; CLI-12-5, 75 NRC 301 (2012)
- concept of alternatives evolves, and agencies must explore alternatives as they become better known and understood; LBP-11-13, 73 NRC 534 (2011)
- consideration of impacts with either a low probability of occurrence, or where the link between the agency action and the claimed impact is too attenuated to find the proposed federal action to be the proximate cause of that impact are excluded under the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)
- considering the reasonable alternatives analysis, it is only in the depth of the consideration and in the level of detail provided in the corresponding environmental documents that an environmental assessment and an environmental impact statement will differ; LBP-15-11, 81 NRC 401 (2015)
- contention seeking full impacts analysis of the power supply alternative of wind, either alone or in combination with solar and storage, is inadmissible because it fails to adequately demonstrate the capacity to produce baseload power; LBP-12-15, 76 NRC 14 (2012)
- contention that final environmental assessment fails to adequately analyze all reasonable alternatives is inadmissible; LBP-15-11, 81 NRC 401 (2015)
- contention that the draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- contentions could show a genuine dispute with respect to a technology that, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation; CLI-12-5, 75 NRC 301 (2012)
- Corps of Engineers may not issue a 404 permit if there exists a practicable alternative that would have less adverse impact on the aquatic system, the permit would cause significant degradation of the water of the United States, or appropriate and practicable mitigation has not been undertaken; LBP-14-9, 80 NRC 15 (2014)
- costs and benefits of the energy-efficient building code are essential to determine whether the adoption of an energy-efficient building code should be included as an alternative; LBP-11-21, 74 NRC 115 (2011)
- deficiencies in NRC Staff's analysis of a combination alternative is not harmless error; LBP-12-17, 76 NRC 71 (2012)
- demonstration that an alternative energy technology, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation has not been made; LBP-12-15, 76 NRC 14 (2012)
- development and discussion of a wide range of alternatives to any proposed federal action is so important that it is mandated by NEPA when any proposal involves unresolved conflicts concerning alternative uses of available resources, and the requirement is independent of and of wider scope than the duty to file an EIS; LBP-13-13, 78 NRC 246 (2013)
- discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 combined license proceeding; LBP-12-15, 76 NRC 14 (2012)
- discussion of alternatives that present severe engineering requirements or are imprudent for reasons including their high cost, safety hazards, and operational difficulties is excluded under NEPA; LBP-15-3, 81 NRC 65 (2015)
- discussion of need for power is required in an environmental report, but applicant need not precisely identify future market conditions and energy demand or develop other detailed analyses in order to establish with certainty that construction and operation of a nuclear power plant is the most economical alternative; LBP-11-6, 73 NRC 149 (2011)
- discussion of the economic costs and benefits of the proposed action and alternatives is required if such costs and benefits are essential for a determination regarding the inclusion of an alternative in the range of alternatives considered; LBP-11-21, 74 NRC 115 (2011)
- discussion of the no-action alternative need only include feasible, nonspeculative alternatives; LBP-12-8, 75 NRC 539 (2012)
- doctrine of harmless error has only limited application in NEPA cases, and none where the agency has failed to take the required hard look at environmental consequences and alternatives; LBP-12-17, 76 NRC 71 (2012)
- draft environmental impact statement must include a preliminary analysis that considers and weighs the environmental effects of and alternatives to the proposed action and alternatives available for reducing

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or avoiding adverse environmental effects; LBP-14-9, 80 NRC 15 (2014)

draft environmental impact statements must include a preliminary analysis that considers and weighs alternatives available for reducing or avoiding adverse environmental effects; LBP-12-18, 76 NRC 127 (2012)

energy efficiency alternative is excluded because it would not advance applicant's goal to provide additional baseload electrical generation capacity for use in the owner's current markets and/or for potential sale on the wholesale markets; LBP-11-7, 73 NRC 254 (2011)

environmental impact statement must describe the potential environmental impact of the proposed action and discuss any reasonable alternatives; LBP-11-7, 73 NRC 254 (2011)

environmental impact statement that contains an incomplete or misleading comparison of alternatives is deficient; LBP-11-21, 74 NRC 115 (2011)

environmental impact statements are to include a detailed statement by the responsible official on alternatives to the proposed action; LBP-12-17, 76 NRC 71 (2012)

environmental impact statements must consider the alternative of no action; LBP-12-8, 75 NRC 539 (2012)

environmental impact statements must include a detailed statement of reasonable alternatives to the proposed action; LBP-14-9, 80 NRC 15 (2014)

environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 249 (2015)

environmental report need only consider the range of alternatives that are capable of achieving the goals of the proposed action; LBP-11-13, 73 NRC 534 (2011)

environmental reports for license renewal must address environmental impacts of the proposed action and compare those impacts to the impacts of alternative actions, but need only consider those alternatives that are reasonable; LBP-12-15, 76 NRC 14 (2012)

environmental reports submitted by license renewal applicants must address the environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-8, 75 NRC 393 (2012)

existence of a reasonable but unexamined alternative renders an environmental impact statement inadequate; LBP-12-17, 76 NRC 71 (2012) ; LBP-14-9, 80 NRC 15 (2014)

extent of the no-action discussion is governed by a rule of reason; LBP-12-8, 75 NRC 539 (2012)

extent to which operation and maintenance costs of a solar facility may present a comparative benefit is immaterial since the four-part combination of alternative energy sources is not environmentally preferable to two new nuclear units; LBP-11-4, 73 NRC 91 (2011)

federal agencies must consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-17, 76 NRC 71 (2012)

federal agencies must rigorously explore and objectively evaluate all reasonable alternatives and devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-11-14, 73 NRC 591 (2011)

final environmental impact statements need not discuss remote and speculative alternatives, but must consider only alternatives that bring about the ends of the proposed project; LBP-12-17, 76 NRC 71 (2012)

for an alternative energy source to be considered reasonable for an operating license renewal proceeding, the alternative should be commercially viable and technically capable of producing an equal amount of baseload power now or in the near future, but no later than the expiration date of the current operating license; CLI-12-8, 75 NRC 393 (2012)

for an electrical generation alternative to qualify for in-depth review, the alternative must be able to provide 1190 MWe of baseload power during the license renewal term; LBP-12-15, 76 NRC 14 (2012)

for an operating license renewal, if NRC Staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, applicant's environmental report must contain a consideration of alternatives to mitigate severe accidents; LBP-11-18, 74 NRC 29 (2011)

for siting alternatives, an agency's duty under NEPA is to study all alternatives that appear reasonable and appropriate for study at the time of drafting the environmental impact statement; CLI-12-5, 75 NRC 301 (2012)

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- for the no-action alternative, there need not be much discussion in the environmental documents because it is most simply viewed as maintaining the status quo; LBP-12-8, 75 NRC 539 (2012)
- generation of baseload power is an acceptable purpose for a licensing action and has been determined to be broad enough to permit consideration of a host of energy-generating alternatives; LBP-11-13, 73 NRC 534 (2011)
- if an alternative is commercially feasible and capable of bringing about the ends of the proposed project, then NRC Staff may not dismiss it merely because it is inconsistent with the preferences of interested parties, or for other reasons inconsistent with NEPA's rule of reason; LBP-12-17, 76 NRC 71 (2012)
- if an assessment of alternatives to the proposed action was prepared at the early site permit stage and no new information in the areas of energy alternatives or system design alternatives has been identified at the combined license stage, conclusions made at the ESP stage remain valid; CLI-12-2, 75 NRC 63 (2012)
- if the adverse environmental impacts of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-14, 73 NRC 591 (2011)
- in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)
- inaccurate, incomplete, or misleading information in an environmental impact statement concerning the comparison of alternatives is itself sufficient to render the EIS unlawful and to compel its revision; LBP-12-17, 76 NRC 71 (2012)
- intervenors fail to specify what other alternatives to the license renewal application should be discussed in the draft supplemental environmental impact statement, much less show that any proposed alternative would satisfy the purpose of applicant's proposed action; LBP-15-1, 81 NRC 15 (2015)
- it is not enough to demonstrate a theoretical possibility that wind farms spread across a wide area could provide consistent power, but rather petitioners must show concretely that wind could be a reliable, commercially viable source of baseload power during the license renewal period; LBP-15-5, 81 NRC 249 (2015)
- it will always be possible to envision and propose some alternative approach to severe accident mitigation alternatives analysis, some additional detail to include, or some refinement; LBP-15-29, 82 NRC 246 (2015)
- license renewal applicant must file an environmental report that includes an alternatives analysis that considers and balances the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-11-13, 73 NRC 534 (2011)
- license renewal applicant's environmental report must address environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-5, 75 NRC 301 (2012)
- license renewal applicant's environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in Appendix B; LBP-11-21, 74 NRC 115 (2011)
- license renewal applicant's environmental report must include a consideration of alternatives to mitigate severe accidents if NRC Staff has not previously considered them for applicant's plant in an environmental impact statement or related supplement or in an environmental assessment; CLI-12-19, 76 NRC 377 (2012)
- merely describing an alternative is insufficient to comply with NEPA; LBP-11-14, 73 NRC 591 (2011)
- National Environmental Policy Act does not call for examination of every conceivable aspect of federally licensed projects, but requires only a discussion of reasonably foreseeable impacts; LBP-13-4, 77 NRC 107 (2013)
- National Environmental Policy Act should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-13-4, 77 NRC 107 (2013)
- need for power is a shorthand expression for the benefit side of the cost-benefit balance that NEPA mandates for a proceeding considering the licensing of a nuclear power plant; LBP-11-6, 73 NRC 149 (2011)
- neither NRC nor applicant need consider any alternative that does not bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

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- NEPA alternatives analysis is the heart of the environmental impact statement; CLI-12-9, 75 NRC 421 (2012)
- NEPA does not mandate substantive results but, rather, imposes procedural restraints on agencies, requiring them to take a hard look at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-12-5, 75 NRC 227 (2012)
- NEPA does not require a worst-case analysis; LBP-12-5, 75 NRC 227 (2012)
- NEPA does not require agencies to analyze impacts of alternatives that are speculative, remote, impractical, or not viable; CLI-12-5, 75 NRC 301 (2012)
- NEPA does not require agencies to elevate environmental concerns over other appropriate considerations; LBP-12-17, 76 NRC 71 (2012)
- NEPA does not require consideration of alternatives that are technologically unproven; LBP-15-3, 81 NRC 65 (2015)
- NEPA imposes procedural restraints on agencies, which require them to take a hard look at the environmental impacts of a proposed action and the reasonable alternatives to that action; LBP-12-17, 76 NRC 71 (2012)
- NEPA requires agencies to exercise a degree of skepticism in dealing with self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives preferred by the applicant; LBP-12-17, 76 NRC 71 (2012)
- NEPA requires consideration of reasonable alternatives, not all conceivable ones; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)
- NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-18, 76 NRC 127 (2012); LBP-14-9, 80 NRC 15 (2014)
- NEPA requires federal agencies to take a hard look at the environmental impacts of a proposed action, as well as reasonable alternatives to that action; LBP-15-3, 81 NRC 65 (2015)
- NEPA requires that alternatives be considered as they exist and are likely to exist, not merely as they exist at the present time; LBP-12-17, 76 NRC 71 (2012)
- NEPA requires that an actual range of alternatives be considered, so that agencies are precluded from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only applicant's proposed project; LBP-15-15, 81 NRC 598 (2015)
- NEPA requires that an environmental review provide a sufficient discussion of alternatives to enable the decisionmaker to take a hard look at environmental factors, and to make a reasoned decision; LBP-11-13, 73 NRC 534 (2011)
- NEPA requires that NRC take a hard look at alternatives, including severe accident mitigation alternatives, and to provide a rational basis for rejecting alternatives that are cost-effective; LBP-12-8, 75 NRC 539 (2012)
- NEPA's "hard look" requirement is tempered by a rule of reason; LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)
- NEPA's requirement to discuss alternatives to the proposed action does not extend to the construction of transmission line corridors, because it is not "construction" as defined in 10 C.F.R. 50.10; LBP-11-6, 73 NRC 149 (2011)
- NEPA's rule of reason would not exclude consideration of demand-side management as part of an alternatives analysis when applicant is a state-regulated utility; LBP-11-6, 73 NRC 149 (2011)
- NRC generally defers to an applicant's stated purpose as long as that purpose is not so narrow as to eliminate alternatives; LBP-11-13, 73 NRC 534 (2011)
- NRC gives substantial weight to the preferences of the applicant and/or sponsor; CLI-12-5, 75 NRC 301 (2012)
- NRC Staff is required to issue a final environmental impact statement that thoroughly and objectively evaluates reasonable alternatives to the proposed action; LBP-12-17, 76 NRC 71 (2012)
- NRC Staff is to consider and weigh the environmental, technical, and other costs and benefits of a proposed action and alternatives, and, to the fullest extent practicable, quantify the various factors considered; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

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NRC's position is that it need not compare the costs of alternatives to a proposed action if its FEIS does not identify an environmentally preferable alternative; LBP-12-18, 76 NRC 127 (2012)

petitioner has provided adequate support for its claim that there are numerous new severe accident mitigation alternatives candidates that should be evaluated for their significance; LBP-12-8, 75 NRC 539 (2012)

petitioners' challenge to the adequacy of applicant's existing analysis of solar and wind as alternative energy sources is not a contention of omission; CLI-12-8, 75 NRC 393 (2012)

project goals determine the alternatives that are considered reasonable; LBP-12-17, 76 NRC 71 (2012)

proper question is not whether there are plausible alternative choices for use in the SAMA analysis, but whether the analysis that was done is reasonable under NEPA; LBP-15-29, 82 NRC 246 (2015)

reasonable alternatives under NEPA are limited to those alternatives that will bring about the ends of the proposed action; LBP-11-21, 74 NRC 115 (2011)

reasonable alternatives under NEPA do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-15-3, 81 NRC 65 (2015)

record of decision must discuss relevant factors including economic and technical considerations among alternatives; LBP-11-7, 73 NRC 254 (2011)

remote and speculative alternatives need not be addressed in a final environmental impact statement, but NEPA requires NRC Staff to consider reasonable alternatives that are likely to be available within the time frame of the proposed action; LBP-12-17, 76 NRC 71 (2012)

remote and speculative alternatives need not be addressed in an applicant's environmental report; CLI-12-5, 75 NRC 301 (2012); LBP-11-2, 73 NRC 28 (2011)

rule of reason is inherent in NEPA and its implementing regulations; LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)

severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis, and the agency's obligations under NEPA are tempered by a practical rule of reason; LBP-11-18, 74 NRC 29 (2011)

Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; LBP-12-15, 76 NRC 14 (2012)

supplemental environmental impact statements for license renewal are not required to discuss need for power or economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 246 (2013)

there exists an obligation to consider alternatives as they exist and are likely to exist; LBP-11-13, 73 NRC 534 (2011)

there is no assurance of a mitigation measure efficacy where the government conducted no study of its likely effects, proposed no monitoring to determine how effective the proposed mitigation would be, and did not consider alternatives in the event the measure fails; LBP-12-23, 76 NRC 445 (2012)

there is no NEPA requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-12-5, 75 NRC 227 (2012)

to challenge an energy alternatives analysis, petitioner ordinarily must provide alleged facts or expert opinion sufficient to raise a genuine dispute as to whether the best information available today suggests that a commercially viable alternate technology (or combination of technologies) is available now, or will become so in the near future, to supply baseload power; CLI-12-8, 75 NRC 393 (2012)

to demonstrate the admissibility of a NEPA contention that an applicant failed to consider a viable alternative to its proposed action, petitioner must show that its contention presents a genuine dispute; CLI-12-5, 75 NRC 301 (2012)

to make an impact statement something more than an exercise in frivolous boilerplate, the concept of alternatives must be bounded by some notion of feasibility; LBP-13-4, 77 NRC 107 (2013)

to the extent that applicant proposes modifications to the facility in response to a request for information, NEPA also requires the consideration of the effectiveness and relative costs of a range of alternatives for satisfying NRC's concerns; LBP-12-15, 76 NRC 14 (2012)

under NEPA, an agency need not discuss alternatives that are infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area; LBP-13-9, 78 NRC 37 (2013)

under the rule of reason governing NEPA, the concept of alternatives must be bounded by some notion of feasibility; CLI-12-15, 75 NRC 704 (2012)

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unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions and models may change the cost-benefit conclusions for the severe accident mitigation alternative candidates evaluated, no purpose would be served to further refine the SAMA analysis; CLI-12-5, 75 NRC 301 (2012)

use of mean consequences in severe accident mitigation alternatives analysis is consistent with NRC policy and precedent, whereas the 95th percentile approach is akin to a worst-case scenario analysis, which is not required by NRC; LBP-11-18, 74 NRC 29 (2011)

weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations; LBP-11-7, 73 NRC 254 (2011)

when a contention alleges the need for further study of an alternative, from an environmental perspective, such reasonableness determinations are the merits, and should only be decided after the contention is admitted; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

when NRC Staff prepares a final environmental impact statement, then, until a record of decision is issued, no action concerning the proposal may be taken by the Commission that would have an adverse environmental impact or limit the choice of reasonable alternatives; LBP-14-9, 80 NRC 15 (2014)

when reviewing a discrete license application filed by a private applicant, a federal agency may appropriately accord substantial weight to the preferences of the applicant in siting and design of the project, taking into account the economic goals of the project's sponsor; CLI-12-5, 75 NRC 301 (2012)

when taking the requisite hard look at environmental consequences of alternatives to the proposed licensing action, the environmental impact statement must discuss the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

when the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; CLI-12-5, 75 NRC 301 (2012)

without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an environmental impact statement to inform agency deliberation and facilitate public involvement would be greatly degraded; LBP-12-17, 76 NRC 71 (2012)

See also Severe Accident Mitigation Alternatives; Severe Accident Mitigation Alternatives Analysis CONSOLIDATION OF ISSUES

any consolidation of multiple parties' presentations of evidence that would prejudice the rights of any party may not be ordered; LBP-11-4, 73 NRC 91 (2011)

CONSOLIDATION OF PROCEEDINGS

consolidating proceedings is the exception rather than the rule; CLI-14-5, 79 NRC 254 (2014)

litigant asking for consolidation of proceedings has the burden of showing that it will be conducive to the proper dispatch of NRC's business and to the ends of justice and will be conducted in accordance with the other provisions of Subpart C; CLI-14-5, 79 NRC 254 (2014)

proceedings have been consolidated for the renewal of a materials license and to contest NRC Staff's denial of that renewal in order to, among other things, litigate a common issue only once; CLI-14-5, 79 NRC 254 (2014)

related proceedings may be consolidated based on similarity of issues in the proceedings, commonality of litigants, and convenience and saving of time or expense; CLI-14-5, 79 NRC 254 (2014)

separate hearings have been shown to be appropriate for cases governed by different procedural rules; CLI-14-5, 79 NRC 254 (2014)

CONSTRUCTION

activities that are no longer considered "construction" are listed; LBP-11-26, 74 NRC 499 (2011)

amendment to the definition of construction generally prohibited, absent an NRC construction permit, any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site and construction of nonnuclear facilities such as turbogenerators and turbine buildings for use in connection with the facility; LBP-14-9, 80 NRC 15 (2014)

any action concerning applicant's proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives may be grounds for denial of a license; LBP-14-9, 80 NRC 15 (2014)

availability of funding for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

biological assessment of listed species shall be completed before any contract for construction is entered into and before construction is begun with respect to such action; LBP-12-12, 75 NRC 742 (2012)

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building of transmission lines is excluded from the definition of construction; LBP-14-9, 80 NRC 15 (2014)

certain “construction” activities are allowed at a reactor site pursuant to a limited work authorization as long as a site redress plan is submitted; LBP-11-11, 73 NRC 455 (2011)

challenges in maintaining knowledge gained during the combined license review if construction is delayed are discussed; CLI-15-13, 81 NRC 555 (2015)

“commencement of construction” is defined to include clearing of land, excavation, or other substantial action that would adversely affect the environment of the site; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

commencement of construction is prohibited prior to a NEPA determination; LBP-15-16, 81 NRC 618 (2015)

“construction” and “commencement of construction” are defined; LBP-12-3, 75 NRC 164 (2012)

excluding the transmission corridor from the scope of the proposed action also removes it from the limitation on actions; LBP-14-9, 80 NRC 15 (2014)

for a proposed nuclear materials-related activity, including uranium enrichment, commencement of construction prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

for power reactors, NRC Staff review should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed; LBP-11-26, 74 NRC 499 (2011)

fugitive dust generated onsite at a facility, particularly during construction, can be a concern in the vicinity of a facility; LBP-12-3, 75 NRC 164 (2012)

grounds for license denial exist if, prior to issuance of a license to possess and use source and byproduct materials for uranium milling, there is commencement of construction by an applicant; LBP-12-3, 75 NRC 164 (2012)

important consequence of decision whether to include new construction within the scope of the proposed action is that, if it is included, it will be subject to the limitation on actions in 10 C.F.R. 51.101(a); LBP-14-9, 80 NRC 15 (2014)

in situ recovery license applicant is barred from installing a complete wellfield and associated monitor well networks until after a license is issued; LBP-15-3, 81 NRC 65 (2015)

in the 2007 limited work authorization rule, NRC decided that the building of transmission lines to serve a nuclear power plant would no longer be classified as a construction activity and would no longer require authorization from NRC; LBP-14-9, 80 NRC 15 (2014)

Limited Work Authorization Rule expressly excludes transmission lines from delineated construction activities that would require NRC approval before being undertaken; CLI-15-1, 81 NRC 1 (2015)

“major construction activity” is defined as a construction project, or other undertaking having similar physical impacts, that is a major federal action significantly affecting the quality of the human environment as referred to in NEPA; LBP-12-10, 75 NRC 633 (2012)

NEPA’s requirement to discuss alternatives to the proposed action does not extend to the construction of transmission line corridors, because it is not “construction” as defined in 10 C.F.R. 50.10; LBP-11-6, 73 NRC 149 (2011)

nothing in the definition of “construction” in 10 C.F.R. 40.4 precludes the installation of wells or the use of monitoring protocols as needed to provide those background data; LBP-15-3, 81 NRC 65 (2015)

NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 15 (2014)

NRC’s broad definition of “construction” in the pre-2007 version of the regulation was originally added to Part 50 because of the interpretation that enactment of NEPA required NRC to expand its permitting/licensing authority; LBP-14-9, 80 NRC 15 (2014)

scope of activities requiring permission from NRC in the form of limited work authorization was narrowed by eliminating the concept of commencement of construction formerly described in section 50.10(c) and the authorization formerly described in section 50.10(e)(1); LBP-14-9, 80 NRC 15 (2014)

site exploration, including preconstruction monitoring to establish background information related to the environmental impacts of construction or operation or the protection of environmental values, is not included in the definition of construction; LBP-15-3, 81 NRC 65 (2015)

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under 10 C.F.R. 40.41(g) and 70.32(k), a uranium enrichment facility cannot be operated until the agency verifies through inspection that the facility has been constructed in accordance with the license; LBP-11-11, 73 NRC 455 (2011)

where an acting agency is engaged in major construction activities, the acting agency is to evaluate, through preparation of a biological assessment, whether the action is likely to adversely affect species or habitat; LBP-12-10, 75 NRC 633 (2012)

CONSTRUCTION AUTHORIZATION APPLICATION

at the construction authorization request stage, the board dismissed a material control and accounting contention as moot, pending submittal of applicant's Fundamental Nuclear Material Control Plan which would require inclusion of a detailed MC&A program; LBP-14-1, 79 NRC 39 (2014)

before a final decision approving or disapproving a construction authorization application can be reached, not only must NRC Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 219 (2013)

CONSTRUCTION COMPLETION

continued construction was barred pending the filing of an adequate environmental impact statement, notwithstanding the fact that the project was initially approved and construction commenced prior to the effective date of NEPA; LBP-12-1, 75 NRC 1 (2012)

CONSTRUCTION OF MEANING

although petitioner bears the burden of establishing standing, licensing boards should construe petitioner's standing arguments in favor of petitioner; LBP-15-13, 81 NRC 456 (2015)

board may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-14-5, 79 NRC 377 (2014)

boards are to construe intervention petitions in favor of petitioners in determining whether petitioner has demonstrated standing; CLI-14-2, 79 NRC 11 (2014); LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-14-4, 79 NRC 319 (2014)

boards may appropriately view petitioner's supporting information in a light favorable to petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-12-27, 76 NRC 583 (2012)

boards may view petitioner's supporting information in a light favorable to the petitioner, but petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-12-25, 76 NRC 540 (2012)

definition of "power of detection" does not explicitly require a demonstration of data accuracy; LBP-14-1, 79 NRC 39 (2014)

"demand" for a hearing is understood to confer a right to a hearing; LBP-14-4, 79 NRC 319 (2014)

in context of a license renewal application, reasonable assurance is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-14-1, 79 NRC 39 (2014)

interpretation may not conflict with the plain meaning of the wording used in a regulation, which in the end of course must prevail; LBP-14-7, 79 NRC 451 (2014)

licensing board, construing the petition in favor of petitioners, based its standing finding on potential harm from traffic-generated dust and light pollution; CLI-12-12, 75 NRC 603 (2012)

licensing boards must examine the record in the light most favorable to the opponent of summary disposition and draw all justifiable inferences in favor of that party; LBP-12-23, 76 NRC 445 (2012)

meaning of "shut down permanently" is discussed; CLI-15-20, 82 NRC 211 (2015)

meaning of "verify" in the context of item presence verification is discussed; CLI-15-9, 81 NRC 512 (2015)

"prima facie" is not defined in NRC regulations, but is interpreted to mean a substantial showing; LBP-14-16, 80 NRC 183 (2014)

principle of *expressio unis est exclusio alterius* is discussed; LBP-15-11, 81 NRC 401 (2015)

reasonable assurance is not quantified as equivalent to a 95% (or any other percent) confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-13-13, 78 NRC 246 (2013)

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“reductions in residual radioactivity” refers only to dose reductions to the public that can be accomplished solely through the steps associated with unrestricted-release decommissioning, i.e., removal of contaminated material or decontamination; CLI-13-6, 78 NRC 155 (2013)

regulation’s title can aid in construing regulatory text; LBP-15-4, 81 NRC 156 (2015)

“shall” is a term of legal significance, in that it is mandatory or imperative, not merely precatory; CLI-11-12, 74 NRC 460 (2011)

See also Definitions; Statutory Construction

CONSTRUCTION OF TERMS

no bright line is established between control or domination, on the one hand, and their absence, on the other; LBP-14-3, 79 NRC 267 (2014)

scope of the term “impact” includes cumulative impacts; LBP-12-24, 76 NRC 503 (2012)

CONSTRUCTION PERMITS

applicant for a construction permit must include the principal design criteria for a proposed facility and the relationship of the design bases to the PDC as part of the preliminary safety analysis report; DD-15-11, 82 NRC 361 (2015)

applications must include the principal design criteria for a proposed facility and describe the design bases and their relationship to the principal design criteria in the preliminary safety analysis report; DD-13-3, 78 NRC 571 (2013)

approval of permits to a nuclear power plant was conditioned on the rerouting of two offsite transmission lines to avoid environmental impacts on marshlands, tree species, and migratory waterfowl; LBP-14-9, 80 NRC 15 (2014)

district court did not abuse its discretion in balancing the harms in favor of an injunction related to an electric utility’s Clean Water Act permit for the construction of a new power plant; LBP-14-6, 79 NRC 404 (2014)

in determining whether a license amendment, construction permit, or early site permit will be issued to applicant, the Commission is guided by the considerations that govern issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate; LBP-15-20, 81 NRC 829 (2015)

CONSTRUCTION WORKERS

annual 100-millirem limit for members of the public is defined to include radiation exposure to construction workers; CLI-12-2, 75 NRC 63 (2012)

CONSULTATION DUTY

admissibility of contention that environmental assessment failed to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 401 (2015)

agencies are encouraged to incorporate consultation procedures on endangered/threatened species and essential fish habitat into their NEPA review; LBP-12-10, 75 NRC 633 (2012)

agencies are required to confer with the Fish and Wildlife Service on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat; LBP-13-9, 78 NRC 37 (2013)

agencies are to ensure that the federal government operates within a government-to-government relationship with federally recognized Native American tribes, reflecting respect for the rights of self-government due the sovereign tribal governments; LBP-15-16, 81 NRC 618 (2015)

agency official must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking; LBP-13-6, 77 NRC 253 (2013)

all motions must include a certification that movant has made a sincere effort to contact other parties in the proceeding and resolve the issue raised in the motion, and that the movant’s efforts to resolve the issue have been unsuccessful; LBP-11-2, 73 NRC 28 (2011); LBP-11-15, 73 NRC 629 (2011)

areas of potential effect of a federal undertaking must be designated, and the lead federal agency must consult with the state historic preservation office regarding the presence and protection of historic and cultural resources in the designated area, as well as any federally recognized Native American groups with an ancestral interest in the property, to determine if resources important to the tribe are present; LBP-11-26, 74 NRC 499 (2011)

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as soon as practicable after issuance of the initial scheduling order, parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the proceeding or any portion thereof, to make or arrange for the disclosures required by section 2.704, and to develop a proposed discovery plan; LBP-14-11, 80 NRC 125 (2014)

because applicant did not comply with the consultation requirement of 10 C.F.R. 2.323(b), the board does not consider information supplied with applicant's letter in connection with the board's analysis of petitioner's contention; LBP-11-2, 73 NRC 28 (2011)

burden of fulfilling the National Historic Preservation Act's consultation requirements rests exclusively with the NRC, not with the applicant; LBP-12-23, 76 NRC 445 (2012)

claim that NRC Staff did not engage in the consultation process relevant to issues addressed by the Migratory Bird Treaty Act and that the impacts to wildlife with respect to this Act are inadequately analyzed is inadmissible; LBP-13-9, 78 NRC 37 (2013)

concurrence by U.S. Fish and Wildlife Service discharges NRC's consultation responsibilities; LBP-15-11, 81 NRC 401 (2015)

consultation must provide an Indian tribe with a reasonable opportunity to identify its concerns about historic properties, advise on their identification and evaluation, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects; LBP-15-16, 81 NRC 618 (2015)

consultation with appropriate agencies is needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected; LBP-12-10, 75 NRC 633 (2012)

consultation with U.S. Fish & Wildlife Service is legally mandated for any agency action that may affect listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)

contention alleging failure to involve or consult all interested tribes as required by federal law is admissible; LBP-14-5, 79 NRC 377 (2014)

contention alleging that an Indian tribe had not been consulted concerning cultural resources, in violation of the National Historic Preservation Act, was premature because NRC Staff, not applicant, has the duty to consult with the tribe under the Act, and Staff had not completed its review process; LBP-12-19, 76 NRC 184 (2012)

contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of NRC Staff's draft environmental impact statement; CLI-14-2, 79 NRC 11 (2014); LBP-15-5, 81 NRC 249 (2015)

contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 253 (2013)

contention questioning whether an appropriate consultation was conducted pursuant to the Endangered Species Act and implementing regulations is admissible; LBP-14-5, 79 NRC 377 (2014)

direct consultation obligation is imposed on NRC if NRC determines that approval of a requested license renewal may adversely affect any essential fish habitat; LBP-12-10, 75 NRC 633 (2012)

discovery may not begin until 10 days after petitioner and the Director have held the mandatory consultation; LBP-14-11, 80 NRC 125 (2014)

duties of NRC Staff and not an applicant, such as consultation with other federal agencies, could not be raised at the environmental report stage, and therefore such a contention will not be rejected as untimely when filed after the release of the draft environmental impact statement; LBP-12-12, 75 NRC 742 (2012)

even if the National Marine Fisheries Service disagrees with NRC's no-effect determination, it may only request that NRC enter formal consultation, but NRC is not required to consent to the request; LBP-12-10, 75 NRC 633 (2012)

federal agencies shall, in consultation with and with the assistance of the Secretary of the Interior, ensure that any action authorized, funded, or carried out by an agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of their habitat; LBP-12-12, 75 NRC 742 (2012)

federal agency is required to consult if an action may affect listed species or designated critical habitat, even if the effects are expected to be beneficial; LBP-15-11, 81 NRC 401 (2015)

federal agency must consult with any Indian tribe that attaches religious and cultural significance to potentially impacted historic properties; LBP-15-16, 81 NRC 618 (2015)

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- federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under section 402.12 or as a result of informal consultation with the FWS under section 402.13, the federal agency determines, with the written concurrence of the U.S. Fish and Wildlife Service Director, that the proposed action is not likely to adversely affect any listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)
- federal law not only recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal land, but has also imposed on federal agencies a consultation requirement under the National Historic Preservation Act to ensure the protection of tribal interests in cultural resources; CLI-14-2, 79 NRC 11 (2014)
- First Nations in Canada must receive invitations to participate in the environmental impact statement scoping process when there are transboundary environmental impacts from a project; LBP-12-12, 75 NRC 742 (2012)
- formal consultation follows only if a biological assessment shows that the action may affect listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)
- formal consultation includes preparation of a biological opinion by the Service, detailing the likely effects of the action on listed species or habitat as well as mitigation alternatives; LBP-12-10, 75 NRC 633 (2012)
- Fukushima-related contention is denied for failure of its proponent to contact the other parties to resolve the issue presented by the contention prior to its submission; LBP-11-37, 74 NRC 774 (2011)
- if an agency determines that a particular action will have no effect on an endangered or threatened species, the U.S. Fish & Wildlife Service consultation requirements are not triggered; LBP-15-11, 81 NRC 401 (2015)
- if NRC engages in an informal consultation with the Fish and Wildlife Service and it is determined that the project will not adversely affect listed species or critical habitat, it need not engage in formal consultation; LBP-13-9, 78 NRC 37 (2013)
- if the acting agency concludes in the biological assessment that the action is not likely to affect listed habitats or species, and the Service concurs, the acting agency need not enter formal consultation; LBP-12-10, 75 NRC 633 (2012)
- if the acting agency makes a “likely to affect” determination in the biological assessment, it is required to enter into formal consultation with the appropriate Service; LBP-12-10, 75 NRC 633 (2012)
- if the Service does not concur with the agency’s “not likely to affect” determination, it may request that the acting agency enter into formal consultation; LBP-12-10, 75 NRC 633 (2012)
- in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)
- in determining that a federal action is not likely to jeopardize species or modify habitat, the acting agency is to proceed in consultation with and with the assistance of the Secretary of Interior or Commerce; LBP-12-10, 75 NRC 633 (2012)
- Indian tribe’s contention that NRC Staff had not fulfilled its National Historic Preservation Act consultation duty regarding cultural resources and tribal artifacts was premature because Staff had not completed its NEPA review; LBP-12-23, 76 NRC 445 (2012)
- “informal consultation” is an optional process that includes all discussions, correspondence, etc., between the U.S. Fish and Wildlife Service and the federal agency designed to assist the federal agency in determining whether formal consultation or a conference is required with the Service under section 402.13; LBP-15-11, 81 NRC 401 (2015)
- “informal consultation” is any communication between the acting agency and one of the Services designed to assist the acting agency in determining whether formal consultation is required; LBP-12-10, 75 NRC 633 (2012)
- issue of the alleged failure to consult with the tribe on historic and cultural resources is material and within the scope of a materials license proceeding; LBP-13-9, 78 NRC 37 (2013); LBP-15-16, 81 NRC 618 (2015)
- it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)

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motions to admit new contentions must be rejected if they do not include a certification by movant's attorney or representative that movant has made a sincere effort to contact other parties and resolve the issues raised in the motion, and that movant's efforts have been unsuccessful; LBP-11-34, 74 NRC 685 (2011); LBP-12-27, 76 NRC 583 (2012)

National Marine Fisheries Service has the authority to consult with other agencies if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on essential fish habitat and that agency does not act as the lead agency; LBP-12-10, 75 NRC 633 (2012) neither formal nor informal consultation is required by the Endangered Species Act if an agency determines that its proposed activity will not affect any listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)

NRC Staff is required to consult with interested parties, including Indian tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 11 (2014)

NRC Staff, not the applicant, has the legal duty to engage in consultation under the Endangered Species Act; LBP-12-12, 75 NRC 742 (2012)

only mandatory trigger for initiating formal consultation is if the acting agency itself determines that its action may affect listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)

only species listed as threatened or endangered under the Endangered Species Act are covered by the Act's formal consultation requirements; LBP-15-11, 81 NRC 401 (2015)

portions of a contention relevant to the completion of the Endangered Species Act §7 consultation process and the adequacy of the NRC Staff's impact analyses relevant to the three named species meet admissibility standards; LBP-13-9, 78 NRC 37 (2013)

prior to preparing an environmental impact statement, the responsible federal official shall consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-12-10, 75 NRC 633 (2012)

tribes have a procedural right to be consulted regarding historic preservation matters; LBP-13-6, 77 NRC 253 (2013)

under NEPA, defining the scope of effects of a project requires engagement with governments of affected tribes through an early and open process aimed at identifying concerns, potential impacts, relevant effects of past actions, and possible alternative actions; LBP-15-16, 81 NRC 618 (2015)

when engaging in informal consultation, an agency must provide its determination as to whether the proposed action will affect threatened and endangered species to U.S. Fish & Wildlife Service and request FWS concurrence; LBP-15-11, 81 NRC 401 (2015)

whether NRC Staff undertakes formal consultation with the Services in the event that they disagree with a finding by the NRC of "no effect" or "not likely adversely to affect" depends upon the NRC's own regulations and its interpretation of its duty under the ESA to ensure that any action is not likely to jeopardize listed species or habitat; LBP-12-10, 75 NRC 633 (2012)

CONTAINMENT

acceptance criteria for Type A leak rate limits embodied in the technical specification are established to ensure that, in the event of a design-basis accident, the dose received by a member of the general public will not exceed the dose limits; LBP-15-26, 82 NRC 163 (2015)

contention claiming that modifications to repair or replace inadequate structural beams and columns is more appropriately presented as a request for enforcement action; CLI-15-5, 81 NRC 329 (2015)

contention that ice condenser containments lack acceptable aging management plans to adequately maintain critical components of the containment for 20 years of additional operation is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that license renewal application lacks supporting documentation providing analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 1 (2013)

leakage rate acceptance limit is based on minimizing leakage that would occur at the calculated peak containment internal pressure related to the design-basis loss-of-coolant accident; LBP-15-26, 82 NRC 163 (2015)

licensees must conduct periodic containment leakage tests to ensure that leakage does not exceed the allowable rates specified in the technical specifications and the containment will perform its design

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- function following an accident up to and including the plant design-basis accident; LBP-15-26, 82 NRC 163 (2015)
- primary reactor containments are subject to the requirements 10 C.F.R. Part 50, Appendix J; LBP-15-26, 82 NRC 163 (2015)
- request for enforcement action based on support beam deficiencies, flood protection inadequacy, flood risks from upstream dams, and primary reactor containment electrical penetration seals containing Teflon is denied because petitioner's requests have been addressed through other actions; DD-15-4, 81 NRC 869 (2015)
- request that licensee replace passive autocatalytic recombiners in the containment with electrically powered thermal hydrogen recombiners is denied; DD-13-1, 77 NRC 347 (2013)
- request that NRC immediately revoke prior preapproval of the hardened vent system or direct torus vent system at each GE BWR Mark I unit has been addressed by an order modifying licenses with regard to reliable hardened containment vents capable of operation under severe accident conditions; DD-15-1, 81 NRC 193 (2015)
- request that NRC order licensees to include a reliable hardened vent in boiling-water reactor Mark I and Mark II containments is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order the immediate suspension of the operating licenses of all General Electric boiling-water reactors that use the Mark I primary containment system citing the Fukushima Dai-ichi accident in Japan as its rationale basis is resolved; DD-15-1, 81 NRC 193 (2015)
- required Type A containment leakage tests measure total leakage rate from all potential leakage paths, including containment liner welds, valves, fittings, and components that penetrate the containment; LBP-15-26, 82 NRC 163 (2015)
- simply referencing a study without explaining the information's significance relative to the potential containment leakage monitored by the testing at issue does not establish its materiality; LBP-15-26, 82 NRC 163 (2015)
- CONTAINMENT DESIGN**
- assertions of a need to implement filtered vented containment are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)
- containments must be designed to remain essentially leaktight during postulated accidents; LBP-13-8, 78 NRC 1 (2013)
- contention that environmental report fails to accurately and thoroughly conduct severe accident mitigation alternatives analysis to design vulnerability of GE Mark I boiling water reactor pressure suppression containment system and environmental consequences of a to-be-anticipated severe accident post-Fukushima Daiichi fails to present a genuine material dispute; LBP-15-5, 81 NRC 249 (2015)
- existing containment vent systems at BWRs with Mark I containments provide a capability to vent the containment under design-basis conditions; DD-15-1, 81 NRC 193 (2015)
- CONTAINMENT ISOLATION VALVES**
- Type C pneumatic tests measure leakage rates; LBP-15-26, 82 NRC 163 (2015)
- CONTAINMENT SYSTEMS**
- containment system is defined as the principal barrier, after the reactor coolant pressure boundary, to prevent release of quantities of radioactive material that would have a significant radiological effect on public health; LBP-15-26, 82 NRC 163 (2015)
- each nuclear power plant must be able to cool the reactor core and maintain containment integrity in the event of a station blackout of a specified duration; LBP-12-18, 76 NRC 127 (2012)
- inservice visual inspection of containment system must comply with ASME Boiler and Pressure Vessel Code Section XI; LBP-15-26, 82 NRC 163 (2015)
- licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent-fuel pool cooling capabilities to address loss of large areas from fires or explosions that arise from a beyond-design-basis event; CLI-12-2, 75 NRC 63 (2012)
- licensees of boiling water reactors with Mark I and II containments are required to design and install a venting system that provides venting capability from the wetwell during severe accident conditions; DD-15-1, 81 NRC 193 (2015)
- NRC has addressed pressure suppression containment system vulnerability to early failure under severe accident conditions including overpressurization in NUREG-0474; DD-15-1, 81 NRC 193 (2015)

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periodic visual inspections of the accessible interior and exterior surfaces of the containment system are required to identify structural deterioration that may affect containment integrity; LBP-15-26, 82 NRC 163 (2015)

request that the applicability for technical specification be revised to include secondary containment, secondary containment isolation dampers, standby gas treatment system, control room emergency ventilation, and control room air conditioning system, whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

CONTENTIONS

admissible contention is required for grant of a hearing request; LBP-15-17, 81 NRC 753 (2015)

admitted contentions of omission may be rendered moot by subsequent license-related documents filed by the NRC Staff that address the alleged omission; LBP-13-9, 78 NRC 37 (2013)

although all environmental contentions may, in a general sense, ultimately challenge NRC's compliance with NEPA, NRC regulations expressly permit the lodging of contentions against an applicant's environmental report well before release of NRC's NEPA documents; LBP-11-38, 74 NRC 817 (2011)

although applicant carries the burden of proof on safety issues, intervenors have the initial burden of going forward with each contention and must provide sufficient evidence to support the claims made; LBP-14-1, 79 NRC 39 (2014)

although applicant has the ultimate burden of proof on any issues upon which a hearing is held, hearings are held on only those issues that an intervenor brings to the fore; LBP-11-4, 73 NRC 91 (2011)

although environmental contentions are, in essence, challenges to NRC Staff's compliance with NEPA, those contentions must be raised, if possible, in response to applicant's environmental report; CLI-15-1, 81 NRC 1 (2015); LBP-15-19, 81 NRC 815 (2015)

although environmental contentions ultimately challenge NRC's compliance with NEPA, applicant is free to support positions set forth in the environmental impact statement that are under challenge; LBP-12-5, 75 NRC 227 (2012); LBP-14-7, 79 NRC 451 (2014)

although the Task Force Report on the Fukushima accident did not justify initiating a generic NEPA review, the Commission acknowledged that new and significant information may come to light that must be considered in individual reactor licensing proceedings; LBP-11-32, 74 NRC 654 (2011)

any person or organization seeking to intervene as a party in an NRC adjudicatory proceeding addressing a proposed licensing action must establish standing and proffer at least one admissible contention; LBP-11-13, 73 NRC 534 (2011)

applicant may bear the burden of proof on contentions asserting deficiencies in its environmental report and where the applicant becomes a proponent of a particular challenged position set forth in the environmental impact statement; LBP-11-38, 74 NRC 817 (2011)

applicants face a continuing possibility of contentions in adjudicatory proceedings based upon omissions or deficiencies in their environmental report because NRC rules require the filing of contentions as early as possible; CLI-12-13, 75 NRC 681 (2012)

assertion that final environmental impact statement inadequately addresses, and inappropriately characterizes as small, the plant's dewatering-associated impacts to wetlands, floodplains, special aquatic sites, and other waters is litigated; LBP-13-4, 77 NRC 107 (2013)

at the outset of proceedings, NEPA contentions are to be based on the applicant's environmental report; LBP-11-32, 74 NRC 654 (2011)

based on its language, a contention can be characterized as a contention of omission, a contention of adequacy, or both; LBP-13-9, 78 NRC 37 (2013)

board rules in favor of applicant on contention challenging adequacy of quality assurance program developed and implemented by applicant; LBP-14-7, 79 NRC 451 (2014)

board rules in favor of NRC Staff on contention challenging adequacy of assessment of impacts on the eastern fox snake contained within the final environmental impact statement; LBP-14-7, 79 NRC 451 (2014)

board's conclusion that a contention is one of omission is driven by its examination of the contention, including its underlying arguments; LBP-11-6, 73 NRC 149 (2011)

boards have the authority to reformulate contentions to consolidate issues for a more efficient proceeding; LBP-11-13, 73 NRC 534 (2011); LBP-15-17, 81 NRC 753 (2015)

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boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-23, 76 NRC 445 (2012)

by participating in NRC proceedings, intervenors accept the obligation of uncovering relevant, publicly available information; CLI-12-21, 76 NRC 491 (2012)

commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance, but does not insulate such an approach from challenge by an intervenor, and is not binding on a licensing board in an adjudication; LBP-11-20, 74 NRC 65 (2011)

contention alleging that statutory and regulatory prohibitions on foreign ownership, control, or domination forbid the licensing of proposed units is decided in applicant's favor; LBP-14-3, 79 NRC 267 (2014)

contention based solely upon omissions from the environmental report is rendered moot when the missing information is supplied; LBP-11-14, 73 NRC 591 (2011)

contention challenging applicant's ability to rapidly assess the validity of alleged thefts of strategic special nuclear material is decided; LBP-14-1, 79 NRC 39 (2014)

contention of omission alleges that an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application; LBP-11-6, 73 NRC 149 (2011); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

contention of omission that has been admitted may be rendered moot by subsequent license-related documents filed by NRC Staff that address the alleged omission; LBP-14-5, 79 NRC 377 (2014)

contention that final supplemental environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 65 (2015)

contention that final supplemental environmental impact statement lacks an adequate baseline groundwater characterization or fails to demonstrate that groundwater samples were collected in a scientifically defensible manner is decided; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

contentions challenging a severe accident mitigation alternatives analysis must identify a deficiency that plausibly could alter the overall result of the analysis in a material way; LBP-13-13, 78 NRC 246 (2013)

contentions of adequacy may migrate into contentions of omission; LBP-13-10, 78 NRC 117 (2013)

contentions of omission and contentions of inadequacy are defined; LBP-15-5, 81 NRC 249 (2015)

contentions of omission are appropriate when an issue that by law should be discussed is not, whereas contentions of adequacy are those that assert the existing discussion of an issue is incomplete; CLI-15-25, 82 NRC 389 (2015)

designation of a contention as a contention of omission is a means to limit its scope; CLI-11-11, 74 NRC 427 (2011)

environmental contentions ultimately challenge NRC's compliance with NEPA, but applicant is free to support positions set forth in the environmental impact statement that are under challenge; LBP-12-17, 76 NRC 71 (2012)

environmental report's adequacy is examined under the auspices of NEPA because the ER is the foundation upon which NRC's environmental impact statement is prepared and contentions that seek compliance with NEPA must be based on that environmental report; LBP-11-13, 73 NRC 534 (2011)

exceptionally grave issue is one that raises a sufficiently grave threat to public safety; LBP-12-1, 75 NRC 1 (2012)

for an environmental issue to be "significant" for the purposes of reopening a record, new information must paint a seriously different picture of the environmental landscape; LBP-12-1, 75 NRC 1 (2012)

general discussion about contentions of omission and contentions of adequacy is provided; LBP-13-10, 78 NRC 117 (2013)

if a motion for summary disposition is granted, then the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of NRC Staff's treatment of the relevant issue; LBP-14-5, 79 NRC 377 (2014)

if all matters at issue in a contention of omission are addressed by NRC Staff in its draft environmental impact statement through the actual provision of information on all such matters, then no legal interest in that contention remains, and the contention is moot; LBP-11-4, 73 NRC 91 (2011)

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if applicants believe that their actions render a contention moot, then they should promptly file a motion for summary disposition; LBP-12-19, 76 NRC 184 (2012)

if the environmental impact statement addresses the concerns alleged in the contention, the original contention becomes moot and the intervenor must raise a new contention if it claims the EIS discussion is still inaccurate or incomplete; LBP-14-6, 79 NRC 404 (2014)

in certain instances, contentions challenging an environmental report are deemed to migrate from challenging applicant's environmental report to challenging NRC Staff's environmental assessment; LBP-14-6, 79 NRC 404 (2014)

in ruling on whether a contention is moot, boards look to whether a justiciable controversy still exists and whether an issue is still live, such that a party still has a legal interest in the issue; LBP-11-4, 73 NRC 91 (2011)

in the future the Commission might provide relevant guidance regarding the proper time frame for adjudicating Fukushima-related contentions; LBP-11-39, 74 NRC 862 (2011)

intervenor has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as a foundation for a specific contention; LBP-12-13, 75 NRC 784 (2012)

intervenors are expected to file contentions on the basis of applicant's environmental report and not delay their contentions until after NRC Staff issues its environmental analysis; CLI-12-13, 75 NRC 681 (2012); LBP-12-12, 75 NRC 742 (2012)

intervenors are not only permitted but are required to file their contentions in response to the license application, rather than await a fully formalized administrative decision; LBP-12-19, 76 NRC 184 (2012)

intervenors fail to establish the validity of their various challenges to the adequacy of the FSEIS description of the baseline water quality at the in situ recovery site; LBP-15-3, 81 NRC 65 (2015)

intervenors opposed renewal of the nuclear power plant license, and proposed new contentions for increased ultrasonic testing of sand bed epoxy coating integrity; LBP-15-1, 81 NRC 15 (2015)

intervention petitioner must proffer at least one admissible contention; LBP-13-8, 78 NRC 1 (2013)

issues framed in contentions challenging an application generally encompass two categories alleging an informational or analytical omission from the application and/or alleging that information/analysis in the application is inadequate (as opposed to missing); LBP-13-10, 78 NRC 117 (2013)

it is possible for a contention to contain an omission component and an inadequacy component; LBP-11-6, 73 NRC 149 (2011)

licensing proceedings are not the appropriate venue for generic issues, especially those that are about to become the subject of rulemaking; LBP-14-1, 79 NRC 39 (2014)

migration tenet applies where information in the draft environmental impact statement is sufficiently similar to the information in the environmental report; LBP-14-6, 79 NRC 404 (2014)

Model Milestones permit intervenors' proposed late-filed contentions on SER and necessary NEPA documents to be filed within 30 days of the issuance of those documents; LBP-11-22, 74 NRC 259 (2011)

neither new procedures nor a separate timetable for raising new issues related to the Fukushima events is warranted; CLI-12-15, 75 NRC 704 (2012)

NEPA-related contentions initially are based on applicant's environmental report which will inform the Staff's NEPA review; CLI-13-7, 78 NRC 199 (2013); LBP-13-10, 78 NRC 117 (2013)

nothing in 10 C.F.R. Part 40, Appendix A, Criterion 5B precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's precicensing program were adequate to provide the necessary information to properly characterize the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 65 (2015)

NRC Staff's issuance of an environmental assessment under NEPA does not necessarily moot contentions challenging applicant's environmental report; LBP-14-6, 79 NRC 404 (2014)

on issues arising under NEPA, intervenor must file contentions based on the applicant's environmental report, but may amend those contentions or file new contentions; LBP-11-7, 73 NRC 254 (2011)

once a petitioner successfully demonstrates standing, it will then be free to assert any contention, which, if proved, will afford it the relief it seeks; LBP-11-29, 74 NRC 612 (2011)

party who neglects to fully participate in a proceeding is subject to sanctions including dismissal of its contention; CLI-14-2, 79 NRC 11 (2014)

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- petitioner must base its environmental contentions on information available at the time its intervention petition is to be filed, including applicant's environmental report; CLI-14-2, 79 NRC 11 (2014)
- petitioner provides no support for the proposition that applicant must demonstrate that each individual resolution method can be completed, by itself, within the approved time period; LBP-14-1, 79 NRC 39 (2014)
- petitioner seeking a hearing must demonstrate standing and proffer at least one admissible contention; LBP-11-29, 74 NRC 612 (2011)
- petitioner will have an opportunity to submit contentions based on the final supplemental environmental impact statement if appropriate; LBP-13-9, 78 NRC 37 (2013)
- petitioners must raise and reasonably specify at the outset their objections to a license application; CLI-12-1, 75 NRC 39 (2012)
- petitioners' challenge to the adequacy of applicant's existing analysis of solar and wind as alternative energy sources is not a contention of omission; CLI-12-8, 75 NRC 393 (2012)
- proper mechanism for raising Fukushima-related, application-specific concerns in ongoing combined license cases is to file a new contention, consistent with the applicable procedural rules; CLI-11-5, 74 NRC 141 (2011)
- resolution of a mooted contention requires no more than a finding by the presiding officer that the matter has become moot; LBP-12-5, 75 NRC 227 (2012)
- to be successful, intervenor must point to a deficiency that renders the severe accident mitigation alternatives analysis unreasonable under NEPA; LBP-13-13, 78 NRC 246 (2013)
- to be successful, intervenors must demonstrate with adequate support that NRC Staff failed to take a hard look at important environmental questions or failed to provide a reasonable analysis; LBP-13-13, 78 NRC 246 (2013)
- to the extent NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)
- two primary types of contentions are contentions of omission and contentions of adequacy; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- when the adequacy of an EIS mitigation strategy is challenged, the determining issue is whether the agency took a sufficiently hard look at environmental consequences, and ensured that its decision was supported by a completely informed record; LBP-15-16, 81 NRC 618 (2015)
- where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot; LBP-11-16, 73 NRC 645 (2011)
- whether applicant's item monitoring program has the capability to verify, on a statistical sampling basis, the presence and integrity of strategic special nuclear material items is decided; LBP-14-1, 79 NRC 39 (2014)
- See also Abeyance of Contention; Amendment of Contentions
- CONTENTIONS, ADMISSIBILITY**
- absence of a prohibition is not sufficient justification to admit a contention; CLI-15-23, 82 NRC 321 (2015)
- absent a petition for a waiver, no rule or regulation of the Commission is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-14-6, 79 NRC 445 (2014); LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-13-12, 78 NRC 239 (2013)
- absent a waiver, contentions that raise a direct or indirect challenge to a Commission regulation must be rejected; LBP-15-4, 81 NRC 156 (2015)
- absent a waiver, no rule or regulation of the Commission, or any provision thereof, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to 10 C.F.R. Part 2; CLI-15-19, 82 NRC 151 (2015); LBP-15-24, 82 NRC 68 (2015); LBP-15-26, 82 NRC 163 (2015)
- absent any duty under Part 51 requiring applicant to supplement its environmental report to address subsequent events or information, subsequent events and information do not create a genuine dispute as to the compliance status of the ER; LBP-12-13, 75 NRC 784 (2012)

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- absent compelling reasons, the Commission adheres to the case or controversy doctrine in its adjudicatory proceedings; LBP-13-7, 77 NRC 307 (2013)
- absent documentary support, NRC has declined to assume that licensees will contravene its regulations; CLI-11-9, 74 NRC 233 (2011)
- absent error of law or abuse of discretion, the Commission defers to licensing board rulings on contention admissibility; CLI-11-9, 74 NRC 233 (2011); CLI-12-5, 75 NRC 301 (2012); CLI-12-19, 76 NRC 377 (2012)
- absent good cause, there must be a compelling showing on the remaining late-filing factors; CLI-12-10, 75 NRC 479 (2012)
- absent voluntary action by applicant to amend its environmental report, intervenor wishing to raise new or revised post-ER environmental concerns must await issuance of Staff's draft environmental impact statement; LBP-11-37, 74 NRC 774 (2011)
- adequacy of NRC Staff's review is not a litigable issue in a licensing case; CLI-15-9, 81 NRC 512 (2015)
- adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a generic EIS; CLI-13-7, 78 NRC 199 (2013)
- adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-13-6, 77 NRC 253 (2013)
- admissibility of contention that a license amendment will be required for licensee to update and maintain accurate design basis documents is decided; CLI-15-5, 81 NRC 329 (2015)
- admissibility of contention that applicant submit a decommissioning plan and updated financial plans related to decommissioning is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental assessment fails to adequately describe and analyze aquifer restoration goals in light of new standards for determining alternative control limits is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental assessment fails to adequately describe and analyze impacts of maintaining post-operational wellfields as long-term hazardous waste facilities is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental assessment fails to adequately describe or analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 401 (2015)
- admissibility of contention that environmental assessment fails to analyze impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 401 (2015)
- admissibility of contention that environmental assessment fails to conduct the required hard look at impacts of the proposed mine and failed to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 401 (2015)
- admissibility of contention that environmental assessment fails to describe and analyze the environmental impacts of new porosity and permeability in the aquifer caused by mining activity is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental documents and associated monitoring values and restoration goals rely on baseline data calculations that are inadequate and unacceptable is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental documents lack an adequate description of financial assurances to cover costs of restoration and long-term monitoring of up to 30 years is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental report lacks site-specific safety and environmental findings regarding spent fuel storage and disposal is decided; LBP-15-5, 81 NRC 249 (2015)
- admissibility of contention that final environmental assessment fails to adequately analyze cumulative impacts is decided; LBP-15-11, 81 NRC 401 (2015)
- admissibility of contention that final environmental assessment fails to adequately evaluate adverse impacts on public health and safety is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with restoration standards and difficulty and cost in achieving them and the use of the alternative standards permitted under the proposed rules is decided; LBP-15-15, 81 NRC 598 (2015)

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- admissibility of contention that licensee is undertaking modifications for protection against severe flooding in the event of upstream dam failures that will require a license amendment is decided; CLI-15-5, 81 NRC 329 (2015)
- admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 401 (2015)
- admissibility of contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is decided; LBP-15-5, 81 NRC 249 (2015)
- admissibility requirement generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons; LBP-15-1, 81 NRC 15 (2015)
- admissible contention challenging consideration of alternatives must show that a particular alternative was not discussed in the draft environmental impact statement and provide some support that the alternative is reasonable; LBP-13-9, 78 NRC 37 (2013)
- admissible contentions must meet all six pleading requirements of 10 C.F.R. 2.309(f)(1); CLI-15-21, 82 NRC 295 (2015); LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-13-8, 78 NRC 1 (2013); LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-18, 81 NRC 793 (2015); LBP-15-20, 81 NRC 829 (2015); LBP-15-29, 82 NRC 246 (2015)
- admissible contentions must point to a deficiency in the application, and not merely suggest other ways an analysis could have been done or other details that could have been included; CLI-15-18, 82 NRC 135 (2015)
- admission of a contention that might require further explanation of severe accident mitigation alternatives cost-benefit analysis did not have a pervasive and unusual effect on the litigation; CLI-11-6, 74 NRC 203 (2011)
- admission of a management integrity contention relied on references to a serious incident involving shutdown of the reactor, management responsible for the incident remaining in place, and a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert witness in support of the contention; CLI-11-11, 74 NRC 427 (2011)
- admission of a “placeholder” contention is not necessary to ensure that petitioner’s challenges to the Continued Storage Rule and GEIS receive a full and fair airing; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)
- admission of contentions that NRC may ultimately deal with generically through notice-and-comment rulemaking is precluded; LBP-11-32, 74 NRC 654 (2011)
- admitted contentions challenging applicant’s environmental report may, in appropriate circumstances, function as challenges to similar portions of the Staff’s environmental impact statement; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-15-11, 81 NRC 401 (2015)
- adoption of building code rules by a state presents new and materially different information not previously available, upon which intervenors may rest their proposed contention; LBP-11-7, 73 NRC 254 (2011)
- after reviewing the background regarding the continued storage rule, the Commission directed licensing boards to reject waste confidence contentions pending before them; LBP-14-12, 80 NRC 138 (2014)
- after the section 2.309(b) deadline has passed for submitting an initial hearing petition with one or more accompanying contentions, petitioner/intervenor who wishes to amend an already submitted or admitted contention or gain admission of a new contention must file a motion for leave to file such a new or amended contention; LBP-13-10, 78 NRC 117 (2013)
- all contentions must proffer an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-12-27, 76 NRC 583 (2012)
- all contentions, regardless of when they are filed, must satisfy the six criteria specified in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-11-20, 74 NRC 65 (2011); LBP-11-32, 74 NRC 654 (2011); LBP-11-39, 74 NRC 862 (2011); LBP-12-1, 75 NRC 1 (2012)
- all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-12-3, 75 NRC 164 (2012)

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all properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-12-3, 75 NRC 164 (2012)

allegation of omission, not of inadequacy, in an environmental report's analysis of socioeconomic impacts raises an issue that is not material to any finding NRC must make in an early site permit proceeding; LBP-11-16, 73 NRC 645 (2011)

allegation that applicant's site assessment has inadequately characterized the rate of movement of growth faults at the site, as it relates to its analysis of surface deformation, is admissible; LBP-11-16, 73 NRC 645 (2011)

allegation that multiple, unrelated sources of electricity ought to be evaluated collectively is inadmissible; LBP-11-2, 73 NRC 28 (2011)

allegation that NRC or licensee has abused or exceeded its lawful discretion with respect to nuclear safety programs is not admissible because it fails to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-14-4, 79 NRC 319 (2014)

allegation that other costs were ignored is not admissible because petitioners presented no facts or expert opinion that show it to be plausible that including them might affect the outcome of the severe accident mitigation alternatives analysis; LBP-11-2, 73 NRC 28 (2011)

allegation that the Continued Storage Rule and GEIS fail to address the trust responsibility the NRC owes an Indian tribe represents a collateral attack on the Continued Storage Rule and GEIS; LBP-14-16, 80 NRC 183 (2014)

allegations of inadequacies and omissions in NRC Staff's environmental assessment satisfy the requirement to provide a specific statement of the issue of law or fact to be raised; LBP-15-13, 81 NRC 456 (2015)

allegations of noncompliance with already-issued, existing, and open Commission orders are part of the current licensing basis and therefore cannot be challenged in a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

alleged facts and expert opinions in intervention petition and associated exhibits are sufficient to satisfy regulatory requirements; LBP-15-13, 81 NRC 456 (2015)

alleged violations of state law are outside the scope of, and not material to, an adjudicatory proceeding; LBP-15-24, 82 NRC 68 (2015)

allowing an environmental challenge to continue after the environmental impact statement has issued does not constitute a merits ruling that the Staff's review document is inadequate; CLI-11-6, 74 NRC 203 (2011)

almost every item originally contained in technical specifications has some conceivable connection to safety, but this general premise is insufficient, by itself, as a ground for intervention; LBP-12-25, 76 NRC 540 (2012)

alternatives for reducing adverse environmental impacts, including impacts of severe accidents, are among the limited issues within the scope of a license renewal proceeding; LBP-11-13, 73 NRC 534 (2011)

although 10 C.F.R. 2.337(f), by its terms, applies to evidence at hearings, the bounds that this rule places on official notice is also appropriate for the contention admissibility stage of a proceeding; LBP-11-7, 73 NRC 254 (2011)

although a board may view petitioner's supporting information in a light favorable to the petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-11-16, 73 NRC 645 (2011); LBP-11-29, 74 NRC 612 (2011)

although a contention contesting applicant's environmental report generally may be viewed as a challenge to the NRC Staff's subsequent draft environmental impact statement, new claims must be raised in a new or amended contention; LBP-13-10, 78 NRC 117 (2013); LBP-14-5, 79 NRC 377 (2014)

although a contention might have been more detailed or otherwise better supported, petitioners have done enough to raise a question about the adequacy of the probability figures used in applicant's SAMA analysis, namely, whether they should have incorporated or otherwise acknowledged information from a Sandia study; LBP-12-18, 76 NRC 127 (2012)

although a licensing board is not required to recast contentions to make them acceptable, it is also not precluded from doing so; LBP-11-13, 73 NRC 534 (2011)

although an admissible contention requires no more than some minimal factual and legal foundation in support, the Commission expects that in almost all instances petitioner must go beyond merely quoting

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- a request for additional information to justify admission; LBP-15-1, 81 NRC 15 (2015)
- although boards do not decide the merits or resolve conflicting evidence at the contention admission stage, materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; LBP-12-12, 75 NRC 742 (2012); LBP-15-20, 81 NRC 829 (2015)
- although boards may appropriately view petitioner's support for its contention in a light favorable to petitioner, they cannot do so by ignoring the contention admissibility requirements; CLI-15-18, 82 NRC 135 (2015)
- although disagreement over proper interpretation of NRC regulations may give rise to an admissible contention, petitioner's proposed interpretation is in direct conflict with the plain meaning of the regulation and its Statement of Considerations; LBP-12-8, 75 NRC 539 (2012)
- although intervenors disagree with applicant's opportunistic inspection strategy for managing rebar corrosion, they merely assert, and do not plausibly explain, how applicant's approach will lead to a material safety impact; LBP-15-1, 81 NRC 15 (2015)
- although intervenors may use discovery to develop a case once contentions are admitted, contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact(s) demonstrating a genuine material dispute with the applicant; CLI-12-5, 75 NRC 301 (2012)
- although it might be fatal for standing purposes if an Indian tribe were seeking to have intervenors represent their interests in the proceeding, intervenors' lack of authority to represent them is not a bar to intervenors raising the tribe's contention; LBP-12-12, 75 NRC 742 (2012)
- although NRC regulations do not provide a precise definition of "timely," licensing boards have often found a new contention to be timely if it has been filed within 30 days of the availability of information on which the contention is based; LBP-12-11, 75 NRC 731 (2012)
- although NRC Staff's argument against contention admission appears to have some weight, the board need not resolve it, because the contention is inadmissible for failing to raise a genuine dispute of material fact or law with the environmental report; LBP-11-6, 73 NRC 149 (2011)
- although NUREGs are not legally binding, they are guidance documents, and applicant's failure to comply with such documents could give rise to an admissible contention; LBP-11-6, 73 NRC 149 (2011)
- although petitioner proffered a contention within 30 days of events that prompted it, this does not automatically render a newly proffered contention timely; LBP-11-15, 73 NRC 629 (2011)
- although petitioners are not required to run their own computer models at the contention admissibility stage, a contention challenging a SAMA analysis nonetheless must be tethered to the computer modeling and mathematical aspects of the analysis; CLI-12-15, 75 NRC 704 (2012)
- although sufficiency of the application and NRC Staff's environmental review of that application are proper targets of contentions, sufficiency of NRC Staff's safety review of the application is not; LBP-11-29, 74 NRC 612 (2011)
- although the combined license application is not expressly required to consider sea level rise, the board decides that the issue is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)
- amended contentions filed after the initial filing period has expired may be admitted only with leave of the licensing board if they satisfy the three criteria of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-9, 75 NRC 615 (2012)
- amended contentions must satisfy general contention admissibility criteria and either the timeliness standards of section 2.309(f)(2) or the balancing test in section 2.309(c) for nontimely contentions; LBP-12-9, 75 NRC 615 (2012)
- amendment of 10 C.F.R. 2.309 in 2012 was to simplify the rules, not fundamentally change the rationale boards use to admit new/amended contentions; LBP-15-11, 81 NRC 401 (2015)
- among the limited issues within the scope of a license renewal proceeding are alternatives for reducing adverse environmental impacts listed as Category 2 issues in Appendix B to Subpart A of 10 C.F.R. Part 51; LBP-11-2, 73 NRC 28 (2011)
- any contention filed within 30 days of the date when new and material information on which it is based first became available is regarded as timely; LBP-12-9, 75 NRC 615 (2012)
- any contention that fails to directly controvert the application or environmental impact statement, or mistakenly asserts the application does not address a relevant issue, will be dismissed; LBP-12-3, 75

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- NRC 164 (2012); LBP-15-1, 81 NRC 15 (2015)
- any contention that falls outside the specified scope of the proceeding must be rejected; LBP-12-27, 76 NRC 583 (2012)
- any interested person may challenge use of a categorical exclusion by presenting special circumstances; LBP-15-26, 82 NRC 163 (2015)
- any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 253 (2013)
- apart from discretionary review by the Commission, NRC Staff's no significant hazards consideration determination under section 50.92(c) may not be contested; LBP-15-26, 82 NRC 163 (2015)
- appeal under 10 C.F.R. 2.311 of a licensing board order holding various contentions inadmissible was premature because a waste confidence contention had been held in abeyance, and the board had therefore not yet granted or denied the hearing request; LBP-14-8, 79 NRC 519 (2014)
- appeals of contention admissibility rulings are available only upon denial of a petition to intervene and/or request for hearing on the question of whether it should have been granted or upon the grant of a petition to intervene and/or request for hearing on the question of whether it should have been wholly denied; CLI-13-3, 77 NRC 51 (2013)
- applicability of a guidance document may be challenged in an individual proceeding; LBP-15-20, 81 NRC 829 (2015)
- applicant's change of legal position, its claims that such change no longer entails a need for an exemption from the regulations, and its identification of new means/systems to satisfy the regulations are all types of materially different new information that can enable a contention to satisfy the timely new or amended contention requirements of 10 C.F.R. 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)
- applicant's decision to improve an existing program to promote health and safety or to boost public support and confidence does not ordinarily confer an automatic opportunity to advance a new contention; LBP-15-1, 81 NRC 15 (2015)
- appropriate mechanism to challenge individual contention admissibility determinations following a ruling on an initial petition is a request for interlocutory review; CLI-12-12, 75 NRC 603 (2012)
- argument is untimely when it is raised for the first time at oral argument; LBP-15-23, 82 NRC 55 (2015)
- arguments made for the first time on appeal will not be considered; CLI-12-3, 75 NRC 132 (2012)
- as a matter of law and logic, if applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program was a fortiori inadequate, and intervenor had a regulatory obligation to challenge it in its original petition to intervene; LBP-11-9, 73 NRC 391 (2011); LBP-11-20, 74 NRC 65 (2011)
- as an alternative ground for excluding a NEPA terrorism contention, NRC Staff's determination in the generic environmental impact statement that the environmental impacts of a terrorist attack were bounded by those resulting from internally initiated events is sufficient to address the environmental impacts of terrorism; CLI-11-11, 74 NRC 427 (2011)
- as an exercise of its inherent supervisory authority over adjudications, the Commission directs that waste confidence contentions and any related contentions that may be filed in the near term be held in abeyance pending further order; LBP-13-1, 77 NRC 57 (2013)
- as tangible Fukushima lessons emerge, Fukushima-related contentions in individual adjudications may become more plausible, except insofar as NRC is taking generic steps to address them; LBP-12-18, 76 NRC 127 (2012)
- as to whether the connected action aspect of 40 C.F.R. 1508.25(a)(1) supports an improper-segmentation contention's admissibility, petitioners have not provided sufficient supporting information to show that a genuine dispute exists on the material issue; LBP-13-10, 78 NRC 117 (2013)
- asking questions and seeking additional information is an essential part of the NRC's licensing process, and such questioning does not automatically give rise to an admissible contention; LBP-12-27, 76 NRC 583 (2012)
- assertion by applicant that its aging management plan is consistent with the GALL Report does not immunize it against a challenge to the AMP; CLI-12-5, 75 NRC 301 (2012)
- assertion that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on licensee's off-duty employees not otherwise required by 10 C.F.R. 73.56(f)(1)-(3) is argued; LBP-14-4, 79 NRC 319 (2014)

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assertion that a license renewal environmental report must include a discussion of need for power is inadmissible; LBP-11-13, 73 NRC 534 (2011)

assertion that additional physical analysis is necessary, without a basis to support the need for additional testing, is not admissible; CLI-15-23, 82 NRC 321 (2015)

assertion that other severe accident mitigation alternatives might become cost-effective if implemented, without indication of any particular positive or negative environmental impact from any such implementation fails to present an exceptionally grave issue; LBP-12-1, 75 NRC 1 (2012)

assertions of a need to implement filtered vented containment are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

at the admissibility stage, a board evaluates whether a petitioner has provided sufficient support to justify admitting the contention for further litigation; CLI-11-8, 74 NRC 214 (2011); LBP-15-24, 82 NRC 68 (2015)

at the admissibility stage, a board should view petitioner's support for its contention in a light favorable to petitioner, but cannot do so by ignoring the requirements set forth in 10 C.F.R. 2.309(f)(1); CLI-15-23, 82 NRC 321 (2015)

at the admissibility stage, it is simply not appropriate for boards to decide what additional information, if any, is necessary to cure a claimed deficiency in a license application; CLI-11-11, 74 NRC 427 (2011)

at the admissibility stage, parties must come forward with sufficiently detailed grievances to allow a board to conclude that genuine disputes exist justifying a commitment of adjudicatory resources; LBP-11-21, 74 NRC 115 (2011)

at the admissibility stage, petitioners need not marshal their evidence as though preparing for an evidentiary hearing; LBP-11-21, 74 NRC 115 (2011); LBP-15-20, 81 NRC 829 (2015)

at the admissibility stage, petitioners should provide a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-11-13, 73 NRC 534 (2011)

at the admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application; CLI-11-9, 74 NRC 233 (2011)

at the construction authorization request stage, the board dismissed a material control and accounting contention as moot, pending submittal of applicant's Fundamental Nuclear Material Control Plan that would require inclusion of a detailed MC&A program; LBP-14-1, 79 NRC 39 (2014)

at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion; LBP-15-1, 81 NRC 15 (2015)

attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013)

attempts by petitioners to challenge aspects of an aging management plan that they could have challenged earlier is rejected; LBP-15-1, 81 NRC 15 (2015)

availability of new information may provide good cause for nontimely filing, but the test for good cause is not simply when the intervenor became aware of the material sought to be introduced but when the information became available and when the intervenor reasonably should have become aware of the information; LBP-11-7, 73 NRC 254 (2011)

bald allegations do not suffice to support contention admissibility; LBP-13-8, 78 NRC 1 (2013)

bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding; CLI-12-15, 75 NRC 704 (2012)

bare assertions are insufficient to demonstrate a genuine dispute on a material issue of law or fact under general contention admissibility requirements in section 2.309(f)(1)(vi), let alone a motion to reopen, which sets a higher evidentiary standard; CLI-12-3, 75 NRC 132 (2012)

bare assertions are insufficient to support a contention; CLI-11-11, 74 NRC 427 (2011)

bare assertions in a contention run afoul of NRC's intention to focus the hearing process and provide notice to the other parties; LBP-11-21, 74 NRC 115 (2011)

basic admissibility criteria that all contentions must satisfy are governed by 10 C.F.R. 2.309(f)(1); LBP-11-9, 73 NRC 391 (2011)

because generic impact determinations on impacts of continued storage have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings; LBP-14-15, 80 NRC 151 (2014)

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because of the need to provide specific support for a contention in order to raise a genuine dispute, the genuine dispute admissibility requirement is sometimes discussed together with the requirement for petitioners and intervenors to provide alleged factual or expert support for their allegations; LBP-15-1, 81 NRC 15 (2015)

because petitioner fails to address information in the draft supplemental environmental impact statement and generic EIS that is relevant to the issue it raises, the board must reject arguments relating to liquid waste disposal; LBP-13-9, 78 NRC 37 (2013)

because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the environmental report as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, this argument is not timely; LBP-12-7, 75 NRC 503 (2012)

because petitioner has not shown how a proposed plan would fail to ensure that buried pipes continue to fulfill their intended safety purposes, the contention is inadmissible; LBP-15-5, 81 NRC 249 (2015)

because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions as defined by 10 C.F.R. 54.4(a)(1)-(3), the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 28 (2011)

because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petition and motions itself; CLI-14-9, 80 NRC 147 (2014)

because primary responsibility to address and comply with AEA safety-related requirements resides with a license applicant, that application, not the Staff's application review, is the focus of any safety-related contentions and thus the migration tenet does not apply; LBP-13-10, 78 NRC 117 (2013)

because the board granted a hearing request, its decision to reject some contentions may not be appealed until the end of the case; CLI-14-2, 79 NRC 11 (2014)

because the final environmental impact statement had been issued and the board had ruled that a contention remained procedurally defective, it was an appropriate point for board consideration of whether the contention merited sua sponte review; LBP-14-9, 80 NRC 15 (2014)

because the shield building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts, and thus petitioner's contention concerns a matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 15 (2015)

because three contentions are already set for hearing in the proceeding, the admission of further contentions would not substantially delay the proceeding; LBP-12-12, 75 NRC 742 (2012)

because two of the previously admitted contentions allege NEPA violations, new NEPA contentions put forward by the intervenors would not unreasonably broaden the issues; LBP-12-12, 75 NRC 742 (2012)

before any hearing is granted on an order issued pursuant to 10 C.F.R. 2.202, a threshold question, intertwined with both standing and contention admissibility issues, is whether the hearing requests are within the scope of the proceeding; CLI-13-2, 77 NRC 39 (2013)

"belief" that is not supported by alleged facts or expert opinion renders a contention inadmissible; LBP-15-26, 82 NRC 163 (2015)

board admitted a contention on a conditional basis, pending Commission ruling on merits of petition for waiver of NRC regulations; CLI-11-11, 74 NRC 427 (2011)

board admitted a contention without deciding if it was a contention of omission or a contention of inadequacy; LBP-15-5, 81 NRC 249 (2015)

board applied the late-filing standards to a post-9/11 contention related to the risk of a terrorist attack on the ISFSI and found the contention timely but denied admission of both the safety and environmental aspects of the contention; CLI-11-5, 74 NRC 141 (2011)

board concludes that contention is not admissible because it fails to satisfy criteria of 10 C.F.R. 2.309(f)(1), and thus need not rule on its timeliness; LBP-15-29, 82 NRC 246 (2015)

board decisions that have inferred additional bases for contentions beyond those supplied by petitioner have been overturned; CLI-14-2, 79 NRC 11 (2014)

board decisions that have revised inadmissible contentions to render them admissible have been overturned; CLI-14-2, 79 NRC 11 (2014)

board declines to entertain contentions based on little more than speculation, which represent negligible knowledge of the issues being challenged; LBP-15-1, 81 NRC 15 (2015)

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board denies as untimely a motion to reopen and admit a new contention alleging that the licensee lacks certain required environmental permits and approvals from state and federal agencies; LBP-12-16, 76 NRC 44 (2012)

board erred in admitting a contention pertaining to a plant's safety culture; CLI-11-11, 74 NRC 427 (2011)

board erred in reformulating contentions with arguments not originally raised by petitioners; CLI-15-18, 82 NRC 135 (2015)

board examines the information, facts, and expert opinions provided by petitioners to confirm that they do indeed provide adequate support for the contention; LBP-15-20, 81 NRC 829 (2015)

board improperly allowed petitioner to challenge the generic environmental impact statement's generic finding regarding severe accident consequences; CLI-15-6, 81 NRC 340 (2015)

board is free to decide contention admissibility on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives litigants a chance to present arguments (and, where appropriate, evidence) regarding the board's new theory; LBP-14-4, 79 NRC 319 (2014)

board is the agency's expert body on matters of contention admissibility, and the Commission generally defers to its judgment on contention admissibility; CLI-12-14, 75 NRC 692 (2012)

board is the appropriate arbiter of fact-specific questions of contention admissibility, and the Commission will not second-guess the board's evaluation of factual support for the contention, absent an error of law or abuse of discretion, even if support for the contention is weak; CLI-15-25, 82 NRC 389 (2015)

board is wrong to strain to discern the outlines of any contention in an amorphous petition; CLI-15-18, 82 NRC 135 (2015)

board may appropriately view petitioner's support for its contention in a light favorable to petitioner, but cannot do so by ignoring the requirements in 10 C.F.R. 2.309(f)(1); LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015)

board may construe an admitted contention contesting applicant's environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-14-5, 79 NRC 377 (2014); LBP-15-11, 81 NRC 401 (2015)

board may grant a timely filed petition to intervene if it concludes that petitioner has established standing and proffered at least one admissible contention; LBP-15-26, 82 NRC 163 (2015)

board may not supply its own bases for a contention; CLI-15-17, 82 NRC 33 (2015)

board members are not required to comb through the record seeking support for contentions; LBP-11-13, 73 NRC 534 (2011)

board merits determination is inappropriate at the contention admissibility stage; LBP-13-6, 77 NRC 253 (2013)

board properly rejected state's contention that raised concerns similar to those in its rulemaking petition as an impermissible challenge to NRC regulations; CLI-12-6, 75 NRC 352 (2012)

boards admit contentions, not their supporting bases; LBP-11-2, 73 NRC 28 (2011)

boards are appropriate arbiters of fact-specific questions of contention admissibility, and the Commission will not second-guess their evaluation of factual support, absent an error of law or abuse of discretion; CLI-12-5, 75 NRC 301 (2012)

boards are directed to reject waste storage contentions pending before them; LBP-14-16, 80 NRC 183 (2014)

boards are not responsible for providing support for contentions so as to make them admissible; LBP-12-3, 75 NRC 164 (2012)

boards are not to decide the merits at the contention admissibility stage; LBP-12-18, 76 NRC 127 (2012)

boards are precluded from hearing rule challenges absent a showing of special circumstances; LBP-14-9, 80 NRC 15 (2014)

boards do not adjudicate disputed facts at the contention admission stage; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-12-8, 75 NRC 539 (2012)

boards evaluate contentions under the six requirements of 10 C.F.R. 2.309(f)(1); LBP-15-24, 82 NRC 68 (2015)

boards have authority under 10 C.F.R. 2.316, 2.319, 2.329 to further define petitioners' admitted contentions when redrafting would clarify the scope of the contentions; LBP-11-13, 73 NRC 534 (2011)

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boards have some discretion to reformulate or narrow contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding, but this authority is not without limit; CLI-15-18, 82 NRC 135 (2015)

boards in individual licensing proceedings are expected to assess contentions against applicable procedural standards; CLI-12-7, 75 NRC 379 (2012)

boards may afford an interested state, local governmental body, and federally recognized Indian tribe that has not been admitted as a party under section 2.309 a reasonable opportunity to participate in a hearing; LBP-15-19, 81 NRC 815 (2015)

boards may appropriately view petitioner's supporting information in a light favorable to petitioner, but failure to provide such information requires that the contention be rejected; LBP-12-3, 75 NRC 164 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013)

boards may appropriately view petitioner's supporting information in a light favorable to the petitioner, but neither mere speculation nor bare or conclusory assertions, even by an expert, will suffice to allow the admission of a proffered contention; LBP-13-10, 78 NRC 117 (2013)

boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-13-9, 78 NRC 37 (2013)

boards may examine both the statements in the document that support petitioner's assertions and those that do not; LBP-15-20, 81 NRC 829 (2015)

boards may not make assumptions or draw inferences that favor petitioner or supply information that is lacking if petitioner neglects to provide the requisite support for its contentions; LBP-12-15, 76 NRC 14 (2012)

boards may not supply information that is lacking in a contention that otherwise would be inadmissible; CLI-15-18, 82 NRC 135 (2015)

boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; LBP-11-6, 73 NRC 149 (2011); LBP-12-18, 76 NRC 127 (2012); LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015)

boards may view petitioner's supporting information in a light favorable to the petitioner, but the petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-13-8, 78 NRC 1 (2013)

boards must do more than uncritically accept a party's mere assertion that a particular document supplies the basis for its contention, without even reviewing the document itself to determine if it appears to support a litigable contention; LBP-11-6, 73 NRC 149 (2011)

boards must not adjudicate the merits of allegations at the contention admission stage, but, to be admissible, a contention must provide more than a bare assertion, and must explain the supporting reasons for the dispute; LBP-11-16, 73 NRC 645 (2011)

boards must reject intervenors' arguments that fail to specifically address the draft environmental impact statement; LBP-13-9, 78 NRC 37 (2013)

boards should not accept in individual license proceedings contentions that are, or are about to become, the subject of rulemaking by the Commission; LBP-12-24, 76 NRC 503 (2012)

boards should not be expected to sift unaided through documents filed before the board to piece together and discern a party's argument and the grounds for its claims; LBP-12-3, 75 NRC 164 (2012)

boards should not have to guess what aspects of the severe accident mitigation alternatives analysis the petitioner is challenging; LBP-12-1, 75 NRC 1 (2012)

boards should not supply new information not otherwise present in the adjudicatory record in order to cure deficiencies in a petition; CLI-12-12, 75 NRC 603 (2012)

both standing (redressability) and contention admissibility (scope) in the context of an NRC enforcement order are addressed; LBP-14-4, 79 NRC 319 (2014)

both the reopening and contention admissibility criteria require that new contentions be timely presented, generally within 30-60 days of the availability of the information on which the contention is based; CLI-12-21, 76 NRC 491 (2012)

brief explanation of the basis for a contention is required; LBP-11-13, 73 NRC 534 (2011)

brief explanation of the rationale underlying the contention is sufficient to satisfy 10 C.F.R. 2.309(f)(1)(ii); LBP-15-24, 82 NRC 68 (2015)

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broad-based issues akin to safety culture, such as operational history, quality assurance, quality control, management competence, and human factors, are outside the scope of license renewal because they raise issues that are relevant to current plant operation; LBP-12-27, 76 NRC 583 (2012)

broadening of issues for hearing caused by board's admission of a contention that applicant opposes does not constitute a pervasive and unusual effect on the litigation meriting interlocutory review; CLI-15-17, 82 NRC 33 (2015)

burden is on intervenors to demonstrate that a balancing of the factors of 10 C.F.R. 2.309(c)(i)-(viii) weighs in favor of granting a late-filed petition; LBP-12-27, 76 NRC 583 (2012)

burden is on the proponent of a contention to show that NRC Staff's analysis or methodology is unreasonable or insufficient; CLI-12-6, 75 NRC 352 (2012)

by participating in NRC proceedings, intervenors accept the obligation of uncovering relevant, publicly available information; CLI-12-13, 75 NRC 681 (2012)

by pointing to the exemptions and the license amendment request, petitioner has adequately supported its statement that the LAR is legally deficient in light of the granted exemptions; LBP-15-24, 82 NRC 68 (2015)

by reason of their own standing in a proceeding, intervenors may assert any violation of law that would lead to a redress of their injuries, including their interests in seeing that the NEPA process is properly carried out or in preventing or delaying issuance of the requested combined license; LBP-12-12, 75 NRC 742 (2012)

carry-over contentions must be subjected to especially careful scrutiny by the board at the prehearing stage; LBP-11-34, 74 NRC 685 (2011)

Category 1 issues are environmental issues that NRC has resolved generically and therefore does not consider in specific license renewal proceedings; CLI-15-18, 82 NRC 135 (2015)

Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. 2.335, because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-13, 73 NRC 534 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015)

Category 1 issues in section 51.53(c)(3)(i) are excluded from site-specific review absent a waiver of the rule; CLI-12-19, 76 NRC 377 (2012)

Category 2 issues must be reviewed on a site-specific basis because they have not been determined to be essentially similar for all plants and thus can be the subject of a contention; LBP-11-13, 73 NRC 534 (2011)

challenge that applicant's environmental report omits material that petitioner alleges is required to be there is within the scope of the proceeding; LBP-12-8, 75 NRC 539 (2012)

challenge to NRC Staff's environmental analysis, which may come in the form of a categorical exclusion, may be filed as a timely motion to add a new contention once that analysis is complete; LBP-15-24, 82 NRC 68 (2015)

challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of the license renewal proceeding; LBP-12-24, 76 NRC 503 (2012)

challenge to the inputs and methodology in the SAMA analysis is impermissibly late; CLI-12-10, 75 NRC 479 (2012)

challenge to use of an alternate concentration limit is an impermissible challenge to an NRC regulation, which is not subject to attack in any adjudicatory proceeding; LBP-15-11, 81 NRC 401 (2015)

challenges based on 10 C.F.R. 50.61a and the question of whether applicant demonstrated substantial advantage under 10 C.F.R. Part 50, Appendix H as a reason to not test capsules are beyond the scope of a license amendment proceeding, which concerns compliance with Appendix G of 10 C.F.R. Part 50; LBP-15-20, 81 NRC 829 (2015)

challenges to a combined license applicant's failure to provide information on long-term storage of Greater-Than-Class-C radioactive waste are outside the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)

challenges to admissibility on the ground that it does not include an adequate basis because it does not include sufficient facts, evidence, or supporting factual information are misguided; LBP-15-20, 81 NRC 829 (2015)

challenges to agency rules or regulations without a waiver, in addition to being expressly prohibited, are outside the scope of the proceeding; CLI-15-21, 82 NRC 295 (2015)

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challenges to an applicant's or licensee's character require sufficient support; CLI-11-9, 74 NRC 233 (2011)

challenges to an enhanced version of an application alone are insufficient to vitiate intervenors' obligation to file any challenges to the original version of that application at the outset of the proceeding; LBP-11-9, 73 NRC 391 (2011)

challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 379 (2012)

challenges to Category 1 findings based on new and significant information require a waiver of 10 C.F.R. Part 51, Subpart A, Appendix B, in order to be litigated in a license renewal adjudication; CLI-13-7, 78 NRC 199 (2013)

challenges to emergency planning fall outside the scope of a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

challenges to extensive damage mitigation guidelines are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to licensee actions taken under 10 C.F.R. 50.59 may only be taken by means of a petition for enforcement action under 10 C.F.R. 2.206; CLI-15-5, 81 NRC 329 (2015)

challenges to NRC enforcement orders are limited to whether the order should be sustained; LBP-14-4, 79 NRC 319 (2014)

challenges to NRC rules and regulations are generally prohibited, with limited exceptions, in view of expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis on rulemaking proceedings as the appropriate forum for settling basic policy issues; CLI-13-7, 78 NRC 199 (2013)

challenges to NRC's assumptions about operators' capability to mitigate an accident are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to NRC's excessive secrecy regarding accident mitigation measures are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to NRC's previous rejection of petitioner's concerns regarding environmental impacts of high-density pool storage of spent fuel are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to only the draft environmental impact statement apply equally to the final environmental impact statement under the migration tenet; LBP-12-5, 75 NRC 227 (2012)

challenges to provisions of the current license that are not being changed and that are not fairly related to the license amendment request are outside the scope of the proceeding; LBP-12-25, 76 NRC 540 (2012)

challenges to rules are appropriately lodged through a request for rulemaking; CLI-13-1, 77 NRC 1 (2013)

challenges to section 50.54(hh)(2) are neither germane to age-related degradation nor unique to the license renewal period; LBP-11-21, 74 NRC 115 (2011)

challenges to the \$2000/person-rem conversion factor, to use of a single dose-rate reduction effectiveness factor, and to evacuation times and assumptions are not admissible because petitioners presented no facts or expert opinion of error; LBP-11-2, 73 NRC 28 (2011)

challenges to the ABWR design certification are impermissible; LBP-11-38, 74 NRC 817 (2011)

challenges to the agency's regulations are not allowed; LBP-15-3, 81 NRC 65 (2015)

challenges to the basic regulatory structure of the NRC's design basis and generic environmental impacts already assessed through rulemaking are inadmissible; LBP-11-32, 74 NRC 654 (2011)

challenges to the design of the nuclear power plant are outside the scope of the license renewal proceeding; LBP-11-23, 74 NRC 287 (2011)

challenges to the generic environmental impact statement's determinations amount to attacks on NRC regulations and are not within the scope of license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)

challenging features of the AP1000 standard design is a matter for a design certification rulemaking, not a combined license proceeding; CLI-11-8, 74 NRC 214 (2011)

challenging the environmental report preserves petitioner's right to challenge the environmental impact statement at a later stage of the proceedings; LBP-12-8, 75 NRC 539 (2012)

citation of studies indicating that source terms from the Modular Accident Analysis Progression (MAAP) code are lower than results from Source Term Code Package or NUREG-1150 satisfies the requirements of 10 C.F.R. 2.309(f)(1)(v); LBP-11-2, 73 NRC 28 (2011)

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- claim that application fails to adequately present the true extent of historical exploration drilling, borehole abandonment details, R&D testing, changes to groundwater quality, and interconnections of geologic strata contains no alleged facts to support this opinion and thus does not raise a genuine dispute; LBP-12-3, 75 NRC 164 (2012)
- claim that NRC Staff did not engage in the consultation process relevant to issues addressed by the Migratory Bird Treaty Act and that impacts to wildlife with respect to this Act are inadequately analyzed is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- claim that SAMA analysis is deficient for failing to address potential spent fuel pool accidents falls beyond the scope of NRC SAMA analysis and impermissibly challenges NRC regulations; LBP-11-13, 73 NRC 534 (2011)
- claim that the draft environmental impact statement does not adequately assess the impacts to threatened and endangered species is rejected; LBP-13-9, 78 NRC 37 (2013)
- claimed deficiencies in a decommissioning plan must have health and safety significance to be admissible; LBP-15-24, 82 NRC 68 (2015)
- claims for relief from Fukushima-related events are premature; LBP-11-37, 74 NRC 774 (2011)
- claims in a contention that did not genuinely stem from the specific amendments to the aging management plan or from particular information in the revised GALL Report were untimely under standards for admission of new or amended contentions; CLI-12-10, 75 NRC 479 (2012)
- claims must be set forth with particularity; CLI-12-1, 75 NRC 39 (2012)
- claims of past and current mismanagement are outside the scope of the license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)
- collateral attacks on NRC regulations, unsupported by any showing of special circumstances warranting a waiver, are rejected; LBP-14-16, 80 NRC 183 (2014)
- collateral challenge to NRC emergency response data system rule is inadmissible; CLI-15-20, 82 NRC 211 (2015)
- comments and questions generated by a state agency that is examining a state application to determine compliance with state legal and technical standards do not, in and of themselves, demonstrate a material deficiency in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011)
- Commission affirmed the board's standing ruling, but declined to accept review of challenges to the board's admission of two contentions because petitioner had failed to perfect its appeal by challenging the validity of the board's admissibility rulings regarding other contentions; LBP-15-3, 81 NRC 65 (2015)
- Commission affords substantial deference to licensing boards' contention admission decisions; CLI-15-6, 81 NRC 340 (2015)
- Commission approval of a rule waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist; CLI-15-6, 81 NRC 340 (2015)
- Commission approval of the Continued Storage Rule and GEIS mandates that contentions discussing the long-term storage of spent nuclear fuel are not to be heard by individual licensing boards; LBP-14-16, 80 NRC 183 (2014)
- Commission chose to review intervenors' motion along with similar motions in other proceedings and associated petitions to suspend reactor licensing pending issuance of waste confidence safety findings; CLI-15-6, 81 NRC 340 (2015)
- Commission declined to establish new procedures or a separate timetable for raising issues related to the Fukushima events; CLI-12-13, 75 NRC 681 (2012)
- Commission defers to a board's contention admissibility rulings unless the appeal points to an error of law or abuse of discretion; CLI-14-2, 79 NRC 11 (2014); CLI-15-25, 82 NRC 389 (2015)
- Commission denied motions for leave to file new contentions concerning the Continued Storage Rule; LBP-15-7, 81 NRC 391 (2015); LBP-15-9, 81 NRC 396 (2015)
- Commission denied petition to supplement and declined to admit "placeholder" contention; CLI-15-13, 81 NRC 555 (2015)
- Commission directed all licensing boards to reject pending waste confidence contentions that had been held in abeyance, because the generic impact determinations have been the subject of extensive public participation in the rulemaking process and therefore are excluded from litigation in individual proceedings; LBP-15-1, 81 NRC 15 (2015); LBP-15-5, 81 NRC 249 (2015)

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Commission exercised its inherent supervisory authority over agency adjudications to review petition and motions challenging the Continued Storage Rule; LBP-14-16, 80 NRC 183 (2014)

Commission exercised its supervisory authority and dismissed proposed waste confidence safety contention and denied suspension petitions; CLI-15-13, 81 NRC 555 (2015)

Commission generally defers to board decisions on contention admissibility unless it finds an error of law or abuse of discretion; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-15-20, 82 NRC 211 (2015)

Commission has the authority to set the scope of its own hearings; LBP-14-4, 79 NRC 319 (2014)

Commission lifted suspension on final licensing decisions, declined to accept contentions concerning continued storage of spent nuclear fuel, and directed boards to reject pending contentions on this issue; LBP-14-14, 80 NRC 144 (2014)

Commission retained authority to provide ultimate direction on the waste confidence contentions being held in abeyance; LBP-14-8, 79 NRC 519 (2014)

Commission toughened its contention admissibility rule in 1989 to ensure that only intervenors with genuine and particularized concerns participate in NRC hearings; LBP-11-6, 73 NRC 149 (2011)

Commission will defer to a board's rulings on contention admissibility absent an error of law or abuse of discretion; CLI-11-11, 74 NRC 427 (2011)

Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-11-9, 74 NRC 233 (2011)

complex, fact-intensive issues are rarely appropriate for summary disposition, much less for resolution on the initial pleadings; LBP-11-2, 73 NRC 28 (2011)

compliance with the current licensing basis is not within the scope of a license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)

concern about computer modeling methodology used to calculate groundwater quantity impacts is inadmissible as lacking sufficient factual or expert support and as failing to establish a material factual or legal dispute; LBP-12-3, 75 NRC 164 (2012)

concerns that apply generically to all spent fuel pools at all reactors are more appropriately addressed via rulemaking or other appropriate generic activity; CLI-12-6, 75 NRC 352 (2012)

concerns with the current design and operation of a nuclear power plant are more properly addressed through a petition for enforcement action; LBP-15-13, 81 NRC 456 (2015)

conclusory assertion, even if made by an expert, is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; LBP-11-6, 73 NRC 149 (2011)

conclusory statements do not amount to a challenge to a severe accident mitigation alternatives analysis; CLI-15-18, 82 NRC 135 (2015)

concurrent with approval of the final Continued Storage Rule and companion Generic Environmental Impact Statement, the Commission lifted the suspension on final licensing decisions and directed that the proposed spent fuel storage contentions be dismissed; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

confinement of aquifers is material to the environmental impacts of the licensing action; CLI-14-2, 79 NRC 11 (2014)

Congress called upon the Commission to make fundamental changes in its public hearing process to ensure that hearings adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; LBP-11-6, 73 NRC 149 (2011)

consideration in adjudicatory proceedings of issues presently to be taken up by the Commission in rulemaking would be a wasteful duplication of effort; LBP-14-1, 79 NRC 39 (2014)

consideration of an admissible contention can be deferred, where appropriate, but an inadmissible one cannot; LBP-11-28, 74 NRC 604 (2011)

contention about a matter not covered by a specific rule need only allege that the matter poses a significant safety problem; CLI-15-23, 82 NRC 321 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-20, 81 NRC 829 (2015)

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- contention admissibility criteria are strict by design but should not be turned into a fortress to deny intervention; LBP-11-6, 73 NRC 149 (2011); LBP-15-20, 81 NRC 829 (2015)
- contention admissibility requirements are strict by design and only focused, well-supported issues will be admitted for hearing; CLI-15-21, 82 NRC 295 (2015)
- contention admissibility requirements are strict by design in order to help assure that the NRC hearing process will be appropriately focused upon disputes that can be resolved in the adjudication; LBP-11-29, 74 NRC 612 (2011)
- contention admissibility requirements seek to ensure that NRC hearings adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; CLI-15-8, 81 NRC 500 (2015)
- contention admissibility rule serves to ensure that admitted contentions focus on real disputes that can be resolved in an adjudication, establish a sufficient factual and legal foundation to warrant further inquiry, and put other parties on notice of the disputed issues so they will know precisely those claims they must support or oppose; LBP-11-6, 73 NRC 149 (2011)
- contention admissibility rules are strict by design; LBP-14-4, 79 NRC 319 (2014)
- contention admissibility test in section 2.309(f)(1) was crafted by the Commission to raise the threshold bar for an admissible contention; LBP-11-6, 73 NRC 149 (2011)
- contention admission stage is not the appropriate point at which to evaluate witness credibility or to weigh competing evidence, but an expert must provide a reasoned basis or explanation for opinions in support of a contention; LBP-15-17, 81 NRC 753 (2015)
- contention admission standards are strict by design and exist to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)
- contention alleging a failure to protect historic and cultural resources is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention alleging a material deficiency must link the claimed deficiency to a public health and safety or an environmental impact; LBP-15-1, 81 NRC 15 (2015)
- contention alleging deficiencies in Corp of Engineers' compensatory mitigation methods under the Clean Water Act lack alleged facts or expert opinions; LBP-15-23, 82 NRC 55 (2015)
- contention alleging deficiencies or errors in an application also must indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-12-27, 76 NRC 583 (2012)
- contention alleging failure to involve or consult all interested tribes as required by federal law is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging failure to meet applicable legal requirements regarding protection of historical and cultural resources is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging that an Indian tribe had not been consulted concerning cultural resources, in violation of the National Historic Preservation Act, was premature because NRC Staff, not applicant, has the duty to consult with the tribe under the Act, and Staff had not completed its review process; LBP-12-19, 76 NRC 184 (2012)
- contention alleging that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 456 (2015)
- contention alleging that final supplemental environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging that final supplemental environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging that final supplemental environmental impact statement fails to consider connected actions is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging that final supplemental environmental impact statement fails to include adequate hydrogeological information to demonstrate ability to contain fluid migration and assess potential impacts to groundwater is admissible; LBP-14-5, 79 NRC 377 (2014)

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- contention alleging that final supplemental environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging that license renewal application fails to consider plutonium fuel use, which would place it outside the current licensing basis, is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contention alleging that licensee had a repeated pattern of violations which could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)
- contention argument is an improper attempt to graft a historical-event criterion onto the performance-criteria specified in Appendix J, Option B; LBP-15-26, 82 NRC 163 (2015)
- contention asserting that applicant's environmental report fails to address the reasonably foreseeable impacts of climate change on water availability is admissible; LBP-11-16, 73 NRC 645 (2011)
- contention asserting that applicant's Integrated Plant Assessment for the license renewal application fails to identify and assess safety-related incidents at the plant in its required time-limited aging analysis is a safety contention and is not admissible; LBP-13-8, 78 NRC 1 (2013)
- contention asserting that because no previous ISL/ISR mining operation has been able to restore groundwater to baseline standards, applicant will be required to request that the Commission set an alternate concentration limit for aqueous contaminants is admissible; LBP-12-3, 75 NRC 164 (2012)
- contention asserting that draft environmental impact statement must include the Corps of Engineers CWA 404 permit analysis in order to satisfy NEPA fails to raise a material issue; LBP-15-23, 82 NRC 55 (2015)
- contention asserting that NEPA requires a groundwater baseline characterization for an in situ recovery site is admissible; LBP-12-3, 75 NRC 164 (2012)
- contention asserting that NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)
- contention bases that do not pertain specifically to the license renewal application do not provide sufficient information to demonstrate a genuine dispute with the applicant on a material issue and is thus inadmissible; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)
- contention challenging a Commission rule is beyond the scope of the proceeding; LBP-14-16, 80 NRC 183 (2014)
- contention challenging applicant's consideration of new and significant information regarding cleanup costs is inadmissible; LBP-12-8, 75 NRC 539 (2012)
- contention challenging applicant's safety culture and claiming to rely on NRC Staff's Safety Evaluation Report is inadmissible because the SER did not discuss safety culture as a general matter and could not serve as a reasonably apparent foundation for a safety culture contention; LBP-15-11, 81 NRC 401 (2015)
- contention challenging removal of details from licensee's technical specifications to a licensee-controlled document was rejected; LBP-12-25, 76 NRC 540 (2012)
- contention challenging sufficiency of the draft environmental impact statement as it pertains to the protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention challenging the adequacy/propriety of a Staff determination to prepare an environmental assessment in lieu of a supplemental environmental impact statement would need to await the issuance of the draft EA; LBP-13-6, 77 NRC 253 (2013)
- contention challenging the Waste Confidence Rule may not be admitted absent a waiver or exception; LBP-11-16, 73 NRC 645 (2011)
- contention charging that a licensee's poor safety culture could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)
- contention claiming that modifications to repair or replace inadequate structural beams and columns is more appropriately presented as a request for enforcement action; CLI-15-5, 81 NRC 329 (2015)

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- contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of NRC Staff's draft environmental impact statement; CLI-14-2, 79 NRC 11 (2014); LBP-15-5, 81 NRC 249 (2015)
- contention claiming that the application insufficiently addresses the safety implications of low water availability is inadmissible for failure to raise a genuine dispute with the application because the contention does not provide specific references to relevant sections of the site safety analysis report that address low-water considerations; LBP-11-16, 73 NRC 645 (2011)
- contention claiming that the environmental report's discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with NRC requirements is admissible; LBP-11-16, 73 NRC 645 (2011)
- contention concerning cultural and historic resources is not admissible because it provides no alleged facts or expert opinions; LBP-14-6, 79 NRC 404 (2014)
- contention contending that applicant failed to evaluate groundwater impacts of in situ recovery is inadmissible for failure to present factual allegations and/or expert opinion to support the contention; LBP-13-6, 77 NRC 253 (2013)
- contention contesting adequacy of hydrogeologic information provided in application regarding fluid migration is admissible; LBP-13-6, 77 NRC 253 (2013)
- contention contesting adequacy of licensee's equivalent margins analysis is not a challenge to 10 C.F.R. Part 50, Appendix H; LBP-15-20, 81 NRC 829 (2015)
- contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 253 (2013)
- contention copied from an unrelated license renewal proceeding is inadmissible because the two-sentence introduction does not refer to the license renewal application or environmental report at issue; LBP-11-34, 74 NRC 685 (2011)
- contention dismissal based on mootness is a jurisdictional ruling, not a decision on the merits of the claim; LBP-11-22, 74 NRC 259 (2011)
- contention fails because it contests NRC Staff's safety review rather than the license renewal application; LBP-15-15, 81 NRC 598 (2015)
- contention fails to satisfy the good cause requirements of 10 C.F.R. 2.309(c)(i) because its foundational argument does not rest upon new and materially different information and could and should have been filed at the outset of the proceeding; LBP-11-35, 74 NRC 701 (2011)
- contention frames a legal dispute over the meaning of regulation's direction that a license amendment shall be in accord with the provisions of 10 C.F.R. 50.75(h)(5); LBP-15-24, 82 NRC 68 (2015)
- contention in a license renewal proceeding based on applicant's failure to consider alleged new and significant information arising from NRC's Fukushima Task Force Report was rejected; LBP-12-8, 75 NRC 539 (2012)
- contention is inadmissible for failing to raise a material issue; LBP-15-26, 82 NRC 163 (2015)
- contention is inadmissible for failure to show that a genuine dispute exists with applicant on a material issue of law or fact; LBP-11-33, 74 NRC 675 (2011)
- contention is inadmissible for failure to show that a genuine dispute exists with license amendment request; LBP-15-26, 82 NRC 163 (2015)
- contention is within the scope of license renewal proceeding because NRC regulations require that the environmental report include a severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 249 (2015)
- contention migrates when a licensing board construes it as challenging the environmental section of an application as a challenge to a subsequently issued Staff NEPA document without petitioner amending the contention; CLI-15-17, 82 NRC 33 (2015)
- contention must be rejected if it attacks applicable statutory requirements or regulations, challenges the basic structure of the regulatory process, merely expresses petitioner's view of policy, seeks to raise an issue improper for adjudication in the proceeding or not applicable to the facility in question, or raises an issue that is not concrete or is otherwise not litigable; LBP-11-6, 73 NRC 149 (2011)
- contention must explain what specific deficiencies exist and why they materially impact the license renewal application or environmental impact statement; LBP-15-1, 81 NRC 15 (2015)

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- contention must provide more than a bare assertion and must explain the supporting reasons for the dispute; LBP-15-1, 81 NRC 15 (2015)
- contention must provide sufficient information to show a genuine dispute with applicant on a material issue of law or fact; CLI-15-20, 82 NRC 211 (2015)
- contention of omission claims that the application fails to contain information on a relevant matter as required by law and provides the supporting reasons for petitioner's belief; LBP-15-5, 81 NRC 249 (2015)
- contention of omission may be summarily rejected as inadmissible if there is no requirement to address the topic allegedly omitted from the application or the topic that allegedly is omitted is in fact included in the application; LBP-11-6, 73 NRC 149 (2011)
- contention of omission on a matter related to the National Environmental Policy Act must describe the information that should have been included in applicant's environmental report and provide the legal basis that requires the omitted information to be included; LBP-15-5, 81 NRC 249 (2015)
- contention or amendment or supplement to a contention is considered timely if filed 60 days of the date when the material information on which it is based first became available to the moving party through service, publication, or any other means; LBP-12-27, 76 NRC 583 (2012)
- contention pleading rules are designed to ensure that only well-defined issues are admitted for hearing and a board should not add material not raised by a petitioner in order to render a contention admissible; CLI-11-11, 74 NRC 427 (2011)
- contention pleading standards require petitioners to plead specific grievances, not simply to provide general notice pleadings; CLI-15-18, 82 NRC 135 (2015)
- contention proposing alternative inputs or methodologies for severe accident mitigation alternatives analysis must present some factual or expert basis for why the proposed changes in the analysis are warranted; LBP-12-26, 76 NRC 559 (2012)
- contention questioning the accuracy of the severe accident mitigation alternatives analysis results given the geographic location and variable meteorological conditions at the site and the large population base surrounding the plant is admissible; LBP-11-2, 73 NRC 28 (2011)
- contention questioning whether an appropriate consultation was conducted pursuant to the Endangered Species Act and implementing regulations is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention questioning whether final supplemental environmental impact statement's impact analyses relevant to greater sage grouse, whooping crane, and black-footed ferret are sufficient is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention questioning whether future anticipated use of MOX fuel is sufficiently definite to constitute a proposal under the law, with a connection, cumulative impact, interdependence, or similar relationship to matters at issue in a license renewal proceeding to warrant being addressed in the supplemental environmental impact statement is admissible; LBP-14-6, 79 NRC 404 (2014)
- contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the environmental assessment, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 598 (2015)
- contention regarding limitations and phenomena that were widely known, and should have been known to intervenor, at the outset of the proceeding, and thus could have been raised long ago, is untimely; LBP-11-23, 74 NRC 287 (2011)
- contention regarding mitigation alternatives is effectively a collateral attack on the regulation that exempts applicants from having to reanalyze severe accident mitigation alternatives during the renewal process; LBP-14-15, 80 NRC 151 (2014)
- contention relating to a matter not previously in controversy among the parties must satisfy the requirements of section 2.309(c) and (f); LBP-14-8, 79 NRC 519 (2014)
- contention rule does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary material; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- contention rule is strict by design; CLI-15-8, 81 NRC 500 (2015); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- contention rule reflects a deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly supported contentions that were admitted for hearing although based on little more than speculation; CLI-15-8, 81 NRC 500 (2015)

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contention rules are intended to prevent admission of ill-defined contentions where petitioners at the outset have not set forth particularized concerns; CLI-12-5, 75 NRC 301 (2012)

contention seeking full impacts analysis of the power supply alternative of wind, either alone or in combination with solar and storage, is inadmissible because it fails to adequately demonstrate the capacity to produce baseload power; LBP-12-15, 76 NRC 14 (2012)

contention should be deemed resolved during the early site permit proceeding if the subject of the contention was actually litigated and decided during the ESP proceeding, or, although not actually litigated, was decided by the Staff, was necessary for the Staff to resolve in the ESP proceeding, and was within the scope of that proceeding as defined in the Federal Register notice of opportunity for a hearing; LBP-11-10, 73 NRC 424 (2011)

contention submitted for the first time after the draft environmental impact statement is issued will be deemed untimely; LBP-12-12, 75 NRC 742 (2012)

contention that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on licensee's off-duty employees not otherwise required by the NRC to observe and report offsite, off-duty conduct of fellow employees is inadmissible; LBP-14-4, 79 NRC 319 (2014)

contention that applicant failed to discuss a report on a recently identified seismic fault near the plant is admissible; LBP-15-20, 81 NRC 829 (2015)

contention that applicant failed to establish in its aging management plan that the effects of aging will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 314 (2015)

contention that applicant fails to include need-for-power analyses in its environmental report for operating license renewal is inadmissible; LBP-13-12, 78 NRC 239 (2013)

contention that applicant had inadequately described aging management plan by relying on a promise of compliance with NRC orders instead of describing the plan is admissible; LBP-15-24, 82 NRC 68 (2015)

contention that applicant must include a discussion of environmental impacts of spent fuel pool leakage, fires, and lack of a spent fuel repository is dismissed; LBP-14-12, 80 NRC 138 (2014)

contention that applicant's revised material control and accounting plan fails to show how confirmation and verification of theft of plutonium will be carried out in the specified timelines is inadmissible; CLI-15-9, 81 NRC 512 (2015)

contention that applicant's revised material control and accounting plan is inadequate to satisfy the alarm resolution requirements is inadmissible; CLI-15-9, 81 NRC 512 (2015)

contention that applicant's severe accident mitigation alternatives analysis improperly ignored radioactive waste disposal is outside the scope of the proceeding because it directly challenges the generic determinations in Table B-1 of Appendix B to Part 51; LBP-11-2, 73 NRC 28 (2011)

contention that applicant's severe accident mitigation alternatives analysis is significantly flawed because of the use of inaccurate factual assumptions about population is admissible; LBP-15-5, 81 NRC 249 (2015)

contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-13-6, 77 NRC 253 (2013)

contention that challenges lack of severe accident mitigation alternatives analysis in applicant's environmental report is inadmissible; CLI-13-7, 78 NRC 199 (2013)

contention that challenges the entire steam generator replacement project, rather than any aspect of the proposed changes to four technical specifications identified in the license amendment request is outside the scope of this proceeding; LBP-13-11, 78 NRC 177 (2013)

contention that challenges the legal sufficiency of the final environmental impact statement for a combined license is within the scope of the proceeding; LBP-12-18, 76 NRC 127 (2012)

contention that considers the terms of a confirmatory order warranted or unwarranted is irrelevant if they fall within NRC's authority to impose; LBP-14-4, 79 NRC 319 (2014)

contention that DEIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 815 (2015)

contention that DEIS is inadequate solely because it does not include the results of the Corps of Engineers' section 404 permit review fails to raise a material issue; LBP-15-23, 82 NRC 55 (2015)

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- contention that DEIS must identify the percentage of radial collector well water drawn from underneath the industrial wastewater facility is inadmissible; LBP-15-19, 81 NRC 815 (2015)
- contention that does not actually challenge any specific part of the integrated plant assessment or time-limited aging analyses fails to demonstrate the existence of a genuine dispute; LBP-15-6, 81 NRC 314 (2015)
- contention that does not dispute any specific portion of applicant's fuel handling accident analysis is inadmissible for lack of a genuine dispute; LBP-15-18, 81 NRC 793 (2015)
- contention that does not focus at all on the technical specifications that are the subject of its request raises no issues that are material to any findings NRC must make to approve the license amendment request; LBP-13-11, 78 NRC 177 (2013)
- contention that draft environmental assessment fails to adequately address potential impacts of the reasonably foreseeable expansion of an independent spent fuel storage installation on cultural and historic resources is admissible; LBP-14-6, 79 NRC 404 (2014)
- contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that draft environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)
- contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 37 (2013)
- contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that draft environmental impact statement lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is admissible; LBP-13-10, 78 NRC 117 (2013)
- contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 401 (2015)
- contention that environmental assessment violates the National Environmental Policy Act in its failure to analyze groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 401 (2015)
- contention that environmental report does not satisfy NEPA because it does not consider a range of measures to mitigate the risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 249 (2015)
- contention that environmental report fails to accurately and thoroughly conduct severe accident mitigation alternatives analysis on design vulnerability of GE Mark I boiling water reactor pressure suppression containment system and environmental consequences of a to-be-anticipated severe accident post-Fukushima Daiichi fails to present a genuine material dispute; LBP-15-5, 81 NRC 249 (2015)
- contention that environmental report fails to explain whether a discharge pipe with phosphoric acid as a corrosion inhibitor would increase algae production and potential for toxic algal blooms is admissible; LBP-15-5, 81 NRC 249 (2015)
- contention that environmental report is inadequate insofar as it does not consider the risk of spent fuel pool fires is inadmissible; LBP-15-5, 81 NRC 249 (2015)
- contention that environmental review documents fail to identify source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene in groundwater is inadmissible as untimely; LBP-15-19, 81 NRC 815 (2015)
- contention that falls outside the specified scope of the proceeding must be rejected; LBP-12-15, 76 NRC 14 (2012); LBP-12-25, 76 NRC 540 (2012)
- contention that final environmental assessment fails to adequately analyze all reasonable alternatives is inadmissible; LBP-15-11, 81 NRC 401 (2015)
- contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)

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- contention that final environmental assessment fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-15-11, 81 NRC 401 (2015)
- contention that final safety analysis report is deficient because it does not include information provided in applicant's seismic evaluation process report is rejected; LBP-15-14, 81 NRC 591 (2015)
- contention that final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 377 (2014)
- contention that ice condenser containments lack acceptable aging management plans to adequately maintain critical components of the containment for 20 years of additional operation is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contention that indicates neither positive nor negative impact from proposed severe accident mitigation alternative implementation does not paint the required seriously different picture of the environmental landscape to reopen the record; LBP-11-35, 74 NRC 701 (2011)
- contention that is primarily based on the fact that steam generator replacements in other reactors have experienced problems is not adequately supported; LBP-13-11, 78 NRC 177 (2013)
- contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 239 (2013)
- contention that license renewal application fails to adequately address the risks of flooding from failure of upstream dams is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contention that license renewal application has failed to establish that the effects of aging on relay switches and snubbers will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 314 (2015)
- contention that license renewal application lacks supporting documentation providing analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contention that licensee's history of managing whistleblower complaints regarding safety issues demonstrates that the plant will not be operated safely during the license renewal term is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 11 (2014)
- contention that merely predicts that at some future date petitioner might petition to intervene in this adjudication fails to identify any dispute with the license application or the DEIS, and thus fails to satisfy the admission requirement; LBP-12-12, 75 NRC 742 (2012)
- contention that NRC has failed to engage other relevant federal, state, and local agencies and has not analyzed impacts subject to jurisdiction and control of these other agencies, and has thus failed to comply with NEPA's action-forcing mandate and general purpose is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 117 (2013)
- contention that NRC has not fulfilled its trust responsibility in its analysis and conclusion of the cumulative impacts on historic and cultural resources from the reasonably foreseeable expansion of an independent spent fuel storage installation is admissible; LBP-14-6, 79 NRC 404 (2014)
- contention that NRC has promulgated a regulation that violates the National Environmental Policy Act is inadmissible; LBP-13-12, 78 NRC 239 (2013)
- contention that NRC Staff's environmental assessment fails to consider that applicant's use of copper sulfate to control algae blooms will increase reactor operating temperatures in relation to waste is inadmissible; LBP-15-13, 81 NRC 456 (2015)
- contention that offers no explanation of how its assertions are directly relevant to applicant's ability to manage the effects of aging during the renewal term is inadmissible; LBP-13-8, 78 NRC 1 (2013)

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contention that operating license should not be renewed unless and until applicant establishes that the plant can withstand and be safely shut down following an earthquake is not within the scope of a license renewal proceeding; LBP-15-6, 81 NRC 314 (2015)

contention that population used for analysis might underestimate the exposed population in a severe accident and, in turn, underestimate the benefit achieved in implementing a severe accident mitigation alternatives analysis is admissible; LBP-15-5, 81 NRC 249 (2015)

contention that provides no reference to any specific portion of the license amendment request that petitioners dispute is inadmissible; LBP-13-11, 78 NRC 177 (2013)

contention that raises a genuine dispute with the sufficiency of the cumulative impacts analysis, or the lack thereof, in the environmental report is admissible; LBP-12-3, 75 NRC 164 (2012)

contention that regulatory provisions are themselves insufficient to protect the public health and safety constitutes an improper collateral attack upon NRC regulations; LBP-15-4, 81 NRC 156 (2015)

contention that relies on testimony marking the first time NRC Staff has addressed an impact at the site is timely; LBP-15-24, 82 NRC 68 (2015)

contention that requiring a tribe to formulate contentions before a final EIS is released and failing to follow scoping process violates NEPA is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that seeks to impose a requirement beyond those imposed by NRC regulations is inadmissible; LBP-15-26, 82 NRC 163 (2015)

contention that seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-14-1, 79 NRC 39 (2014)

contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-13-6, 77 NRC 253 (2013)

contention that steam generator replacement project be deemed an experiment and that an adjudicatory public hearing be convened for independent analysis of the project before it is implemented is inadmissible; LBP-13-11, 78 NRC 177 (2013)

contention that supplementation of the environmental impact statement is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the continued storage GEIS and Continued Storage Rule is inadmissible; CLI-15-10, 81 NRC 535 (2015)

contention that the draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to adequately assess cumulative impacts of the proposed action and another proposed ISL uranium mining operation is inadmissible; LBP-13-10, 78 NRC 117 (2013)

contention that the draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to analyze the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that the draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to include adequate hydrological information to demonstrate applicant's ability to contain groundwater fluid migration is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that the draft environmental impact statement fails to include an adequate hydrogeological analysis to assess adequate confinement and potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-13-9, 78 NRC 37 (2013)

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- contention that the draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- contention that the draft supplemental environmental impact statement fails to consider connected actions is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that the environmental report fails to satisfy 10 C.F.R. 51.53(c)(2) because it does not include information about plans to modify the facility in response to post-Fukushima enforcement order is inadmissible; LBP-12-15, 76 NRC 14 (2012)
- contention that the environmental report is deficient in concluding that environmental impacts from proposed deep injection wells will be small because the ER fails to identify the source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene is admissible; LBP-12-9, 75 NRC 615 (2012)
- contention that the frequency of occurrence of severe accidents is erroneously underestimated should have been raised at the outset of the license renewal proceeding and thus is untimely; LBP-11-35, 74 NRC 701 (2011)
- contention that was originally admitted as a challenge to the environmental report may be treated as a challenge to the similar section of the draft environmental impact statement; LBP-11-1, 73 NRC 19 (2011)
- contention that wastewater contains chemical contaminants that are not discussed in the environmental report, and that when the wastewater is discharged via deep injection wells, the chemicals might migrate to an aquifer is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)
- contention that, in the event of a core-melt accident, applicant's emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks NRC's emergency planning regulation; LBP-11-15, 73 NRC 629 (2011)
- contention where a fisheries biologist opined that applicant lacked adequate data on which to conclude that impacts on the aquatic environment were insignificant is admissible; LBP-15-20, 81 NRC 829 (2015)
- contention where arguments and expert testimony were copied, largely without change, from another proceeding and failed to offer information specific to the challenged license renewal application is inadmissible; CLI-15-6, 81 NRC 340 (2015)
- contentions alleging that applicants' handling of past safety issues at the plants demonstrated that applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term are inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contentions based on bare assertions and speculation will not be admitted; LBP-13-8, 78 NRC 1 (2013)
- contentions based on new information in a document that was not previously available and that is materially different from a document that was previously available are not untimely simply for not being included in an intervenor's initial hearing request filed at the outset of a proceeding; LBP-11-9, 73 NRC 391 (2011)
- contentions based on the Fukushima accident must be relevant to the present proceeding and must link the events at Fukushima to the risk of a severe accident at the site that is the subject of the proceeding; CLI-12-13, 75 NRC 681 (2012); LBP-12-1, 75 NRC 1 (2012)
- contentions calling for requirements in excess of those imposed by regulations will be rejected as a collateral attack on regulations; CLI-12-5, 75 NRC 301 (2012); LBP-15-4, 81 NRC 156 (2015)
- contentions cannot be automatically discarded by a hearing board simply because they repeat contentions advanced in a different proceeding; LBP-11-34, 74 NRC 685 (2011)
- contentions cannot be based on speculation but must have some reasonably specific factual or legal basis; CLI-15-20, 82 NRC 211 (2015)
- contentions challenging an environmental report may be viewed as a challenge to the NRC Staff's subsequent draft or final environmental impact statement; CLI-12-1, 75 NRC 39 (2012)
- contentions challenging applicable statutory requirements or Commission regulations are not admissible in NRC adjudications; LBP-15-5, 81 NRC 249 (2015)
- contentions challenging existing NRC safety regulations are barred from consideration in adjudicatory proceedings; LBP-12-18, 76 NRC 127 (2012)

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- contentions challenging the ability of combined license applicants to handle onsite storage of Classes B and C low-level radioactive waste, as well as the attendant potential environmental impacts of such storage in the wake of the closure of the Barnwell facility in South Carolina to states outside of the Atlantic Compact are admissible; LBP-11-6, 73 NRC 149 (2011)
- contentions concerning benefits assessment shall not be admitted if the applicant does not address those issues in the early site permit application; LBP-11-16, 73 NRC 645 (2011)
- contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)
- contentions could show a genuine dispute with respect to a technology that, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation; CLI-12-5, 75 NRC 301 (2012)
- contentions filed after the deadline for initial intervention petitions also must satisfy the standards for late-filed contentions; CLI-12-15, 75 NRC 704 (2012)
- contentions filed after the initial petition are not subject to appeal pursuant to 10 C.F.R. 2.311; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012)
- contentions for adjudicatory hearings must raise a genuine dispute with the applicant/licensee on a material issue of law or fact; CLI-12-10, 75 NRC 479 (2012)
- contentions may challenge the adequacy of the review contained in the Staff's NEPA documents; LBP-11-22, 74 NRC 259 (2011)
- contentions may not challenge agency rules or regulations in any adjudicatory proceeding absent a waiver from the Commission; CLI-12-19, 76 NRC 377 (2012)
- contentions must be based on a genuine material dispute, not the possibility that petitioners, if they perform their own additional analyses, may ultimately disagree with the application; LBP-14-6, 79 NRC 404 (2014)
- contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report, or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner; LBP-11-29, 74 NRC 612 (2011)
- contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend; CLI-15-18, 82 NRC 135 (2015)
- contentions must be raised at the earliest possible opportunity; CLI-15-1, 81 NRC 1 (2015)
- contentions must be raised with sufficient detail to put the parties on notice of the issues to be litigated; CLI-11-11, 74 NRC 427 (2011)
- contentions must be set forth with particularity and must meet all six admissibility factors; CLI-15-18, 82 NRC 135 (2015)
- contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to a licensing board; LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013)
- contentions must demonstrate that the issue raised in the contention is within the scope of the proceeding; LBP-14-6, 79 NRC 404 (2014)
- contentions must directly controvert relevant sections of the environmental report; LBP-11-16, 73 NRC 645 (2011)
- contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-13-6, 77 NRC 253 (2013)
- contentions must focus on the license application, including the safety analysis report/technical report and the environmental report, challenging either specific portions or alleged omissions so as to establish a genuine dispute on a material issue of law or fact; LBP-12-15, 76 NRC 14 (2012)
- contentions must include references to the specific portions of the application that petitioner disputes and the supporting reasons for each dispute; LBP-12-25, 76 NRC 540 (2012); LBP-14-6, 79 NRC 404 (2014)
- contentions must include specific grievances beyond mere notice pleading; LBP-11-29, 74 NRC 612 (2011)

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contentions must meet all six pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-12-8, 75 NRC 539 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-12-23, 76 NRC 445 (2012); LBP-12-24, 76 NRC 503 (2012); LBP-14-6, 79 NRC 404 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-4, 81 NRC 156 (2015); LBP-15-6, 81 NRC 314 (2015); LBP-15-16, 81 NRC 618 (2015); LBP-15-23, 82 NRC 55 (2015); LBP-15-26, 82 NRC 163 (2015)

contentions must point to a deficiency in the application, not merely suggest other ways an analysis could have been done or other details that could have been included; CLI-13-7, 78 NRC 199 (2013)

contentions must provide factual support for underlying claims and identify a genuine dispute with the applicant on a material issue; CLI-14-6, 79 NRC 445 (2014)

contentions must provide sufficient information to show a genuine dispute with applicant on a material issue of law or fact; CLI-15-8, 81 NRC 500 (2015); LBP-14-6, 79 NRC 404 (2014)

contentions must satisfy the twin precepts of timeliness and admissibility; LBP-13-10, 78 NRC 117 (2013)

contentions need not be proven at the admissibility stage; LBP-13-8, 78 NRC 1 (2013)

contentions on Category 1 issues amount to a challenge to the regulation barring challenges to generic environmental findings; CLI-12-19, 76 NRC 377 (2012)

contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement; CLI-15-18, 82 NRC 135 (2015)

contentions proposed after the filing deadline, which would have been allowable under the previous 10 C.F.R. 2.309(f)(2) requirements, will also be allowable under the current section 2.309(c)(1) requirements; LBP-15-11, 81 NRC 401 (2015)

contentions relying on information and findings discussed in the notice of proposed rulemaking, as opposed to tentative rules or policy determinations, are not timely filed; LBP-15-15, 81 NRC 598 (2015)

contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute with the applicant; LBP-12-8, 75 NRC 539 (2012)

contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute; LBP-15-1, 81 NRC 15 (2015)

contentions should refer to portions of the application that petitioner disputes along with supporting reasons for each dispute, and if petitioner believes that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for that belief; CLI-15-8, 81 NRC 500 (2015)

contentions submitted after the deadline for initial intervention petitions must satisfy the standards for late-filed contentions; CLI-12-10, 75 NRC 479 (2012)

contentions submitted after the initial filing period for receipt of petitions to intervene must be based on information not previously available and materially different than information previously available and must be submitted in a timely fashion based on availability of the new information; LBP-12-27, 76 NRC 583 (2012)

contentions that address an important security issue regarding Part 74's strict requirements for the proposed facility, which applicant previously admitted it failed to satisfy, are admissible; LBP-11-9, 73 NRC 391 (2011)

contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-13-6, 77 NRC 253 (2013)

contentions that amount to an attack on applicable statutory requirements or represent a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-11-29, 74 NRC 612 (2011)

contentions that are not accompanied by sufficient factual support to raise a genuine dispute are inadmissible; LBP-13-12, 78 NRC 239 (2013)

contentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings; CLI-14-8, 80 NRC 71 (2014); LBP-14-15, 80 NRC 151 (2014); LBP-14-16, 80 NRC 183 (2014); LBP-15-4, 81 NRC 156 (2015); LBP-15-17, 81 NRC 753 (2015)

contentions that challenge an NRC regulation are inadmissible; LBP-13-12, 78 NRC 239 (2013)

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contentions that challenge applicant's compliance with the loss-of-large-areas requirements of 10 C.F.R. 50.54(hh)(2) are not admissible because they are not within the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

contentions that fail to directly controvert the application or that mistakenly assert that the application does not address a relevant issue will be dismissed; LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013)

contentions that fail to satisfy timeliness standards in section 2.309(f)(2) may still be admitted pursuant to a balancing test governing nontimely filings that weighs the factors set forth in 10 C.F.R. 2.309(c); LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012)

contentions that fall outside the specified scope of the proceeding are inadmissible; LBP-12-18, 76 NRC 127 (2012); LBP-15-20, 81 NRC 829 (2015)

contentions that neither explain how the application is inadequate nor identify which sections of the application are inadequate are inadmissible; LBP-11-21, 74 NRC 115 (2011)

contentions that relate to current operations at a plant, as opposed to how it might operate during the period of extended operation, are inadmissible; LBP-13-8, 78 NRC 1 (2013)

contentions that request more testing, more methods of testing, and more information, without explaining why the current program is inadequate, are inadmissible; LBP-15-20, 81 NRC 829 (2015)

contentions will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-14-6, 79 NRC 404 (2014)

correctness of assurance that license conditions will be replaced by sections 50.75(h) and 50.82(a)(8) is a genuine concern relative to the appropriateness of the license amendment request; LBP-15-24, 82 NRC 68 (2015)

criteria that nontimely contentions must address are governed by 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 391 (2011)

crux of the "genuine dispute" prong under 10 C.F.R. 2.309(f)(1)(vi) is the requirement for specificity, that a contention must have more than general allegations; LBP-15-1, 81 NRC 15 (2015)

current licensing basis issues cannot be challenged in license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

current operating issues are, by their very nature, beyond the scope of license renewal proceedings; CLI-11-2, 73 NRC 333 (2011)

current safety issues are beyond the scope of a license renewal proceeding; LBP-12-27, 76 NRC 583 (2012)

decisions on admissibility generally are not considered to be extraordinary for purposes of interlocutory appellate review, particularly where petitioner has been admitted as a party and has other contentions pending; CLI-13-3, 77 NRC 51 (2013)

decisions on the admissibility of contentions will be affirmed where the Commission finds no error of law or abuse of discretion; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

deference to board rulings on contention admissibility is appropriate even where the Commission may consider that the support for the contention is weak, or where the claim's materiality presents a close question; CLI-14-2, 79 NRC 11 (2014)

degree to which new/amended contentions will be considered timely submitted is generally defined by the presiding officer as a specific period following the triggering event that makes the previously unavailable/materially different information available so as to be the basis for the new/amended contention; LBP-13-10, 78 NRC 117 (2013)

degree to which pendency of a new contention at the time of the board's ruling on an initial hearing petition tolled the time for filing any appeals from that decision regarding the admissibility of the contentions would be a matter for Commission determination; LBP-14-12, 80 NRC 138 (2014)

delay in filing contentions caused by the schedule of counsel in other matters can support a finding of good cause; LBP-12-12, 75 NRC 742 (2012)

demonstration that an alternative energy technology, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation has not been made; LBP-12-15, 76 NRC 14 (2012)

determination that, for any license renewal of a nuclear power plant, the probability-weighted consequences of a severe accident are small cannot be challenged; LBP-11-2, 73 NRC 28 (2011)

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discretionary intervention is permitted only where at least one petitioner has established standing and at least one contention has been admitted; CLI-14-11, 80 NRC 167 (2014)

discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 combined license proceeding; LBP-12-15, 76 NRC 14 (2012)

dispute at issue is material if its resolution would make a difference in the outcome of the licensing proceeding; CLI-14-2, 79 NRC 11 (2014)

during pendency of remand, intervenors are free to submit a motion to reopen the record pursuant to 10 C.F.R. 2.326, should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; LBP-11-20, 74 NRC 65 (2011)

duties of NRC Staff and not an applicant, such as consultation with other federal agencies, could not be raised at the environmental report stage, and therefore such a contention will not be rejected as untimely when filed after the release of the draft environmental impact statement; LBP-12-12, 75 NRC 742 (2012)

eight-factor balancing test is applied to determine whether nontimely contentions should be admitted; LBP-12-27, 76 NRC 583 (2012)

eight-factor test that allowed a board to consider new or amended contentions that did not meet the three requirements for admissibility of late-filed contentions available under 10 C.F.R. 2.309(f)(2) is no longer available; LBP-15-1, 81 NRC 15 (2015)

emergency planning is neither germane to age-related degradation nor unique to the period covered by a license renewal application; LBP-11-35, 74 NRC 701 (2011)

energy efficiency alternative is excluded because it would not advance applicant's goal to provide additional baseload electrical generation capacity for use in the owner's current markets and/or for potential sale on the wholesale markets; LBP-11-7, 73 NRC 254 (2011)

enforcement orders are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

enhancement to a program does not constitute new information sufficient to support a new contention; LBP-11-20, 74 NRC 65 (2011)

entertaining contentions in a license renewal proceeding that challenge the current licensing basis would be both unnecessary and wasteful, given ongoing agency oversight, review, and enforcement; LBP-11-21, 74 NRC 115 (2011)

environmental analysis of severe accidents is designated as a Category 2 site-specific issue for license renewal, and therefore the SAMA analysis normally is subject to challenge in a license renewal adjudicatory proceeding; CLI-13-7, 78 NRC 199 (2013)

environmental contention regarding cumulative impact on groundwater quantity of the in situ recovery project and the planned expansion satisfies admissibility requirements; LBP-12-3, 75 NRC 164 (2012)

environmental contentions are expected in response to applicant's or NRC Staff's environmental reviews, and contentions regarding their adequacy cannot be expected to be proffered at an earlier stage of the proceeding before the documents are available; LBP-15-11, 81 NRC 401 (2015)

environmental issue is "significant" for the purposes of reopening a record if it will paint a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-10, 75 NRC 633 (2012)

environmental justice is a Category 2 issue, within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

environmental waste confidence contentions are dismissed; CLI-15-6, 81 NRC 340 (2015)

evaluation of a contention at the admissibility stage should not be confused with evaluation at the merits stage; CLI-11-8, 74 NRC 214 (2011); LBP-15-24, 82 NRC 68 (2015)

even if a contention provided information not discussed in the environmental report, it is still not admissible if it fails to provide a reasoned basis or explanation for why the ER is wrong; LBP-15-5, 81 NRC 249 (2015)

even if contentions are based on NRC Staff's FSEIS, intervenor still bears the responsibility of demonstrating that a new contention merits admission and meets all six pleading requirements; LBP-15-16, 81 NRC 618 (2015)

even if petitioner disputes that the Commission's newly adopted Continued Storage Rule satisfies the requirements of the National Environmental Policy Act or the court's decision, it cannot challenge the adoption or validity of the rule itself before a board; LBP-14-15, 80 NRC 151 (2014)

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even if petitioner fails to establish good cause for an untimely petition, the other late-filing factors must be examined; LBP-12-12, 75 NRC 742 (2012)

even when a proposed new contention is not found timely, it may be admitted if it meets a balancing of the eight nontimely filing factors; LBP-11-39, 74 NRC 862 (2011)

evidence contained in affidavits supporting a motion to reopen must meet the admissibility standards, i.e., be relevant, material, and reliable; CLI-12-3, 75 NRC 132 (2012); LBP-15-14, 81 NRC 591 (2015)

except as provided in section 2.335(b)-(d), no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to Part 2; LBP-15-4, 81 NRC 156 (2015); LBP-15-6, 81 NRC 314 (2015)

exception in 10 C.F.R. 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in certain license renewal adjudications; CLI-13-7, 78 NRC 199 (2013)

exception to the general rule that NRC regulations are not subject to challenge in adjudicatory proceedings is provided; CLI-11-11, 74 NRC 427 (2011)

exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented; LBP-11-35, 74 NRC 701 (2011); LBP-12-1, 75 NRC 1 (2012)

exemption requests are subjected to the same level of litigation as other issues that could be admissibly raised in a COL proceeding; LBP-11-10, 73 NRC 424 (2011)

expert opinion that merely states a conclusion deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-12-5, 75 NRC 301 (2012)

expert opinion that merely states a conclusion without providing a reasoned basis or explanation is inadequate; LBP-15-26, 82 NRC 163 (2015)

expert witness has enough knowledge in the subject area to proffer an expert opinion for the purpose of determining contention admissibility; LBP-15-24, 82 NRC 68 (2015)

expert witness must have enough knowledge in the subject area to allow him to proffer an expert opinion for the purposes of determining contention admissibility; LBP-15-20, 81 NRC 829 (2015)

external entities are not entitled to seek revisions to a Commission direction to the NRC Staff contained in a Staff Requirements Memorandum; CLI-15-19, 82 NRC 151 (2015)

factors that timely new or amended contentions must satisfy are governed by are 10 C.F.R. 2.309(f)(2); LBP-11-9, 73 NRC 391 (2011)

facts and issues raised in a contention are not in controversy and subject to a full evidentiary hearing unless the proposed contention is admitted; CLI-11-8, 74 NRC 214 (2011); LBP-15-24, 82 NRC 68 (2015)

facts put forward by intervenor should plausibly indicate why a program is inadequate; LBP-15-20, 81 NRC 829 (2015)

facts relied on to support a contention of omission need not show that the facility cannot be safely operated, but only that the application is incomplete; LBP-15-5, 81 NRC 249 (2015)

factual basis requirement for contentions admission is intended to preclude contentions from being admitted where an intervenor has no facts to support its position and instead contemplates using discovery or cross-examination as a fishing expedition that might produce relevant supporting facts; LBP-14-6, 79 NRC 404 (2014)

factual support is not necessary at the contention filing stage to show that a genuine dispute exists and need not be in affidavit or formal evidentiary form or of the quality necessary to withstand a summary disposition motion; LBP-15-11, 81 NRC 401 (2015)

factual support required for a contention at the admission stage is a minimal showing that material facts are in dispute; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-14, 73 NRC 591 (2011)

factual support required for an admissible contention need not be of the quality necessary to withstand a summary disposition motion, but need only demonstrate that material facts are in dispute; LBP-11-16, 73 NRC 645 (2011)

failure of petitioner to cite even a single specific deficiency in the application precludes satisfaction of the specificity requirement of 10 C.F.R. 2.309(f)(1)(vi); LBP-11-29, 74 NRC 612 (2011)

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failure to challenge the existing severe accident mitigation alternatives analysis would be insufficient to establish a material dispute for the purposes of satisfying the general contention admissibility standards, let alone the reopening standards; CLI-12-6, 75 NRC 352 (2012)

failure to comply with any of the contention pleading requirements of 10 C.F.R. 2.309(f)(1) is grounds for dismissing a contention; LBP-11-7, 73 NRC 254 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-12-3, 75 NRC 164 (2012); LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-12-24, 76 NRC 503 (2012); LBP-12-25, 76 NRC 540 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-14-8, 79 NRC 519 (2014); LBP-15-13, 81 NRC 456 (2015); LBP-15-19, 81 NRC 815 (2015); LBP-15-23, 82 NRC 55 (2015); LBP-15-26, 82 NRC 163 (2015)

failure to demonstrate good cause for a late-filed contention requires a compelling showing on the remaining factors; CLI-12-15, 75 NRC 704 (2012)

failure to directly controvert the application or to mistakenly assert that the application does not address a relevant issue will result in rejection of the contention; LBP-12-15, 76 NRC 14 (2012)

failure of contentions to meet any of the pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi) renders them inadmissible; LBP-14-5, 79 NRC 377 (2014); LBP-14-6, 79 NRC 404 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-4, 81 NRC 156 (2015); LBP-15-6, 81 NRC 314 (2015); LBP-15-16, 81 NRC 618 (2015)

failure to offer factual support for the proposition that applicant's inputs for evacuation times are flawed or unreasonable or that its sensitivity analysis of these inputs was incorrect renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

failure to provide sufficient factual or expert support for claims in a contention in contravention of section 2.309(f)(1)(v) also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-12-15, 76 NRC 14 (2012)

failure to reference specific sources showing that wind or other renewables are viable sources of baseload power within the service area, renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

failure to show the final supplemental environmental impact statement's air emissions data represent new or materially different information renders a new contention inadmissible; LBP-14-5, 79 NRC 377 (2014)

filing deadlines may be extended or shortened by either the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer; LBP-14-5, 79 NRC 377 (2014)

flyspecking of environmental documents is inappropriate for environmental contentions; CLI-14-2, 79 NRC 11 (2014)

following adoption of a revised Continued Storage Rule, boards were ordered to reject continued storage contentions pending before them, except contentions unresolved by the Continued Storage Rule; CLI-15-6, 81 NRC 340 (2015)

for a motion to reopen to be granted and a new contention admitted after termination of a proceeding, the motion must meet all of the requirements of 10 C.F.R. 2.326 for reopening a record, and the new contention must have been submitted in a timely fashion and demonstrate admissibility as required at 10 C.F.R. 2.309; LBP-12-11, 75 NRC 731 (2012)

for a reopening motion to be timely presented, movant must show that the issue sought to be raised could not have been raised earlier; LBP-11-20, 74 NRC 65 (2011)

for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-11-21, 74 NRC 115 (2011)

for a timely filed contention to be admissible, it must satisfy six pleading requirements; LBP-11-6, 73 NRC 149 (2011)

for an admissible contention, petitioners do not have to prove outright that a SAMA analysis was deficient; CLI-11-11, 74 NRC 427 (2011)

for an enforcement order, the threshold question, related to both standing and admissibility of contentions, is whether the hearing request is within the scope of the proceeding as outlined in the order; LBP-14-4, 79 NRC 319 (2014)

for any contention to be admissible, regardless of when it is filed, it must satisfy each of the six criteria of 10 C.F.R. 2.309(f)(1); LBP-12-10, 75 NRC 633 (2012)

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for any new arguments or new support for a contention, petitioner must explain why it could not have raised the argument or introduced the factual support earlier; CLI-15-18, 82 NRC 135 (2015)

for contentions that fall within the facility's current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 115 (2011)

for factual disputes, petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion; LBP-12-18, 76 NRC 127 (2012)

for management integrity and character to be a viable contention, there must be a direct and obvious relationship between these issues and the challenged licensing action; CLI-11-8, 74 NRC 214 (2011)

for threshold issues such as contention admissibility, the Commission gives substantial deference to a board's determinations; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

Fukushima contention that petitioners did not relate to any unique characteristics of the particular site at issue was akin to the generic type of NEPA review that the Commission declared premature; LBP-12-18, 76 NRC 127 (2012)

Fukushima-related contention based on a Staff Requirements Memorandum is inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 774 (2011)

Fukushima-related contention is denied for failure of its proponent to contact the other parties to resolve the issue presented by the contention prior to its submission; LBP-11-37, 74 NRC 774 (2011)

Fukushima-related contention is denied for failure to reference any specific portion of the application at issue; LBP-11-37, 74 NRC 774 (2011)

Fukushima-related contention is denied for failure to show the contention is within the scope of the proceeding or is material to the findings NRC must make to support the requested licensing action; LBP-11-37, 74 NRC 774 (2011)

Fukushima-related contentions are rejected as premature, and would not have addressed the standards for reopening, contention admissibility, or rule waiver; CLI-12-6, 75 NRC 352 (2012)

Fukushima-related contentions were dismissed as premature; LBP-11-34, 74 NRC 685 (2011); LBP-11-36, 74 NRC 768 (2011); LBP-11-39, 74 NRC 862 (2011)

Gaussian plume model's incorporation in the MACCS2 code and the wide, customary use of the code are not sufficient grounds to exclude the code's integral dispersion model from all challenge if adequate support is provided for a contention; LBP-11-2, 73 NRC 28 (2011)

general and unparticularized references to health and safety significance and material deficiencies in the environmental report would not satisfy the rule that contentions be pled with specificity; CLI-15-18, 82 NRC 135 (2015)

general requirements for admissibility for all contentions are set forth in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-12-27, 76 NRC 583 (2012)

generalized economic cost arguments, unsupported by asserted facts or expert opinion, are insufficient to show a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)

generalized grievances with sufficiency of NRC Staff's analysis or the adequacy of included documentation are not enough to raise a proposed contention to the level of admissibility; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

generalized reference to the potential human and economic costs from an accident falls short of the support necessary for a severe accident mitigation alternatives contention; CLI-15-18, 82 NRC 135 (2015)

generic analysis remains appropriate for spent fuel pool accidents in license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

generic determinations are appropriately excluded from litigation in individual proceedings; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

generic environmental impact statement findings with respect to severe accident consequences are not subject to challenge in individual license renewal proceedings; CLI-15-6, 81 NRC 340 (2015)

generic environmental impact statement for ISL mining is subject to an appropriate challenge in an adjudicatory proceeding; LBP-15-11, 81 NRC 401 (2015)

generally applicable concerns are not appropriate for resolution in an adjudicatory proceeding, a rulemaking petition being the appropriate mechanism for raising those concerns; CLI-12-6, 75 NRC 352 (2012)

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- genuine dispute prong of 10 C.F.R. 2.309(f)(1)(vi) requires a nexus between alleged deficiencies and a material consequence; LBP-15-1, 81 NRC 15 (2015)
- good cause doesn't exist where petitioner's late-filed contention is due to careless inadvertence and not, as petitioner claimed, attributable to technical difficulties with the E-Filing system; LBP-15-4, 81 NRC 156 (2015)
- good cause for a newly proposed contention exists when information on which it is based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-14-5, 79 NRC 377 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)
- good cause for failure to file on time is the most important factor of the late-filing criteria; LBP-11-7, 73 NRC 254 (2011); LBP-11-9, 73 NRC 391 (2011); LBP-11-10, 73 NRC 424 (2011); LBP-11-15, 73 NRC 629 (2011)
- good cause for late filing exists when information on which the filing is based was not previously available and is materially different from information previously available and the filing has been submitted in a timely fashion based on the availability of the subsequent information; LBP-13-9, 78 NRC 37 (2013)
- "good cause" for late filing is defined as a showing that petitioner could not have met the filing deadline and filed as soon as possible thereafter; LBP-11-7, 73 NRC 254 (2011)
- good cause for late filing is the most important of the late-filing factors and is given the most weight; CLI-12-10, 75 NRC 479 (2012); LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012); LBP-12-12, 75 NRC 742 (2012)
- good cause for the failure to file on time is afforded the most weight in the balancing of the eight late-filing factors of 10 C.F.R. 2.309(c)(i)-(viii); LBP-12-27, 76 NRC 583 (2012)
- good cause in 10 C.F.R. 2.307(a) does not share the same definition that is used for good cause in final 2.309(c); LBP-14-5, 79 NRC 377 (2014)
- grounds were found for litigation regarding defendants' assertion that treatment of highway interchanges and village development as cumulative impacts in the final environmental impact statement was sufficient under NEPA even if these actions should have been treated as connected actions under the statute's implementing regulations; LBP-14-9, 80 NRC 15 (2014)
- groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)
- hearing on a confirmatory order is limited solely to whether, on the basis of matters set forth in the order, the order should be sustained; LBP-14-4, 79 NRC 319 (2014)
- hearing petitioners have an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to uncover any information that could serve as the foundation for a specific contention; LBP-11-9, 73 NRC 391 (2011)
- hearing request is granted where petitioners have submitted a timely petition, established representational standing, and proffered an admissible contention; LBP-15-20, 81 NRC 829 (2015)
- hearing request or petition to intervene must set forth with particularity the contentions sought to be raised by satisfying six criteria; LBP-11-21, 74 NRC 115 (2011)
- holidays and weekends are excluded from the date calculation for filing new contentions; LBP-15-24, 82 NRC 68 (2015)
- if a board were to adjudicate either the admissibility of a moot contention or the standing of a petitioner who sought to adjudicate a moot contention, it would be issuing an advisory opinion in derogation of Commission precedent; LBP-13-7, 77 NRC 307 (2013)
- if a contention as originally pleaded did not satisfy 10 C.F.R. 2.309(f)(1), a reply cannot remediate the deficiency by introducing, for the first time, references to a genuine dispute with the license application at issue; LBP-11-34, 74 NRC 685 (2011)
- if a contention is based upon new information, it must meet the standards of 10 C.F.R. 2.309(f)(2); LBP-11-35, 74 NRC 701 (2011)
- if a contention is rendered moot by information supplied by applicant or considered by Staff in a draft EIS, the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of the NRC Staff's treatment of the relevant issue; LBP-13-9, 78 NRC 37 (2013)

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- if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-15-5, 81 NRC 249 (2015)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 127 (2012)
- if a new contention is not timely filed, it must meet an eight-factor test to be deemed admissible; LBP-11-10, 73 NRC 424 (2011)
- if a new or amended contention is deemed untimely under section 2.309(f)(2)(iii), it will be evaluated under 10 C.F.R. 2.309(c)(1), which requires a balancing of eight factors to determine whether it is admissible; LBP-12-12, 75 NRC 742 (2012)
- if a party submits a proposed contention after the initial filing deadline announced in the applicable Federal Register notice for submitting a hearing petition, it will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)
- if a petition is rejected or dismissed at the docketing stage (before the evidentiary record has ever been opened), then subsequent petitions, in addition to meeting all of the other requirements, must also show that the evidentiary record should be reopened; LBP-14-4, 79 NRC 319 (2014)
- if a proposed new contention is not timely under section 2.309(f)(2)(iii), then proponent must address the eight criteria of 10 C.F.R. 2.309(c)(1); LBP-11-32, 74 NRC 654 (2011)
- if a proposed new contention that is filed after the initial filing period set forth in the hearing notice is not timely under 10 C.F.R. 2.309(f)(2)(iii), then proponent must address the eight criteria of section 2.309(c)(1) and show that a balance of these factors weighs in favor of admitting that contention; LBP-11-9, 73 NRC 391 (2011)
- if applicant cures the omission cited in a contention, the contention will become moot unless revised by intervenors; LBP-15-5, 81 NRC 249 (2015)
- if applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program embodied in its license renewal application was *a fortiori* inadequate, and intervenors had a regulatory obligation to challenge it in their original petition to intervene; LBP-15-1, 81 NRC 15 (2015)
- if applicant's enhanced monitoring program, which was the topic of a late-filed contention, was insufficient, it must have been insufficient beforehand too; CLI-12-10, 75 NRC 479 (2012)
- if attempting to raise a new issue based on new information in the final supplemental environmental impact statement, intervenor must file a new contention if information in the FSEIS is sufficiently different from the information in the DSEIS that supported the original contention's admission; LBP-14-5, 79 NRC 377 (2014)
- if case-specific challenges to the waste confidence rule are appropriate for consideration, normal procedural rules will apply; CLI-12-16, 76 NRC 63 (2012)
- if compliance with the current licensing basis cannot be fully achieved during the current licensing term and must be consummated during the period of extended operation, then a contention raising issues about such CLB compliance is within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)
- if good cause is not shown, a board may still permit the late filing, but petitioner or intervenor must make a strong showing on the other factors of 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 391 (2011); LBP-11-32, 74 NRC 654 (2011)
- if intervenor cannot meet the requirements for filing a contention under the new section 2.309(c)(1), he or she can still take advantage of an extension request if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline; LBP-15-1, 81 NRC 15 (2015)
- if intervenor fails to show good cause for a late filing, its demonstration on the other late-filing factors must be particularly strong; LBP-11-7, 73 NRC 254 (2011)
- if intervenors make reference to new material in the final supplemental environmental impact statement but do not address the six elements of 10 C.F.R. 2.309(f)(1), such references to new material do not give rise to either a new or an amended contention; LBP-14-5, 79 NRC 377 (2014)

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- if intervenors raise issues that are not within the scope of an admitted contention and have not sought to amend the contention to include those issues, the board will not consider the issues because they are outside the scope of the admitted contention; LBP-12-23, 76 NRC 445 (2012)
- if intervenors sought to introduce new issues, then they should have filed a new or amended contention; CLI-15-9, 81 NRC 512 (2015)
- if petitioner believes that an application fails to contain information on a relevant matter as required by law, the contention must identify each failure and the supporting reasons for the petitioner's belief; CLI-15-20, 82 NRC 211 (2015); LBP-11-6, 73 NRC 149 (2011)
- if petitioner can provide a sound basis to dispute compliance-related statements in a license amendment request, then the contention is within the scope of the proceeding; LBP-15-24, 82 NRC 68 (2015)
- if petitioner could avoid the Commission's limitation on the scope of an enforcement order simply by characterizing its petition as opposing the order unless additional measures are granted, the Commission would never be able to limit its proceedings; LBP-12-14, 76 NRC 1 (2012)
- if petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor petitioner, nor may the board supply information that is lacking; LBP-12-3, 75 NRC 164 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013)
- if petitioner's challenge to an agency rule or regulation relates to an issue of broader significance, then filing a petition for rulemaking is the better approach; CLI-13-7, 78 NRC 199 (2013)
- if reopening standards are inapplicable, or if reopening criteria have been satisfied, a new contention must also meet the standards for contention admissibility; LBP-11-35, 74 NRC 701 (2011)
- if the reason a motion to admit a new or amended contention was filed after the initial deadline does not relate to the substance of the filing itself, the standard in 10 C.F.R. 2.307(a) applies in determining whether the motion can be considered timely; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from data or conclusions in applicant's documents, late-filing standards are no bar to the admission of properly supported contentions; LBP-15-11, 81 NRC 401 (2015)
- if, within 60 days after pertinent information supporting a new contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding construction of a mixed oxide facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements or the requirements for reopening the record; LBP-11-9, 73 NRC 391 (2011)
- in 1989, NRC revised its rules to prevent the admission of poorly defined or supported contentions or those based on little more than speculation; CLI-12-8, 75 NRC 393 (2012)
- in a license amendment proceeding, an admissible contention must meet the six requirements of 10 C.F.R. 2.309(f)(1); LBP-15-24, 82 NRC 68 (2015)
- in addition to being timely, new contention must satisfy the six-factor admissibility standard; LBP-15-19, 81 NRC 815 (2015)
- in addition to satisfying the timeliness standards in 10 C.F.R. 2.309(f)(2) or the balancing test in 10 C.F.R. 2.309(c), a newly proffered contention must satisfy the admissibility criteria of 10 C.F.R. 2.309(f)(1); LBP-12-7, 75 NRC 503 (2012)
- in addressing the good cause factor for late filing, petitioner must explain not only why it failed to file within the time required, but also why it did not file as soon thereafter as possible; LBP-11-7, 73 NRC 254 (2011)
- in an ongoing proceeding in which a hearing petition has been granted and there are contentions pending for merits resolution, intervenors must satisfy two sets of requirements to gain the admission of a newly proffered contention; LBP-11-37, 74 NRC 774 (2011)
- in analyzing the admissibility of a proffered contention, a licensing board need not turn a blind eye to those portions of a petitioner's exhibits that might militate against admissibility; LBP-11-6, 73 NRC 149 (2011)
- in any combined license proceeding referencing an early site permit, contentions may be litigated on whether the nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit; LBP-11-10, 73 NRC 424 (2011)

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- in determining whether an issue is ripe for judicial decision, a court must evaluate fitness of the issues for judicial decision and hardship to the parties of withholding court consideration; LBP-12-19, 76 NRC 184 (2012)
- in examining contention admissibility, the Commission generally defers to the board unless it finds either an error of law or abuse of discretion; CLI-12-8, 75 NRC 393 (2012)
- in explaining why there is a genuine material dispute, contention must give the board a reason to believe that the alleged deficiency will lead to a material safety or environmental outcome, based on factual or expert support; LBP-15-1, 81 NRC 15 (2015)
- in interpreting the scope of an admitted contention, boards look back to the bases set forth in support of the contention; CLI-15-9, 81 NRC 512 (2015)
- in making contention admissibility decisions, boards appropriately apply their technical and legal expertise to evaluate the proposed contention and its support; CLI-11-8, 74 NRC 214 (2011)
- in the absence of a timely analysis of the section 2.309(c)(1) and (f)(1) new/amended contention precepts by the contention's sponsor, a board is not obligated to determine whether those new/amended contention requirements could have been met relative to a migrated environmental contention; LBP-13-10, 78 NRC 117 (2013)
- in the absence of good cause for late filing, a party must make an especially strong showing on the other factors to justify admission of a nontimely contention; LBP-12-10, 75 NRC 633 (2012); LBP-12-12, 75 NRC 742 (2012)
- in view of its adoption of a revised rule codifying NRC's generic determinations regarding the pertinent environmental impacts associated with continued storage of spent nuclear fuel, the Commission directs boards to reject pending contentions on this issue; LBP-14-13, 80 NRC 142 (2014)
- inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 249 (2015)
- inasmuch as NRC Staff relies on the benefits of proposed units to satisfy an otherwise unmet need for power, the adequacy of the need-for-power assessment is material to granting the proposed combined license; LBP-11-7, 73 NRC 254 (2011)
- Indian tribe's contention that NRC Staff had not fulfilled its National Historic Preservation Act consultation duty regarding cultural resources and tribal artifacts was premature because Staff had not completed its NEPA review; LBP-12-23, 76 NRC 445 (2012)
- Indian tribe's treaty-based claims of ownership of mining site and international treaty-based claims cannot support admission of environmental assessment contention; LBP-15-11, 81 NRC 401 (2015)
- individual licensing proceedings are not the appropriate forum for evaluating severe accident mitigation alternatives; LBP-13-1, 77 NRC 57 (2013)
- information notice merely summarizes information that has long been publicly available and does not provide new information that would constitute good cause for the late filing; CLI-12-10, 75 NRC 479 (2012)
- information offered in evidence, even if not specifically stated in the original contention and bases, may be relevant if it falls within the envelope, reach, or focus of the contention when read with the original bases offered for it; LBP-12-17, 76 NRC 71 (2012)
- initial Notice and Order referring the proceeding to the licensing board defines the scope of litigable issues; LBP-12-27, 76 NRC 583 (2012)
- inquiry into future, inchoate plans of licensee would generally invite petitioners in license renewal cases to raise safety issues involving a myriad of possible future license amendments; LBP-13-8, 78 NRC 1 (2013)
- insofar as a contention requests consideration of a dry cooling design alternative, that matter must be considered resolved in the early site permit proceeding; LBP-11-10, 73 NRC 424 (2011)
- inspection reports could be seen as objective evidence that applicant may not adequately manage aging in the future; CLI-11-11, 74 NRC 427 (2011)
- intent of 10 C.F.R. 2.309(f)(1) is to focus litigation on concrete issues and result in a clearer and more focused record for decision and to ensure that the Commission expends resources to support the hearing process only for issues that are appropriate for, and susceptible to, resolution in an NRC hearing; LBP-11-16, 73 NRC 645 (2011)

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interlocutory review of a board decision that denied reconsideration of a contention admissibility determination was declined; CLI-15-24, 82 NRC 331 (2015)

interlocutory review of a board's dismissal of a new contention is granted only upon a showing of extraordinary circumstances; CLI-12-13, 75 NRC 681 (2012)

intervenor attempting to litigate an issue based on expressed concerns about the draft environmental impact statement may need to amend the admitted contention or submit a new contention if the information in the DEIS is sufficiently different from the information in the environmental report that supported the original contention's admission; LBP-13-9, 78 NRC 37 (2013)

intervenor is not free to change the focus of its admitted contention, at will, as litigation progresses; LBP-12-5, 75 NRC 227 (2012)

intervenor may file a new or amended contention challenging relevant new portions of the draft environmental impact statement that differ from applicant's environmental report; LBP-11-1, 73 NRC 19 (2011)

intervenor may not delay filing a contention until a document becomes available that collects, summarizes, and places into context previously available facts supporting that contention; LBP-12-1, 75 NRC 1 (2012)

intervenor must do more than point to issues with the shield building, but must also indicate what is wrong with applicant's response and its amended inspection program and why intervenor believes the particular inspection program makes the license renewal application unacceptable; LBP-15-1, 81 NRC 15 (2015)

intervenor must do more than submit bald or conclusory allegations of a dispute with the applicant; LBP-13-9, 78 NRC 37 (2013)

intervenor need not make its case at the contention admission stage, but must indicate what facts or expert opinions provide the basis for its contention; LBP-13-6, 77 NRC 253 (2013)

intervenor normally is not allowed to challenge a board's rejection of contentions where the board has granted a hearing on any contention; CLI-12-12, 75 NRC 603 (2012)

intervenor's challenge to NRC's compliance with NEPA in light of the NRC's Fukushima Task Force Report is premature; LBP-11-33, 74 NRC 675 (2011)

intervenor's reliance on long-available documents regarding leakages and notices of violation made a contention untimely as filed; LBP-15-11, 81 NRC 401 (2015)

intervenor's are not allowed to postpone filing a contention challenging environmental or safety information or analysis until Staff issues some document that collects, summarizes, and places into context the facts supporting that contention; LBP-15-11, 81 NRC 401 (2015)

intervenor's cannot simply point to documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source as doing so does not render "new" the summarized or compiled information; LBP-12-27, 76 NRC 583 (2012)

intervenor's fail to show that, with respect to terrestrial and wetland mitigation plans, there are data or conclusions in the draft environmental impact statement that differ significantly from the data or conclusions in the applicant's documents; LBP-12-12, 75 NRC 742 (2012)

intervenor's fail to specify what other alternatives to the license renewal application should be discussed in the draft supplemental environmental impact statement, much less show that any proposed alternative would satisfy the purpose of applicant's proposed action; LBP-15-1, 81 NRC 15 (2015)

intervenor's have demonstrated their ability to contribute to the development of a sound record where they have put forward in support of those contentions the views of a witness whose expertise has been recognized in other NRC proceedings; LBP-11-9, 73 NRC 391 (2011)

intervenor's in adjudicatory proceedings are prohibited from challenging regulations unless they first obtain a waiver by showing special circumstances; LBP-14-15, 80 NRC 151 (2014)

intervenor's may file new or amended contentions in response to the draft environmental impact statement if they can satisfy the test of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-12, 75 NRC 742 (2012)

intervenor's may not impose an additional requirement that is not present in a regulation; CLI-11-9, 74 NRC 233 (2011)

intervenor's may question whether the draft environmental impact statement includes a sufficient justification for its reliance upon future actions of a state agency; LBP-12-23, 76 NRC 445 (2012)

intervenor's must assert a sufficiently specific challenge that demonstrates that further inquiry is warranted; CLI-11-9, 74 NRC 233 (2011)

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- intervenor must demonstrate a genuine dispute suitable for evidentiary hearing; LBP-11-28, 74 NRC 604 (2011)
- intervenor must develop a fact-based argument that actually and specifically challenges the application; LBP-15-1, 81 NRC 15 (2015)
- intervenor must make a showing for admission of a NEPA contention sufficient to require reasonable minds to inquire further; LBP-12-18, 76 NRC 127 (2012)
- intervenor must point to the specific ways in which the shield building monitoring aging management plan is wrong or inadequate to raise a genuine dispute with applicant's license renewal application; LBP-12-27, 76 NRC 583 (2012)
- intervenor must provide a concise statement of the facts or expert opinions that support their position and upon which they intend to rely at the hearing; LBP-12-18, 76 NRC 127 (2012)
- intervenor need not prove their case at the contention admission stage, but petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-12-27, 76 NRC 583 (2012)
- intervenor need not prove their case on the merits, but need only allege some fact or expert opinion that supports their position and demonstrates a genuine dispute with the sufficiency of the FEIS; LBP-12-18, 76 NRC 127 (2012)
- intervenor only demonstrate that the issue raised in the contention is material to a licensing decision, i.e., that the issue would make a difference in the decision; LBP-11-7, 73 NRC 254 (2011)
- intervenor seeking a new hearing on a new contention after the board has closed the evidentiary record must move to reopen the evidentiary record and meet a deliberately higher threshold standard than that for an ordinary late-filed contention; CLI-12-15, 75 NRC 704 (2012)
- intervenor were correct to file contentions on a newly adopted rule because, unlike a proposed rule, it now has indisputable legal effect; LBP-15-15, 81 NRC 598 (2015)
- intervenor's allegations are viewed in a light favorable to intervenors; LBP-15-11, 81 NRC 401 (2015)
- intervenor's allegations do not plausibly indicate that the shield building would lose its functionality under the proposed aging management plan; LBP-15-1, 81 NRC 15 (2015)
- intervenor's challenge concerning the DEIS's alleged failure to discuss the Great Lakes Compact's process for regional review of its application for a consumptive water use permit is inadmissible; LBP-12-12, 75 NRC 742 (2012)
- intervenor's challenge to the aging management plan must consist of more than allegations that the AMP is deficient, but rather must point to specific ways the AMP is inadequate or wrong; LBP-12-27, 76 NRC 583 (2012)
- intervenor's challenges to adequacy of applicant's environmental report with respect to environmental impacts of dewatering associated with the proposed nuclear plant continue to serve as viable challenges to similar sections of Staff's draft environmental impact statement and thus are not moot; LBP-11-1, 73 NRC 19 (2011)
- intervenor's requests for more testing, more methods of testing, and more information, without an explanation of why the current program is inadequate, do not create a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)
- intervenor's speculation that further review of certain issues might change some conclusions in the FSAR does not justify restarting the hearing process; LBP-11-20, 74 NRC 65 (2011)
- intervention petition is denied for failure to proffer an admissible contention; LBP-11-21, 74 NRC 115 (2011); LBP-13-11, 78 NRC 177 (2013)
- intervention petition was not sufficiently specific when it merely repeated the contents of petitioner's earlier petition concerning a prior license amendment; LBP-15-17, 81 NRC 753 (2015)
- intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 512 (2015)
- intervention petitioner must review relevant documents and provide sufficient discussion of these documents and its concerns to demonstrate existence of a genuine material dispute with licensee on a material issue of law or fact; CLI-15-23, 82 NRC 321 (2015)
- intervention petitioner need not discuss each and every portion of the application that bears any relation to the issue being contested, but only provide a brief explanation of the argument and a concise statement of the relevant facts; CLI-14-2, 79 NRC 11 (2014)

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- intervention petitioner's burden is met if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-13-6, 77 NRC 253 (2013)
- intervention petitioners have an ironclad obligation to review the application thoroughly and to base their challenges on its contents; CLI-12-5, 75 NRC 301 (2012)
- intervention petitioners may not challenge the adequacy of the safety evaluation report, but may file contentions challenging the combined license application based on new information in the SER; LBP-11-22, 74 NRC 259 (2011)
- intervention petitions must be filed within 60 days based on the documents then in existence, meaning that the petition must be based on the documents submitted with the application; LBP-11-22, 74 NRC 259 (2011)
- issuance of a request for additional information does not alone establish deficiencies in an application or that NRC Staff will go on to find any of applicant's clarifications, justifications, or other responses to be unsatisfactory; CLI-15-8, 81 NRC 500 (2015)
- issuance of a Staff Requirements Memorandum directing Staff to implement "without delay" the recommendations of the Fukushima Task Force does not render contentions admissible; LBP-11-36, 74 NRC 768 (2011)
- issue of the alleged failure to consult with the tribe on historic and cultural resources is material and within the scope of a materials license proceeding; LBP-13-9, 78 NRC 37 (2013)
- issue raised must fall within the scope of the proceeding and be material to the findings that the NRC must make; CLI-15-8, 81 NRC 500 (2015)
- issue to be determined at hearing is whether the confirmatory order should be sustained or denied, not whether the order should be enhanced; CLI-13-2, 77 NRC 39 (2013)
- issues addressed in a separate proceeding are beyond the scope of a later proceeding; LBP-15-20, 81 NRC 829 (2015)
- issues surrounding severe accident mitigation design alternatives that have been resolved by regulation may not be challenged in a combined license adjudication; CLI-11-6, 74 NRC 203 (2011)
- it is a well-established principle that a petitioner in an adjudicatory proceeding cannot use one regulation to challenge another without first obtaining a waiver by showing special circumstances; LBP-15-4, 81 NRC 156 (2015)
- it is insufficient for petitioner to point to an Internet Web site or article and expect the board on its own to discern what particular issue a petitioner is raising, including what section of the application, if any, is being challenged as deficient and why; LBP-11-6, 73 NRC 149 (2011)
- it is intervention petitioner's responsibility to put others on notice as to the issues it seeks to litigate in a proceeding; CLI-11-11, 74 NRC 427 (2011); LBP-11-35, 74 NRC 701 (2011)
- it is not enough to demonstrate a theoretical possibility that wind farms spread across a wide area could provide consistent power, but rather petitioners must show concretely that wind could be a reliable, commercially viable source of baseload power during the license renewal period; LBP-15-5, 81 NRC 249 (2015)
- it is not the function of a licensing board to comb through the record searching for arguments in support of a proffered contention; LBP-11-6, 73 NRC 149 (2011)
- it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)
- it makes no sense to spend the parties' and NRC's own valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging; CLI-15-21, 82 NRC 295 (2015); LBP-15-6, 81 NRC 314 (2015)
- it must be genuinely plausible that revising the severe accident mitigation alternatives analysis would change the outcome so that one or more of the SAMA candidates that applicant evaluated and rejected would become cost-beneficial; LBP-15-5, 81 NRC 249 (2015)
- it would not be consistent with the NRC's statutorily mandated responsibilities to spend time and resources on matters that are of no substantive regulatory significance; LBP-14-16, 80 NRC 183 (2014)
- judges are not like pigs, hunting for truffles buried in briefs; LBP-11-6, 73 NRC 149 (2011)
- lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 65 (2011)

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late-filed contention is inadmissible both for lack of a good-cause showing and for failure to address the other factors of 10 C.F.R. 2.309(c)(1); LBP-11-6, 73 NRC 149 (2011)

late-filed contention shall not be considered by a licensing board unless the petitioner demonstrates that a multifactor balancing test weighs in favor of consideration; LBP-11-6, 73 NRC 149 (2011)

late-filed contentions lack good cause when they are based on a draft environmental impact statement that contains no new information relevant to the contention; LBP-13-9, 78 NRC 37 (2013)

late-filing factor given the most weight is whether there is good cause for the failure to file on time; CLI-12-15, 75 NRC 704 (2012)

level of support required to sustain a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012)

license applications, not Staff's review, are to be the focus of a licensing adjudication; LBP-13-6, 77 NRC 253 (2013)

license renewal applicant is not required to identify safety-related incidents that have occurred during the current licensing term; LBP-13-8, 78 NRC 1 (2013)

license renewal applications must contain any significant new information relevant to environmental impacts of license renewal of which applicant is aware, and new information generally may be challenged in individual adjudications; CLI-12-19, 76 NRC 377 (2012)

license renewal contention alleging higher cancer death rates in local counties than state average is inadmissible because it is based on unsupported speculation; LBP-13-8, 78 NRC 1 (2013)

license renewal environmental report is not required to include discussion of need for power; LBP-11-21, 74 NRC 115 (2011)

license renewal is limited to age-related issues, not issues already monitored and reviewed in the ongoing regulatory oversight processes; CLI-11-2, 73 NRC 333 (2011)

license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to ongoing compliance oversight activity; CLI-11-11, 74 NRC 427 (2011); LBP-13-8, 78 NRC 1 (2013)

licensing board concluded that information on a website cited by intervenors, instead of supporting intervenors' claim, contradicted it; LBP-15-20, 81 NRC 829 (2015)

licensing board failed to provide sufficient justification for rejecting a challenge to applicant's meteorological model where petitioners pointed to site-specific meteorological patterns to argue that the model and inputs were inaccurate and insufficiently conservative; LBP-15-20, 81 NRC 829 (2015)

licensing board finds no material dispute concerning the effect of calcium contained in the thermal effluent stream on the potential proliferation of *Lyngbya wollei*; LBP-12-23, 76 NRC 445 (2012)

licensing board may appropriately view petitioner's supporting information in a light favorable to the petitioner, but may not do so by ignoring other admissibility requirements; LBP-15-1, 81 NRC 15 (2015); LBP-15-19, 81 NRC 815 (2015); LBP-15-20, 81 NRC 829 (2015)

licensing boards applied existing procedural rules to new contentions and motions to reopen filed in response to the Three Mile Island accident and the September 11, 2001, terrorist attacks; CLI-12-13, 75 NRC 681 (2012)

licensing boards are bound to admit for litigation contentions that are material and supported by reasonably specific factual and legal allegations; LBP-11-6, 73 NRC 149 (2011)

licensing boards are directed to reject pending waste confidence contentions that had been held in abeyance; LBP-14-15, 80 NRC 151 (2014)

licensing boards are expected to examine cited materials to verify that they do, in fact, support a contention; CLI-15-22, 82 NRC 310 (2015)

licensing boards are expected to reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-15-25, 82 NRC 389 (2015)

licensing boards are precluded from admitting contentions alleging that the project may not be consistent with the requirements of another federal, state, or local agency; LBP-12-12, 75 NRC 742 (2012)

licensing boards have commonly afforded intervenors the opportunity to propose new contentions to challenge the new information, even though no contention is pending; LBP-11-22, 74 NRC 259 (2011)

licensing boards may not stretch the scope of admitted contentions beyond their reasonably inferred bounds, but may consider issues that, although not expressly stated, can reasonably be inferred from the arguments presented; LBP-12-17, 76 NRC 71 (2012)

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licensing boards must admit an adequately supported contention alleging that the agency's NEPA analysis of severe accident mitigation alternatives is deficient; LBP-12-18, 76 NRC 127 (2012)

licensing boards must specify each basis relied upon for admitting a contention; CLI-12-5, 75 NRC 301 (2012)

licensing boards should not accept in individual licensing proceedings contentions that are or are about to become the subject of general rulemaking by the Commission; CLI-12-16, 76 NRC 63 (2012); CLI-15-9, 81 NRC 512 (2015); CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

licensing boards should not consider premature contentions; LBP-12-19, 76 NRC 184 (2012)

licensing hearing does not embrace *anything* new revealed in the safety evaluation report or the NEPA documents; CLI-12-14, 75 NRC 692 (2012)

licensing proceedings are not the appropriate venue for generic rulemaking issues; CLI-15-9, 81 NRC 512 (2015)

limited exception to NRC's general prohibition against challenges to its rules or regulations in adjudicatory proceedings is provided in 10 C.F.R. 2.335(b); CLI-13-7, 78 NRC 199 (2013)

litigability of the adequacy of applicant's efforts to address current operational issues is excluded from a license renewal proceeding; CLI-11-11, 74 NRC 427 (2011)

litigants may not challenge a rule in NRC adjudicatory proceedings absent a showing of special circumstances; CLI-15-1, 81 NRC 1 (2015)

management integrity contentions are admissible in license renewal proceedings only if they rely on specific supporting information, including references to a serious incident involving shutdown where management responsible for the incident remained in place, a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert in support of the contention; LBP-13-8, 78 NRC 1 (2013)

material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 1 (2015)

materiality depends on whether the information is capable of influencing the decisionmaker, not on whether the decisionmaker would, in fact, have relied on it; LBP-15-24, 82 NRC 68 (2015)

"materiality" means that petitioner must show why the alleged error or omission is significant to grant or denial of a pending license application; LBP-15-24, 82 NRC 68 (2015)

materiality of a SAMA contention is based on whether it purports to show that an additional SAMA should have been identified as potentially cost-beneficial; CLI-11-11, 74 NRC 427 (2011)

materiality requirement for contention admission often dictates that allegations of deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the public health and safety or the environment; LBP-12-15, 76 NRC 14 (2012)

"materiality" requires petitioner to show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-15-20, 81 NRC 829 (2015)

matter resolved in an early site permit proceeding may be revisited in the combined license proceeding when new and significant information is presented; LBP-11-10, 73 NRC 424 (2011)

matters relating to reasonable assurance of safety during the current license term are to be addressed under the current license and are outside the scope of a license renewal review; CLI-15-21, 82 NRC 295 (2015)

members of the public may challenge an action taken under 10 C.F.R. 50.59 only by means of a petition under section 2.206; LBP-13-11, 78 NRC 177 (2013)

mere existence of comments and questions generated by NRC Staff do not, in and of themselves, demonstrate a material deficiency in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011)

mere general references to NRC Staff's requests for additional information do not provide the requisite reasonable specificity to support admission of a contention; CLI-12-5, 75 NRC 301 (2012)

mere notice pleading is insufficient for contention admission; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-12-8, 75 NRC 539 (2012)

mere notice pleading is insufficient, but requirement for contention specificity and factual support rather than vague or conclusory statements is not intended to prevent intervention when material and concrete issues exist; LBP-15-20, 81 NRC 829 (2015)

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merits determination cannot be resolved at the contention admission stage of the proceeding; LBP-11-6, 73 NRC 149 (2011); LBP-14-6, 79 NRC 404 (2014); LBP-15-20, 81 NRC 829 (2015)

migration of a contention is appropriate only where the environmental analysis or discussion at issue is essentially in pari materia with applicant's analysis or discussion that is the focus of the contention; LBP-12-12, 75 NRC 742 (2012); LBP-15-11, 81 NRC 401 (2015)

migration tenet applies when information in the draft environmental impact statement is sufficiently similar to information in applicant's environmental report, and allows previously admitted contentions challenging the environmental report to apply to relevant portions of the DSEIS; LBP-15-16, 81 NRC 618 (2015)

migration tenet applies when information in the final supplemental environmental impact statement is sufficiently similar to information in the draft SEIS; LBP-14-5, 79 NRC 377 (2014)

migration tenet applies where the information in the draft environmental impact statement is sufficiently similar to the information in the environmental report; LBP-11-1, 73 NRC 19 (2011); LBP-13-9, 78 NRC 37 (2013)

migration tenet helps to expedite hearings by obviating the need to file and litigate the same contention up to three times, once against the ER, once against the DEIS, and one final time against the FEIS; LBP-12-12, 75 NRC 742 (2012)

minimal showing that material facts are in dispute is sufficient to render a proposed contention admissible; LBP-12-8, 75 NRC 539 (2012)

motion to admit a new contention arguing that applicant's environmental report fails to satisfy NEPA because it does not address findings and recommendations raised by Task Force Report on the Fukushima Dai-ichi accident is denied as premature and insufficiently focused on the license renewal application; LBP-11-28, 74 NRC 604 (2011)

motion to admit a new contention must be supported by an affidavit that separately addresses each of the 2.326(a) criteria; LBP-14-8, 79 NRC 519 (2014)

motion to admit a new waste-confidence-related contention is being held in abeyance; CLI-13-7, 78 NRC 199 (2013)

motion to file new or amended contentions must address the motion to reopen standards after an intervention petition has been denied; LBP-11-20, 74 NRC 65 (2011)

motion to reopen relating to a new contention must also satisfy the requirements for nontimely contentions in section 2.309(c); LBP-11-20, 74 NRC 65 (2011)

motion to reopen that relates to a contention not previously in controversy must satisfy the section 2.309(c) requirements for new or amended contentions filed after the original hearing petition deadline; LBP-15-14, 81 NRC 591 (2015)

motions to admit new contentions must be rejected if they do not include a certification by movant's attorney or representative that movant has made a sincere effort to contact other parties and resolve the issues raised in the motion, and that movant's efforts have been unsuccessful; LBP-11-34, 74 NRC 685 (2011)

motions to reopen on issues not previously litigated must satisfy the balancing test of 10 C.F.R. 2.309(c) in addition to the reopening standards; CLI-12-3, 75 NRC 132 (2012)

motions to reopen to admit a new contention must be submitted in a timely fashion, based on new information that is materially different from information previously available or a balancing of the factors in 10 C.F.R. 2.326 must weigh in favor of admitting the contention; LBP-12-16, 76 NRC 44 (2012)

multifactor contention admissibility test in section 2.309(f)(1) is strict by design; LBP-11-6, 73 NRC 149 (2011); LBP-11-16, 73 NRC 645 (2011)

narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; CLI-11-11, 74 NRC 427 (2011)

neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-15-1, 81 NRC 15 (2015)

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neither speculation nor conclusory assertions, even by an expert, alleging that a matter fails to satisfy the Atomic Energy Act or National Environmental Policy Act will suffice to allow admission of a contention; LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012)

neither the Commission nor the board should be expected to sift through a lengthy document in search of asserted factual support that petitioner has not specified; CLI-12-5, 75 NRC 301 (2012)

NEPA is not intended to encompass every possible impact, and does not encompass potential losses due to individuals' perception of a risk; LBP-12-24, 76 NRC 503 (2012)

new and amended contentions submitted after an intervenor's initial hearing request are evaluated under 10 C.F.R. 2.309(f)(2) for timeliness and, if found timely, their general admissibility is analyzed pursuant to section 2.309(f)(1); LBP-11-10, 73 NRC 424 (2011)

"new and significant information" requirement does not override, for purposes of litigating the issues in an adjudicatory proceeding, the exclusion of Category 1 issues in section 51.53(c)(3)(i) from site-specific review; CLI-12-19, 76 NRC 377 (2012)

new arguments may not be raised for the first time in a reply brief; CLI-15-20, 82 NRC 211 (2015); LBP-13-12, 78 NRC 239 (2013); LBP-15-17, 81 NRC 753 (2015)

new contention filed after the record has closed must also satisfy general contention admissibility requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-12-16, 76 NRC 44 (2012)

new contention is inadmissible because it neither points to nor references any specific portion of the application that is disputed; LBP-11-35, 74 NRC 701 (2011)

new contention is inadmissible because it relies on information that is not materially different from information previously available and already in the record; LBP-15-11, 81 NRC 401 (2015); LBP-15-16, 81 NRC 618 (2015)

new contention must be based on information materially different than the information previously available; LBP-14-5, 79 NRC 377 (2014); LBP-14-8, 79 NRC 519 (2014)

new contention must meet requirements of 10 C.F.R. 2.326(a), must be timely, must concern a significant environmental or safety issue, and must demonstrate the likelihood of a materially different result; LBP-14-8, 79 NRC 519 (2014)

new contention must present a seriously different picture of the environmental impact of the proposed project; LBP-14-5, 79 NRC 377 (2014)

new contentions are deemed timely if filed within 30 days of the date when the new and material information on which they are based first became available; CLI-11-8, 74 NRC 214 (2011); LBP-11-39, 74 NRC 862 (2011); LBP-12-10, 75 NRC 633 (2012)

new contentions filed after the initial filing may only be admitted upon a showing that the information upon which they are based was not previously available and is materially different than information previously available and they have been submitted in a timely fashion based on the availability of the subsequent information; LBP-12-18, 76 NRC 127 (2012)

new contentions may be admitted as long as they meet the timeliness criteria in 10 C.F.R. 2.309(f)(2) or the nontimely contention criteria in section 2.309(c)(1) and fulfill the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-11-39, 74 NRC 862 (2011)

new contentions must be submitted in a timely fashion based on the availability of the information on which they are based; CLI-15-17, 82 NRC 33 (2015)

new contentions must paint a seriously different picture of the environmental landscape that would require supplementation of an environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

new contentions must satisfy the six requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-11-34, 74 NRC 685 (2011); LBP-14-8, 79 NRC 519 (2014)

new contentions on the safety and environmental implications of the NRC Task Force Report on the Fukushima Dai-ichi accident are premature and must be denied on that basis without regard to any other considerations; LBP-11-27, 74 NRC 591 (2011)

new contentions submitted within 30 days of the occurrence of the triggering the event are timely; LBP-12-18, 76 NRC 127 (2012)

new information on the need to supplement an issued final EIS must point to impacts that affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-15-16, 81 NRC 618 (2015)

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new or amended contention is considered timely if it is filed within 60 days of the date when the material information first became available to movant through service, publication, or any other means; LBP-15-1, 81 NRC 15 (2015)

new or amended contentions are considered to be timely if filed within 60 days of any triggering event; LBP-11-9, 73 NRC 391 (2011)

new or amended contentions based on material information that has subsequently become available must meet the general contention admissibility requirements of 10 C.F.R. 2.309(f)(1) as well as the three requirements in section 2.309(c)(1); LBP-14-6, 79 NRC 404 (2014)

new or amended contentions filed after the initial filing period has expired may be admitted as timely only with leave of the licensing board if it meets the timeliness standards of 10 C.F.R. 2.309(f)(2); LBP-12-7, 75 NRC 503 (2012); LBP-12-12, 75 NRC 742 (2012)

new or amended contentions generally must meet the six admissibility factors specified in section 2.309(f)(1); LBP-13-10, 78 NRC 117 (2013); LBP-14-5, 79 NRC 377 (2014)

new or amended contentions must be based on information not previously available and materially different from previously available information and be submitted in a timely fashion based on the availability of the subsequent information; LBP-14-6, 79 NRC 404 (2014)

new or amended contentions must demonstrate good cause for post-initial-hearing petition deadline filing, based on three factors; LBP-13-10, 78 NRC 117 (2013)

new or amended contentions must satisfy the substantive contention admissibility standards, and failure to meet any of them renders a contention inadmissible; LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)

new or amended contentions not related to the question of foreign ownership that an interested person may wish to file during the pendency of the combined license application are subject to usual rules of practice, including rules governing reopening the record of a closed proceeding; CLI-13-4, 77 NRC 101 (2013)

new or amended contentions related to portions of the draft environmental impact statement that differ from the environmental report must be timely filed under section 2.309(c), and meet the contention admissibility standards of section 2.309(f)(1) to be admitted; LBP-13-9, 78 NRC 37 (2013)

newly proffered contention that does not satisfy the timeliness requirements of section 2.309(f)(2) may still be considered for admission if it satisfies section 2.309(c)(1); LBP-11-15, 73 NRC 629 (2011)

no finding on emergency planning is necessary for issuance of a renewed nuclear power reactor operating license; CLI-15-6, 81 NRC 340 (2015)

no NRC rule or regulation is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding of Part 2; CLI-15-20, 82 NRC 211 (2015); LBP-12-8, 75 NRC 539 (2012); LBP-12-24, 76 NRC 503 (2012)

no NRC rule or regulation or provision thereof is subject to attack in an adjudicatory proceeding unless a waiver is granted by the Commission; LBP-14-16, 80 NRC 183 (2014)

no NRC rule or regulation, or any provision thereof, concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-11-8, 74 NRC 214 (2011); LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015)

no one can challenge an enforcement order as long as the order, in any way, improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

no significant hazards consideration determination is a procedural decision barred from litigation; LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015)

nontimely contentions might be admissible if petitioner can show that the contention is based on new information and was filed promptly after the new information became available; LBP-12-27, 76 NRC 583 (2012)

nontimely proposed contention may be admissible if, on balance, it satisfies eight criteria; LBP-11-7, 73 NRC 254 (2011)

not only must intervenor act promptly after learning of new information, but the information itself must be new information, not information already in the public domain; LBP-11-7, 73 NRC 254 (2011)

nothing in NRC case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans; LBP-13-8, 78 NRC 1 (2013); LBP-14-6, 79 NRC 404 (2014)

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NRC adjudication is not the appropriate forum for a challenge to a decision by a state regulatory agency; LBP-12-23, 76 NRC 445 (2012)

NRC adjudicatory hearings are not environmental impact statement editing sessions; LBP-11-2, 73 NRC 28 (2011)

NRC deliberately raised contention admissibility standards to relieve the hearing delays that poorly defined or supported contentions had caused in the past; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012); LBP-15-1, 81 NRC 15 (2015)

NRC has authority to define the scope of its proceedings, which, in enforcement proceedings, is to permit challenges solely on whether an order should be sustained; LBP-12-14, 76 NRC 1 (2012)

NRC has resolved many environmental impacts for license renewal through a generic environmental impact statement and these issues need not be revisited in site-specific environmental impact statements; CLI-14-7, 80 NRC 1 (2014)

NRC Information Notice that merely summarized information that was previously available is not new information upon which a new contention can be based; LBP-11-20, 74 NRC 65 (2011)

NRC opinions have long referred back to the bases set forth in support of the contention when an issue arises over the scope of an admitted contention; LBP-12-17, 76 NRC 71 (2012)

NRC practice of closing the hearing record after resolution of the last live contention, and of holding new contentions to the higher reopening standard has been upheld by higher courts; CLI-12-14, 75 NRC 692 (2012)

NRC properly reserves its hearing process for genuine, material controversies between knowledgeable litigants; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

NRC regulations and case law already provide clear and uniform standards to determine the timeliness of motions to add new contentions on the Fukushima accident; LBP-11-32, 74 NRC 654 (2011)

NRC regulations do not allow use of reply briefs to provide, for the first time, the necessary threshold support for contentions; LBP-11-6, 73 NRC 149 (2011)

NRC regulations may not be challenged in an adjudicatory proceeding absent a request for a waiver under section 2.335(b); CLI-12-6, 75 NRC 352 (2012); LBP-12-12, 75 NRC 742 (2012); LBP-13-1, 77 NRC 57 (2013)

NRC revised its rules in 1989 to prevent admission of contentions based on little more than speculation; CLI-12-5, 75 NRC 301 (2012)

NRC rules are designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate in a hearing; CLI-12-15, 75 NRC 704 (2012)

NRC rules contain ample provisions through which litigants may seek admission of new or amended contentions; CLI-12-13, 75 NRC 681 (2012)

NRC rules deliberately place a heavy burden on proponents of contentions, who must challenge aspects of license applications with specificity, backed up with substantive technical support, mere conclusions or speculation being insufficient; CLI-11-5, 74 NRC 141 (2011); LBP-11-35, 74 NRC 701 (2011)

NRC rules of practice are designed to avoid unfocused inquiry in contested proceedings; CLI-15-1, 81 NRC 1 (2015)

NRC rules of practice require that a proposed contention be supported by alleged fact or expert opinion; CLI-12-7, 75 NRC 379 (2012)

NRC Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 319 (2014)

NRC Staff cannot release NEPA documents that blindly parallel the applicant's information and omissions and then be allowed to argue that applicant's omissions prevent filing of new contentions concerning the newly released NEPA document; LBP-13-9, 78 NRC 37 (2013)

NRC Staff's first attempt to analyze a NEPA issue gives rise to an intervenor's first opportunity to raise contentions on the adequacy of this assessment; LBP-15-11, 81 NRC 401 (2015)

NRC Staff's safety analysis and environmental analysis occur separately, and intervenors are expected to raise safety challenges in response to the safety reports and environmental challenges in response to the environmental statements; LBP-15-11, 81 NRC 401 (2015)

NRC's rules are intentionally strict; CLI-15-20, 82 NRC 211 (2015)

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NRC's "strict by design" contention admissibility standards focus the hearing process on disputes that can be resolved in adjudication; CLI-15-22, 82 NRC 310 (2015); CLI-15-23, 82 NRC 321 (2015)

NRC's strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing; LBP-12-27, 76 NRC 583 (2012)

on appeal, Commission defers to board's rulings on contention admissibility absent an error of law or abuse of discretion; CLI-15-23, 82 NRC 321 (2015)

once it made a determination of plausible injury from the proposed project, the board was not required to weigh the evidence to determine whether the harm to petitioners was beyond doubt; CLI-12-12, 75 NRC 603 (2012)

once parties demonstrate standing, they will then be free to assert any contention, which, if proven, will afford them the relief they seek; LBP-11-21, 74 NRC 115 (2011)

once the deadline for filing petitions to intervene has passed, a party may file new or amended contentions if it is able to demonstrate good cause by meeting three requirements; LBP-15-1, 81 NRC 15 (2015)

only alleged facts, not evidence or expert opinion, are required to support contention admissibility; LBP-13-8, 78 NRC 1 (2013)

only those NRC-regulated facilities located within the Ninth Circuit's jurisdictional boundaries are required to conduct environmental analyses of possible terrorist acts; LBP-14-6, 79 NRC 404 (2014)

onsite waste storage contentions are to be held in abeyance pending further Commission order; LBP-13-8, 78 NRC 1 (2013)

original contention did not point to any specific grievance with the environmental justice discussion provided in applicant's environmental report and so the board should have applied the standards in 10 C.F.R. 2.309(c) to determine whether petitioner had demonstrated good cause for its late filing; CLI-15-18, 82 NRC 135 (2015)

other than hypothesizing that there will be a failure of the nuclear reactor vessel because of increased stress brought by the proposed license amendment request, the contention does not provide sufficient information to show that a genuine dispute exists; LBP-11-29, 74 NRC 612 (2011)

Part 51's license renewal provisions cover environmental issues relating to onsite spent fuel storage generically and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-11-13, 73 NRC 534 (2011)

participant may request waiver of a current rule or regulation in a specific proceeding under special circumstances as an exception to the prohibition against challenging NRC rules or regulations in adjudicatory proceedings; CLI-14-7, 80 NRC 1 (2014)

parties are expected to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point; LBP-11-6, 73 NRC 149 (2011)

parties may not raise new arguments that are outside the scope of their contentions, but may legitimately amplify arguments presented in support of the contention in order to fairly respond to arguments raised by the opposing party; LBP-12-23, 76 NRC 445 (2012)

parties may seek leave of the board to file new contentions that challenge the sufficiency of Staff's NEPA documents where information on which new contentions are based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-11-39, 74 NRC 862 (2011)

parties with new and significant information that could undermine the rationale for a Commission regulation must seek a rulemaking instead of challenging the regulation in a particular proceeding unless the information uniquely applies to a given adjudication; LBP-11-35, 74 NRC 701 (2011)

party may petition the Commission for permission to challenge a rule, but that party must make a showing of special circumstances; LBP-15-5, 81 NRC 249 (2015)

petition challenging an immediately effective enforcement order asking that licensee take certain physical security measures in addition to those already required by NRC regulations, to protect the spent fuel it planned to store at its power plant site was rejected; LBP-12-14, 76 NRC 1 (2012)

petition seeking additional enforcement measures beyond those prescribed by the order was properly denied; LBP-12-14, 76 NRC 1 (2012)

petition that attempts to proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected; LBP-12-7, 75 NRC 503 (2012)

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petitioner argued against an enforcement order unless it were modified to clarify various points, including the costs of state and local law enforcement resources that would be needed to implement the order, but the board based its analysis on whether petitioner had shown that the requirements, as stated in the order, would make the facility less safe; CLI-13-2, 77 NRC 39 (2013)

petitioner bears the burden for setting forth clear arguments for its contentions; CLI-12-5, 75 NRC 301 (2012)

petitioner bears the burden of establishing the admissibility of proffered contentions; CLI-14-2, 79 NRC 11 (2014)

petitioner can justify missing a contention filing deadline by showing that the delay was caused by factors such as a weather event or unexpected health issues; LBP-12-27, 76 NRC 583 (2012)

petitioner cannot cure a deficient contention with new arguments not presented in the initial petition; LBP-15-4, 81 NRC 156 (2015)

petitioner cannot rest its contentions on bare assertions and speculation; LBP-11-21, 74 NRC 115 (2011)

petitioner does not demonstrate, with the level of support required under section 2.326(b), that a materially different result would have been likely had the possibility of recriticality over a period longer than 24 hours, or even 4 days, been considered in the SAMA analysis initially; CLI-12-3, 75 NRC 132 (2012)

petitioner does not have to prove its contentions at the admission stage; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-21, 74 NRC 115 (2011)

petitioner does not identify how the Fukushima accident paints a seriously different picture of the environment, given the bounding severe accident scenarios assumed in the GEIS analysis and its consideration of liquid pathways; CLI-12-15, 75 NRC 704 (2012)

petitioner fails to demonstrate that the issue of radiation dispersal due to site inundation is material to the findings the NRC must make to support approving a combined license application; LBP-12-7, 75 NRC 503 (2012)

petitioner fails to specifically explain why a materially different result would have been likely had information currently available from the Fukushima accident been considered ab initio in the severe accident mitigation alternatives analysis or why that information presents a significant safety or environmental issue; LBP-11-35, 74 NRC 701 (2011)

petitioner has not satisfied reopening standards because it has not raised a significant environmental issue and has not demonstrated that a materially different result would be likely if the contention had been considered initially; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

petitioner has provided adequate support for its claim that there are numerous new severe accident mitigation alternatives candidates that should be evaluated for their significance; LBP-12-8, 75 NRC 539 (2012)

petitioner has the burden of going forward with a sufficient factual basis, but the ultimate burden of proof is not shifted from applicant to petitioner, nor do the rules require petitioner to prove its case at the contention stage; LBP-12-18, 76 NRC 127 (2012)

petitioner impermissibly assumes that applicant will violate applicable state law regarding its treatment of wells at the site; LBP-11-16, 73 NRC 645 (2011)

petitioner is not required to set forth all its evidence or to prove its contentions at the admissibility stage; LBP-12-17, 76 NRC 71 (2012)

petitioner is obliged to present factual allegations and/or expert opinion necessary to support its contention; LBP-12-3, 75 NRC 164 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012)

petitioner is required to make reference to specific sources and documents on which it intends to rely; LBP-12-8, 75 NRC 539 (2012)

petitioner lacked good cause for a hearing request filed 7 days after the filing deadline when the argument relied on a misimpression of due dates; LBP-11-9, 73 NRC 391 (2011)

petitioner may claim deficiencies in the application's cultural resources discussion even though it is generally not expected that the applicant's cultural resources discussion will be comprehensive; CLI-14-2, 79 NRC 11 (2014)

petitioner may file new contentions if there are data or conclusions in the draft or final environmental impact statement or environmental assessment that differ significantly from data or conclusions in applicant's documents; LBP-15-11, 81 NRC 401 (2015)

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petitioner may not provide support for a contention in its reply; LBP-15-5, 81 NRC 249 (2015)

petitioner may not rely on a document generated by a state agency if that document contains nothing more than a request for information; LBP-11-6, 73 NRC 149 (2011)

petitioner may not rely on general allegations, but must show specific ties to NRC regulatory requirements or to safety in general to demonstrate a genuine dispute of fact or law; LBP-15-20, 81 NRC 829 (2015)

petitioner may not remediate deficient contentions by introducing, in the reply, documents that were available to it during the time frame for initially filing contentions; LBP-12-7, 75 NRC 503 (2012)

petitioner may question the practice for severe accident mitigation alternatives analysis to utilize mean consequence values, which results in an averaging of potential consequences; LBP-11-13, 73 NRC 534 (2011)

petitioner may raise a SAMA-related contention in a license renewal adjudication if it satisfies the general contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)

petitioner must also show that its contention is material to the findings NRC must make to support issuance of the license amendments; CLI-15-25, 82 NRC 389 (2015)

petitioner must approximate the relative cost and benefit of a challenged SAMA or provide at least some ballpark consequence and implementation costs should the SAMA be performed; CLI-11-11, 74 NRC 427 (2011)

petitioner must challenge the environmental report, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-12-8, 75 NRC 539 (2012)

petitioner must demonstrate good cause for proffering a new contention after the initial deadline for the filing of contentions; LBP-15-23, 82 NRC 55 (2015)

petitioner must demonstrate that a contention asserts an issue of law or fact that is material to the findings NRC must make to support the action that is involved in the proceeding; LBP-12-18, 76 NRC 127 (2012); LBP-15-20, 81 NRC 829 (2015)

petitioner must demonstrate that a contention of omission is within the scope of the proceeding; LBP-15-5, 81 NRC 249 (2015)

petitioner must demonstrate that the issue raised in a contention is within the scope of the proceeding and material to the findings NRC must make to support the action involved in the proceeding; CLI-12-15, 75 NRC 704 (2012); CLI-15-20, 82 NRC 211 (2015); LBP-12-3, 75 NRC 164 (2012)

petitioner must demonstrate that the issue raised in its contention is within the scope of the proceeding; CLI-15-25, 82 NRC 389 (2015)

petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support petitioner's position and on which petitioner intends to rely in litigating the contention at hearing; CLI-15-8, 81 NRC 500 (2015); LBP-15-5, 81 NRC 249 (2015)

petitioner must explain, with specificity, particular safety or legal reasons why moving a requirement from the license into a licensee-controlled document would be improper; LBP-12-25, 76 NRC 540 (2012)

petitioner must file NEPA-related contentions based on applicant's environmental report, but the filing of new or amended contentions is explicitly permitted if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from data or conclusions in applicant's documents; LBP-12-13, 75 NRC 784 (2012)

petitioner must make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-15-23, 82 NRC 55 (2015); LBP-15-24, 82 NRC 68 (2015)

petitioner must make clear why cited references provide a basis; CLI-12-5, 75 NRC 301 (2012)

petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate; LBP-12-18, 76 NRC 127 (2012)

petitioner must provide a brief explanation of the basis for its contention; CLI-15-25, 82 NRC 389 (2015)

petitioner must provide a concise statement of the alleged facts or expert opinions that support its position on the issue and on which it intends to rely at hearing, together with references to the specific sources and documents on which it intends to rely to support its position; LBP-14-6, 79 NRC 404 (2014)

petitioner must provide a sound basis for its contention in its petition or in an expert affidavit or other supporting information that specifically corroborates the contested issues framed by the contention; LBP-13-6, 77 NRC 253 (2013)

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- petitioner must provide factual evidence or supporting documents that produce some doubt about the adequacy of a specified portion of applicant's documents or that provide supporting reasons that tend to show that there is some specified omission from applicant's documents; LBP-15-20, 81 NRC 829 (2015)
- petitioner must provide references to specific sources and documents on which petitioner intends to rely to support its contention; LBP-13-8, 78 NRC 1 (2013)
- petitioner must provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-12-13, 75 NRC 784 (2012)
- petitioner must provide sufficient information to show that a genuine dispute exists with the environmental assessment on a material issue of law or fact; CLI-15-25, 82 NRC 389 (2015)
- petitioner must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, including references to specific portions of the application that petitioner disputes and the supporting reasons for each dispute; CLI-14-2, 79 NRC 11 (2014); LBP-12-24, 76 NRC 503 (2012)
- petitioner must raise a genuine dispute with the license application and must provide underlying factual or legal support; CLI-12-15, 75 NRC 704 (2012)
- petitioner must raise issues that are within the scope of the proceeding; LBP-12-25, 76 NRC 540 (2012)
- petitioner must refer to specific portions of the application that it disputes, along with the supporting reasons for each dispute; CLI-15-20, 82 NRC 211 (2015)
- petitioner must show that a genuine dispute exists on a material issue of law or fact relating to the application; LBP-15-19, 81 NRC 815 (2015)
- petitioner must state the alleged facts or expert opinions that support its position and on which it intends to rely at hearing; CLI-15-20, 82 NRC 211 (2015)
- petitioner must state the issue of law or fact to be raised or controverted and a brief explanation of the basis for each contention; CLI-15-20, 82 NRC 211 (2015)
- petitioner must, among other things, provide a concise statement of the alleged facts or expert opinions that support its position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents that support its position; CLI-12-5, 75 NRC 301 (2012)
- petitioner need not prove its contentions at the admissibility stage; LBP-11-16, 73 NRC 645 (2011); LBP-12-8, 75 NRC 539 (2012)
- petitioner need not rerun applicant's own cost-benefit calculations, but must do more than merely suggest that additional factors be evaluated or that different analytical techniques be used; LBP-15-5, 81 NRC 249 (2015)
- petitioner or intervenor may file timely new or amended contentions, with leave of the board, if three requirements are met; LBP-11-9, 73 NRC 391 (2011)
- petitioner proffers no new information on station blackout or mitigation measures, and the events therefore cannot form the basis for an assertion of timeliness of a motion to reopen; LBP-11-35, 74 NRC 701 (2011)
- petitioner proposing alternative inputs or methodologies for the severe accident mitigation alternatives analysis must present some factual or expert basis for why the proposed changes in the analysis are warranted; CLI-12-8, 75 NRC 393 (2012)
- petitioner should not wait for the Staff to perform its responsibilities under the National Historic Preservation Act before it raises a claim that information is lacking; CLI-14-2, 79 NRC 11 (2014)
- petitioner who failed in its revised petition to challenge applicant's reliance on the generic environmental impact statement cannot raise that challenge for the first time in its reply; LBP-11-6, 73 NRC 149 (2011)
- petitioner that fails to provide sufficient factual or expert support for the claims in its contention in contravention of section 2.309(f)(1)(v) also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-15-1, 81 NRC 15 (2015)
- petitioner who files a new contention after the board has already closed the evidentiary record is obliged to address the reopening standards; CLI-12-6, 75 NRC 352 (2012)
- petitioner who satisfies the reopening standard must also show that its proposed new contention meets the standard for new or amended contentions in section 2.309(c) and the underlying admissibility standards of section 2.309(f)(1); LBP-14-8, 79 NRC 519 (2014)

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petitioner will have an opportunity to challenge the board's contention admissibility decision at the end of the case; CLI-12-13, 75 NRC 681 (2012)

petitioner's assertion that applicant's environmental report must be supplemented to take account of allegedly new and significant information is, as a procedural matter, unfounded and must be rejected; LBP-11-33, 74 NRC 675 (2011)

petitioner's assertion that continued operation of an independent spent fuel storage installation causes fear and anxiety among its members is not a valid claim under NEPA; LBP-12-24, 76 NRC 503 (2012)

petitioner's assertion that recriticality is demonstrated by the relative quantities of radionuclides released is not self-evident and is clearly of the class of statements that must be supported by expert opinion; LBP-11-23, 74 NRC 287 (2011)

petitioner's assertion that severe accidents from spent fuel pools must be considered in applicant's SAMA analysis is in direct conflict with NRC regulations; LBP-11-2, 73 NRC 28 (2011)

petitioner's attempt to tie NEPA environmental justice claim to Fukushima Task Force report is an improper effort to interpose concerns that could have been raised at the outset of the proceeding; LBP-11-37, 74 NRC 774 (2011)

petitioner's averment that the proffered environmental contentions will better position the agency to fully review the possible impacts of applicant's proposed project and, based on petitioner's expert's information, may address concerns and mitigate impacts to water, land, and other resources is sufficient to fulfill the redressability requirement for standing; CLI-12-12, 75 NRC 603 (2012)

petitioner's burden on a contention of omission is to identify the omission and the supporting reasons for petitioners' belief that the application fails to contain information on a relevant matter as required by law; LBP-15-5, 81 NRC 249 (2015)

petitioner's challenge to applicant's use of Three Mile Island data constitutes a genuine dispute on a material issue and is within the scope of the license renewal proceeding because it challenges the adequacy of the environmental report; LBP-12-8, 75 NRC 539 (2012)

petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of the NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 149 (2011)

petitioner's failure to address applicant's supplemental economic analyses, demonstrate specific knowledge of the analysis, and not indicate, even broadly, that the SAMA economic cost-benefit conclusions are not sufficiently conservative renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

petitioner's issue of NRC Staff's compliance with its NEPA obligation to undertake a full evaluation of the environmental impacts associated with a proposed federal action is within the scope of an operating license amendment proceeding and material to the findings NRC must make; LBP-15-13, 81 NRC 456 (2015)

petitioner's issue will be ruled inadmissible if the petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-11-6, 73 NRC 149 (2011)

petitioner's request that the Commission defer a decision on the license renewal applications pending disposition of its forthcoming rulemaking and other potential events is premature and is therefore denied; CLI-14-6, 79 NRC 445 (2014)

petitioners are not allowed to postpone filing a contention challenging publicly available information or analysis until NRC Staff issues some document that collects, summarizes, and places into context the facts supporting that contention; CLI-15-17, 82 NRC 33 (2015)

petitioners are not barred from contending that additional testing is necessary to show margins of safety equivalent to those of the ASME BPV Code, Section XI, Appendix G because petitioners allege noncompliance with 10 C.F.R. Part 50, Appendix G and not Appendix H; LBP-15-20, 81 NRC 829 (2015)

petitioners are not required at the contention admission stage to prove their case on the merits or even to provide expert or factual support as strong as that necessary to withstand a summary disposition motion; LBP-15-20, 81 NRC 829 (2015)

petitioners are not required to demonstrate their asserted injury with certainty at the contention admissibility stage of the proceeding; CLI-12-12, 75 NRC 603 (2012); CLI-15-25, 82 NRC 389 (2015)

petitioners are obliged to present factual allegations and/or expert opinion necessary to support their contentions; LBP-15-1, 81 NRC 15 (2015)

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petitioners are required to make a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-15-20, 81 NRC 829 (2015)

petitioners are required to provide sufficient factual support to demonstrate a genuine dispute; LBP-15-20, 81 NRC 829 (2015)

petitioners can raise compliance issues only under 10 C.F.R. 2.206, which would allow them to petition NRC to take an enforcement action; LBP-15-5, 81 NRC 249 (2015)

petitioners cannot challenge an NRC regulation without first obtaining a waiver; LBP-15-20, 81 NRC 829 (2015)

petitioners cannot rely on a late attempt to reinvigorate thinly supported contentions by presenting entirely new arguments in reply briefs; LBP-15-4, 81 NRC 156 (2015)

petitioners did not demonstrate that the issue of whether the MACCS2 was subject to quality assurance is material to the findings the NRC must make under NEPA to support the requested license extension; LBP-11-13, 73 NRC 534 (2011)

petitioners do not need to cite a specific portion of the application to support a contention of omission; LBP-15-5, 81 NRC 249 (2015)

petitioners do not provide any alleged facts or expert support indicating that the river valley is within the geographic area for which applicant was required to model atmospheric dispersion; LBP-11-13, 73 NRC 534 (2011)

petitioners fail to link any of their past criticisms to specific provisions of the environmental report, and the board declines to pore through the attachments to their intervention submission to assemble the basis for such a contention; LBP-12-3, 75 NRC 164 (2012)

petitioners have an affirmative obligation to request confidential and proprietary information that has not been made publicly available in order to support a proposed contention; LBP-11-9, 73 NRC 391 (2011)

petitioners have not established that use of another source term would identify additional cost-beneficial severe accident mitigation alternatives; LBP-11-13, 73 NRC 534 (2011)

petitioners have not raised an issue material to findings that NRC must make to support final decisions and they are unable to satisfy contention admissibility standards or meet the criteria to reopen a closed record; CLI-15-4, 81 NRC 221 (2015)

petitioners may challenge a Staff guidance document such as a Regulatory Guide; LBP-15-20, 81 NRC 829 (2015)

petitioners may not raise arguments for the first time in their reply; CLI-15-22, 82 NRC 310 (2015)

petitioners may not raise in adjudicatory proceedings contentions attacking the agency's rules and regulations or contentions that are the subject of ongoing rulemakings; LBP-11-29, 74 NRC 612 (2011)

petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the environmental report; LBP-15-5, 81 NRC 249 (2015)

petitioners may raise issues not addressed by a specific regulation when unique features in the facility or ongoing development of a generic solution mean that there are some gaps in the regulatory scheme that must be addressed on a case-by-case basis; LBP-15-20, 81 NRC 829 (2015)

petitioners must do more than rest on the mere existence of requests for additional information as a basis for their contention; CLI-15-8, 81 NRC 500 (2015)

petitioners must offer more than speculation at the contention admission stage; LBP-15-5, 81 NRC 249 (2015)

petitioners must point to a deficiency in the application, and not merely suggest other ways an analysis could have been done, or other details that could have been included; CLI-12-5, 75 NRC 301 (2012)

petitioners must provide a concise statement of the alleged facts or expert opinions that support their position on the issue, together with references to the specific sources and documents, on which they intend to rely to support their position on the issue; LBP-15-5, 81 NRC 249 (2015); LBP-15-20, 81 NRC 829 (2015)

petitioners must provide a nexus between its concerns and any deficiencies in applicant's SAMA analysis; CLI-15-18, 82 NRC 135 (2015)

petitioners must provide site-specific support to show that the severe accident mitigation alternatives analysis is unreasonable; LBP-15-5, 81 NRC 249 (2015)

petitioners must satisfy the six basic requirements of specificity, brief explanation, scope, materiality, concise statement of alleged facts or expert opinion, and genuine dispute; LBP-12-25, 76 NRC 540 (2012)

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petitioners question applicant's failure to consider the qualitative benefits of installing engineered filters; LBP-15-5, 81 NRC 249 (2015)

petitioners who choose to wait to raise contentions that could have been raised earlier risk the possibility that there will not be a material difference between the application and NRC Staff's review documents, thus rendering any newly proposed contention on previously available information impermissibly late; CLI-15-1, 81 NRC 1 (2015)

petitioners who have been denied a hearing for raising an issue outside the scope of a proceeding could still raise the issue through a petition for enforcement under 10 C.F.R. 2.206; LBP-12-14, 76 NRC 1 (2012)

petitioners' argument opposing an order that imposed additional security measures at a spent fuel storage facility, because it created a false sense of security, was rejected because petitioners did not explain how they would be better off without the measures in the order; CLI-13-2, 77 NRC 39 (2013)

petitioners' argument that additional testing should be required to demonstrate compliance with 10 C.F.R. 50.61a is an impermissible challenge to that regulation; CLI-15-22, 82 NRC 310 (2015)

petitioners' argument that power reactor is being operated as a test reactor reflects a misreading of 10 C.F.R. 50.59; LBP-15-20, 81 NRC 829 (2015)

petitioners' assertions that the MACCS2 code was not subjected to quality assurance requirements is deficient because a severe accident mitigation alternatives analysis is not subject to such requirements; LBP-11-2, 73 NRC 28 (2011)

petitioners' contention challenges the sufficiency of the equivalent margins analysis to provide reasonable assurance of reactor safety and is therefore within the scope of the proceeding; LBP-15-20, 81 NRC 829 (2015)

petitioners' reliance on loss of future opportunities to challenge by adjudicatory intervention licensee-initiated changes in the low-level effluent monitoring details fell short of an admissible contention; LBP-12-25, 76 NRC 540 (2012)

petitions that lack alleged facts or expert opinions to support the contentions are inadmissible; LBP-11-29, 74 NRC 612 (2011)

petitions that proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected; LBP-12-9, 75 NRC 615 (2012)

placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage is inadmissible; CLI-15-27, 82 NRC 414 (2015)

placeholder contentions that challenge the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-15, 81 NRC 803 (2015)

plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face general criticism that the passage of time between original licensing and renewal has rendered their SAMA analysis out of date upon application for a subsequent renewal term; CLI-13-7, 78 NRC 199 (2013)

pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-15-5, 81 NRC 249 (2015); LBP-15-11, 81 NRC 401 (2015)

pleadings submitted by pro se petitioners are afforded greater leniency than petitions drafted with the assistance of counsel; LBP-15-13, 81 NRC 456 (2015)

pointing to alleged new and significant information is not enough to allow boards to adjudicate an issue resolved generically by regulation; LBP-15-5, 81 NRC 249 (2015)

portion of a contention asserting that applicant failed to consider the results of a particular study in its SAMA analysis is admissible; CLI-11-11, 74 NRC 427 (2011)

portions of a contention relevant to completion of the Endangered Species Act §7 consultation process and adequacy of NRC Staff's impact analyses relevant to the three named species meet the admissibility standards; LBP-13-9, 78 NRC 37 (2013)

possible future action must at least constitute a proposal pending before the agency to be ripe for adjudication, and to establish that cumulative impacts of the action must be addressed, petitioner must first show that any proposal applicant has made is so interdependent with the application at issue that it would be unwise or irrational to complete one without the other; LBP-14-6, 79 NRC 404 (2014)

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post-9/11 motion to reopen satisfied rules for reopening the record and for late-filed contentions, but contention involving a license amendment request for reconfiguring a spent fuel pool was inadmissible; CLI-11-5, 74 NRC 141 (2011)

post-environmental report, intervenor would need to file a motion to amend an already-admitted contention or to admit a new contention if the information in NRC Staff's NEPA statement is sufficiently different from information in the ER that supported the original contention's admission; LBP-13-10, 78 NRC 117 (2013)

post-hearing petition contention (new or amended contention) also must satisfy the substantive contention admissibility standards; LBP-13-9, 78 NRC 37 (2013)

potential legislative action that might result in a reduction in demand is speculative and therefore does not provide a basis for admission of a contention on need for power; LBP-11-7, 73 NRC 254 (2011)

potential to broaden or delay a proceeding may not be relied on to exclude a contention because NRC has a duty to consider new and significant information that arises before it makes its licensing decisions; LBP-11-35, 74 NRC 701 (2011)

presiding officer may restrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments; LBP-11-13, 73 NRC 534 (2011)

prior to NRC's 1989 rule revision, intervenors were able to trigger hearings after merely copying a contention from another proceeding, even though these admitted intervenors often had negligible knowledge of the issues and no direct case to present; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

proper question is not whether there are plausible alternative choices for use in the SAMA analysis, but whether the analysis that was done is reasonable under NEPA; CLI-13-7, 78 NRC 199 (2013)

properly formulated contentions must focus on the license application in question, challenging either specific portions of, or alleged omissions from, the application (including the safety analysis report/technical report and the ER) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-12-27, 76 NRC 583 (2012)

proponent of a contention must provide sufficient information to show that a genuine dispute exists with applicant/licensee on a material issue of law or fact; CLI-14-2, 79 NRC 11 (2014)

proponent of a contention, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for its admission; CLI-12-5, 75 NRC 301 (2012); CLI-12-13, 75 NRC 681 (2012); CLI-15-23, 82 NRC 321 (2015)

proponents of contentions must challenge aspects of license applications with specificity, backed up with substantive technical support, mere conclusions or speculation being insufficient, but an even heavier burden applies to motions to reopen; LBP-11-35, 74 NRC 701 (2011)

proponents of new or amended contentions are required to demonstrate good cause for their filing, which includes a demonstration that the information on which the new or amended contention is based is materially different from information previously available; CLI-15-1, 81 NRC 1 (2015)

proposed new contention will be considered timely if it is filed within 30 days of the date when the new and material information on which the proposed contention is based first becomes available; LBP-11-7, 73 NRC 254 (2011)

proposed new or amended contention shall be deemed timely if filed within 30 days of the date when the new and material information on which it is based first becomes available; LBP-12-23, 76 NRC 445 (2012)

proposed new or amended contentions shall be deemed timely if filed within 60 days of the date when the document containing the new and material information first becomes available; LBP-12-12, 75 NRC 742 (2012)

proposed rule or proposed law may not support an admissible contention because its ultimate effect is at best speculative; LBP-15-15, 81 NRC 598 (2015)

proposed rules are not binding upon administrative agencies and are not ripe for review by NRC boards; LBP-15-15, 81 NRC 598 (2015)

providing a brief explanation of the basis for a contention is but one of the six requirements for establishing that a contention is admissible; LBP-11-34, 74 NRC 685 (2011)

providing any material or document as a basis for a contention without setting forth an explanation of its significance is inadequate to support admission of that contention; LBP-12-12, 75 NRC 742 (2012); LBP-15-20, 81 NRC 829 (2015)

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psychological fears or stigma effects are not cognizable NEPA claims; CLI-12-5, 75 NRC 301 (2012)

publication of NRC Staff's draft environmental impact statement may moot a contention challenging the environmental analysis in the applicant's environmental report, if the DEIS dispenses with the issues raised in the original contention challenging the ER; LBP-11-1, 73 NRC 19 (2011)

publication of the draft environmental impact statement does not provide an opportunity to renew previously filed (and rejected) contentions, but rather, petitioner must demonstrate that the DEIS actually contains new data or conclusions; LBP-12-12, 75 NRC 742 (2012)

purpose of 10 C.F.R. 2.309(f)(1) is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-13-8, 78 NRC 1 (2013); LBP-15-5, 81 NRC 249 (2015)

purpose of contention pleading requirements is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-12-25, 76 NRC 540 (2012)

purpose of the timeliness rules is not to trap petitioners into a no-win situation where a contention is called premature if filed in the original petition and untimely if petitioners wait for a potential event to actually transpire; LBP-15-24, 82 NRC 68 (2015)

radiological claims that represent a direct challenge to prior license amendments authorizing extended power uprates are outside the scope of a license amendment proceeding; LBP-15-13, 81 NRC 456 (2015)

raising new issues related to the Fukushima events does not warrant new procedures or a separate timetable; CLI-12-6, 75 NRC 352 (2012)

rarely should basis for a contention require more than a sentence or two; LBP-11-34, 74 NRC 685 (2011)

reach of a contention necessarily hinges upon its terms coupled with its stated bases; CLI-12-5, 75 NRC 301 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-13-10, 78 NRC 117 (2013)

reference to Fukushima Task Force Report recommendations alone, without facts or expert opinion that explain their significance for the unique characteristics of the sites or reactors that are the subject of the petitions, does not provide sufficient support for the common contention; LBP-12-18, 76 NRC 127 (2012)

references to prior problems involving estimation of decommissioning costs are inadequate to establish a likelihood that the amount of applicant's decommissioning bond will be insufficient; LBP-12-3, 75 NRC 164 (2012)

referencing an aging management program described in the GALL Report does not insulate a program from an adequately supported challenge at a hearing; LBP-11-2, 73 NRC 28 (2011)

regardless of when filed, all proposed contentions must comply with the general contention admissibility criteria; LBP-11-7, 73 NRC 254 (2011)

regulations are not subject to collateral attack in NRC hearings; LBP-13-9, 78 NRC 37 (2013)

regulations can be challenged only under extremely limited circumstances; LBP-15-5, 81 NRC 249 (2015)

rejection of contention, where petitioner has other contentions pending for hearing, does not constitute serious and irreparable harm or affect the structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 33 (2015)

release of NRC Staff's environmental review document may be the first opportunity for a petitioner to question the accuracy of the Staff's environmental analysis; CLI-15-17, 82 NRC 33 (2015)

relevant issues for an additional 20 years of reactor plant operation differ from those when a reactor plant is first built and licensed; LBP-11-21, 74 NRC 115 (2011)

relitigation of an issue previously decided by a licensing board or the Commission may also be barred by the doctrine of collateral estoppel; LBP-11-10, 73 NRC 424 (2011)

reopening a proceeding with respect to a specific issue would not have the effect of reopening the proceeding for adjudication on unrelated matters once a record is closed; CLI-12-17, 76 NRC 207 (2012)

reopening standards expressly contemplate contentions that raise issues not previously litigated; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

reply brief cannot introduce new issues or expand the scope of arguments advanced in the original petition, but rather must focus on actual or logical arguments presented in the original petition or raised in answers to it; LBP-15-26, 82 NRC 163 (2015)

reply brief may not be used to present entirely new arguments in support of an existing contention or to propose a new contention, but board may consider information in a reply that legitimately amplifies an issue presented in the original petition; LBP-15-5, 81 NRC 249 (2015)

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reply briefs may not be used to introduce new arguments to reinvigorate thinly supported contentions; CLI-12-5, 75 NRC 301 (2012)

reply briefs may not contain new information that was not raised in either the petition or answers, but arguments that respond to the petition or answers, whether they are offered in rebuttal or in support, are not precluded; LBP-12-8, 75 NRC 539 (2012)

request for hearing and/or petition for leave to intervene will be granted if the board determines that requestor/petitioner has standing and has proposed at least one admissible contention; LBP-12-8, 75 NRC 539 (2012)

request for hearing or petition for leave to intervene must explain proposed contentions with particularity; CLI-11-8, 74 NRC 214 (2011)

request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 65 (2011)

request that NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions is premature; LBP-12-18, 76 NRC 127 (2012)

request to admit a new or amended contention requires petitioner to show that the information upon which it is based was not previously available and is materially different from information previously available; CLI-14-2, 79 NRC 11 (2014)

requests for a generic NEPA analysis were premature where the NRC evaluation of the Fukushima Dai-ichi events was still ongoing; LBP-15-24, 82 NRC 68 (2015)

requirement for brief explanation of the basis for a contention merely requires an explanation of the rationale or theory of the contention; LBP-15-20, 81 NRC 829 (2015)

requirement that a contention refer to specific portions of the application ensures that the board will be able to determine whether the contention is within the scope of the proceeding and that applicant knows which portions of the application it must defend; LBP-15-20, 81 NRC 829 (2015)

requirement that a contention refer to specific portions of the application is satisfied when a commonsense reading of the petition makes abundantly clear which sections of the application petitioners are challenging, even though petitioners do not specifically cite particular sections; LBP-15-20, 81 NRC 829 (2015)

requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)

requirements for an admissible contention are provided in 10 C.F.R. 2.309(f)(i)-(vi); CLI-15-8, 81 NRC 500 (2015)

requirements for an admissible contention are specified; LBP-12-3, 75 NRC 164 (2012)

requiring petitioners to proffer additional and conclusive support for the effect of their proposed contention would improperly require boards to adjudicate the merits of contentions before admitting them; LBP-11-7, 73 NRC 254 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-11-25, 74 NRC 380 (2011); LBP-15-20, 81 NRC 829 (2015)

results of review by NRC Staff and Indian tribe of applicant's newly disclosed well log data did not paint a seriously different picture of the environmental landscape; LBP-15-16, 81 NRC 618 (2015)

review of a board's dismissal of some contentions would normally await the end of the case; CLI-12-19, 76 NRC 377 (2012)

review of a license renewal application does not reopen issues relating to a plant's current licensing basis; LBP-12-24, 76 NRC 503 (2012)

routine contention admissibility decisions do not affect the basic structure of a proceeding in a pervasive or unusual manner; CLI-12-13, 75 NRC 681 (2012)

routine contention admissibility determinations generally are not appropriate for interlocutory review; CLI-12-12, 75 NRC 603 (2012)

rule waiver would be necessary to litigate the issue of potentially new and significant information pertaining to bird collisions in an adjudicatory proceeding; CLI-13-7, 78 NRC 199 (2013)

rules on contention admissibility are strict by design; LBP-11-21, 74 NRC 115 (2011); LBP-11-22, 74 NRC 259 (2011); LBP-12-25, 76 NRC 540 (2012); LBP-13-8, 78 NRC 1 (2013); LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-26, 82 NRC 163 (2015)

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ruling on an appeal, the Commission defers to a board's rulings on contention admissibility absent an error of law or abuse of discretion; CLI-15-22, 82 NRC 310 (2015)

safety culture issues are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

safety culture, operational history, quality assurance, quality control, management competence, human factors, and emergency planning issues are beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

safety evaluation report did not add a last piece of information, but merely compiled and organized preexisting information; CLI-11-8, 74 NRC 214 (2011)

safety issue that does not involve aging management issues is outside the scope of the license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

safety issues that are routinely addressed through the agency's ongoing regulatory oversight are outside the scope of license renewal proceedings because considering them in that context would be unnecessary and wasteful; LBP-11-2, 73 NRC 28 (2011)

safety matters generally need to be raised, relative to an admitted safety contention, in the context of the merits disposition of the already admitted safety contention or, in the case of a new issue, as a wholly new safety contention; LBP-13-10, 78 NRC 117 (2013)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

SAMA contention is admissible only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-11-13, 73 NRC 534 (2011)

scope of a contention is limited to the issues of law and fact pleaded with particularity and any factual and legal material in support thereof; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

scope of a proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-12-18, 76 NRC 127 (2012)

scope of a section 2.202 proceeding is limited to the narrow issues of whether the facts stated in the order are true and whether the remedy selected is supported by those facts; CLI-13-2, 77 NRC 39 (2013)

scope of an adjudicatory hearing is limited to the notice of hearing, which, in licensing matters, normally extends only to the application at issue; CLI-14-11, 80 NRC 167 (2014)

scope of an admitted contention is determined by the bases set forth in support of the contention; LBP-11-14, 73 NRC 591 (2011)

scope of any hearing should include the proposed license amendments, and any health, safety, or environmental issues fairly raised by them; LBP-12-25, 76 NRC 540 (2012)

scope of license amendment proceedings is limited to the license amendment request, and petitioners typically cannot challenge a Commission regulation; LBP-15-24, 82 NRC 68 (2015)

scope of the license renewal proceeding on safety-related issues is limited to plant structures and components that will require an aging management review for the period of extended operation under the renewed license and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; CLI-15-21, 82 NRC 295 (2015)

section 2.309(c)(vii) weighs heavily against admission of a contention because the addition of a hearing on its subject matter will unduly broaden the issues and materially delay the proceeding; LBP-11-35, 74 NRC 701 (2011)

section 2.341 applies to appeals of rulings on new contentions filed after initial intervention petitions; CLI-12-7, 75 NRC 379 (2012)

severe accident mitigation alternatives analysis issues can present difficult judgment calls at the contention admission stage; LBP-15-5, 81 NRC 249 (2015)

severe accident mitigation alternatives are listed as Category 2 issues, and NRC must treat them as such; LBP-12-8, 75 NRC 539 (2012)

severe accident mitigation alternatives contentions are admissible only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-11-2, 73 NRC 28 (2011)

should requirements for reopening the record be satisfied, the requirements for untimely contentions must also be satisfied, as well as the contention admissibility criteria of section 2.309(f)(1); LBP-11-35, 74 NRC 701 (2011)

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should the Commission determine at a future time that case-specific challenges to waste confidence are appropriate for consideration, normal procedural rules will apply; LBP-13-1, 77 NRC 57 (2013); LBP-14-6, 79 NRC 404 (2014)

showing necessary to demonstrate that a materially different result in the outcome of the severe accident mitigation alternatives analysis would be or would have been likely had the newly proffered evidence been considered initially is discussed; LBP-11-35, 74 NRC 701 (2011)

significant, high, and adverse disparate impacts are necessary to form a valid environmental justice contention; LBP-12-24, 76 NRC 503 (2012)

simple reference to a large number of documents is not enough to put the parties on notice as to the basis for intervention, but rather, petitioner must clearly identify and summarize the facts being relied on in the specific portions of the documents cited; LBP-13-6, 77 NRC 253 (2013)

simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support admission of the contention; LBP-12-3, 75 NRC 164 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-15-1, 81 NRC 15 (2015)

simply referencing a study without explaining the information's significance relative to the potential containment leakage monitored by the testing at issue does not establish its materiality; LBP-15-26, 82 NRC 163 (2015)

site-specific environmental issues are Category 2 issues and thus admissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

some reasonably specific factual or legal basis is required; CLI-15-8, 81 NRC 500 (2015)

speculation by an expert cannot form the basis for admission of a contention on the basis of the matter being exceptionally grave; LBP-11-20, 74 NRC 65 (2011)

speculation cannot be the basis for an admissible contention; LBP-12-27, 76 NRC 583 (2012)

speculation that NRC would consider other SAMAs than have been previously considered does not demonstrate that the issue raised is material to NRC's decision; LBP-12-1, 75 NRC 1 (2012)

standard for admission of new or amended contentions involves a balancing of eight factors; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-8, 74 NRC 214 (2011); CLI-12-10, 75 NRC 479 (2012); LBP-11-20, 74 NRC 65 (2011); LBP-11-22, 74 NRC 259 (2011); LBP-11-35, 74 NRC 701 (2011)

standard for determining whether a materially different result would be obtained is measured using the Commission's test of whether it has been shown that a motion for summary disposition could be defeated; LBP-11-20, 74 NRC 65 (2011)

standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or an abuse of discretion; CLI-12-7, 75 NRC 379 (2012)

standards are deliberately strict, and any contention that does not satisfy NRC requirements will be rejected; CLI-11-8, 74 NRC 214 (2011)

standards are strict by design; LBP-15-19, 81 NRC 815 (2015); LBP-15-23, 82 NRC 55 (2015)

standards for admission of new contentions are reviewed; LBP-11-25, 74 NRC 380 (2011)

standards governing contention admissibility are strict by design; LBP-12-7, 75 NRC 503 (2012)

state has provided sufficiently supported expert opinion to show at the contention admissibility stage why the inadvertent release of radionuclides is enough of a risk to public health and safety to warrant merits consideration as an unforeseen expense; LBP-15-24, 82 NRC 68 (2015)

state's claim that licensee's license amendment request contains incomplete and incorrect statements concerning its use of the trust fund is within the scope of the license amendment proceeding as defined in the notice of opportunity to request a hearing; LBP-15-24, 82 NRC 68 (2015)

statement of supporting facts or expert opinion to establish how the project would impair the visual resources, rather than mere speculation, is required for an admissible contention; LBP-12-3, 75 NRC 164 (2012)

subject matter of contentions must impact the grant or denial of a pending license application; LBP-12-15, 76 NRC 14 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-15-20, 81 NRC 829 (2015)

sufficiency of an aging management program that meets the GALL Report's recommendations can be challenged if the contention admissibility requirements are otherwise met; CLI-12-10, 75 NRC 479 (2012)

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sufficiency of the NRC's hard look at the benefits of severe accident mitigation alternatives in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 11 (2011)

summary disposition is appropriate where alleged omission from initial renewal application is cured in updated SAMA analysis; LBP-15-29, 82 NRC 246 (2015)

support for a contention must be provided when the contention is filed, not at some later date; LBP-15-5, 81 NRC 249 (2015)

support required for a contention necessarily will depend on the issue sought to be litigated; CLI-11-11, 74 NRC 427 (2011)

suppositions/speculation regarding effectiveness of hydrogen control mechanisms are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable; CLI-12-10, 75 NRC 479 (2012)

test for materiality that would require petitioners to demonstrate quantitatively how an alleged defect would result in a violation of pertinent requirements is rejected; LBP-11-7, 73 NRC 254 (2011)

that NRC Staff will develop additional information relevant to cultural resources, as part of its National Historic Preservation Act review, does not preclude a challenge to the application's cultural resources discussion; CLI-14-2, 79 NRC 11 (2014)

that the corrective measures outlined in a confirmatory order do not improve petitioner's personal situation does not provide grounds to rescind the confirmatory order; CLI-13-2, 77 NRC 39 (2013)

there is a difference between asserting genuinely new arguments and alerting the tribunal to new, additional support for an existing argument; LBP-15-27, 82 NRC 184 (2015)

there is no contention-based requirement mandating that to have standing, besides showing that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury, petitioner also must establish a link between that injury and the issues it wishes to litigate in challenging an application; LBP-12-3, 75 NRC 164 (2012)

there is no legal requirement that an applicant consider population projections to the end of the license term, but petitioner could succeed in raising such a contention if it demonstrated that considering such data would be material to the proceeding; LBP-12-8, 75 NRC 539 (2012)

there must be some significant link between a claimed deficiency and NRC's ultimate determination whether applicant will adequately protect the health and safety of the public and the environment; LBP-15-20, 81 NRC 829 (2015); LBP-15-24, 82 NRC 68 (2015)

there simply would be no end to NRC licensing proceedings if petitioners could ignore timeliness requirements and add new contentions at their convenience based on information that could have formed the basis for a timely contention at the outset of the proceeding; LBP-11-20, 74 NRC 65 (2011)

thinly supported contention is inadmissible; CLI-15-6, 81 NRC 340 (2015)

time for challenging the environmental report passes when NRC Staff releases its draft supplemental environmental impact statement, but contentions challenging the ER can be filed with the initial petition and prior to the time Staff's environmental review documents are completed; LBP-12-11, 75 NRC 731 (2012)

timeliness of late-filed contentions turns on fact-specific considerations, such as when new documents or information first became available and how promptly intervenors reacted; LBP-15-24, 82 NRC 68 (2015)

timely new contentions challenging the sufficiency of Staff's NEPA documents may be filed where data or conclusions in these documents differ significantly from data or conclusions in previous versions of these documents or in the applicant's environmental report; LBP-11-39, 74 NRC 862 (2011)

timely new or amended contentions may be admitted if they meet three pleading requirements; LBP-11-32, 74 NRC 654 (2011)

to accept the argument that a reopening standard may never be applied in situations where a petitioner seeks to add previously unlitigated material would effectively render the regulation meaningless; CLI-12-3, 75 NRC 132 (2012)

to assess whether a contention is within the scope of, and material to, the proceeding, boards need to know the legal basis (safety or environmental) of the contention; LBP-13-8, 78 NRC 1 (2013)

to be accepted for hearing, contentions must meet strict admissibility standards; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

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- to be admissible, a newly proffered contention must satisfy either the timeliness standards in 10 C.F.R. 2.309(f)(2) or the standards in 10 C.F.R. 2.309(c)(1) for newly proffered nontimely contentions, and the contention admissibility standards in 10 C.F.R. 2.309(f)(1); LBP-11-15, 73 NRC 629 (2011)
- to be admissible, all contentions must satisfy the six criteria of 10 C.F.R. 2.309(f)(1); LBP-11-16, 73 NRC 645 (2011)
- to be admissible, each contention must satisfy six pleading requirements; LBP-11-29, 74 NRC 612 (2011)
- to be admissible, late-filed contentions must not only meet standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of section 2.309(c) or section 2.307; LBP-13-9, 78 NRC 37 (2013)
- to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-14-6, 79 NRC 404 (2014)
- to challenge a Category 1 issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 249 (2015)
- to challenge an energy alternatives analysis, petitioner ordinarily must provide alleged facts or expert opinion sufficient to raise a genuine dispute as to whether the best information available today suggests that a commercially viable alternative technology (or combination of technologies) is available now, or will become so in the near future, to supply baseload power; CLI-12-8, 75 NRC 393 (2012)
- to challenge generic application of a rule, petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply; CLI-13-7, 78 NRC 199 (2013)
- to define the scope of an admitted contention properly, boards should specify which bases are admitted; LBP-13-6, 77 NRC 253 (2013); LBP-13-10, 78 NRC 117 (2013)
- to demonstrate a significant safety issue, petitioners must establish either that uncorrected errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely; LBP-11-35, 74 NRC 701 (2011)
- to demonstrate that a revised SAMA analysis would produce a materially different result, intervenor should indicate how much the mean consequences of the severe accident scenarios could reasonably be expected to change as well as cost of implementing other SAMAs it believes might become cost-effective; LBP-12-1, 75 NRC 1 (2012)
- to demonstrate the admissibility of a NEPA contention that an applicant failed to consider a viable alternative to its proposed action, petitioner must show that its contention presents a genuine dispute; CLI-12-5, 75 NRC 301 (2012)
- to eliminate the inadmissible issue of tribal notification and to clarify the scope of the subsistence consumption issue, board narrows and reformulates a contention; LBP-15-5, 81 NRC 249 (2015)
- to establish that cumulative impacts must be addressed, petitioner must first show that any proposal applicant has made is so interdependent with the application at issue that it would be unwise or irrational to complete one without the other; LBP-14-6, 79 NRC 404 (2014)
- to gain the admission of a new or amended contention, a party must meet the requirements of 10 C.F.R. 2.309(c) and (f); LBP-15-16, 81 NRC 618 (2015)
- to have a new contention admitted after the contested proceeding has terminated, petitioner must meet three criteria; CLI-12-14, 75 NRC 692 (2012)
- to litigate a SAMA-related contention in adjudicatory proceedings where the SAMA-analysis exception applies, petitioner must obtain a rule waiver as well as satisfy the contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)
- to litigate an issue that otherwise would be outside the scope of an adjudication, petitioner must file a petition for waiver showing that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted; CLI-13-7, 78 NRC 199 (2013)
- to litigate SAMA-related issues requires demonstration of potentially significant deficiency in the SAMA analysis that credibly could render the SAMA analysis unreasonable under NEPA standards; CLI-13-7, 78 NRC 199 (2013)
- to meet the section 2.309(f)(1)(v) requirement for providing factual and expert support, petitioners must proffer at least some minimal factual and legal foundation in support of their contentions; LBP-15-1, 81 NRC 15 (2015)

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- to obtain a hearing, petitioner must show that its request is timely, that it has standing to obtain a hearing, and that it has proposed at least one admissible contention; CLI-14-11, 80 NRC 167 (2014)
- to participate in a proceeding as an intervenor, petitioner must establish standing and proffer at least one admissible contention; LBP-11-6, 73 NRC 149 (2011); LBP-11-16, 73 NRC 645 (2011)
- to raise a genuine dispute on a material issue of law or fact, a properly formulated contention must challenge specific portions of, or alleged omissions from, the application or the agency's environmental impact statement, and provide reasons in support; LBP-15-1, 81 NRC 15 (2015)
- to satisfy contention admissibility standards, petitioner must meet all six pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); CLI-15-23, 82 NRC 321 (2015)
- to show a genuine dispute with applicant on a material issue of law or fact, a contention must include references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute; CLI-11-9, 74 NRC 233 (2011)
- to show that it is within the realm of reason that the federal government may assert an implied water right, petitioner must provide some indicia of an attempt, plan, or intention; LBP-11-16, 73 NRC 645 (2011)
- to the extent a contention is premised on error, it is inadmissible for failing to raise a genuine dispute of fact; LBP-11-6, 73 NRC 149 (2011)
- to the extent a contention would require licensee to maintain the ERDS link or to create another ERDS-like system after its reactor is permanently shut down and defueled, it is an impermissible collateral attack on a regulation; LBP-15-4, 81 NRC 156 (2015)
- to the extent NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-12-16, 76 NRC 63 (2012)
- to the extent petitioner believes there are existing management competence questions that merit immediate action, then its remedy is to direct the Staff's attention to those matters by filing a request for action in accordance with 10 C.F.R. 2.206; CLI-11-11, 74 NRC 427 (2011)
- to the extent petitioner is challenging the adequacy of computer modeling of plume variability, petitioner bears the burden of providing evidence specific to the license renewal applicant; LBP-15-5, 81 NRC 249 (2015)
- to the extent petitioner seeks to have applicant implement safety measures in addition to those ordered, its recourse is to petition for rulemaking or to petition for license modification, suspension, or revocation; LBP-12-14, 76 NRC 1 (2012)
- to the extent petitioner seeks to raise a generic challenge to the 10-mile plume exposure pathway EPZ, such an argument constitutes an impermissible challenge NRC regulations; LBP-11-15, 73 NRC 629 (2011)
- to the extent that contentions raise matters other than onsite spent fuel storage, the board should assess their admissibility under the generally applicable rules of practice; CLI-14-8, 80 NRC 71 (2014)
- to the extent that Fukushima events provide the basis for contentions appropriate for litigation in individual proceedings, NRC procedural rules contain ample provisions through which litigants may seek admission of new or amended contentions; LBP-12-18, 76 NRC 127 (2012)
- to the extent that intervenors challenge all radiological releases from nuclear power plants, the contention presents an impermissible challenge to the NRC's regulations; LBP-12-12, 75 NRC 742 (2012)
- to the extent that intervenors' proposed contention is based on asserted deficiencies in NRC Staff's process for soliciting public participation pursuant to the National Historic Preservation Act, the contention fails to demonstrate a genuine dispute on a material issue of fact or law; LBP-12-23, 76 NRC 445 (2012)
- to the extent that petitioner challenges the generic environmental impact statement, its remedy is a petition for rulemaking or a petition for a waiver of the rules based on circumstances; CLI-11-11, 74 NRC 427 (2011)
- to the extent that the board relied on a precedent that allowed notice pleading under 10 C.F.R. 2.714(b) in making its contention admissibility determination, it erred; CLI-15-23, 82 NRC 321 (2015)
- to trigger a full adjudicatory hearing, petitioners must be able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-12-27, 76 NRC 583 (2012)
- to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in this license renewal proceeding, the Commission

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must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 427 (2011)

trigger date for a filing period can be especially unclear where both public and nonpublic documents associated with a proceeding are produced and where an applicant's stated compliance with NRC regulations shifts over time; LBP-11-9, 73 NRC 391 (2011)

trigger point for timely submission of new or amended contentions is when new information becomes available, and NRC rules require the filing of contentions in a timely manner after such new information becomes available; CLI-12-13, 75 NRC 681 (2012); LBP-12-13, 75 NRC 784 (2012)

two issues in one contention are best evaluated as separate contentions; LBP-15-5, 81 NRC 249 (2015)

ultimate issue on severe accident mitigation alternatives analysis is whether any additional SAMA should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

under 10 C.F.R. 2.309(f)(1), petitioner need only properly allege a defect in meeting materiality requirement; LBP-11-7, 73 NRC 254 (2011)

under current rules, intervenors may use discovery to develop a case once contentions are admitted, but contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute with the applicant; CLI-12-8, 75 NRC 393 (2012)

under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final environmental impact statement without the necessity for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 742 (2012)

under the previous contention admissibility rule, a contention could be admitted and litigated based on little more than speculation, with parties attempting to unearth a case through cross-examination; LBP-11-6, 73 NRC 149 (2011)

unless a contention, submitted with adequate factual, documentary, or expert support, raises a potentially significant deficiency in the severe accident mitigation alternatives analysis, a SAMA-related dispute will not be material to the licensing decision and is not appropriate for litigation in NRC proceedings; LBP-12-26, 76 NRC 559 (2012)

unless petitioner sets forth a supported contention pointing to an apparent error or deficiency that may have significantly skewed the environmental conclusions, there is no genuine material dispute for hearing; CLI-12-8, 75 NRC 393 (2012); LBP-15-5, 81 NRC 249 (2015); LBP-15-29, 82 NRC 246 (2015)

until NRC defines and imposes on licensees new requirements arising from the Fukushima events, such requirements are highly speculative; LBP-11-33, 74 NRC 675 (2011)

until NRC Staff issues its draft or final environmental impact statement, it cannot plausibly be argued that the document is inadequate or otherwise fails to satisfy NEPA; LBP-11-33, 74 NRC 675 (2011)

untimeliness constitutes sufficient grounds on its own for denying the motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 44 (2012)

untimely motion to reopen the proceeding and admit a new contention concerning licensee's impacts on the roseate tern, a federally listed endangered species, is denied; LBP-12-11, 75 NRC 731 (2012)

untimely motions to reopen that present an exceptionally grave issue may be admitted at the board's discretion; LBP-12-16, 76 NRC 44 (2012)

using reply briefs to provide, for the first time, the necessary threshold support for contentions would effectively bypass and eviscerate NRC rules governing timely filing, contention amendment, and submission of late-filed contentions; LBP-12-7, 75 NRC 503 (2012)

vague accusation does not rise to the level of an admissible genuine dispute of material fact or law; LBP-11-10, 73 NRC 424 (2011)

waiver petition would permit consideration of an issue in an adjudicatory proceeding that would otherwise impermissibly challenge an NRC rule or regulation; CLI-14-7, 80 NRC 1 (2014)

when a contention alleges the need for further study of an alternative, from an environmental perspective, such reasonableness determinations are the merits, and should only be decided after the contention is admitted; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

when an application is alleged to be deficient, petitioner must identify the deficiencies and provide supporting reasons for its position that such information is required; LBP-15-1, 81 NRC 15 (2015)

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when an NRC regulation permits use of a particular analysis, a contention asserting that a different analysis or technique should be used is inadmissible because it indirectly attacks NRC's regulations; LBP-15-17, 81 NRC 753 (2015); LBP-15-20, 81 NRC 829 (2015)

when NRC Staff issues the environmental impact statement, intervenors have an opportunity to either amend admitted contentions or proffer new contentions based on data or conclusions in the NRC draft or final EIS or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-11-6, 73 NRC 149 (2011)

when omissions are cured by the subsequent issuance of licensing-related documents, a contention of omission must be disposed of or modified; LBP-12-5, 75 NRC 227 (2012)

when petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor petitioner, nor may the board supply information that is lacking; LBP-15-1, 81 NRC 15 (2015)

when petitioner obtains the relief it is seeking before the admissibility of its contention is resolved, the admissibility *vel non* of the contention is no longer justiciable, because it no longer presents a live controversy involving a true clash of interests that is susceptible to meaningful adjudicative relief; LBP-13-7, 77 NRC 307 (2013)

when raising a genuine material dispute with an application, petitioner must present well-defined issues, not issues based on little more than guesswork; CLI-15-23, 82 NRC 321 (2015)

where a contention alleges a deficiency or error in the application, the deficiency or error must have some independent health and safety significance; LBP-11-23, 74 NRC 287 (2011)

where a contention alleges omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by NRC Staff in a draft environmental impact statement, the contention is moot, and intervenors must timely file a new or amended contention to raise specific challenges regarding the new information; LBP-12-5, 75 NRC 227 (2012)

where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by applicant, the contention is moot; LBP-12-27, 76 NRC 583 (2012)

where a motion to reopen relates to a contention not previously in controversy, the motion must demonstrate that the balance of the nontimely filing factors in section 2.309(c) favors granting the motion to reopen; LBP-11-20, 74 NRC 65 (2011)

where a supplemental environmental impact statement is being prepared, intervenor may submit proposed new contentions based on new information, including new information in the SER and Staff NEPA documents; LBP-11-22, 74 NRC 259 (2011)

where admission of a late-filed contention would cause a material delay in the proceeding weighed against admission of the contention; CLI-12-15, 75 NRC 704 (2012)

where an admitted contention is pending before the board, appeals do not lie under section 2.311, but rather under section 2.341(f)(2), which governs petitions for interlocutory review, including board rulings on new contentions; CLI-13-3, 77 NRC 51 (2013)

where an amended version of a dismissed contention was pending before the board, the board retains jurisdiction to decide whether to admit the proposed contention; LBP-11-22, 74 NRC 259 (2011)

where an issue arises over the scope of an admitted contention, NRC opinions have long referred back to the bases set forth in support of the contention; LBP-12-23, 76 NRC 445 (2012)

where applicant deletes a material portion of its application and replaces it with a changed explanation of legal compliance, that replacement is materially different information that was previously unavailable and thus can satisfy the requirements of 10 C.F.R. § 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)

where contentions are defective for any reason, licensing boards have no duty to make them acceptable under 10 C.F.R. 2.309; LBP-13-9, 78 NRC 37 (2013)

where good cause is not shown for the late filing of a contention, the requestor's demonstration on the other factors must be particularly strong; LBP-11-15, 73 NRC 629 (2011)

where implementation of a building code could not make a difference in the outcome of the proceeding, it cannot be material; LBP-11-7, 73 NRC 254 (2011)

where neither the Commission nor any licensing board has had the opportunity to interpret the meaning of 10 C.F.R. 50.75(h)(5), a legal issue exists for the board to address; LBP-15-24, 82 NRC 68 (2015)

where petition fails on the merits, the Commission need not address procedural issues; CLI-15-10, 81 NRC 535 (2015)

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- where petitioner fails to show good cause for late filing, its demonstration on the other factors must be particularly strong; LBP-12-9, 75 NRC 615 (2012)
- where seismic suitability of a site was evaluated at the early site permit stage, further litigation of a geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 519 (2014)
- where the proceeding remains open during the pendency of a remand, but the record remains closed, any contentions raising genuinely new issues would have to be accompanied by a motion to reopen; CLI-12-3, 75 NRC 132 (2012)
- where the time for filing contentions had expired in a given case, no new TMI-related contentions would be accepted absent a showing of good cause and a balancing of the late-filing factors; CLI-11-5, 74 NRC 141 (2011)
- whether a contention should properly be characterized as a contention of omission or a contention of adequacy and the ramifications of such a designation with regard to contention admissibility are discussed; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- whether a proposed alternative method for estimating a macroscopic frequency of occurrence of a severe offsite radiological release should have been used in the severe accident mitigation alternatives analysis could have been raised when the original license renewal application was submitted and thus is not timely; LBP-11-35, 74 NRC 701 (2011)
- whether and how NRC Staff fulfills its consultation obligations are issues that could form the basis for a new contention that might appropriately be made in a timely fashion after Staff issues its draft environmental impact statement; CLI-15-18, 82 NRC 135 (2015)
- whether and to what extent measures a state sought were needed to make the facility safer was essentially irrelevant because those additional measures were outside the scope of the enforcement order; CLI-13-2, 77 NRC 39 (2013)
- with respect to contentions filed after the initial petition, failure to address the requirements of 10 C.F.R. 2.309(c) and 2.309(f)(2) is reason enough to reject the new contentions; LBP-11-7, 73 NRC 254 (2011)
- with respect to the need to supplement an issued final EIS, the party offering the new contention has the burden of presenting information sufficient to show that there is a genuine issue regarding whether the NRC Staff should supplement its document; LBP-15-16, 81 NRC 618 (2015)
- with the board's termination of the proceeding, the board's interlocutory rulings on contention admissibility became ripe for appeal; CLI-11-9, 74 NRC 233 (2011)
- within 30 days after new information becomes available is a reasonable amount of time for filing a new contention; LBP-15-24, 82 NRC 68 (2015)
- CONTENTIONS, LATE-FILED**
- absent good cause, there must be a compelling showing on the remaining late-filing factors; CLI-12-10, 75 NRC 479 (2012)
- admission is allowed only upon a showing that information upon which the new contention is based was not previously available and is materially different than information previously available and the new contention has been submitted in a timely fashion based on the availability of the subsequent information; CLI-11-2, 73 NRC 333 (2011)
- after the section 2.309(b) deadline has passed for submitting an initial hearing petition with one or more accompanying contentions, petitioner/intervenor who wishes to amend an already submitted or admitted contention or gain admission of a new contention must file a motion for leave to file such a contention; LBP-13-10, 78 NRC 117 (2013)
- all contentions, regardless of when they are filed must satisfy the six criteria specified in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-11-20, 74 NRC 65 (2011); LBP-11-32, 74 NRC 654 (2011); LBP-12-1, 75 NRC 1 (2012)
- although NRC regulations do not provide a precise definition of "timely," licensing boards have often found a new contention to be timely if it has been filed within 30 days of the availability of information on which the contention is based; LBP-12-11, 75 NRC 731 (2012)
- although petitioner proffered a contention within 30 days of events that prompted it, this does not automatically render a newly proffered contention timely; LBP-11-15, 73 NRC 629 (2011)
- amended contentions must satisfy general contention admissibility criteria and either the timeliness standards of section 2.309(f)(2) or the balancing test in section 2.309(c) for nontimely contentions; LBP-12-9, 75 NRC 615 (2012)

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amendment of contentions and submission of new contentions are allowed when good cause is shown; CLI-12-1, 75 NRC 39 (2012)

any changes in NRC rules post-9/11 that might bear on license renewal reviews could be addressed via late-filed contentions; CLI-11-5, 74 NRC 141 (2011)

applicant's change of legal position, its claims that such change no longer entails a need for an exemption from the regulations, and its identification of new means/systems to satisfy the regulations are all types of materially different new information that can enable a contention to satisfy the timely new or amended contention requirements of 10 C.F.R. 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)

argument that applying heightened late-filing standards to contentions triggered by the NRC Staff's review documents violates a petitioner's AEA hearing rights has been considered and rejected; CLI-12-14, 75 NRC 692 (2012)

as a matter of law and logic, if applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program was a fortiori inadequate, and intervenor had a regulatory obligation to challenge it in its original petition to intervene; LBP-11-9, 73 NRC 391 (2011); LBP-11-20, 74 NRC 65 (2011)

availability of new information may provide good cause for nontimely filing, but the test for good cause is not simply when the intervenor became aware of the material sought to be introduced but when the information became available and when the intervenor reasonably should have become aware of the information; LBP-11-7, 73 NRC 254 (2011)

basic admissibility criteria that all contentions must satisfy are governed by 10 C.F.R. 2.309(f)(1); LBP-11-9, 73 NRC 391 (2011)

because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the environmental report as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, this argument is nontimely; LBP-12-7, 75 NRC 503 (2012)

because the motion to reopen and contention are based on information that is neither new nor materially different from information that was previously available, the motion and contention are untimely; LBP-12-11, 75 NRC 731 (2012)

because three contentions are already set for hearing in the proceeding, the admission of further contentions would not substantially delay the proceeding; LBP-12-12, 75 NRC 742 (2012)

because two of the previously admitted contentions allege NEPA violations, new NEPA contentions put forward by the intervenors would not unreasonably broaden the issues; LBP-12-12, 75 NRC 742 (2012)

board applied the late-filing standards to a post-9/11 contention related to the risk of a terrorist attack on the ISFSI and found the contention timely but denied admission of both the safety and environmental aspects of the contention; CLI-11-5, 74 NRC 141 (2011)

board denies as untimely a motion to reopen and admit a new contention alleging that the licensee lacks certain required environmental permits and approvals from state and federal agencies; LBP-12-16, 76 NRC 44 (2012)

boards should develop schedules that will provide a fair and expeditious procedure for resolving new or amended contentions that might be proposed during the course of the proceeding, not just those already admitted; LBP-11-22, 74 NRC 259 (2011)

both the reopening and contention admissibility criteria require that new contentions be timely presented, generally within 30-60 days of the availability of the information on which the contention is based; CLI-12-21, 76 NRC 491 (2012)

burden is on intervenors to demonstrate that a balancing of the factors of 10 C.F.R. 2.309(c)(i)-(viii) weighs in favor of granting a late-filed petition; LBP-12-27, 76 NRC 583 (2012)

by filing proposed new or amended contention within the time specified in the initial scheduling order, petitioner satisfies timeliness requirements but would still have to satisfy the other requirements of section 2.309(f)(2) or the requirements of section 2.309(c), as well as the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-11-22, 74 NRC 259 (2011)

challenges to an enhanced version of an application alone are insufficient to vitiate intervenors' obligation to file any challenges to the original version of that application at the outset of the proceeding; LBP-11-9, 73 NRC 391 (2011)

challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 379 (2012)

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contention fails to satisfy the good cause requirements of 10 C.F.R. 2.309(c)(i) because its foundational argument does not rest on new and materially different information and could and should have been filed at the outset of the proceeding; LBP-11-35, 74 NRC 701 (2011)

contention regarding limitations and phenomena that were widely known, and should have been known to intervenor, at the outset of the proceeding, and thus could have been raised long ago, is untimely; LBP-11-23, 74 NRC 287 (2011)

contention submitted for the first time after the draft environmental impact statement is issued will be deemed untimely; LBP-12-12, 75 NRC 742 (2012)

contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 401 (2015)

contention that the draft environmental impact statement fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that the frequency of occurrence of severe accidents is erroneously underestimated should have been raised at the outset of the license renewal proceeding and thus is untimely; LBP-11-35, 74 NRC 701 (2011)

contentions based on new information in a document that was not previously available and that is materially different from a document that was previously available are not untimely simply for not being included in an intervenor's initial hearing request filed at the outset of a proceeding; LBP-11-9, 73 NRC 391 (2011)

contentions relying on information and findings discussed in the notice of proposed rulemaking, as opposed to tentative rules or policy determinations, are not timely filed; LBP-15-15, 81 NRC 598 (2015)

contentions submitted after the deadline for initial intervention petitions must satisfy the standards for late-filed contentions; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

contentions that fail to satisfy timeliness standards in section 2.309(f)(2) may still be admitted pursuant to a balancing test governing nontimely filings that weighs the factors set forth in 10 C.F.R. 2.309(c); LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012)

criteria that nontimely contentions must address are governed by 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 391 (2011)

degree to which new/amended contentions will be considered timely submitted is generally defined by the presiding officer as a specific period following the triggering event that makes the previously unavailable/materially different information available so as to be the basis for the new/amended contention; LBP-13-10, 78 NRC 117 (2013)

delay in filing contentions caused by the schedule of counsel in other matters can support a finding of good cause; LBP-12-12, 75 NRC 742 (2012)

denial or conditioning of a license would obviously be a materially different result; CLI-12-14, 75 NRC 692 (2012)

documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source do not render "new" the summarized or compiled information; CLI-11-2, 73 NRC 333 (2011)

duties of NRC Staff and not an applicant, such as consultation with other federal agencies, could not be raised at the environmental report stage, and therefore such a contention will not be rejected as untimely when filed after the release of the draft environmental impact statement; LBP-12-12, 75 NRC 742 (2012)

eight-factor test that allowed a board to consider new or amended contentions that did not meet the three requirements for admissibility of late-filed contentions available under 10 C.F.R. 2.309(f)(2) is no longer available; LBP-15-1, 81 NRC 15 (2015)

enhancement to a program does not constitute new information sufficient to support a new contention; LBP-11-20, 74 NRC 65 (2011)

even if petitioner fails to establish good cause for an untimely petition, the other late-filing factors must be examined; LBP-12-12, 75 NRC 742 (2012)

even when a proposed new contention is not found timely, it may be admitted if it meets a balancing of the eight nontimely filing factors; LBP-11-39, 74 NRC 862 (2011)

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exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented; LBP-11-35, 74 NRC 701 (2011); LBP-12-1, 75 NRC 1 (2012)

factors that timely new or amended contentions must satisfy are governed by 10 C.F.R. 2.309(f)(2); LBP-11-9, 73 NRC 391 (2011)

failure to comply with pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-11-7, 73 NRC 254 (2011)

failure to demonstrate good cause for a late-filed contention requires a compelling showing on the remaining factors; CLI-12-15, 75 NRC 704 (2012)

filing deadlines may be extended or shortened by either the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer; LBP-14-5, 79 NRC 377 (2014)

filing of amended or new contentions is permitted only with leave of the board and upon a showing that it is based on information not previously available and materially different and the filing is timely; LBP-12-13, 75 NRC 784 (2012)

filing of new contentions based on the SER and Staff NEPA documents is expressly contemplated by the Model Milestones; LBP-11-22, 74 NRC 259 (2011)

for a motion to reopen to be granted and a new contention admitted after termination of a proceeding, the motion must meet all of the requirements of 10 C.F.R. 2.326 for reopening a record, and the new contention must have been submitted in a timely fashion and demonstrate admissibility as required at 10 C.F.R. 2.309; LBP-12-11, 75 NRC 731 (2012)

for a newly proffered contention to be timely, it must be based on information that was not previously available; LBP-11-15, 73 NRC 629 (2011)

for a reopening motion to be timely presented, movant must show that the issue sought to be raised could not have been raised earlier; LBP-11-20, 74 NRC 65 (2011)

for any new arguments or new support for a contention, petitioner must explain why it could not have raised the argument or introduced the factual support earlier; CLI-15-18, 82 NRC 135 (2015)

good cause doesn't exist where petitioner's late-filed contention is due to careless inadvertence and not, as petitioner claimed, attributable to technical difficulties with the E-Filing system; LBP-15-4, 81 NRC 156 (2015)

good cause for a newly proposed contention exists when information on which it is based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-14-5, 79 NRC 377 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)

good cause for failure to file on time is the most important of the late-filing criteria; LBP-11-7, 73 NRC 254 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-9, 73 NRC 391 (2011); LBP-11-10, 73 NRC 424 (2011); LBP-11-15, 73 NRC 629 (2011)

good cause for late filing exists when information on which the filing is based was not previously available and is materially different from information previously available and the filing has been submitted in a timely fashion based on the availability of the subsequent information; LBP-13-9, 78 NRC 37 (2013)

"good cause" for late filing is defined as a showing that petitioner could not have met the filing deadline and filed as soon as possible thereafter; LBP-11-7, 73 NRC 254 (2011)

good cause for the failure to file on time is afforded the most weight in the balancing of the eight late-filing factors of 10 C.F.R. 2.309(c)(i)-(viii); LBP-11-23, 74 NRC 287 (2011); LBP-11-32, 74 NRC 654 (2011); LBP-12-27, 76 NRC 583 (2012)

good cause in 10 C.F.R. 2.307(a) does not share the same definition that is used for good cause in final 2.309(c); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

good cause is the most important of the factors in the 2.309(c) balancing test, and in the absence of good cause, a party must make an especially strong showing on the other factors to justify admission of a nontimely contention; CLI-12-10, 75 NRC 479 (2012); LBP-12-7, 75 NRC 503 (2012); CLI-12-15, 75 NRC 704 (2012); LBP-12-9, 75 NRC 615 (2012); LBP-12-10, 75 NRC 633 (2012); LBP-12-12, 75 NRC 742 (2012)

health issues or an unexpected weather event might constitute good cause for purposes of requesting an extension; LBP-14-5, 79 NRC 377 (2014)

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- hearing petitioners have an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to uncover any information that could serve as the foundation for a specific contention; LBP-11-9, 73 NRC 391 (2011)
- if a contention is based upon new information, it must meet the standards of 10 C.F.R. 2.309(f)(2); LBP-11-35, 74 NRC 701 (2011)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 127 (2012)
- if a new contention is deemed untimely under section 2.309(f)(2)(iii), it will be evaluated under section 2.309(c)(1), which provides that a board presented with a nontimely contention shall balance eight factors to determine whether to admit the contention; LBP-12-12, 75 NRC 742 (2012); LBP-12-23, 76 NRC 445 (2012)
- if a new contention is not timely filed, it must meet an eight-factor test to be deemed admissible; LBP-11-9, 73 NRC 391 (2011); LBP-11-10, 73 NRC 424 (2011)
- if a party submits a proposed contention after the initial filing deadline announced in the applicable Federal Register notice for submitting a hearing petition, it will not be entertained absent a determination by the presiding officer that participant has demonstrated good cause; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)
- if a proposed new contention is not timely under section 2.309(f)(2)(iii), then the proponent must address the eight criteria of 10 C.F.R. 2.309(c)(1); LBP-11-32, 74 NRC 654 (2011)
- if applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program embodied in its license renewal application was *a fortiori* inadequate, and intervenors had a regulatory obligation to challenge it in their original petition to intervene; LBP-15-1, 81 NRC 15 (2015)
- if applicant's enhanced monitoring program, which was the topic of a late-filed contention, was insufficient, it must have been insufficient beforehand too; CLI-12-10, 75 NRC 479 (2012)
- if attempting to raise a new issue based on new information in the final supplemental environmental impact statement, intervenor must file a new contention if information in the FSEIS is sufficiently different from the information in the DSEIS that supported the original contention's admission; LBP-14-5, 79 NRC 377 (2014)
- if good cause is not shown, a board may still permit the late filing, but petitioner or intervenor must make a strong showing on the other factors of 10 C.F.R. 2.309(c); LBP-11-7, 73 NRC 254 (2011); LBP-11-9, 73 NRC 391 (2011); LBP-11-15, 73 NRC 629 (2011); LBP-11-32, 74 NRC 654 (2011)
- if intervenors file a new or amended contention, with supporting materials, within 60 days after pertinent information first becomes available, then the contention will be deemed timely filed and intervenors will not have to satisfy the late-filing requirements of 10 C.F.R. 2.309(c) or the requirements for reopening the record; LBP-11-22, 74 NRC 259 (2011)
- if intervenors sought to introduce new issues, then they should have filed a new or amended contention; CLI-15-9, 81 NRC 512 (2015)
- if new information becomes available that, e.g., an endangered species has been living on the site or that the facility has been leaking tritium into the groundwater, then a new contention alleging that the environmental report as originally filed did not comply with Part 51 may be filed; LBP-11-32, 74 NRC 654 (2011)
- if reopening standards are inapplicable, or if reopening criteria have been satisfied, a new contention must also meet the standards for contention admissibility; LBP-11-35, 74 NRC 701 (2011)
- if the reason a motion to admit a new or amended contention was filed after the initial deadline does not relate to the substance of the filing itself, the standard in 10 C.F.R. 2.307(a) applies in determining whether the motion can be considered timely; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- in addition to being timely, new contentions must satisfy the six-factor contention admissibility standard; LBP-15-19, 81 NRC 815 (2015); LBP-15-23, 82 NRC 55 (2015)
- in addition to satisfying the timeliness standards in 10 C.F.R. 2.309(f)(2) or the balancing test in 10 C.F.R. 2.309(c), a newly proffered contention must satisfy the admissibility criteria of 10 C.F.R. 2.309(f)(1); LBP-12-7, 75 NRC 503 (2012)

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- in addressing the good cause factor for late filing, petitioner must explain not only why it failed to file within the time required, but also why it did not file as soon thereafter as possible; LBP-11-7, 73 NRC 254 (2011)
- in an ongoing proceeding in which a hearing petition has been granted and there are contentions pending for merits resolution, intervenors must satisfy two sets of requirements to gain the admission of a newly proffered contention; LBP-11-37, 74 NRC 774 (2011)
- in the context of a new contention filed after the initial petition, petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-11-2, 73 NRC 333 (2011)
- information notice merely summarizes information that has long been publicly available and does not provide new information that would constitute good cause for the late filing; CLI-12-10, 75 NRC 479 (2012)
- intervenor may not delay filing a contention until a document becomes available that collects, summarizes, and places into context previously available facts supporting that contention; LBP-12-1, 75 NRC 1 (2012)
- intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 259 (2011)
- intervenors and potential intervenors have a period of time to file new or amended contentions in response to a draft environmental impact statement; LBP-13-9, 78 NRC 37 (2013)
- intervenors are not permitted to wait until information reappears in the draft environmental impact statement to file their contentions; LBP-13-9, 78 NRC 37 (2013)
- intervenors cannot simply point to documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source as doing so does not render “new” the summarized or compiled information; LBP-12-27, 76 NRC 583 (2012)
- intervenors may file new or amended contentions in response to the draft environmental impact statement if they can satisfy the test of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-12, 75 NRC 742 (2012)
- intervenors seeking a new hearing on a new contention after the board has closed the evidentiary record must move to reopen the evidentiary record and meet a deliberately higher threshold standard than that for an ordinary late-filed contention; CLI-12-15, 75 NRC 704 (2012)
- late-filed contention is inadmissible both for lack of a good-cause showing and for failure to address the other factors of 10 C.F.R. 2.309(c)(1); LBP-11-6, 73 NRC 149 (2011)
- late-filed contentions lack good cause when they are based on a draft environmental impact statement that contains no new information relevant to the contention; LBP-13-9, 78 NRC 37 (2013)
- licensing board’s dismissal of all pending contentions on mootness grounds due to new information ordinarily would terminate the proceeding, but new contentions could be filed on new information before termination of the proceeding; LBP-11-22, 74 NRC 259 (2011)
- licensing boards have commonly afforded intervenors the opportunity to propose new contentions to challenge new information, even though no contention is pending; LBP-11-22, 74 NRC 259 (2011)
- licensing hearing does not embrace *anything* new revealed in the safety evaluation report or the NEPA documents; CLI-12-14, 75 NRC 692 (2012)
- material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 1 (2015)
- Model Milestones permit the filing of proposed late-filed contentions on the Safety Evaluation Report and necessary National Environmental Policy Act documents within 30 days of the issuance of those documents; LBP-11-22, 74 NRC 259 (2011)
- most important among the late-filing factors is demonstration of good cause; LBP-15-1, 81 NRC 15 (2015)
- motion to file new or amended contentions must address the motion to reopen standards after an intervention petition has been denied; LBP-11-20, 74 NRC 65 (2011)
- motion to reopen that relates to a contention not previously in controversy must satisfy the section 2.309(c) requirements for new or amended contentions filed after the original hearing petition deadline; CLI-11-8, 74 NRC 214 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-15-14, 81 NRC 591 (2015)

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motions seeking admission of new or amended contentions must be filed within 30 days of the date the information that forms the basis for the contention becomes available; CLI-11-8, 74 NRC 214 (2011)

motions to reopen may be granted, even if untimely presented, when the motion presents an exceptionally grave issue; LBP-12-11, 75 NRC 731 (2012)

motions to reopen relating to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in 10 C.F.R. 2.309(c) and the admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-12-1, 75 NRC 1 (2012); LBP-12-10, 75 NRC 633 (2012)

motions to reopen to admit a new contention must be submitted in a timely fashion, based on new information that is materially different from information previously available or a balancing of the factors in 10 C.F.R. 2.326 must weigh in favor of admitting the contention; LBP-12-16, 76 NRC 44 (2012)

new and amended contentions submitted after an intervenor's initial hearing request are evaluated under 10 C.F.R. 2.309(f)(2) for timeliness and, if found timely, their general admissibility is analyzed pursuant to section 2.309(f)(1); LBP-11-10, 73 NRC 424 (2011)

new contention is inadmissible because it neither points to nor references any specific portion of the application that is disputed; LBP-11-35, 74 NRC 701 (2011)

new contention is inadmissible because it relies on information that is not materially different from information previously available and already in the record; LBP-15-16, 81 NRC 618 (2015)

new contention must present a seriously different picture of the environmental impact of the proposed project; LBP-14-5, 79 NRC 377 (2014)

new contentions are timely when filed within 30 days of the date that asserted foundational information became available; LBP-12-1, 75 NRC 1 (2012)

new contentions cannot be based on previously available information; LBP-15-11, 81 NRC 401 (2015)

new contentions filed after the initial filing may only be admitted upon a showing that the information upon which they are based was not previously available and is materially different than information previously available and they have been submitted in a timely fashion based on the availability of the subsequent information; LBP-12-18, 76 NRC 127 (2012); LBP-12-27, 76 NRC 583 (2012)

new contentions filed after the record has closed must satisfy the timeliness requirement of either 10 C.F.R. 2.309(f)(2) or 2.309(c), and the admissibility requirements of section 2.309(f)(1); LBP-11-22, 74 NRC 259 (2011); LBP-11-39, 74 NRC 862 (2011)

new contentions must be submitted in a timely fashion based on the availability of the information on which they are based; CLI-15-17, 82 NRC 33 (2015)

new contentions must paint a seriously different picture of the environmental landscape that would require supplementation of an environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

new contentions on the safety and environmental implications of the NRC Task Force Report on the Fukushima Dai-ichi accident are premature and must be denied on that basis without regard to any other considerations; LBP-11-27, 74 NRC 591 (2011)

new environmental contentions may be filed if data or conclusions in the draft or final environmental impact statement differ significantly from the data or conclusions in the environmental report; LBP-11-32, 74 NRC 654 (2011); LBP-11-33, 74 NRC 675 (2011)

new or amended contention is considered timely if it is filed within 60 days of the date when the material information first became available to the moving party through service, publication, or any other means; LBP-15-1, 81 NRC 15 (2015)

new or amended contentions are considered to be timely if filed within 60 days of any triggering event; LBP-11-9, 73 NRC 391 (2011)

new or amended contentions based on material information that has subsequently become available must meet the general contention admissibility requirements of 10 C.F.R. 2.309(f)(1) as well as the three requirements in section 2.309(c)(1); LBP-14-6, 79 NRC 404 (2014)

new or amended contentions filed after the initial filing period has expired may be admitted as timely only with leave of the licensing board if it meets the timeliness standards of 10 C.F.R. 2.309(f)(2); LBP-12-7, 75 NRC 503 (2012); LBP-12-12, 75 NRC 742 (2012)

new or amended contentions generally must meet the six admissibility factors specified in section 2.309(f)(1); LBP-13-10, 78 NRC 117 (2013)

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new or amended contentions must be based on information not previously available and materially different from previously available information and be submitted in a timely fashion based on the availability of the subsequent information; LBP-14-6, 79 NRC 404 (2014)

new or amended contentions must demonstrate good cause for post-initial-hearing petition deadline filing, based on three factors; LBP-13-10, 78 NRC 117 (2013)

new or amended contentions must satisfy the substantive contention admissibility standards and failure to meet any of them renders a contention inadmissible; LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)

newly proffered contention that does not satisfy the timeliness requirements of section 2.309(f)(2) may still be considered for admission if it satisfies section 2.309(c)(1); LBP-11-15, 73 NRC 629 (2011)

nontimely proposed contention may be admissible if, on balance, it satisfies eight criteria; LBP-11-7, 73 NRC 254 (2011)

not only must intervenor act promptly after learning of new information, but the information itself must be new information, not information already in the public domain; LBP-11-7, 73 NRC 254 (2011)

NRC generally considers approximately 30-60 days as the limit for timely filings based on new information; CLI-11-2, 73 NRC 333 (2011)

NRC generally disfavors the filing of new contentions at the eleventh hour of an adjudication, a policy that is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; CLI-11-2, 73 NRC 333 (2011)

NRC Information Notice that merely summarized information that was previously available is not new information upon which a new contention can be based; LBP-11-20, 74 NRC 65 (2011)

NRC preserves the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-11-22, 74 NRC 259 (2011)

NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-10, 75 NRC 479 (2012); CLI-12-21, 76 NRC 491 (2012)

NRC recognizes an exception to the timeliness requirement in rare instances in which petitioner raises an exceptionally grave issue; CLI-11-2, 73 NRC 333 (2011)

once the deadline for filing petitions to intervene has passed, a party may file new or amended contentions if it is able to demonstrate good cause by meeting three requirements; LBP-15-1, 81 NRC 15 (2015); LBP-15-19, 81 NRC 815 (2015)

parties' other professional obligations do not relieve them of their obligations to meet mandatory deadlines; LBP-12-12, 75 NRC 742 (2012)

party that has successfully intervened in a licensing proceeding may propose new contentions for litigation until the license is issued; LBP-11-22, 74 NRC 259 (2011)

petition that attempts to proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected; LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012)

petitioner can justify missing a contention filing deadline by showing that the delay was caused by factors such as a weather event or unexpected health issues; LBP-12-27, 76 NRC 583 (2012)

petitioner demonstrates that a multifactor balancing test weighs in favor of consideration; LBP-11-6, 73 NRC 149 (2011)

petitioner lacked good cause for a hearing request filed 7 days after the filing deadline when the argument relied on a misimpression of due dates; LBP-11-9, 73 NRC 391 (2011)

petitioner may file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or environmental assessment that differ significantly from data or conclusions in applicant's documents; LBP-15-11, 81 NRC 401 (2015)

petitioner must act reasonably and promptly after learning of the new information on which its motion to reopen is based; LBP-11-23, 74 NRC 287 (2011)

petitioner must demonstrate good cause for proffering a new contention after the initial filing deadline; LBP-15-23, 82 NRC 55 (2015)

petitioner must show that the information upon which the new contention is based was not previously available and is materially different than information previously available; CLI-12-10, 75 NRC 479 (2012)

petitioner or intervenor may file timely new or amended contentions, with leave of the board, if the three requirements are met; LBP-11-9, 73 NRC 391 (2011)

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petitioner proffers no new information on station blackout or mitigation measures, and the events therefore cannot form the basis for an assertion of timeliness of a motion to reopen; LBP-11-35, 74 NRC 701 (2011)

petitioner who seeks both to reopen the record and to submit a late contention must successfully satisfy two elevated standards; CLI-11-2, 73 NRC 333 (2011)

petitioners are not allowed to postpone filing a contention challenging publicly available information or analysis until NRC Staff issues some document that collects, summarizes, and places into context the facts supporting that contention; CLI-15-17, 82 NRC 33 (2015)

petitioners may amend their contentions or file new contentions if the supplemental draft environmental impact statement differs significantly from the data or conclusions in applicant's documents; LBP-11-34, 74 NRC 685 (2011)

petitioners who choose to wait to raise contentions that could have been raised earlier risk the possibility that there will not be a material difference between the application and NRC Staff's review documents, thus rendering any newly proposed contention based on previously available information impermissibly late; CLI-15-1, 81 NRC 1 (2015)

petitioners who have not shown good cause for their late filing must demonstrate that the balance of the remaining factors weighs in their favor; CLI-12-21, 76 NRC 491 (2012)

post-9/11 motion to reopen satisfied rules for reopening the record and for late-filed contentions, but contention involving a license amendment request for reconfiguring a spent fuel pool was inadmissible; CLI-11-5, 74 NRC 141 (2011)

post-hearing petition contention (new or amended contention) also must satisfy the substantive contention admissibility standards; LBP-13-9, 78 NRC 37 (2013)

presiding officer has discretion to consider an exceptionally grave issue even if untimely presented; LBP-11-20, 74 NRC 65 (2011)

proponents of new or amended contentions are required to demonstrate good cause for their filing, which includes a demonstration that the information on which the new or amended contention is based is materially different from information previously available; CLI-15-1, 81 NRC 1 (2015)

proposed new or amended contentions shall be deemed timely if filed within 60 days of the date when the document containing the new and material information first becomes available; LBP-12-12, 75 NRC 742 (2012)

purpose of the timeliness rules is not to trap petitioners into a no-win situation where a contention is called premature if filed in the original petition and untimely if petitioners wait for a potential event to actually transpire; LBP-15-24, 82 NRC 68 (2015)

rationale for NRC's policy of generally disfavoring the filing of new contentions at the eleventh hour of an adjudication is based on the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; LBP-11-20, 74 NRC 65 (2011)

request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 65 (2011)

request to admit a new or amended contention requires petitioner to show that the information upon which it is based was not previously available and is materially different from information previously available; CLI-14-2, 79 NRC 11 (2014)

requirements for demonstrating good cause are the same as the requirements for filing late contentions previously available under section 2.309(f)(2)(i)-(iii); LBP-15-1, 81 NRC 15 (2015)

revised rules no longer require leave from the presiding officer to amend a contention or file a new contentions; LBP-12-27, 76 NRC 583 (2012)

safety evaluation report did not add a last piece of information, but merely compiled and organized preexisting information; CLI-11-8, 74 NRC 214 (2011)

section 2.309(c)(1)(iii) does not stipulate what is considered timely, and the board looks to Commission precedent; LBP-15-11, 81 NRC 401 (2015)

section 2.309(c)(vii) weighs heavily against admission of a contention because the addition of a hearing on its subject matter will unduly broaden the issues and materially delay the proceeding; LBP-11-35, 74 NRC 701 (2011)

standard for admission of new or amended contentions involves a balancing of eight factors; CLI-12-10, 75 NRC 479 (2012)

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standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-2, 73 NRC 333 (2011); CLI-11-8, 74 NRC 214 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-11-22, 74 NRC 259 (2011)

standards for admission of new contentions are reviewed; LBP-11-25, 74 NRC 380 (2011)

tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable; CLI-11-2, 73 NRC 333 (2011); CLI-12-10, 75 NRC 479 (2012)

there simply would be no end to NRC licensing proceedings if petitioners could ignore timeliness requirements and add new contentions at their convenience based on information that could have formed the basis for a timely contention at the outset of the proceeding; LBP-11-20, 74 NRC 65 (2011)

time for submitting a new/amended contention motion based on information that would be newly available, materially different, and otherwise timely submitted given the information's availability can be extended if the extension request is based on good cause; LBP-13-10, 78 NRC 117 (2013)

timeliness of late-filed contentions turns on fact-specific considerations, such as when new documents or information first became available and how promptly intervenors reacted; LBP-15-24, 82 NRC 68 (2015)

timeliness requirement does not apply if no formal proceeding has commenced; LBP-15-27, 82 NRC 184 (2015)

timely new contentions may be filed with leave of the presiding officer if information on which they are based was not previously available and is materially different than information previously available and they have been submitted in a timely fashion based on the availability of the subsequent information; LBP-11-25, 74 NRC 380 (2011)

to be admissible, a newly proffered contention must satisfy either the timeliness standards in 10 C.F.R. 2.309(f)(2) or the standards in 10 C.F.R. 2.309(c)(1) for newly proffered nontimely contentions, and the contention admissibility standards in 10 C.F.R. 2.309(f)(1); LBP-11-15, 73 NRC 629 (2011)

to be admissible, late-filed contentions must not only meet standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of section 2.309(c) or section 2.307; LBP-13-9, 78 NRC 37 (2013)

to gain the admission of a new or amended contention, a party must meet the requirements of 10 C.F.R. 2.309(c) and (f); LBP-15-16, 81 NRC 618 (2015)

trigger date for a filing period can be especially unclear where both public and nonpublic documents associated with a proceeding are produced and where an applicant's stated compliance with NRC regulations shifts over time; LBP-11-9, 73 NRC 391 (2011)

trigger point for the timely submission of new or amended contentions is when new information becomes available, and intervenor has the obligation to raise new contentions based on such information; CLI-12-13, 75 NRC 681 (2012); LBP-12-13, 75 NRC 784 (2012)

understandable misapprehension of the start of the filing period for contentions, leading to inadvertent late filing of new contentions, establishes good cause to excuse missing the filing deadline pursuant to 10 C.F.R. 2.309(c)(1); LBP-11-9, 73 NRC 391 (2011)

unfettered ability to file a late contention may significantly undermine the efficiency of a proceeding even if the contention is based on newly discovered information; CLI-12-14, 75 NRC 692 (2012)

unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances in the case; LBP-12-27, 76 NRC 583 (2012)

untimeliness constitutes sufficient grounds on its own for denying the motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 44 (2012)

untimely filed contention is appropriate for sua sponte board review; LBP-14-9, 80 NRC 15 (2014)

untimely motions to reopen that present an exceptionally grave issue may be admitted at the board's discretion; LBP-12-16, 76 NRC 44 (2012)

when a contention is considered to be timely filed is not specified in 10 C.F.R. 2.309(c)(1)(iii); LBP-15-15, 81 NRC 598 (2015)

when a motion to reopen is untimely, the section 2.326(a)(1) "exceptionally grave" test supplants the section 2.326(a)(2) "significant safety or environmental issue" test; CLI-11-8, 74 NRC 214 (2011); LBP-12-1, 75 NRC 1 (2012); LBP-12-10, 75 NRC 633 (2012)

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- when determining whether a new contention is timely for purposes of reopening a record, the Commission looks to whether the information on which it is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability; CLI-12-21, 76 NRC 491 (2012)
- where a motion to reopen relates to a contention not previously in controversy, the motion must demonstrate that the balance of the nontimely filing factors of 10 C.F.R. 2.309(c) favors granting the motion to reopen; LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011)
- where a supplemental environmental impact statement is being prepared, intervenor may submit proposed new contentions based on new information, including new information in the SER and Staff NEPA documents; LBP-11-22, 74 NRC 259 (2011)
- where admission of a late-filed contention would cause a material delay in the proceeding weighed against admission of the contention; CLI-12-15, 75 NRC 704 (2012)
- where applicant deletes a material portion of its application and replaces it with a changed explanation of legal compliance, that replacement is materially different information that was previously unavailable and thus can satisfy the requirements of 10 C.F.R. 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)
- where initial decisions have been issued, the record should not be reopened to take evidence on some accident-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision; CLI-11-5, 74 NRC 141 (2011)
- where petitioner fails to establish good cause for late filing, its demonstration on the other factors must be particularly strong; LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012)
- where the time for filing contentions had expired in a given case, no new TMI-related contentions would be accepted absent a showing of good cause and a balancing of the late-filing factors; CLI-11-5, 74 NRC 141 (2011)
- whether a proposed alternative method for estimating a macroscopic frequency of occurrence of a severe offsite radiological release should have been used in the severe accident mitigation alternatives analysis could have been raised when the original license renewal application was submitted and thus is not timely; LBP-11-35, 74 NRC 701 (2011)
- with respect to contentions filed after the initial petition, failure to address the requirements of 10 C.F.R. 2.309(c) and 2.309(f)(2) is reason enough to reject the new contentions; LBP-11-7, 73 NRC 254 (2011)
- within 30 days after new information becomes available is a reasonable amount of time for filing a new contention; LBP-15-24, 82 NRC 68 (2015)
- CONTESTED LICENSE APPLICATIONS**
- contested hearing is not required if no petitioner has satisfied the criteria for intervention; LBP-11-22, 74 NRC 259 (2011)
- NRC rules of practice are designed to avoid unfocused inquiry in contested proceedings; CLI-15-1, 81 NRC 1 (2015)
- NRC Staff is authorized to issue a license when it has completed its review during the pendency of a hearing as long as it provides the board and parties notice and an explanation why the public health and safety are protected and why the action is in accord with the common defense and security despite the pendency of the contested matter; CLI-15-17, 82 NRC 33 (2015)
- once all contentions have been decided, the contested proceeding is terminated; CLI-12-14, 75 NRC 692 (2012); LBP-12-19, 76 NRC 184 (2012)
- presiding officer approval for settlements in contested proceedings with admitted contentions is evidenced from provisions of section 2.338 other than paragraph (g); LBP-15-30, 82 NRC 339 (2015)
- CONTINUED STORAGE RULE**
- absent a rule waiver, NRC Staff is not expected to revisit the impact determinations made in the Continued Storage GEIS as part of its site-specific NEPA reviews; CLI-15-10, 81 NRC 535 (2015)
- admission of a "placeholder" contention is not necessary to ensure that petitioner's challenges to the Continued Storage Rule and GEIS receive a full and fair airing; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)
- after reviewing the background regarding the continued storage rule, the Commission directed licensing boards to reject waste confidence contentions pending before them; LBP-14-12, 80 NRC 138 (2014)
- agency did not need to assess site-specific impacts of continuing to store the spent fuel in either an onsite or offsite storage facility in new reactor licensing environmental impact statements or

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environmental assessments beyond the expiration dates of reactor licenses; LBP-14-16, 80 NRC 183 (2014)

allegation that the Continued Storage Rule and GEIS fail to address the trust responsibility the NRC owes an Indian tribe represents a collateral attack on the Continued Storage Rule and GEIS; LBP-14-16, 80 NRC 183 (2014)

assumptions used in the analysis of impacts of continued storage of spent fuel are sufficiently conservative to bound the impacts such that variances that may occur between sites are unlikely to result in environmental impact determinations greater than those presented in the continued storage generic environmental impact statement; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

because 10 C.F.R. 51.23(b) prescribes a specific procedure for incorporating the environmental impacts of continued storage into a site-specific analysis, this procedure, rather than a procedure set forth in the general provisions of Part 51, governs NRC environmental review; CLI-15-10, 81 NRC 535 (2015)

because generic impact determinations on impacts of continued storage have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings; LBP-14-15, 80 NRC 151 (2014)

because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petition and motions itself; CLI-14-9, 80 NRC 147 (2014)

Commission adopted a generic environmental impact statement to identify and analyze the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-12, 81 NRC 452 (2015)

Commission approval of the Continued Storage Rule and GEIS mandates that contentions discussing the long-term storage of spent nuclear fuel are not to be heard by individual licensing boards; LBP-14-16, 80 NRC 183 (2014)

Commission approved issuance of a revised rule codifying NRC's generic determinations regarding the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's licensed operating life; LBP-14-14, 80 NRC 144 (2014)

Commission denied motions for leave to file new contentions concerning the Continued Storage Rule; LBP-15-7, 81 NRC 391 (2015)

Commission denied petition to supplement and declined to admit "placeholder" contention; CLI-15-13, 81 NRC 555 (2015)

Commission directed licensing boards to reject pending waste confidence contentions after adopting a generic environmental impact statement to identify and analyze environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-5, 81 NRC 249 (2015)

Commission exercised its inherent supervisory authority over agency adjudications to review petition and motions challenging the Continued Storage Rule; LBP-14-16, 80 NRC 183 (2014)

Commission instituted a rulemaking to revise the agency's generic determination on the environmental impacts of continued storage of spent nuclear fuel; LBP-14-12, 80 NRC 138 (2014)

Commission lifted suspension on final licensing decisions, declined to accept contentions concerning continued storage of spent nuclear fuel, and directed boards to reject pending contentions on this issue; LBP-14-14, 80 NRC 144 (2014)

concurrent with approval of the final Continued Storage Rule and companion Generic Environmental Impact Statement, the Commission lifted the suspension on final licensing decisions and directed that the proposed spent fuel storage contentions be dismissed; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

contention that supplementation of the environmental impact statement is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the continued storage GEIS and Continued Storage Rule is inadmissible; CLI-15-10, 81 NRC 535 (2015)

"deemed incorporated" function of 10 C.F.R. 51.23(b) provides administrative efficiency by adding the environmental impacts of continued storage to site-specific environmental impact statements without additional work by the Staff; CLI-15-10, 81 NRC 535 (2015)

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environmental impacts of continued storage have been incorporated into the environmental impact statements at issue in the proceedings by operation of law; CLI-15-10, 81 NRC 535 (2015)

even if petitioner disputes that the Commission's newly adopted Continued Storage Rule satisfies the requirements of the National Environmental Policy Act or the court's decision, it cannot challenge the adoption or validity of the rule itself before a board; LBP-14-15, 80 NRC 151 (2014)

following adoption of a revised Continued Storage Rule, boards were ordered to reject continued storage contentions pending before them, except contentions unresolved by the Continued Storage Rule; CLI-15-6, 81 NRC 340 (2015)

generic analyses of the environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 221 (2015)

generic environmental impact statement for spent fuel pools is not limited to discussing only normal operations, but also discusses potential accidents and other nonroutine events, and thus need not be included in the severe accident mitigation alternatives analysis for license renewal; LBP-15-5, 81 NRC 249 (2015)

generic environmental impact statement was adopted to identify and analyze the environmental impacts of continued storage of spent nuclear fuel; LBP-14-16, 80 NRC 183 (2014)

impact determinations in the continued storage generic environmental impact statement shall be deemed incorporated into the environmental impact statements associated with combined license and license renewal applications; CLI-15-10, 81 NRC 535 (2015)

impacts of continued storage will not vary significantly across sites and can be analyzed generically; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015); LBP-14-16, 80 NRC 183 (2014)

in view of its adoption of a revised rule codifying NRC's generic determinations regarding the pertinent environmental impacts associated with continued storage of spent nuclear fuel, the Commission directs boards to reject pending contentions on this issue; LBP-14-13, 80 NRC 142 (2014)

members of the public had the opportunity to fully participate in the Continued Storage rulemaking proceeding; CLI-15-10, 81 NRC 535 (2015)

NRC adopted a generic environmental impact statement identifying and analyzing environmental impacts of continued storage of spent nuclear fuel and associated revisions to the Temporary Storage Rule in 10 C.F.R. 51.23; LBP-15-1, 81 NRC 15 (2015)

NRC adopted a generic environmental impact statement to identify and analyze environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-5, 81 NRC 249 (2015)

NRC considered Indian tribe's trust responsibility concerns during its rulemaking; LBP-14-16, 80 NRC 183 (2014)

NRC need not undertake incorporation by reference of a generic environmental impact statement where the Commission has already taken public comment and performed a comprehensive analysis of the environmental consequences of continued spent fuel storage; CLI-15-10, 81 NRC 535 (2015)

placeholder contentions that challenge the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-15, 81 NRC 803 (2015); CLI-15-27, 82 NRC 414 (2015)

rule and supporting generic environmental impact statement to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 535 (2015)

rule makes generic safety findings concerning feasibility and capacity of spent fuel disposal; LBP-15-9, 81 NRC 396 (2015)

to the extent NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

when considering continued storage in licensing reviews with previously completed final environmental impact statements, NRC Staff is expected to use a consistent and transparent process to ensure that all stakeholders are aware of how the environmental impacts of continued storage are considered in each affected licensing action; CLI-15-10, 81 NRC 535 (2015)

CONTRACTORS

applicant must establish and implement its own quality assurance program when it enters into a contract for the conduct of safety-related combined license application activities and to retain overall control of safety-related activities performed by the contractor; CLI-14-10, 80 NRC 157 (2014)

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license applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but applicant retains responsibility for the quality assurance program; CLI-14-10, 80 NRC 157 (2014); LBP-12-23, 76 NRC 445 (2012)

request that NRC shut down or prohibit restart of nuclear power plants until a criminal investigation of a licensee contractor is complete and everything has been verified safe is denied; DD-14-1, 79 NRC 7 (2014)

CONTROL RODS

See Reactor Control Rods

CONTROL ROOM

applicant must ensure that its control room remains habitable in case of accidental release of hazardous gases; CLI-12-9, 75 NRC 421 (2012)

applicant need not submit information regarding control room habitability and ventilation system design in the site safety analysis report portion of an early site permit application; LBP-11-16, 73 NRC 645 (2011)

modernization plans for seismic instrumentation following failure of an annunciation panel in the main control room are discussed; DD-12-2, 76 NRC 391 (2012)

request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)

request that technical specification for control room emergency ventilation system instrumentation be changed to require that the control building air intake radiation-high function be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

CONTROLLED ACCESS

area includes a permanently established place that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; LBP-14-1, 79 NRC 39 (2014)

term is defined as any temporarily or permanently established area that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; CLI-15-9, 81 NRC 512 (2015)

COOLANT

assurance of adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant; LBP-11-16, 73 NRC 645 (2011)

petitioners' concerns about tube leaks, unplanned power changes, and potential primary coolant contamination did not constitute any violations that were more than minor; DD-15-2, 81 NRC 205 (2015)

COOLANT SYSTEM, MAIN

licensee's operation of primary coolant pumps contrary to plant licensing and the FSAR is a violation of 10 C.F.R. Part 50, Appendix B, Criterion III; DD-15-3, 81 NRC 713 (2015)

request for immediate action to prevent restart because a piece of primary coolant pump impeller was lodged between the reactor vessel and the flow skirt is denied; DD-15-3, 81 NRC 713 (2015)

request for licensee to replace the primary coolant pumps with others designed for their intended duty is denied; DD-15-3, 81 NRC 713 (2015)

COOLING POND

contention claiming that the environmental report's discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with NRC requirements is admissible; LBP-11-16, 73 NRC 645 (2011)

even though a cooling pond is not a safety-related structure, knowledge of faulting under the pool and the impact this faulting might have on the pool's operation are required; LBP-11-16, 73 NRC 645 (2011)

groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

mere promise by applicant to follow applicable regulations in capping and abandoning active and inactive oil and gas wells in the footprint of the cooling basin and plant is insufficient to satisfy NRC's regulations; LBP-11-16, 73 NRC 645 (2011)

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COOLING SYSTEMS

cooling tower and closed-cycle cooling system represent the best available technology and will reduce discharge temperature to the greatest extent possible; LBP-11-14, 73 NRC 591 (2011)
insofar as a contention requests consideration of a dry cooling design alternative, that matter must be considered resolved in the early site permit proceeding; LBP-11-10, 73 NRC 424 (2011)
licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities to address loss of large areas from fires or explosions that arise from a beyond-design-basis event; CLI-12-2, 75 NRC 63 (2012); DD-15-11, 82 NRC 361 (2015)
request that technical specification for residual heat removal–high water level and RHR–low water level be revised or a new limiting condition for operation be added to require one RHR subsystem to be operable whenever the entire reactor core is offloaded into the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

See also Emergency Core Cooling System; Spent Fuel Cooling System

COOLING TOWERS

bird collisions have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term; CLI-13-7, 78 NRC 199 (2013); LBP-13-1, 77 NRC 57 (2013)
combined license application included a request for a departure from the wet-bulb noncoincident temperature, which is considered Tier 1 information and part of the certified design and thus a regulatory exemption is required; CLI-12-9, 75 NRC 421 (2012)
modeling of salt drift from cooling towers is discussed; LBP-13-4, 77 NRC 107 (2013)

CORRECTIVE ACTION PROGRAM

because all aspects of licensee's current licensing basis will remain in effect during the period of extended operation, in the event that renewed licenses are issued, the corrective action requirements of 10 C.F.R. Part 50, Appendix B will apply; LBP-13-13, 78 NRC 246 (2013)
uranium enrichment facility applicant's commitment to monitoring and the corrective action program provides reasonable assurance that public health and safety will be protected and applicant has a program in compliance with the regulations; LBP-12-21, 76 NRC 218 (2012)

CORROSION

although intervenors disagree with applicant's opportunistic inspection strategy for managing rebar corrosion, they merely assert, and do not plausibly explain, how applicant's approach will lead to a material safety impact; LBP-15-1, 81 NRC 15 (2015)

COST-BENEFIT ANALYSIS[HP1]

See Benefit-Cost Analysis

COSTS

contention challenging applicant's consideration of new and significant information regarding cleanup costs is inadmissible; LBP-12-8, 75 NRC 539 (2012)
contention that other costs were ignored is not admissible because petitioners presented no facts or expert opinion that show it to be plausible that including them might affect the outcome of the severe accident mitigation alternatives analysis; LBP-11-2, 73 NRC 28 (2011)
denial of license transfer applications typically is on grounds of operating costs and inability to pay the annual cost for spent fuel storage; CLI-14-5, 79 NRC 254 (2014)
document's unavailability does not render NRC Staff's or applicant's reliance on the NUREG-1150 decontamination cost values altogether unreasonable under NEPA; LBP-13-13, 78 NRC 246 (2013)
generalized economic cost arguments, unsupported by asserted facts or expert opinion, are insufficient to show a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)
if the cost of obtaining information is exorbitant, NRC must still include in the environmental impact statement a statement that the information is unavailable, the relevance of the unavailable information, a summary of existing credible scientific evidence, and the agency's evaluation of the impacts that might be caused; LBP-14-9, 80 NRC 15 (2014)
when information relevant to a reasonably foreseeable environmental effect is incomplete or unavailable, an agency is required to obtain the unavailable information and include it in the environmental impact statement as long as costs are not exorbitant; LBP-14-9, 80 NRC 15 (2014)
See also Decommissioning Costs

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COUNCIL ON ENVIRONMENTAL QUALITY

agencies shall use the criteria for scope in 40 C.F.R. 1508.25 to determine which proposal shall be the subject of a particular environmental impact statement; LBP-11-10, 73 NRC 424 (2011); LBP-14-6, 79 NRC 404 (2014)

CEQ regulations provide guidance on agency compliance with NEPA and are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-15-16, 81 NRC 618 (2015)

CEQ regulations receive substantial deference from federal courts; LBP-12-17, 76 NRC 71 (2012)

if actions are reasonably foreseeable future actions within the meaning of 40 C.F.R. 1508.7, the CEQ regulations require that they be included in a cumulative impact analysis; LBP-14-6, 79 NRC 404 (2014)

in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the CEQ; LBP-11-7, 73 NRC 254 (2011)

NRC has not expressly adopted CEQ regulations, but they are entitled to considerable deference;

LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

NRC is directed to use the Council on Environmental Quality regulation 40 C.F.R. 1502.4 in defining the scope of its impact statements; LBP-12-12, 75 NRC 742 (2012); LBP-14-6, 79 NRC 404 (2014)

NRC is not bound by those portions of CEQ NEPA regulations that have a substantive impact on the way in which the Commission performs its regulatory functions; LBP-11-35, 74 NRC 701 (2011)

NRC looks to CEQ regulations for guidance, but is not bound by them; CLI-11-11, 74 NRC 427 (2011)

NRC regulations incorporate CEQ regulations that define the scope of an environmental impact statement to include cumulative impacts; LBP-12-3, 75 NRC 164 (2012)

COUNCIL ON ENVIRONMENTAL QUALITY GUIDELINES

CEQ guidance does not bind NRC, but NRC gives it substantial deference; LBP-12-17, 76 NRC 71 (2012)

CEQ guidance does not change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable, and some courts have declined to defer to it; LBP-12-23, 76 NRC 445 (2012)

CEQ has recognized that information may be unavoidably incomplete or unavailable, and that under those circumstances, a final environmental impact statement can overcome this deficiency if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-11-11, 74 NRC 427 (2011)

CEQ regulation requiring an environmental impact statement to consider reasonably foreseeable impacts rather than a worst-case analysis is entitled to substantial deference and NEPA does not require a worst-case analysis in an EIS; LBP-13-4, 77 NRC 107 (2013)

CEQ regulations require that agencies discuss possible mitigation measures in defining the scope of the EIS, in discussing alternatives to the proposed action and consequences of that action, and in explaining its ultimate decision; LBP-12-18, 76 NRC 127 (2012)

definition of "connected actions" in 40 C.F.R. 1508.25 is also adopted by 10 C.F.R. 51.14(b); LBP-14-9, 80 NRC 15 (2014)

in determining whether a federal action would significantly affect the environment, the agency should consider the degree to which the proposed action affects public health and safety; LBP-12-18, 76 NRC 127 (2012)

NRC adopted CEQ's definition of "effects" in 40 C.F.R. 1508.8; LBP-14-9, 80 NRC 15 (2014)

NRC has expressly adopted, and is therefore bound by, the CEQ definition of cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

NRC should use the provisions of a CEQ regulation, 40 C.F.R. 1502.4, to define the scope of an environmental impact statement; LBP-14-9, 80 NRC 15 (2014)

numerous CEQ regulations require an agency to discuss possible mitigation measures, including 40 C.F.R. §§ 1508.25(b), 1502.14(f), 1502.16(h), and 1508.20; LBP-13-4, 77 NRC 107 (2013)

requirement that an environmental impact statement contain a detailed discussion of possible mitigation measures flows both from the language of NEPA and, more expressly, from the Council on Environmental Quality's implementing regulations; LBP-13-4, 77 NRC 107 (2013)

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COUNSEL

counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 125 (2014)

delay in filing contentions caused by the schedule of counsel in other matters can support a finding of good cause; LBP-12-12, 75 NRC 742 (2012)

failure of counsel to review the scheduling order does not constitute good cause for failure to meet a filing deadline; LBP-12-12, 75 NRC 742 (2012)

CRACKING

because the shield building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts and thus petitioner's contention concerns a matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 15 (2015)

board has ample authority to ensure that evidence offered concerning microcracking is limited to that specific material issue and does not stray into issues outside the scope of the license amendment proceeding; LBP-15-20, 81 NRC 829 (2015)

directing NRC Staff to investigate a safety issue that the board could not reach through the adjudicatory process may put the Commission in a position, after receiving views of applicant if it desired, to assure itself about the significance, or lack thereof, of the shield building cracking issues raised by intervenors, and to direct such followup proceedings, if any, as it might deem appropriate; LBP-15-1, 81 NRC 15 (2015)

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)

CREDIBILITY

findings concerning personal knowledge are entirely factual and largely dependent on witness credibility; LBP-11-8, 73 NRC 349 (2011)

CRIMINAL PROSECUTION

NRC can take criminal enforcement action against an individual for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

CRITICALITY

petitioner's assertion that recriticality is demonstrated by the relative quantities of radionuclides released is not self-evident and is clearly of the class of statements that must be supported by expert opinion; LBP-11-23, 74 NRC 287 (2011)

CRITICALITY ANALYSES

petitioner does not demonstrate, with the level of support required under section 2.326(b), that a materially different result would have been likely had the possibility of recriticality over a period longer than 24 hours, or even 4 days, been considered in the SAMA analysis initially; CLI-12-3, 75 NRC 132 (2012)

CRITICALITY CONTROL

adequacy of nuclear criticality safety manager qualifications for uranium enrichment facility is discussed and a license condition is imposed; LBP-11-11, 73 NRC 455 (2011)

CROSS-EXAMINATION

although there is no right to reciprocal cross-examination, the parties should be accorded equivalent treatment under the applicable regulatory standard; CLI-12-18, 76 NRC 371 (2012)

boards are expected to explain the necessity of cross-examination in greater detail than a broad-brush reference to a proceedings voluminous or technical nature; CLI-12-18, 76 NRC 371 (2012)

Commission denies a petition for interlocutory review of a licensing board order granting a motion for cross-examination of witnesses; CLI-12-18, 76 NRC 371 (2012)

complexity and number of issues in a proceeding do not per se lead ineluctably to the conclusion that cross-examination is necessary to ensure a fair and adequate hearing; CLI-12-18, 76 NRC 371 (2012)

should the agency's administration of its new procedural rules contradict its present representations that cross-examination will be allowed under the rules when required for a full and true disclosure of the facts or otherwise flout this principle, the rules may be subject to future challenges; LBP-11-4, 73 NRC 91 (2011)

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state's motion for cross-examination was granted, insofar as it would have a reasonable opportunity to examine witnesses pursuant to NRC regulations; LBP-13-13, 78 NRC 246 (2013)

where parties have provided prefiled direct testimony in Subpart L cases and submitted a list of confidential proposed questions for the board to ask the witnesses, the need for cross-examination by parties should be a rare circumstance, except where questions of witness credibility, motive, or intent are at issue; CLI-12-18, 76 NRC 371 (2012)

CULTURAL RESOURCES

agencies must take a hard look at preserving important historic and cultural aspects of our national heritage; LBP-15-16, 81 NRC 618 (2015)

agency failed to take a hard look at cumulative impacts on cultural resources under NEPA even though the agency had satisfied its obligations under NHPA to consult with the tribe; LBP-15-16, 81 NRC 618 (2015)

agency official must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking; LBP-13-6, 77 NRC 253 (2013)

all adverse effects to any historic or cultural resource eligible for listing on the National Register must be considered during any federal undertaking; LBP-11-26, 74 NRC 499 (2011)

applicant owes no duty to address the federal government's trust responsibility in its environmental report; LBP-14-6, 79 NRC 404 (2014)

areas of potential effect of a federal undertaking must be designated, and the lead federal agency must consult with the state historic preservation office regarding the presence and protection of historic and cultural resources in the designated area, as well as any federally recognized Native American groups with an ancestral interest in the property, to determine if resources important to the tribe are present; LBP-11-26, 74 NRC 499 (2011)

board based tribe's standing on the presence onsite of cultural resources that could be harmed as a result of mining activities; CLI-14-2, 79 NRC 11 (2014)

consultation must provide an Indian tribe with a reasonable opportunity to identify its concerns about historic properties, advise on their identification and evaluation, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects; LBP-15-16, 81 NRC 618 (2015)

contention alleging failure to involve or consult all interested tribes as required by federal law is admissible; LBP-14-5, 79 NRC 377 (2014)

contention alleging failure to meet applicable legal requirements regarding protection of historical and cultural resources is admissible; LBP-14-5, 79 NRC 377 (2014)

contention alleging failure to protect historic and cultural resources is admissible; LBP-13-9, 78 NRC 37 (2013)

contention challenging sufficiency of draft environmental impact statement as it pertains to protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 37 (2013)

contention concerning cultural and historic resources is not admissible because it provides no alleged facts or expert opinions; LBP-14-6, 79 NRC 404 (2014)

contention that draft environmental assessment fails to adequately address potential impacts of the reasonably foreseeable expansion of an independent spent fuel storage installation on cultural and historic resources is admissible; LBP-14-6, 79 NRC 404 (2014)

contention that NRC has not fulfilled its trust responsibility in its analysis and conclusion of the cumulative impacts on historic and cultural resources from the reasonably foreseeable expansion of an independent spent fuel storage installation is admissible; LBP-14-6, 79 NRC 404 (2014)

failure to have made any effort to evaluate the cumulative impact of the ISFSI expansion on archaeological sites has been held to be one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)

federal agencies must consult with any Indian tribe that attaches religious and cultural significance to the sites; LBP-15-16, 81 NRC 618 (2015)

federal law not only recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal land, but as well has imposed on federal agencies a consultation requirement under the National Historic Preservation Act to ensure the protection of tribal interests in cultural resources; CLI-14-2, 79 NRC 11 (2014)

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final supplemental environmental impact statement must include an analysis of cultural impacts; LBP-15-16, 81 NRC 618 (2015)

harming Native American artifacts would constitute an irreparable injury because artifacts are, by their nature, unique, and their historical and cultural significance make them difficult to value monetarily; LBP-15-2, 81 NRC 48 (2015)

historical/cultural resources are considered eligible for listing on the National Register of Historic Places if they meet one or more of four criteria; LBP-11-26, 74 NRC 499 (2011)

Indian tribe has an organizational interest in protecting cultural artifacts connected with it; CLI-14-2, 79 NRC 11 (2014)

individual tribal member's assertion of an interest based on cultural resource concerns must show that there is a concrete or particularized injury to herself as an individual; LBP-13-6, 77 NRC 253 (2013)

irreparable harm element of the test for issuance of injunctive relief was met where the tribe's evidence showed that a phase of the project would involve damage to at least one known site, and virtually ensure some loss or damage; LBP-15-2, 81 NRC 48 (2015)

issue of the alleged failure to consult with a tribe on historic and cultural resources is material and within the scope of a materials license proceeding; LBP-13-9, 78 NRC 37 (2013)

materials license application must provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that cultural and historic resources are identified and protected; LBP-15-16, 81 NRC 618 (2015)

Native American tribe's statutorily recognized interest in tribal cultural resources that may still be extant on its recognized aboriginal lands provides a cognizable interest for the purpose of establishing its standing; LBP-13-6, 77 NRC 253 (2013)

NRC Staff must include in the final supplemental environmental impact statement an analysis of significant problems and objections raised by any affected Indian tribes, and by other interested persons; LBP-15-16, 81 NRC 618 (2015)

NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)

overall record for the licensing action includes a complete analysis of the cultural resources; LBP-15-16, 81 NRC 618 (2015)

petitioner asserts standing based on use of proposed site to gather eagle feathers for ceremonial and religious uses; LBP-13-6, 77 NRC 253 (2013)

petitioner may claim deficiencies in the application's cultural resources discussion even though it is generally not expected that the applicant's cultural resources discussion will be comprehensive; CLI-14-2, 79 NRC 11 (2014)

petitioner should not wait for NRC Staff to perform its responsibilities under the National Historic Preservation Act before it raises a claim that information is lacking; CLI-14-2, 79 NRC 11 (2014)

preliminary injunction halting a solar energy project was granted based on a tribal claim that the project would not avoid most of the 459 cultural sites identified, and that the NEPA and NHPA process had been insufficient; LBP-15-2, 81 NRC 48 (2015)

that NRC Staff will develop additional information relevant to cultural resources, as part of its National Historic Preservation Act review, does not preclude a challenge to the application's cultural resources discussion; CLI-14-2, 79 NRC 11 (2014)

to show imminent, irreparable harm to cultural resources, petitioner must describe with specificity the resources and manner in which they are threatened; CLI-15-17, 82 NRC 33 (2015)

tribal member who regularly visits tribal migratory route on national monument land to pursue cultural undertakings has standing under NHPA to raise concerns; LBP-13-6, 77 NRC 253 (2013)

tribes have a procedural right to be consulted regarding historic preservation matters; LBP-13-6, 77 NRC 253 (2013)

CULTURAL SENSITIVITY

agencies are to ensure that the federal government operates within a government-to-government relationship with federally recognized Native American tribes, reflecting respect for the rights of self-government due the sovereign tribal governments; LBP-15-16, 81 NRC 618 (2015)

federal agencies must consult with any Indian tribe that attaches religious and cultural significance to potentially impacted historic properties; LBP-15-16, 81 NRC 618 (2015)

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federal policy supports special consideration where tribal religious exercise is threatened; LBP-15-16, 81 NRC 618 (2015)

CUMULATIVE IMPACTS ANALYSIS

absence of any reference to “cumulative impacts” in a document incorporated by reference negates any intention to incorporate any discussion of cumulative impacts from these prior documents into an environmental report, consistent with the maxim of *expressio unius est exclusio alterius*, i.e., the expression of one thing is to the exclusion of another; LBP-12-24, 76 NRC 503 (2012)

admissibility of contention that final environmental assessment fails to adequately analyze cumulative impacts is decided; LBP-15-11, 81 NRC 401 (2015)

agencies may not undertake a piecemeal review of environmental impacts; LBP-13-9, 78 NRC 37 (2013)

agency failed to take a hard look at cumulative impacts on cultural resources under NEPA even though the agency had satisfied its obligations under NHPA to consult with the tribe; LBP-15-16, 81 NRC 618 (2015)

analysis is required for reasonably foreseeable future actions and test for connected actions in 40 C.F.R. 1508.25 need not be satisfied; LBP-14-6, 79 NRC 404 (2014)

applicant is not required to assess cumulative impacts in its environmental report, but NUREG-1748 requests that applicant discuss any past, present, or reasonably foreseeable future actions that could result in cumulative impacts when combined with the proposed action; LBP-12-24, 76 NRC 503 (2012)

connected actions are distinguished from cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

contention that raises a genuine dispute with the sufficiency of the cumulative impacts analysis, or the lack thereof, in the environmental report is admissible; LBP-12-3, 75 NRC 164 (2012)

contention that the draft environmental impact statement fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that the draft environmental impact statement fails to adequately assess cumulative impacts of the proposed action and another proposed ISL uranium mining operation is inadmissible; LBP-13-10, 78 NRC 117 (2013)

contention that the draft supplemental environmental impact statement fails to consider connected actions is admissible; LBP-13-9, 78 NRC 37 (2013)

cumulative actions are those that, when viewed with other proposed actions, have cumulatively significant impacts so that they should be discussed in the same environmental impact statement; LBP-13-10, 78 NRC 117 (2013)

cumulative effects and improper segmentation issues raise separate but similar questions; LBP-14-6, 79 NRC 404 (2014)

cumulative impact is defined; LBP-13-9, 78 NRC 37 (2013)

“cumulative impact” is defined as the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions; LBP-12-24, 76 NRC 503 (2012)

“cumulative impact” is the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions; LBP-13-4, 77 NRC 107 (2013); LBP-14-6, 79 NRC 404 (2014)

cumulative impacts include impacts resulting from individually minor but collectively significant actions taking place over a period of time; LBP-11-7, 73 NRC 254 (2011); LBP-14-6, 79 NRC 404 (2014)

draft environmental impact statement does not and cannot treat identified environmental concerns in a vacuum; LBP-11-7, 73 NRC 254 (2011)

environmental contention regarding cumulative impact on groundwater quantity of the in situ recovery project and the planned expansion satisfies admissibility requirements; LBP-12-3, 75 NRC 164 (2012)

environmental impact statement must consider the direct, indirect, and cumulative impacts of an action; LBP-11-7, 73 NRC 254 (2011)

environmental impact statements must cover all cumulative environmental impacts even if they occur offsite (e.g., beyond the licensee’s property line); LBP-13-4, 77 NRC 107 (2013)

environmental report must contain an analysis of the cumulative impacts of the activities to be authorized by a combined license; LBP-11-6, 73 NRC 149 (2011)

failure of decision underlying the Clean Water Act § 404 permit to analyze the cumulative impacts reasonably foreseeable from the expected addition of a second generation unit at the plant is one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)

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failure to have made any effort to evaluate the cumulative impact of the ISFSI expansion on archaeological sites has been held to be one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)

future expansion of a power plant was reasonably foreseeable and thus should have been included in the cumulative impacts analysis for the plant; LBP-14-6, 79 NRC 404 (2014)

given that so many more environmental assessments are prepared than environmental impact statements, adequate consideration of cumulative effects requires that EAs address them fully; LBP-14-6, 79 NRC 404 (2014)

grounds were found for litigation regarding defendants' assertion that treatment of highway interchanges and village development as cumulative impacts in the final environmental impact statement was sufficient under NEPA even if these actions should have been treated as connected actions under the statute's implementing regulations; LBP-14-9, 80 NRC 15 (2014)

if actions are reasonably foreseeable future actions within the meaning of 40 C.F.R. 1508.7, they should be included in a cumulative impact analysis; LBP-14-6, 79 NRC 404 (2014)

impact on the environment that results from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions is the cumulative impact; LBP-14-9, 80 NRC 15 (2014)

impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-11-26, 74 NRC 499 (2011)

impacts of water withdrawals, climate change, and saltwater intrusion on wetlands are discussed; LBP-13-4, 77 NRC 107 (2013)

NEPA analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment; LBP-13-9, 78 NRC 37 (2013)

NRC has expressly adopted, and is therefore bound by, the CEQ definition of cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

NRC regulations incorporate Council on Environmental Quality regulations that define the scope of an environmental impact statement to include cumulative impacts; LBP-12-3, 75 NRC 164 (2012)

NRC Staff has conducted cumulative impact analyses of covered actions that were not interdependent with the proposed action; LBP-14-6, 79 NRC 404 (2014)

NRC Staff must consider the cumulative impact of greenhouse gas emissions from a proposed facility; LBP-11-7, 73 NRC 254 (2011)

possible future action must at least constitute a proposal pending before the agency to be ripe for adjudication, and to establish that cumulative impacts of the action must be addressed, petitioner must first show that any proposal applicant has made is so interdependent with the application at issue that it would be unwise or irrational to complete one without the other; LBP-14-6, 79 NRC 404 (2014)

projects that are not connected actions, but are physically related to the system, are cumulative actions and are subject to an examination of cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

rather than being determinative, interdependence of proposed actions with potential future actions should be considered alongside other pertinent facts and circumstances to determine whether there is a sufficient likelihood that an action will occur to render that action foreseeable; LBP-14-6, 79 NRC 404 (2014)

reasonably foreseeable actions must be the subject of a cumulative impacts analysis; LBP-14-6, 79 NRC 404 (2014)

regulations ask whether future actions are foreseeable, not whether they are interdependent; LBP-14-6, 79 NRC 404 (2014)

restricted environmental analysis that fails to consider cumulative impacts would impermissibly subject the decisionmaking process contemplated by NEPA to the tyranny of small decisions; LBP-14-6, 79 NRC 404 (2014)

three types of actions (connected, cumulative, and similar) are to be considered in looking to the scope of an EIS; LBP-13-10, 78 NRC 117 (2013)

to establish that cumulative impacts must be addressed, petitioner must first show that any proposal applicant has made is so interdependent with the application at issue that it would be unwise or irrational to complete one without the other; LBP-14-6, 79 NRC 404 (2014)

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when drafting an environmental impact statement, agency's scope of review must include analysis of any connected or cumulative actions to the central proposed action; LBP-15-16, 81 NRC 618 (2015)

when several proposals for actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together; LBP-13-10, 78 NRC 117 (2013)

CURRENT LICENSING BASIS

ability of a facility to shut down safely following a potential earthquake is a current operating issue, and is not unique to whether licenses should be renewed; LBP-15-6, 81 NRC 314 (2015)

allegations of noncompliance with already-issued, existing, and open Commission orders are part of the CLB and therefore cannot be challenged in a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

although the current licensing basis is not evaluated in the license renewal process, its provisions and protections remain in effect, complementing and supplementing any additional measures added due to aging management requirements; LBP-13-13, 78 NRC 246 (2013)

any amendment to an existing license as a result of NRC review of licensee seismic hazard reevaluations that leads to changes in the current licensing basis would be subject to a hearing opportunity; CLI-15-21, 82 NRC 295 (2015)

applicant has the burden of providing reasonable assurance that the CLB will be maintained throughout the renewal period; LBP-15-5, 81 NRC 249 (2015)

applicant must update its license renewal application annually to reflect changes in its CLB, but such updating does not explicitly extend to the environmental report; LBP-11-32, 74 NRC 654 (2011)

applicant's commitments through incorporation of applicant's updated final safety analysis report supplement are included; LBP-13-13, 78 NRC 246 (2013)

applicants must demonstrate reasonable assurance that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation; CLI-12-5, 75 NRC 301 (2012)

because all aspects of licensee's CLB will remain in effect during the period of extended operation, in the event that renewed licenses are issued, the corrective action requirements of 10 C.F.R. Part 50, Appendix B will apply; LBP-13-13, 78 NRC 246 (2013)

challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of the license renewal proceeding; LBP-12-24, 76 NRC 503 (2012)

CLB includes licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports; LBP-11-21, 74 NRC 115 (2011)

CLB includes NRC regulations contained in 10 C.F.R. Part 50 and appendices thereto; LBP-13-8, 78 NRC 1 (2013)

CLB includes plant-specific design-basis information as documented in the most recent final safety analysis report; LBP-11-21, 74 NRC 115 (2011)

CLB of an operating license shall continue during the license renewal period, but these conditions may be supplemented or amended as necessary to protect the environment during the term of the renewed license and will be derived from information contained in the supplement to the environmental report, as analyzed and evaluated in the NRC record of decision; LBP-11-17, 74 NRC 11 (2011)

Commission distinguishes between aging management issues, reviewed at the time of license renewal, and operational issues, reviewed at all times as part of the CLB; LBP-15-5, 81 NRC 249 (2015)

Commission requirements applicable to a specific plant that are in effect at the time of a license renewal application are encompassed in the CLB; LBP-13-13, 78 NRC 246 (2013)

commitments in the updated final safety analysis report and aging management plan are legally binding as part of the CLB throughout the period of extended operation and can only be changed through the section 50.59 process; LBP-13-13, 78 NRC 246 (2013)

compliance with the CLB is not within the scope of a license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

concerns with the current design and operation of a nuclear power plant are more properly addressed through a petition for enforcement action; LBP-15-13, 81 NRC 456 (2015)

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contentions that relate to current operations at a plant, as opposed to how it might operate during the period of extended operation, are inadmissible; LBP-13-8, 78 NRC 1 (2013)

entertaining contentions in a license renewal proceeding that challenge the current licensing basis would be both unnecessary and wasteful, given ongoing agency oversight, review, and enforcement; LBP-11-21, 74 NRC 115 (2011)

except for the detrimental effects of aging on the functionality of certain plant systems, structures, and components in the period of extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide and maintain an acceptable level of safety; LBP-15-6, 81 NRC 314 (2015)

for active structures, systems, and components, NRC chose to exempt from license renewal, challenges to a plant's operational activities covered by its CLB; LBP-13-13, 78 NRC 246 (2013)

for contentions that fall within the facility's CLB, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 115 (2011)

if compliance with the CLB cannot be fully achieved during the current licensing term and must be consummated during the period of extended operation, then a contention raising issues about such CLB compliance is within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)

independent spent fuel storage installation CLB includes plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report; LBP-12-24, 76 NRC 503 (2012)

integrated plant assessment must demonstrate that effects of aging will be adequately managed so that the intended functions will be maintained consistent with the CLB for the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

it is not necessary or appropriate to throw open the full gamut of provisions in a facility's CLB to reanalysis during the license renewal review, because the CLB is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-12-24, 76 NRC 503 (2012); LBP-13-13, 78 NRC 246 (2013)

license requirements, including license conditions and technical specifications, plant-specific design basis information, and any orders, exemptions, and licensee commitments that are part of the docket for the plant's license make up the CLB; LBP-13-13, 78 NRC 246 (2013)

litigability of the adequacy of applicant's efforts to address current operational issues is excluded from a license renewal proceeding; CLI-11-11, 74 NRC 427 (2011)

NRC has the ongoing responsibility to oversee the safety and security of operating nuclear reactors and maintains an aggressive and ongoing program to oversee plant operation and to maintain compliance with the current licensing basis; LBP-13-8, 78 NRC 1 (2013)

NRC regulations, orders, technical specifications, and license conditions applicable to a specific plant and licensee's written, docketed commitments for ensuring compliance with NRC requirements and the plant-specific design basis make up the CLB; CLI-12-5, 75 NRC 301 (2012)

NRC shall require backfitting of a facility only when it determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security and that the costs of implementation are justified in view of this increased protection; LBP-11-17, 74 NRC 11 (2011)

NRC Staff has authority to require implementation of non-aging-management severe accident mitigation alternatives through its CLB backfit review under Part 50 or through setting conditions of license renewal; LBP-11-17, 74 NRC 11 (2011)

NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-11-11, 74 NRC 427 (2011); CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

NRC's ongoing regulatory process ensures that the CLB of an operating plant remains acceptably safe; LBP-15-5, 81 NRC 249 (2015)

petitioner may file a petition for rulemaking to expand the scope of NRC license renewal regulations if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 295 (2015)

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petitioner may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action that may be proper, if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 295 (2015)

review of a license renewal application does not reopen issues relating to a plant's CLB; LBP-12-24, 76 NRC 503 (2012)

this term of art is comprehended as the various NRC requirements applicable to a specific plant that are in effect at the time of a license renewal application; LBP-15-20, 81 NRC 829 (2015)

updated final safety analysis report supplement represents the capturing of critical aspects of the program into applicant's CLB; LBP-13-13, 78 NRC 246 (2013)

CYBER SECURITY

plans must be submitted for NRC approval; CLI-12-2, 75 NRC 63 (2012)

plans must take into account site-specific conditions; CLI-12-2, 75 NRC 63 (2012)

written policies, implementing procedures, site-specific analysis, and other supporting technical information developed to implement cyber security plans are subject to periodic inspection by NRC Staff; CLI-12-2, 75 NRC 63 (2012)

DAMAGES

walkdowns and inspections performed by licensee, industry, and NRC personnel following an earthquake that exceeded the plant's design basis are described; DD-12-2, 76 NRC 391 (2012)

DEADLINES

absent compelling circumstances, NRC Staff is expected to accord sufficient priority and devote sufficient resources to meeting its estimated safety and environmental review schedules; CLI-12-4, 75 NRC 154 (2012)

adherence to deadlines and procedures in NRC rules is required so that other litigants are not taken by surprise and are accorded an opportunity to respond to new arguments or new information; CLI-15-18, 82 NRC 135 (2015)

administrative challenges to EPA permits are to be filed 30 days after EPA's final permit decision; LBP-14-4, 79 NRC 319 (2014)

although NRC regulations do not provide a precise definition of "timely," licensing boards have often found a new contention to be timely if it has been filed within 30 days of the availability of information on which the contention is based; LBP-12-9, 75 NRC 615 (2012); LBP-12-11, 75 NRC 731 (2012)

any person whose interests may be affected by the license renewal proceeding, and who wishes to participate as a party, must file a petition to leave to intervene within 60 days of the notice of hearing in accordance with 10 C.F.R. 2.309; LBP-12-8, 75 NRC 539 (2012)

applicant is required to submit a report on its decommissioning funding assurance mechanism after combined licenses are issued and no later than 30 days after NRC publishes notice of intended operation in the Federal Register; CLI-12-2, 75 NRC 63 (2012)

applicants must implement the edition and addendum of the ASME Code for Operation and Maintenance of Nuclear Plants incorporated by reference in 10 C.F.R. 50.55a 12 months before fuel loading; CLI-12-2, 75 NRC 63 (2012)

because an applicant denied an operator's license (or a byproduct, source, special materials, or facility license) would be entitled to demand a hearing, rather than merely request a hearing, no more than 20 days would be required to prepare a document that would satisfy the conditions precedent to obtaining the hearing; LBP-13-3, 77 NRC 82 (2013)

board is directed to rule within 140 days of the date of the referral on whether the hearing request should be granted; CLI-15-14, 81 NRC 729 (2015)

both the reopening and contention admissibility criteria require that new contentions be timely presented, generally within 30-60 days of the availability of the information on which the contention is based; CLI-12-21, 76 NRC 491 (2012)

claims and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

Commission enforces the 10-day deadline for filing appeals strictly and excuses it only in unavoidable and extreme circumstances; LBP-12-12, 75 NRC 742 (2012)

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contention filing deadlines support the Commission's interest in promoting efficient adjudication; LBP-15-11, 81 NRC 401 (2015)

contention or amendment or supplement to a contention is considered timely if filed within 60 days of the date when the material information on which it is based first becomes available to the moving party through service, publication, or any other means; LBP-12-27, 76 NRC 583 (2012)

deadline for answer to hearing petition is specified; CLI-11-3, 73 NRC 613 (2011)

deadline for reply to an answer to a hearing petition is specified; CLI-11-3, 73 NRC 613 (2011)

determination as to whether requests or petitions are filed in a timely manner shall be subject to a reasonableness standard and are not subject to the 30-day deadline applicable to motions by existing parties to add or amend contentions; LBP-15-6, 81 NRC 314 (2015)

each licensee shall complete implementation of the ERDS by February 13, 1993, or before initial escalation to full power, whichever comes later; LBP-15-4, 81 NRC 156 (2015)

earliest that a license renewal application may be submitted is 20 years before the expiration date of the operating license in effect; CLI-13-7, 78 NRC 199 (2013)

environmental contentions are expected in response to applicant's or NRC Staff's environmental reviews, and contentions regarding their adequacy cannot be expected to be proffered at an earlier stage of the proceeding before the documents are available; LBP-15-11, 81 NRC 401 (2015)

evidentiary hearing should begin 175 days after release of NRC Staff's environmental review document; CLI-15-17, 82 NRC 33 (2015)

failure of counsel to review the scheduling order does not constitute good cause for failure to meet a filing deadline; LBP-12-12, 75 NRC 742 (2012)

filing deadlines may be extended or shortened by either the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

filing deadlines will not be modified unless a party, in advance of the deadline, petitions the board for a change and demonstrates that there is good cause for such a change; LBP-14-11, 80 NRC 125 (2014)

for proceedings for which a Federal Register notice of agency action is published, the hearing request must be filed not later than the time specified in the notice of proposed action; CLI-14-11, 80 NRC 167 (2014); CLI-15-5, 81 NRC 329 (2015)

for proceedings in which a Federal Register notice is not published, the hearing request shall be filed by the later of 60 days after publication of notice on the NRC website or 60 days after the requestor receives actual notice of a pending application, but not more than 60 days after agency action on the application; CLI-14-11, 80 NRC 167 (2014); CLI-15-5, 81 NRC 329 (2015)

holidays and weekends are excluded from the date calculation for filing new contentions; LBP-15-24, 82 NRC 68 (2015)

if intervenors file a new or amended contention, with supporting materials, within 60 days after pertinent information first becomes available, then the contention will be deemed timely filed and intervenors will not have to satisfy the late-filing requirements of 10 C.F.R. 2.309(c) or the requirements for reopening the record; LBP-11-22, 74 NRC 259 (2011)

if NRC Staff finds that an application does not comply with regulatory requirements, it must inform applicant in writing of the nature of any deficiencies or the reason for the proposed denial and the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)

if the 20-day deadline for requesting a hearing in 10 C.F.R. 2.103(b) applies, NRC Staff's failure to comply with its own responsibilities under that provision bars Staff from invoking it; LBP-11-19, 74 NRC 61 (2011)

if, within 60 days after pertinent information supporting a new contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding construction of a mixed oxide facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements or the requirements for reopening the record; LBP-11-9, 73 NRC 391 (2011)

in denying an exemption request, Staff is required to inform applicant of the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)

intervenors and potential intervenors have a period of time to file new or amended contentions in response to a draft environmental impact statement; LBP-13-9, 78 NRC 37 (2013)

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intervenor are not allowed to postpone filing a contention challenging environmental or safety information or analysis until Staff issues some document that collects, summarizes, and places into context the facts supporting that contention; LBP-15-11, 81 NRC 401 (2015)

intervention petition must be filed within the time specified in any notice of proposed action; LBP-15-13, 81 NRC 456 (2015)

intervention petitions must be filed within 60 days based on the documents then in existence, meaning that the petition must be based on the documents submitted with the application; LBP-11-22, 74 NRC 259 (2011)

Model Milestones permit intervenors' proposed late-filed contentions on SER and necessary NEPA documents to be filed within 30 days of the issuance of those documents; LBP-11-22, 74 NRC 259 (2011)

motions for reconsideration must be filed within 10 days of a Board's decision; LBP-11-15, 73 NRC 629 (2011)

motions for reconsideration must be filed within 10 days of the action for which reconsideration is requested; CLI-14-10, 80 NRC 157 (2014); LBP-12-26, 76 NRC 559 (2012)

new contentions are deemed timely if filed within 30 days of the date when the new and material information on which they are based first became available; LBP-11-39, 74 NRC 862 (2011); LBP-12-1, 75 NRC 1 (2012); LBP-12-10, 75 NRC 633 (2012)

new contentions submitted within 30 days of the occurrence of the triggering event are timely; LBP-12-18, 76 NRC 127 (2012)

new or amended contention is considered timely if it is filed within 60 days of the date when the material information first became available to the moving party through service, publication, or any other means; LBP-15-1, 81 NRC 15 (2015)

notice failing to contain a specific time limit for administrative review, as required by federal regulations, does not trigger a time bar; LBP-11-19, 74 NRC 61 (2011)

notification of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 48 (2015)

NRC generally considers approximately 30-60 days as the limit for timely filings based on new information; CLI-11-2, 73 NRC 333 (2011)

parties' other professional obligations do not relieve them of their obligations to meet regulatory deadlines; LBP-11-34, 74 NRC 685 (2011); LBP-12-12, 75 NRC 742 (2012)

period allotted for the filing of challenges to enforcement orders that impose some sanction is 20 days; LBP-13-3, 77 NRC 82 (2013)

petitioner is generally afforded 7 days to file its reply; LBP-12-3, 75 NRC 164 (2012)

petitions for review must be filed within 15 days; CLI-12-17, 76 NRC 207 (2012)

proposed new contention will be considered timely if it is filed within 30 days of the date when the new and material information on which the proposed contention is based first becomes available; LBP-11-7, 73 NRC 254 (2011)

proposed new or amended contentions shall be deemed timely if filed within 60 days of the date when the document containing the new and material information first becomes available; LBP-12-12, 75 NRC 742 (2012)

reconsideration motions must be filed within 10 days of the action for which reconsideration is requested; CLI-12-17, 76 NRC 207 (2012)

reply must be filed within 7 days after the filing of answers to an intervention petition; LBP-11-21, 74 NRC 115 (2011)

requests for protected documents shall be filed within 60 days of the listing of the document on the privilege log and, in any event, no later than 10 days after the deadline for filing rebuttal testimony; LBP-11-5, 73 NRC 131 (2011)

schedule for Subpart L proceedings, including closing of the record, is described; CLI-12-3, 75 NRC 132 (2012)

settlement is encouraged, but the fact that a possible settlement is being negotiated does not change any of the deadlines set forth in the initial scheduling order; LBP-14-11, 80 NRC 125 (2014)

subject to exceptions, the presiding officer must adhere to the schedule set forth in 10 C.F.R. Part 2, Appendix D; CLI-13-8, 78 NRC 219 (2013)

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- summary disposition opponent has 20 days from proponent's filing of its motion to oppose that motion; LBP-12-7, 75 NRC 503 (2012)
- there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements; LBP-14-4, 79 NRC 319 (2014)
- time for applicant to request a hearing should be tolled until notice is issued if NRC Staff fails to provide the notice and hearing opportunity mandated by 10 C.F.R. 2.103(b); LBP-11-19, 74 NRC 61 (2011)
- time for petitioning for review of any of a board's prior interlocutory rulings will run from the date of the Commission's ruling closing the record; CLI-12-14, 75 NRC 692 (2012)
- time for submitting a new/amended contention motion based on information that would be newly available, materially different, and otherwise timely submitted given the information's availability can be extended if the extension request is based on good cause; LBP-13-10, 78 NRC 117 (2013)
- timeliness of an initial hearing petition in different situations is defined as being filed between 20 and 60 days after certain specified events; LBP-15-11, 81 NRC 401 (2015)
- to be admissible, late-filed contentions must also satisfy the timeliness requirements of section 2.309(c) or section 2.307; LBP-13-9, 78 NRC 37 (2013)
- trigger date for a filing period can be especially unclear where both public and nonpublic documents associated with a proceeding are produced and where an applicant's stated compliance with NRC regulations shifts over time; LBP-11-9, 73 NRC 391 (2011)
- two years before permanent cessation of operations, licensee must submit a preliminary decommissioning cost estimate that includes a plan for adjusting decommissioning funds to demonstrate that funds will be available when needed to cover decommissioning costs; DD-15-8, 82 NRC 107 (2015)
- unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances in the case; LBP-12-27, 76 NRC 583 (2012)
- when a contention is considered to be timely filed is not specified in 10 C.F.R. 2.309(c)(1)(iii); LBP-15-15, 81 NRC 598 (2015)
- when a filing deadline is approaching, notwithstanding that an attorney is engaged in good-faith settlement discussions, prudence should compel the attorney to take all actions that are necessary to ensure the deadline will be met in the event that settlement discussions are unsuccessful; LBP-15-4, 81 NRC 156 (2015)
- where applicant has raised sufficient question as to the appropriate deadline, the board may conclude that it would be unfair to penalize applicant on account of what might be ambiguity in NRC's own regulations; LBP-11-19, 74 NRC 61 (2011)
- where NRC Staff provided advice regarding timing that misled a petitioner, the Staff had conceded timeliness in light of such advice; LBP-12-16, 76 NRC 44 (2012)
- within 30 days after new information becomes available is a reasonable amount of time for filing a new contention; LBP-15-24, 82 NRC 68 (2015)
- within 45 days of the initial scheduling order, target of the enforcement order must provide certain information and documents to the NRC enforcement director; LBP-14-11, 80 NRC 125 (2014)
- DECAY HEAT REMOVAL**
- assurance of adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant; LBP-11-16, 73 NRC 645 (2011)
- DECISION ON THE MERITS**
- allowing an environmental challenge to continue after the environmental impact statement has issued does not constitute a merits ruling that the Staff's review document is inadequate; CLI-11-6, 74 NRC 203 (2011)
- although boards do not decide the merits at the contention admissibility stage, materials cited as the basis for a contention are subject to scrutiny to determine whether, on their face, they actually support the facts alleged; LBP-12-12, 75 NRC 742 (2012)
- because the Commission's vacatur order does not address the merits, it need not address an argument that NRC Staff impermissibly raises objections to the merits of the board's decision without filing a petition for review; CLI-13-9, 78 NRC 551 (2013)
- boards are not to decide the merits at the contention admissibility stage; LBP-12-18, 76 NRC 127 (2012)

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- boards do not adjudicate disputed facts at the contention admission stage; LBP-11-2, 73 NRC 28 (2011); LBP-11-21, 74 NRC 115 (2011)
- boards must not adjudicate the merits of allegations at the contention admissibility stage of an NRC proceeding, but, to be admissible, a contention must provide more than a bare assertion, and must explain the supporting reasons for the dispute raised; LBP-11-16, 73 NRC 645 (2011)
- Commission decision to vacate an unreviewed board decision does not intimate any opinion on the soundness of the board's decision; CLI-13-9, 78 NRC 551 (2013); CLI-13-10, 78 NRC 563 (2013)
- contention dismissal based on mootness is a jurisdictional ruling, not a decision on the merits of the claim; LBP-11-22, 74 NRC 259 (2011)
- dismissal of an appeal with prejudice, similar to termination of a proceeding with prejudice, generally implies that the Commission has ruled on the merits of the appeal and such ruling is reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general; CLI-13-10, 78 NRC 563 (2013)
- evaluation of a contention at the admissibility stage should not be confused with evaluation at the merits stage; CLI-11-8, 74 NRC 214 (2011); LBP-15-24, 82 NRC 68 (2015)
- if, after considering all arguments and facts proffered by the parties, no genuine issue of material fact exists, the Board may dispose of all arguments based on the pleadings; LBP-12-19, 76 NRC 184 (2012)
- in assessing whether applicant/licensee adequately carries out a licensing directive, boards are to assume that NRC Staff will be fair and judge the matter of applicant/licensee's compliance on the merits; LBP-15-3, 81 NRC 65 (2015)
- it is rarely appropriate to resolve complex, fact-intensive issues on the initial pleadings; LBP-11-13, 73 NRC 534 (2011)
- merits determinations cannot be made at the contention admissibility stage; LBP-14-6, 79 NRC 404 (2014); LBP-15-20, 81 NRC 829 (2015)
- NRC Staff guidance is entitled to special weight in a decision on the merits; LBP-15-20, 81 NRC 829 (2015)
- once it made a determination of plausible injury from the proposed project, the board was not required to weigh the evidence to determine whether the harm to petitioners was beyond doubt; CLI-12-12, 75 NRC 603 (2012)
- prima facie showing on a rule waiver request is not a final determination on the merits, but merely requires presentation of enough information to allow the board to infer (absent disproof) that special circumstances exist; LBP-14-16, 80 NRC 183 (2014)
- requiring petitioners to proffer additional and conclusive support for the effect of their proposed contention would improperly require boards to adjudicate the merits of contentions before admitting them; LBP-11-21, 74 NRC 115 (2011); LBP-11-25, 74 NRC 380 (2011); LBP-15-20, 81 NRC 829 (2015)
- when a contention alleges the need for further study of an alternative, from an environmental perspective, such reasonableness determinations are the merits, and should only be decided after the contention is admitted; LBP-11-13, 73 NRC 534 (2011)
- See also Licensing Board Decisions
- DECISIONS**
- although the Atomic Safety and Licensing Appeal Panel is no longer in existence, the decisions of its appeals boards continue to be binding to the degree they concern a regulation or regulatory matter that has not been revised or otherwise materially altered; LBP-11-34, 74 NRC 685 (2011)
- appellate review of the majority of presiding officer decisions is governed by 10 C.F.R. 2.341(a)(1); CLI-12-6, 75 NRC 352 (2012)
- board's ultimate NEPA judgments are made on the basis of the entire adjudicatory record in addition to NRC Staff's final supplemental environmental impact statement; LBP-15-16, 81 NRC 618 (2015)
- See also Decision on the Merits; Initial Decisions; Licensing Board Decisions; Partial Initial Decisions; Record of Decision
- DECOMMISSIONING**
- agreement state license termination regulations are not less protective than or incompatible with NRC's in making the terms of restricted release considerably more difficult than those for unrestricted release; CLI-11-12, 74 NRC 460 (2011)

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ALARA analysis required under section 20.1403(a) calls for a licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls; CLI-13-6, 78 NRC 155 (2013)

applicant need not submit an environmental report until the final stage of decommissioning as part of its license termination plan; LBP-15-24, 82 NRC 68 (2015)

areas of minor radioactive contamination are evaluated and remediated as needed during plant decommissioning; DD-11-1, 73 NRC 7 (2011)

benefit-cost analysis is used to determine initial eligibility for restricted release; CLI-11-12, 74 NRC 460 (2011)

board provides textual analysis and additional clarifying explanation of its interpretation of 10 C.F.R. 20.1403(a); CLI-13-6, 78 NRC 155 (2013)

claim that alternate concentration limit could not be accurately generated until the post-operational decommissioning process did not account for the possible creation of a bounding analysis based on the historical experience at other ISR sites; LBP-13-10, 78 NRC 117 (2013)

contention that the DEIS fails to analyze the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)

“decommissioning” is defined in 10 C.F.R. 50.2; LBP-15-24, 82 NRC 68 (2015)

despite having passed the initial eligibility test for restricted release, if licensee cannot satisfy dose criteria, its site will not be considered acceptable for license termination under restricted conditions; CLI-13-6, 78 NRC 155 (2013)

determination expressly required by the text “further reductions in residual radioactivity . . . were not being made because the residual levels associated with restricted conditions are ALARA” in 10 C.F.R. 20.1403 is an inquiry that focuses on how far it is possible, on a cost-effective basis, to further reduce the “residual levels”; CLI-13-6, 78 NRC 155 (2013)

dose limit for license termination is a constraint within the public dose limit of 25 mrem per year to members of the public; CLI-11-12, 74 NRC 460 (2011)

doses yielded by restricted-release and unrestricted-release decommissioning options are not susceptible to being compared meaningfully because of the significantly different risks and uncertainties associated with each option; CLI-13-6, 78 NRC 155 (2013)

eligibility test in section 20.1403(a) postulates a cost-benefit inquiry that is modeled on a traditional ALARA cost-benefit analysis, but that serves a different regulatory purpose; CLI-13-6, 78 NRC 155 (2013)

for license termination under restricted conditions, licensee must provide legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year; CLI-13-6, 78 NRC 155 (2013)

“further reductions” in 10 C.F.R. 20.1403(a) necessarily refers to further reductions from the level of residual radioactivity that a licensee proposes to leave in place under its proposed restricted-release decommissioning plan; CLI-13-6, 78 NRC 155 (2013)

if institutional controls fail and engineered barriers have degraded over a period of time, the dose to a member of the public will not exceed 100 mrem per year, or 500 mrem per year under certain circumstances, and is as low as reasonably achievable; CLI-11-12, 74 NRC 460 (2011)

if licensee demonstrates, through either of the two cost-benefit approaches, that removing radioactive contamination to the unrestricted-use level would not be cost-beneficial, then licensee must show that, with the addition of engineered barriers and institutional controls, the average annual dose to the public will not exceed 25 mrem per year *and* is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)

keeping radionuclides below the EPA limit is necessary to maintain public safety at a decommissioning facility; LBP-15-24, 82 NRC 68 (2015)

licensee must show that, if institutional controls fail, enough residual radioactivity has been removed from the site so that the average annual dose to the public will not exceed 100 mrem per year and is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)

licensees, in determining whether levels are ALARA, are to consider detriments, such as traffic accidents; CLI-13-6, 78 NRC 155 (2013)

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litigation at NRC has actually reached the point of NRC approval of an onsite plan at the time of the transfer of authority to an agreement state; CLI-11-12, 74 NRC 460 (2011)

nothing in NRC license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 155 (2013)

NRC explicitly expressed a preference for unrestricted release in adopting its license termination rule; CLI-11-12, 74 NRC 460 (2011)

NRC expressly altered the policy and application of 10 C.F.R. 50.59 as it related to decommissioning activities, permitting licensee to dismantle major structural components without prior NRC approval of a final decommissioning plan; CLI-15-14, 81 NRC 729 (2015)

NRC prefers that licensees satisfy radiation dose criteria for license termination through unrestricted-release decommissioning if it is cost-beneficial to do so; CLI-13-6, 78 NRC 155 (2013)

NRC regulations neither explicitly nor implicitly require a comparison of the levels of protection afforded by the unrestricted and restricted decommissioning options; CLI-11-12, 74 NRC 460 (2011)

nuclear power facility arguably exists until final decommissioning, which may take up to 60 years, or longer if approved by the Commission; LBP-15-4, 81 NRC 156 (2015)

objective is to reduce residual radioactivity in structures, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that nuclide; CLI-13-1, 77 NRC 1 (2013)

one of the benefits of removing enough radioactivity to cross the 25-mrem threshold is that the value of the affected property is likely to increase, and it is in this sense that NRC guidelines contemplate, as part of the ALARA analysis, a comparison between restricted release and unrestricted release; CLI-13-6, 78 NRC 155 (2013)

“reductions in residual radioactivity” refers only to dose reductions to the public that can be accomplished solely through the steps associated with unrestricted-release decommissioning, i.e., removal of contaminated material or decontamination; CLI-13-6, 78 NRC 155 (2013)

regulatory history, like 10 C.F.R. Part 50, App. E, § VI itself, is focused entirely on implementation and maintenance of the ERDS operations with not one word about decommissioning the system; LBP-15-4, 81 NRC 156 (2015)

“residual levels,” as used in the phrase “were not being made because the residual levels . . . are ALARA,” in 10 C.F.R. 20.1403(a) refers back to, and is shorthand for, the term “residual radioactivity” used earlier in the introductory language; CLI-13-6, 78 NRC 155 (2013)

sites will be considered acceptable for license termination under restricted conditions if licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of section 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; CLI-13-6, 78 NRC 155 (2013)

sites will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a Total Effective Dose Equivalent to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable; CLI-13-6, 78 NRC 155 (2013)

threshold eligibility for restricted release requires that licensees demonstrate that remediation to the level of adequate protection for license termination cannot be achieved cost-beneficially through unrestricted release before allowing them to pursue restricted-release decommissioning; CLI-13-6, 78 NRC 155 (2013)

to provide adequate protection to the public upon license termination, NRC has established a maximum dose level to the public of 25 mrem per year, which licensee must satisfy without regard to cost, and regardless of whether decommissioning is to be accomplished through restricted or unrestricted release; CLI-13-6, 78 NRC 155 (2013)

unrestricted release and restricted release are both available as independent regulatory options that would provide adequate protection to the public health and safety if the applicable dose and other criteria are met; CLI-11-12, 74 NRC 460 (2011)

“unrestricted use” means that, from a radiological standpoint, no hazards exist at the site, the license can be terminated, and the site can be considered an unrestricted area; CLI-13-1, 77 NRC 1 (2013)

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- words “further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402” are analyzed; CLI-13-6, 78 NRC 155 (2013)
- DECOMMISSIONING COSTS**
- decommissioning funding requirements encompass costs of low-level waste burial; CLI-15-8, 81 NRC 500 (2015)
 - decommissioning trust funds may be used by licensees if withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in section 50.2; LBP-15-24, 82 NRC 68 (2015)
 - exemptions from decommissioning fund withdrawals are categorically excluded from environmental review as administrative changes that do not increase risk of public radiation exposure; LBP-15-24, 82 NRC 68 (2015)
 - given that licensee has not included discovery of unexpected levels of contaminants, and contamination in places not previously expected, in the decommissioning cost estimate, such fund withdrawals would require a 30-day notice; LBP-15-24, 82 NRC 68 (2015)
 - if licensee amends any license conditions related to the decommissioning trust fund, from that point forward it will have to comply with all requirements of 10 C.F.R. 50.75(h); LBP-15-28, 82 NRC 233 (2015)
 - instead of providing notice before each decommissioning expense, licensee must submit a decommissioning cost estimate and timeline, called a Post Shutdown Decommissioning Activities Report, and annual reports on expenditures; LBP-15-24, 82 NRC 68 (2015)
 - license amendment request seeks to replace 30-day notice requirement and other plant-specific license conditions with the decommissioning fund requirements; LBP-15-28, 82 NRC 233 (2015)
 - licensee is required to ensure that the site can be safely maintained and decommissioned, even in the face of unexpected costs; LBP-15-24, 82 NRC 68 (2015)
 - licensee must provide a 30-day notice for all withdrawals other than ordinary administrative expenses to operate the decommissioning fund, but those notices are no longer required once decommissioning has begun and withdrawals are made; LBP-15-24, 82 NRC 68 (2015)
 - narrowly tailored condition will afford petitioner an opportunity to dispute a specific decommissioning fund disbursement via a letter to the NRC or a petition for enforcement action; LBP-15-28, 82 NRC 233 (2015)
 - reporting and recordkeeping rules for decommissioning trusts are government by 10 C.F.R. 50.75(h)(1)-(4); LBP-15-28, 82 NRC 233 (2015)
 - spent fuel management is not a decommissioning activity; LBP-15-24, 82 NRC 68 (2015)
 - state has provided sufficiently supported expert opinion to show at the contention admissibility stage why inadvertent release of radionuclides is enough of a risk to public health and safety to warrant merits consideration as an unforeseen expense; LBP-15-24, 82 NRC 68 (2015)
 - two years before permanent cessation of operations, licensee must submit a preliminary decommissioning cost estimate that includes a plan for adjusting decommissioning funds to demonstrate that funds will be available when needed to cover decommissioning costs; DD-15-8, 82 NRC 107 (2015)
 - where license conditions predate issuance of 10 C.F.R. 50.75(h)(5), the plant has been allowed to keep its existing license conditions; LBP-15-28, 82 NRC 233 (2015)
- DECOMMISSIONING FUNDING**
- acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; CLI-11-4, 74 NRC 1 (2011)
 - annual report on recalculations of decommissioning cost estimates and projected available decommissioning funding must be submitted by a licensee for a plant that has closed before the end of its licensed life; DD-11-4, 73 NRC 713 (2011)
 - applicant seeks authorization to provide financial assurance for decommissioning funding on a forward-looking, incremental basis; LBP-11-11, 73 NRC 455 (2011)
 - applicant’s commitment to provide a letter of credit issued by a financial institution whose operations are regulated and examined by a federal or state agency is sufficient to satisfy decommissioning funding assurance requirements; CLI-11-4, 74 NRC 1 (2011); LBP-11-26, 74 NRC 499 (2011)
 - because it has chosen a surety method, licensee must ensure that the letter of credit is payable to a trust established for decommissioning costs; CLI-11-4, 74 NRC 1 (2011)

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certification of financial assurance may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material; CLI-11-4, 74 NRC 1 (2011)

certifications of financial assurance, which are used by applicants seeking to possess smaller quantities of material, are governed by 10 C.F.R. 70.25(b)(2); CLI-11-4, 74 NRC 1 (2011)

contracts that licensee is relying on for decommissioning funding must be reported to NRC; DD-11-7, 74 NRC 787 (2011)

“credit facility” carries various definitions; CLI-13-1, 77 NRC 1 (2013)

exemption from funding requirements to allow applicant to act as a self-guarantor without satisfying the financial test for self-guarantors must be in the public interest or otherwise satisfy the requirements of 10 C.F.R. 40.14; LBP-12-6, 75 NRC 256 (2012)

exemption from the decommissioning financial assurance requirements is considered to be an extraordinary equitable remedy to be used only sparingly; CLI-13-1, 77 NRC 1 (2013)

exemption request is subject to a hearing where the plant already has a license and is seeking an exemption from the decommissioning financial assurance requirements based on an earlier exemption that it had received during its license renewal; LBP-15-24, 82 NRC 68 (2015)

exemptions from decommissioning fund expenditure notification requirements are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-28, 82 NRC 233 (2015)

federal financial regulatory agencies regularly examine banks within their jurisdiction, generally at 12- or 18-month intervals; CLI-11-4, 74 NRC 1 (2011)

financial assurance for decommissioning may be based on the prepayment method; CLI-15-8, 81 NRC 500 (2015)

financial assurance requirements are structured according to the quantity of material that will be authorized for possession and use; CLI-11-4, 74 NRC 1 (2011)

financial qualifications review for decommissioning funding assurance is revisited every year until the license is terminated; DD-11-4, 73 NRC 713 (2011)

financial test for self-guarantee of the funding obligation requires that licensee maintain a bond rating of “A” or better and have a tangible net worth at least 10 times the total current decommissioning cost estimate; LBP-12-6, 75 NRC 256 (2012)

financial tests for parent company guarantees and self-guarantees require that an independent certified public accountant review the data used in the financial test and require that the licensee inform NRC within 90 days of any matters that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; CLI-11-4, 74 NRC 1 (2011)

formulas, based on reactor type and power level, are provided in 10 C.F.R. 50.75(c) for determining minimum dollar amounts required to demonstrate reasonable assurance of decommissioning funding; CLI-15-8, 81 NRC 500 (2015)

if license amendment request is approved, licensee will no longer have to provide 30-day notice to the Commission once it begins decommissioning and starts making withdrawals from the decommissioning fund; LBP-15-28, 82 NRC 233 (2015)

if licensee amends any of its grandfathered license conditions that were related to the decommissioning trust fund, from that point forward licensee must comply with all of the requirements of 10 C.F.R. 50.75(h); LBP-15-24, 82 NRC 68 (2015)

if NRC Staff makes a finding of no reasonable assurance, NRC reserves the right to take steps to ensure a licensee’s adequate accumulation of decommissioning funds; DD-11-4, 73 NRC 713 (2011)

insofar as applicant contends that NRC’s requirements for self-guarantors are not useful or relevant in evaluating the financial condition of numerous similarly situated corporations, applicant may petition NRC to amend its rules at any time; LBP-12-6, 75 NRC 256 (2012)

intangible assets may be used to meet specified criteria in the financial tests for self-guarantees; CLI-13-1, 77 NRC 1 (2013)

license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 500 (2015)

licensee must file an annual report to NRC certifying that financial assurance for decommissioning will be or has been provided in an amount that may be more, but not less, than the amount stated in the

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- regulations, adjusted as appropriate for changes in labor, energy, and waste burial costs; DD-11-3, 73 NRC 375 (2011)
- licensee seeks regulatory exemptions to allow it to use decommissioning funds to manage spent fuel and eliminate the 30-day notice requirement that would otherwise apply to spent fuel management; LBP-15-28, 82 NRC 233 (2015)
- licensee that wishes to be the sole guarantor of its own liabilities must satisfy a stringent test; LBP-12-6, 75 NRC 256 (2012)
- licensees cannot make decommissioning fund withdrawals that would reduce the value of the trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise; LBP-15-24, 82 NRC 68 (2015)
- licensees have not been permitted to include the value of goodwill to meet the 10:1 tangible net worth requirement; LBP-12-6, 75 NRC 256 (2012)
- licensees may use a site-specific methodology to determine the decommissioning funding needed as long as the amount is greater than the decommissioning cost estimate derived from formulas in 10 C.F.R. 50.75(c); DD-11-7, 74 NRC 787 (2011)
- licensees must annually adjust the amount of decommissioning funding assurance; DD-15-8, 82 NRC 107 (2015)
- licensees must submit, with each operating license application, certification specifying how financial assurance for decommissioning will be provided; DD-15-8, 82 NRC 107 (2015)
- licensees must use the formulas in 10 C.F.R. 50.75(c) to estimate the minimum funding amount needed for radiological decommissioning; DD-11-7, 74 NRC 787 (2011)
- NRC may grant exemptions from the alternative financial test for self-guarantee of the decommissioning funding obligation that are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest; LBP-12-6, 75 NRC 256 (2012)
- NRC monitors the status of decommissioning funds and, when necessary, requires additions to funds through parent company guarantees, cash deposits, or other methods permitted by regulations; DD-15-8, 82 NRC 107 (2015)
- NRC reserves the right to review, as necessary, the rate of accumulation of decommissioning funds and to take additional actions, as appropriate on a case-by-case basis, to ensure an adequate accumulation of decommissioning funds; DD-11-7, 74 NRC 787 (2011)
- NRC seeks to ensure that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems; LBP-12-6, 75 NRC 256 (2012)
- NRC Staff authorization permitting applicant to defer execution of any final letters of credit for decommissioning financial assurance until after a license is issued but before receipt of licensed material might be problematic; LBP-11-26, 74 NRC 499 (2011)
- possession limits associated with a certification of financial assurance are set forth in 10 C.F.R. 70.25(d); CLI-11-4, 74 NRC 1 (2011)
- power reactor licensees must report to the NRC at least once every 2 years on the status of their decommissioning funding for each reactor or part of a reactor that they own; DD-11-4, 73 NRC 713 (2011); DD-11-7, 74 NRC 787 (2011)
- references to prior problems involving estimation of decommissioning costs are inadequate to establish a likelihood that the amount of applicant's decommissioning bond will be insufficient; LBP-12-3, 75 NRC 164 (2012)
- request for action against reactor facilities that have projected shortfalls in their decommissioning trust funds is denied in part and granted in part; DD-11-7, 74 NRC 787 (2011)
- request for exemption from requirements of 10 C.F.R. 40.36 to allow applicant to act as a self-guarantor of the funds necessary for eventually decommissioning the facility without satisfying the financial test for self-guarantors is denied; LBP-12-6, 75 NRC 256 (2012)
- request for exemption that would enable licensee to provide decommissioning funding on a forward-looking, incremental basis, at a rate proportional to the then-current decontamination and decommissioning liability is granted; CLI-11-4, 74 NRC 1 (2011)
- request for hearing on Staff denial of permission to use an alternative method for demonstrating decommissioning funding assurance is granted; LBP-11-19, 74 NRC 61 (2011)

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request that NRC investigate whether licensee possesses sufficient funds to cease operations and decommission its plant is denied; DD-15-8, 82 NRC 107 (2015)

request that NRC issue a demand for information from licensee relating to adequacy of financial assurances for decommissioning is denied; DD-11-4, 73 NRC 713 (2011)

“revolving credit” arrangement is one type of credit facility, and may be used repeatedly up to the limit specified after partial or total repayments have been made; CLI-13-1, 77 NRC 1 (2013)

self-guaranteeing licensees must pass the financial test annually; CLI-13-1, 77 NRC 1 (2013)

source materials licensee must demonstrate that sufficient funds will be available to cover the cost of decommissioning its facility; LBP-12-6, 75 NRC 256 (2012)

source materials licensees can seek an exemption from the decommissioning financial assurance requirements; CLI-13-1, 77 NRC 1 (2013)

source materials licensees have numerous options for meeting their decommissioning funding obligations; LBP-12-6, 75 NRC 256 (2012)

source of funds for operating and maintenance expenses would be unaffected by a transaction for decommissioning funding; CLI-11-4, 74 NRC 1 (2011)

Staff’s deference to the expertise of other federal and state agencies to set and monitor the financial soundness of institutions issuing letters of credit is reasonable; CLI-11-4, 74 NRC 1 (2011)

status of decommissioning funds must be reported to NRC at least once every 2 years; DD-15-8, 82 NRC 107 (2015)

there is no time limit on when a licensee can seek an amendment to the license conditions relating to its decommissioning trust fund; LBP-15-24, 82 NRC 68 (2015)

to qualify for the alternative method of self-funding for decommissioning, licensee must have, among other things, a bond rating of “A” or better, as issued by Standard and Poor’s or Moody’s; CLI-13-1, 77 NRC 1 (2013)

to use the self-guarantee mechanism to fulfill its decommissioning funding obligation, a licensee that issues bonds must annually satisfy the financial test set forth in 10 C.F.R. Part 30, Appendix C, § II.B.3; LBP-12-6, 75 NRC 256 (2012)

trust fund can be used only for decommissioning activities; LBP-15-24, 82 NRC 68 (2015)

with limited exceptions, source material licensees must demonstrate that they can pay for the decommissioning of their regulated facilities; CLI-13-1, 77 NRC 1 (2013)

without an exemption from the NRC, licensee is prohibited from using decommissioning funds for spent fuel management because it is not an allowable decommissioning expense; LBP-15-28, 82 NRC 233 (2015)

DECOMMISSIONING FUNDING PLANS

applicant is required to submit a report on its decommissioning funding assurance mechanism after combined licenses are issued and no later than 30 days after NRC publishes notice of intended operation in the Federal Register; CLI-12-2, 75 NRC 63 (2012)

applicant must include a periodically adjusted cost estimate, specify the method for assuring that sufficient funds will be available when needed, and certify that the amount assured for decommissioning meets or exceeds estimated decommissioning costs; CLI-13-1, 77 NRC 1 (2013)

applicant seeking a specific license for a uranium enrichment facility is required to submit a plan consistent with 10 C.F.R. 70.25(e); CLI-11-4, 74 NRC 1 (2011)

bond-issuing licensees may provide a self-guarantee of funds for decommissioning costs based on a financial test set forth in Appendix C of Part 30; CLI-13-1, 77 NRC 1 (2013)

deferral of execution of the financial instruments until after the license has issued is not allowed for a uranium enrichment facility; CLI-11-4, 74 NRC 1 (2011)

depending on the quantity of material, Part 70 license applicants must submit either a decommissioning funding plan or a certification of financial assurance; CLI-11-4, 74 NRC 1 (2011)

each plan must include a signed original of the instrument obtained to provide financial assurance for decommissioning at the time the plan is submitted; CLI-11-4, 74 NRC 1 (2011)

financial surety arrangements must be established by each mill operator before the commencement of operations to ensure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas; LBP-15-15, 81 NRC 598 (2015)

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- if licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of 10 C.F.R. 50.75(h); LBP-15-24, 82 NRC 68 (2015)
- licensee that has collected funds based on a site-specific estimate under section 50.75(b)(1) may take credit for projected earnings on the external sinking funds using up to a 2% annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate; DD-11-4, 73 NRC 713 (2011)
- nongovernment licensees must demonstrate financial assurance for decommissioning by prepayment, use of a surety method, insurance, or other guarantee method, or use of an external sinking fund; CLI-13-1, 77 NRC 1 (2013)
- NRC requires a contingency factor for decommissioning funds to provide for unforeseen events that may happen during operations or decommissioning that could increase the overall costs of this activity; LBP-15-24, 82 NRC 68 (2015)
- state's claim that licensee's license amendment request contains incomplete and incorrect statements concerning its use of the trust fund is within the scope of the license amendment proceeding as defined in the notice of opportunity to request a hearing; LBP-15-24, 82 NRC 68 (2015)
- two years before permanent cessation of operations, licensee must submit a preliminary decommissioning cost estimate that includes a plan for adjusting decommissioning funds; DD-15-8, 82 NRC 107 (2015)
- use of the 4.81% forecast interest rate and the 2.81% annual inflation rate is in compliance; DD-11-4, 73 NRC 713 (2011)
- DECOMMISSIONING PLANS**
- admissibility of contention that applicant submit a decommissioning plan and updated financial plans related to decommissioning is decided; LBP-15-15, 81 NRC 598 (2015)
- claimed deficiencies in a decommissioning plan must have health and safety significance in order to be admissible; LBP-15-24, 82 NRC 68 (2015)
- combined license applications include operational procedures to minimize contamination of the facility and environment, facilitate eventual decommissioning, and minimize generation of radioactive waste; CLI-12-2, 75 NRC 63 (2012)
- licensee must submit a plan when it decides to cease NRC-licensed activities at its facility; CLI-13-1, 77 NRC 1 (2013)
- licensees must submit for NRC approval their plans to manage spent fuel after the permanent cessation of reactor operation; CLI-15-4, 81 NRC 221 (2015)
- source materials licensees must submit a decommissioning funding plan far in advance of submitting the actual plans for decommissioning; CLI-13-1, 77 NRC 1 (2013)
- DECOMMISSIONING PROCEEDINGS**
- public interest group lacked organizational standing when its business address did not lie within 50 miles of the facility; LBP-13-6, 77 NRC 253 (2013)
- DECONTAMINATION**
- contention challenging applicant's consideration of new and significant information regarding cleanup costs is inadmissible; LBP-12-8, 75 NRC 539 (2012)
- contention that severe accident mitigation alternatives analysis does not accurately reflect decontamination and cleanup costs is decided; LBP-13-13, 78 NRC 246 (2013)
- document's unavailability does not render NRC Staff's or applicant's reliance on the NUREG-1150 decontamination cost values altogether unreasonable under NEPA; LBP-13-13, 78 NRC 246 (2013)
- parties are directed to provide further briefing on questions relating to severe accident decontamination time values and costs used in the SAMA analysis; CLI-15-2, 81 NRC 213 (2015)
- DEFENSE-IN-DEPTH POLICY**
- objectives of licensee's fire protection program to extend the concept of defense-in-depth to fire protection are discussed; DD-12-3, 76 NRC 416 (2012)
- DEFERRAL OF HEARING**
- until the safety evaluation report and Staff NEPA documents have been issued, a licensing board is generally prohibited from holding the hearing on the license application; LBP-11-22, 74 NRC 259 (2011)

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DEFERRAL OF RULING

consideration of an admissible contention can be deferred, where appropriate, but an inadmissible one cannot; LBP-11-28, 74 NRC 604 (2011)

petitioner's request that the Commission defer a decision on the license renewal applications pending disposition of its forthcoming rulemaking and other potential events is premature and is therefore denied; CLI-14-6, 79 NRC 445 (2014)

DEFICIENCIES

deficiency in a final environmental impact statement is not automatic ground for reversal of an order granting a permit although the issue has been opened for full consideration in an agency hearing; CLI-15-6, 81 NRC 340 (2015)

DEFINITIONS

absent an NRC construction permit, amendment to the definition of construction generally prohibited any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site and construction of nonnuclear facilities such as turbogenerators and turbine buildings for use in connection with the facility; LBP-14-9, 80 NRC 15 (2014)

"active dewatering" refers to the mechanical pumping of water from an aquifer; LBP-13-4, 77 NRC 107 (2013)

Administrative Procedure Act broadly defines "rule" to include nearly every statement an agency may make; LBP-15-15, 81 NRC 598 (2015)

"adversary adjudication" is defined as an adjudication under section 554 of the Administrative Procedure Act in which the position of the United States is represented by counsel or otherwise; LBP-11-8, 73 NRC 349 (2011)

ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-11-12, 74 NRC 460 (2011)

although NRC regulations do not provide a precise definition of "timely," licensing boards have often found a new contention to be timely if it has been filed within 30 days of the availability of information on which the contention is based; LBP-12-11, 75 NRC 731 (2012)

"applicant" means a person or entity applying for a license; LBP-14-7, 79 NRC 451 (2014)

"baseline" data describe results of applicant's preoperational or baseline groundwater quality sampling program providing data on project-wide groundwater conditions; LBP-15-16, 81 NRC 618 (2015)

baseload generation is different than peaking power, which provides supplemental power during hours of the day when demand is highest; LBP-11-13, 73 NRC 534 (2011)

"baseload power" is defined as power generating energy intended to continuously produce electricity at or near full capacity, with high availability; CLI-12-5, 75 NRC 301 (2012); LBP-12-15, 76 NRC 14 (2012)

building of transmission lines is excluded from the definition of construction; LBP-14-9, 80 NRC 15 (2014)

"byproduct material" is categorized as tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-15-11, 81 NRC 401 (2015); LBP-15-16, 81 NRC 618 (2015)

categorical exclusion is a generic finding that a category of actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 163 (2015)

"Category IA material" is strategic special nuclear material directly usable in the manufacture of a nuclear explosive device; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)

"Category IB material" is defined as all strategic special nuclear material other than Category IA; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)

"closed record" refers to a record developed at an evidentiary hearing; LBP-11-22, 74 NRC 259 (2011)

"commencement of construction" includes clearing of land, excavation, or other substantial action that would adversely affect the environment of the site; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

"connected actions" are those that lack independent utility; LBP-12-12, 75 NRC 742 (2012); LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)

"construction" and "commencement of construction" are defined; LBP-12-3, 75 NRC 164 (2012)

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- “construction” does not include site exploration, including preconstruction monitoring to establish background information related to the environmental impacts of construction or operation, or the protection of environmental values; LBP-15-3, 81 NRC 65 (2015)
- containment system is defined as the principal barrier, after the reactor coolant pressure boundary, to prevent the release of quantities of radioactive material that would have a significant radiological effect on public health; LBP-15-26, 82 NRC 163 (2015)
- contention of omission alleges that an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application; LBP-11-6, 73 NRC 149 (2011); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- contentions of omission and contentions of inadequacy are defined; LBP-15-5, 81 NRC 249 (2015)
- “controlled access area” is any temporarily or permanently established area that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; LBP-14-1, 79 NRC 39 (2014); CLI-15-9, 81 NRC 512 (2015)
- “credit facility” carries various definitions; CLI-13-1, 77 NRC 1 (2013)
- cumulative actions are those that, when viewed with other proposed actions, have cumulatively significant impacts so that they should be discussed in the same environmental impact statement; LBP-13-10, 78 NRC 117 (2013)
- “cumulative impact” is defined as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions; LBP-11-26, 74 NRC 499 (2011); LBP-12-24, 76 NRC 503 (2012); LBP-13-4, 77 NRC 107 (2013); LBP-13-9, 78 NRC 37 (2013); LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014); LBP-15-16, 81 NRC 618 (2015)
- cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-11-7, 73 NRC 254 (2011)
- current licensing basis consists of license requirements, including license conditions and technical specifications, plant-specific design basis information, and any orders, exemptions, and licensee commitments that are part of the docket for the plant’s license; LBP-13-13, 78 NRC 246 (2013)
- current licensing basis encompasses the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application; LBP-13-13, 78 NRC 246 (2013)
- “current licensing basis” is a term of art comprehending the various NRC requirements applicable to a specific plant that are in effect at the time of a license renewal application; LBP-15-20, 81 NRC 829 (2015)
- “current licensing basis” is defined in 10 C.F.R. 54.3(a); LBP-13-8, 78 NRC 1 (2013)
- “current licensing basis” is the set of NRC requirements (including regulations, orders, technical specifications, and license conditions) applicable to a specific plant, and includes the licensee’s written, docketed commitments for ensuring compliance with applicable NRC requirements and the plant-specific design basis; CLI-12-5, 75 NRC 301 (2012)
- “decommissioning” is defined in 10 C.F.R. 50.2; LBP-15-24, 82 NRC 68 (2015); LBP-15-28, 82 NRC 233 (2015)
- “demand” and “request” are not synonyms and therefore cannot be given the same meaning and effect; LBP-13-3, 77 NRC 82 (2013)
- “demand” for a hearing is understood to confer the right to a hearing; LBP-13-3, 77 NRC 82 (2013)
- “design bases” means information that identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for a design; DD-15-11, 82 NRC 361 (2015); LBP-13-7, 77 NRC 307 (2013)
- design basis is information that identifies specific functions to be performed by a structure, system, or component of a facility; LBP-12-24, 76 NRC 503 (2012)
- “design basis” is the set of regulations adopted without regard to their cost as fundamentally required for all NRC standards that set requirements for adequate protection of health and safety; LBP-12-18, 76 NRC 127 (2012)
- design or procedural modifications that could mitigate the consequences of a severe accident are known as severe accident mitigation alternatives; LBP-11-38, 74 NRC 817 (2011)

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- “dicta” is a court’s opinion that goes beyond the facts before court and therefore represents individual views of the author of the opinion and is not binding in subsequent cases as legal precedent; LBP-14-4, 79 NRC 319 (2014)
- direct impacts are those caused by the action that is the subject of the environmental impact statement, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-11-7, 73 NRC 254 (2011); LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013)
- “disclosing party” means the party required to make mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)
- “document” means any medium (electronic, paper, or any other kind) that contains or stores any information, including text, data, audio, video, computer software, or computer modeling information; LBP-11-5, 73 NRC 131 (2011)
- “effects” include both direct effects, which are caused by the action and occur at the same time and place, and indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-14-9, 80 NRC 15 (2014)
- emergency planning zones are approximately a 10-mile radius around a reactor unit as adjusted to reflect the road network and land use; CLI-12-9, 75 NRC 421 (2012)
- entity is under foreign ownership, control, or domination whenever a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant; LBP-11-25, 74 NRC 380 (2011)
- “environmental document” includes environmental assessment, environmental impact statement, finding of no significant impact, and notice of intent; LBP-15-16, 81 NRC 618 (2015)
- environmental issue is “significant” for the purposes of reopening a record if it will paint a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-10, 75 NRC 633 (2012)
- environmentally qualified cable is defined in 10 C.F.R. 50.49; LBP-13-13, 78 NRC 246 (2013)
- “exceptionally grave” issue is one that raises a sufficiently grave threat to public safety; LBP-12-1, 75 NRC 1 (2012); LBP-12-11, 75 NRC 731 (2012)
- “exceptionally grave” issues warranting reopening of a record are limited to those affecting public safety; CLI-12-21, 76 NRC 491 (2012)
- failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-6, 79 NRC 404 (2014)
- “floodplain” is an area of normally dry or semi-dry land providing temporary natural storage areas for floodwater; LBP-13-4, 77 NRC 107 (2013)
- for a potential injury to be irreparable, it must be shown to be imminent, certain, and great; LBP-15-2, 81 NRC 48 (2015)
- for an environmental issue to be “significant” for the purposes of reopening a record, new information must paint a seriously different picture of the environmental landscape; LBP-12-1, 75 NRC 1 (2012)
- “formula kilogram” means strategic special nuclear material in any combination in a quantity of 1000 grams computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium); CLI-15-9, 81 NRC 512 (2015)
- “good cause” for late filing is defined as a showing that petitioner could not have met the filing deadline and filed as soon as possible thereafter; LBP-11-7, 73 NRC 254 (2011)
- “good cause” in 10 C.F.R. 2.307 does not share the same definition that is used for good cause in section 2.309(c); LBP-15-1, 81 NRC 15 (2015)
- “hydroperiod” is the “natural fluctuations of the water table, the surficial aquifer; LBP-13-4, 77 NRC 107 (2013)
- “incur” within the context of Equal Access to Justice Act means that an individual who is a prevailing party meeting the financial qualification of the EAJA is ineligible to receive an EAJA award when that individual was not responsible for the costs of the attorney’s fees; LBP-11-8, 73 NRC 349 (2011)
- indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-13-4, 77 NRC 107 (2013)
- “informal consultation” is an optional process that includes all discussions, correspondence, etc., between the U.S. Fish and Wildlife Service and the federal agency designed to assist the federal agency in determining whether formal consultation or a conference is required with the Service under section 402.13; LBP-15-11, 81 NRC 401 (2015)

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- “informal consultation” is any communication between the acting agency and one of the Services designed to assist the acting agency in determining whether formal consultation is required; LBP-12-10, 75 NRC 633 (2012)
- “item” means any discrete quantity or container of special nuclear material or source material, not undergoing processing, having a unique identity and also having an assigned element and isotope quantity; LBP-14-1, 79 NRC 39 (2014)
- large environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource; LBP-11-26, 74 NRC 499 (2011)
- low-level radioactive waste is defined as radioactive material that is not high-level radioactive waste, spent nuclear fuel, or byproduct material and that NRC classifies as LLRW; LBP-12-4, 75 NRC 213 (2012)
- low-level radioactive waste traditionally has been defined by what it is not; LBP-12-21, 76 NRC 218 (2012)
- “major construction activity” is defined as a construction project, or other undertaking having similar physical impacts, that is a major federal action significantly affecting the quality of the human environment as referred to in NEPA; LBP-12-10, 75 NRC 633 (2012)
- “material access area” is any location that contains special nuclear material, within a vault or a building, the roof, walls, and floor of which constitute a physical barrier; CLI-15-9, 81 NRC 512 (2015)
- “material issue” is one where resolution of the dispute would make a difference in the outcome of the licensing proceeding; LBP-11-23, 74 NRC 287 (2011)
- “moderate” means environmental effects are sufficient to alter noticeably, but not destabilize, important attributes of the resource; LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013)
- neither “baseline” nor “background” is explicitly defined in 10 C.F.R. Part 40, Appendix A; LBP-15-16, 81 NRC 618 (2015)
- NRC’s broad definition of “construction” in the pre-2007 version of the regulation was originally added to Part 50 because of the interpretation that enactment of NEPA required NRC to expand its permitting/licensing authority; LBP-14-9, 80 NRC 15 (2014)
- NRC’s decision to include transmission lines that serve a nuclear power plant within the definition of “utilization facility” in 42 U.S.C. § 2014(cc) was upheld; LBP-14-9, 80 NRC 15 (2014)
- nuclear power facility has shut down permanently within the meaning of 10 C.F.R. Part 50, Appendix E, § VI.2 when it has permanently ceased reactor operations, and permanently removed fuel from the reactor vessel, as those terms are defined in 10 C.F.R. 50.2; LBP-15-4, 81 NRC 156 (2015)
- nuclear reactor is an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction; DD-13-3, 78 NRC 571 (2013)
- one authorized to make a “request” is merely given permission to ask for something, not to demand it; LBP-13-3, 77 NRC 82 (2013)
- “owned, controlled or dominated” refers to relationships in which the will of one party is subjugated to the will of another; CLI-15-7, 81 NRC 481 (2015)
- “partial initial decision” is one rendered following an evidentiary hearing on one or more contentions, but that does not dispose of the entire matter; CLI-11-6, 74 NRC 203 (2011); CLI-11-10, 74 NRC 251 (2011)
- “passive dewatering” refers to evaporative losses of surface water or groundwater resulting from alterations in land cover, site drainage design, and changes to subsurface flow properties; LBP-13-4, 77 NRC 107 (2013)
- “permanent cessation of operations” for a nuclear power reactor facility is defined as a certification by a licensee to NRC that it has permanently ceased or will permanently cease reactor operations; LBP-15-4, 81 NRC 156 (2015)
- “permanent fuel removal” from a nuclear power reactor facility is defined as a certification by licensee to NRC that it has permanently removed all fuel assemblies from the reactor vessel; LBP-15-4, 81 NRC 156 (2015)
- plain meaning of the word “approval,” as “the act of approving” and “certification as to acceptability,” which requires an affirmative action on the part of an approver, clearly establishes that requiring compliance is different from granting an approval; LBP-12-15, 76 NRC 14 (2012)

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- “power of detection” means the probability that the critical value of a statistical test will be exceeded when there is an actual loss of a specific quantity of strategic special nuclear material; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
- “presiding officer” in NRC adjudicatory proceedings is defined in 10 C.F.R. 2.4; LBP-11-22, 74 NRC 259 (2011)
- “primary groundwater restoration” is to return the constituent to background levels; LBP-15-3, 81 NRC 65 (2015)
- production and utilization facilities include nuclear power reactors; LBP-11-25, 74 NRC 380 (2011)
- “quality assurance” comprises all planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service; DD-15-2, 81 NRC 205 (2015)
- “radiographer’s assistant,” is defined in 10 C.F.R. 34.3; LBP-15-21, 82 NRC 1 (2015)
- “receiving party” means the party to whom the mandatory disclosure must be made; LBP-11-5, 73 NRC 131 (2011)
- “relict sinkhole” is a sinkhole that has been infilled and plugged and that is indicated by a depression wetland; LBP-13-4, 77 NRC 107 (2013)
- “representative” means the attorney or other authorized representative of a party who has entered a notice of appearance; LBP-11-5, 73 NRC 131 (2011)
- “residual radioactivity” is defined as radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee’s control; CLI-13-6, 78 NRC 155 (2013)
- “revolving credit” arrangement is one type of credit facility, and may be used repeatedly up to the limit specified after partial or total repayments have been made; CLI-13-1, 77 NRC 1 (2013)
- ripeness is a justiciability doctrine designed to prevent Article III courts from premature judicial review of abstract controversies and to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties; LBP-12-19, 76 NRC 184 (2012)
- “rule of reason” is a judicial device to ensure that common sense and reason are not lost in the rubric of regulation; LBP-11-26, 74 NRC 499 (2011)
- safety significance of a structure, system, or component is defined in terms of its safety-related functions, and within the scope of license renewal are included those SSCs whose failure could prevent satisfactory accomplishment of the safety-related function; CLI-15-6, 81 NRC 340 (2015)
- safety-related systems, structures, and components are those relied upon to remain functional during and following design-basis events to ensure specific functions; LBP-11-20, 74 NRC 65 (2011)
- SAMA analysis is an analysis of a class of SAMA candidates using probabilistic risk assessment techniques to determine whether any of the SAMA candidates would be cost-beneficial; LBP-13-1, 77 NRC 57 (2013)
- scope of license renewal is defined in 10 C.F.R. 54.4; CLI-15-21, 82 NRC 295 (2015)
- “sealed source” means any special nuclear material that is physically encased in a capsule, rod, element, etc. that prevents the leakage or escape of the SNM and that prevents removal of the SNM without penetrations of the casing; LBP-14-1, 79 NRC 39 (2014)
- “secondary groundwater restoration” is restoration of constituent levels to the drinking water limits enumerated in Appendix A, Table 5C; LBP-15-3, 81 NRC 65 (2015)
- section 11e(2) byproduct material is tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-12-3, 75 NRC 164 (2012)
- segmentation or piecemealing occurs when an action is divided into component parts, each involving action with less significant environmental effects; LBP-12-12, 75 NRC 742 (2012); LBP-14-6, 79 NRC 404 (2014)
- “senior reactor operator” is any individual licensed under Part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators; LBP-13-3, 77 NRC 82 (2013); LBP-14-2, 79 NRC 131 (2014)
- separate actions are “connected” if, among other things, they cannot or will not proceed unless other actions have been taken previously or simultaneously, or they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-14-9, 80 NRC 15 (2014)

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- severe accident mitigation alternatives analysis for license renewal is a cost-benefit analysis, weighing a particular mitigation measure's estimated degree of risk reduction against its estimated cost of implementation; CLI-12-8, 75 NRC 393 (2012)
- severe accident mitigation alternatives analysis is a probability-weighted assessment of the benefits and costs of mitigation alternatives that can be used to reduce the risks of potential severe accidents at nuclear power plants; CLI-12-1, 75 NRC 39 (2012)
- severe accident mitigation alternatives analysis is a quantitative cost-benefit analysis, comparing the costs of implementing a mitigation measure against the value of its benefit; LBP-13-13, 78 NRC 246 (2013)
- severe accident mitigation alternatives are safety enhancements such as a new hardware item or procedure intended to reduce the risk of severe accidents; LBP-11-33, 74 NRC 675 (2011)
- severe accident mitigation alternatives are somewhat broader than severe accident mitigation design alternatives, which focus on design changes and do not consider procedural modifications; LBP-11-38, 74 NRC 817 (2011)
- severe accident mitigation design alternatives analyses examine whether implementing a SAMDA would decrease the probability-weighted consequences of severe accidents; LBP-11-38, 74 NRC 817 (2011)
- severe accidents are reactor accidents more severe than design basis accidents and involve substantial damage to the reactor core; LBP-11-38, 74 NRC 817 (2011)
- "significant" issue is not shown merely by showing that a plant component performs safety functions; CLI-12-10, 75 NRC 479 (2012)
- similar actions are those that, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental impacts together, such as common timing or geography, so that the agency may wish to analyze them together; LBP-13-10, 78 NRC 117 (2013)
- "small" is defined in NRC regulations as environmental impacts that are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource; LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013); LBP-13-13, 78 NRC 246 (2013)
- "small," "moderate," and "large" environmental impacts are defined in 10 C.F.R. Part 51, Subpart A, App. B, tbl. B-1, n.3; LBP-13-8, 78 NRC 1 (2013)
- "source material" is defined as uranium being extracted through the ISL process; LBP-15-16, 81 NRC 618 (2015)
- "special aquatic sites" are defined in accordance with guidelines issued by the U.S. Environmental Protection Agency and include six categories of special aquatic sites; LBP-13-4, 77 NRC 107 (2013)
- "special circumstances" must be unusual if not unique, and NRC must not have previously considered such circumstances, either explicitly or by necessary implication, when it promulgated the relevant regulation in the first place; LBP-12-6, 75 NRC 256 (2012)
- special nuclear material "item" is any discrete quantity or container of special nuclear material or source material, not undergoing processing, having a unique identity and also having an assigned element and isotope quantity; CLI-15-9, 81 NRC 512 (2015)
- "strategic special nuclear material" means uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium; CLI-15-9, 81 NRC 512 (2015)
- structures, systems, and components are passive if they perform their intended function without moving parts or without a change in configuration or properties and the effects of aging degradation for these components are not readily monitorable; LBP-13-13, 78 NRC 246 (2013)
- "synergistic" refers to the joint action of different parts or sites which, acting together, enhance the effects of one or more individual sites; LBP-15-5, 81 NRC 249 (2015)
- "tamper-safing" means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
- technical specifications are those technical requirements that are incorporated in an NRC license; LBP-12-25, 76 NRC 540 (2012)
- "tests or experiments not described in the UFSAR" constitute any activity where any structure, system, or component is utilized or controlled in a manner that is either outside the reference bounds of the design bases as described in the UFSAR or inconsistent with the analyses or descriptions in the UFSAR; LBP-13-7, 77 NRC 307 (2013)

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“Tier 2” means the portion of the Tier 2 information, designated as such in the generic design control document, that is subject to the change process in 10 C.F.R. Part 52, App. D, § VIII.B.6; CLI-12-2, 75 NRC 63 (2012)

“unit process” means an identifiable segment or segments of processing activities for which the amounts of input and output strategic special nuclear material are based on measurements; CLI-15-9, 81 NRC 512 (2015)

“unrestricted use” means that, from a radiological standpoint, no hazards exist at the site, the license can be terminated, and the site can be considered an unrestricted area; CLI-13-1, 77 NRC 1 (2013)

utilization facilities include commercial nuclear power reactors; LBP-13-7, 77 NRC 307 (2013)

“vault” is a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)

“wetlands” is defined as those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and generally include swamps, marshes, bogs, and similar areas; LBP-13-4, 77 NRC 107 (2013)

when an order is warranted to address a specific issue, a confirmatory action letter is used to confirm initial, agreed upon, short-term actions covering the interval period prior to the actual issuance of the order; LBP-13-7, 77 NRC 307 (2013)

See also Construction of Meaning

DELAY

admissibility of contention that final environmental assessment failed to conduct the required hard look at impacts of the proposed mine associated with restoration standards and schedules, including delays, resulting from the proposed rules, and failure to describe such impacts in the final EA is decided; LBP-15-15, 81 NRC 598 (2015)

schedule of counsel in other matters as cause of delay in filing contentions can support a finding of good cause; LBP-12-12, 75 NRC 742 (2012)

significant delays in NRC Staff’s review potentially deprive an Indian tribe of its hearing rights; CLI-12-4, 75 NRC 154 (2012)

DELAY OF PROCEEDING

agencies must set and complete proceedings on license applications with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time; CLI-12-6, 75 NRC 352 (2012)

because three contentions are already set for hearing in the proceeding, the admission of further contentions would not substantially delay the proceeding; LBP-12-12, 75 NRC 742 (2012)

Commission generally has declined to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications; CLI-11-1, 73 NRC 1 (2011)

Commission, but not a licensing board, has the power to address a protracted delay in the proceeding and to direct appropriate remedial measures; LBP-11-30, 74 NRC 627 (2011)

Congress assumed that individuals establishing a right to be heard in opposition to a license application would be heard with reasonable expedition; LBP-11-30, 74 NRC 627 (2011)

extreme delay in the completion of Staff’s environmental review, and thus the equal delay in hearing intervenors’ claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act; LBP-11-30, 74 NRC 627 (2011)

longstanding NRC practice has been to limit orders delaying proceedings to the duration and scope necessary to promote the Commission’s dual goals of public safety and timely adjudication; CLI-11-1, 73 NRC 1 (2011)

potential to broaden or delay a proceeding may not be relied on to exclude a contention because NRC has a duty to consider new and significant information that arises before it makes its licensing decisions; LBP-11-35, 74 NRC 701 (2011)

suspension of licensing proceedings is considered a drastic action that is not warranted absent immediate threats to public health and safety; CLI-11-1, 73 NRC 1 (2011)

where admission of a late-filed contention would cause a material delay in the proceeding weighed against admission of the contention; CLI-12-15, 75 NRC 704 (2012)

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DELIBERATE MISCONDUCT

choosing to store a radiographic exposure device at a facility that did not comply with NRC security requirements and was not an authorized storage location under the license is considered deliberate misconduct; LBP-14-11, 80 NRC 125 (2014)

DELIBERATIVE PROCESS PRIVILEGE

adequacy of the privilege log with respect to the sufficiency of the information contained therein is particularly important with respect to Subpart L proceedings because without sufficient information as to what allegedly makes the document deliberative, the challenger is forced to shoot in the dark and face a substantive answer by the document withholder, without the right to reply; LBP-13-5, 77 NRC 233 (2013)

agency waives the deliberative process privilege for a document when it discloses the same document or one containing equivalent text; LBP-13-5, 77 NRC 233 (2013)

although the privilege is a qualified one and the agency claiming the privilege bears the initial burden of demonstrating that it is applicable, once this demonstration is made, the moving party can only defeat the privilege by a demonstration of an overriding need for the material; LBP-13-5, 77 NRC 233 (2013)

among the categories of privileged documents are interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Commission; LBP-13-5, 77 NRC 233 (2013)

because draft documents are not presumptively privileged, the Staff must provide specific information to justify withholding them from disclosure; LBP-13-5, 77 NRC 233 (2013)

board may employ case law interpreting FOIA Exemption 5 when determining whether the deliberative process privilege applies in an NRC proceeding; LBP-13-5, 77 NRC 233 (2013)

boards can request that a document for which a deliberative process privilege is claimed be provided to it for *in camera* inspection; LBP-13-5, 77 NRC 233 (2013)

courts disfavor government efforts to place a portion of privileged material at issue while self-servingly retaining the rest; LBP-13-5, 77 NRC 233 (2013)

courts have allowed the government to withhold memoranda containing advice, opinions, recommendations, and subjective analysis; LBP-13-5, 77 NRC 233 (2013)

cursory and conclusory assertions that merely paraphrase the standards applicable to the deliberative process privilege without explaining how they apply to any specific document in dispute will not suffice to carry the government's burden of proof in defending FOIA cases; LBP-13-5, 77 NRC 233 (2013)

deliberative process privilege is qualified, requiring the court to balance the interests of the parties for and against disclosures; LBP-13-5, 77 NRC 233 (2013)

documents are not protected in their entirety, and if the government can segregate and disclose nonprivileged factual information within a document, it must; LBP-13-5, 77 NRC 233 (2013)

even where the government identifies significant reasons for nondisclosure, the interest in accurate judicial factfinding is predominant, especially where no satisfactory alternative source of information exists; LBP-13-5, 77 NRC 233 (2013)

evidence is relevant if it has some tendency to make deliberative process privilege opponent's allegations more or less likely; LBP-13-5, 77 NRC 233 (2013)

explanation of reasons for asserting deliberative process privilege need not reveal the contents of the documents, but it must identify, with respect to a specific document or type of document, why that document should be protected from discovery and what specific harm would result from its disclosure; LBP-13-5, 77 NRC 233 (2013)

factual material that does not reveal the deliberative process is not protected by privilege, unless it is inextricably intertwined with the deliberative portions of the document or it could reveal the deliberative process being protected if it were disclosed; LBP-13-5, 77 NRC 233 (2013)

FOIA exemption for inter- or intra-agency materials incorporates the deliberative process privilege, which protects documents that are prepared to assist an agency, board, or official to arrive at a decision; LBP-13-5, 77 NRC 233 (2013)

in a Subpart L proceeding, NRC Staff must disclose or provide documents that support Staff's review of the application or proposed action, together with a list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made; LBP-13-5, 77 NRC 233 (2013)

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- NRC Staff must supply the board with precise and certain reasons for maintaining the confidentiality of requested documents; LBP-13-5, 77 NRC 233 (2013)
- party invoking deliberative process privilege bears the burden of explaining with particularity how and why disclosure of the documents' substance would harm an identified deliberative function; LBP-13-5, 77 NRC 233 (2013)
- person qualified to assert deliberative process privilege must be involved in the initial assertion of privilege; LBP-13-5, 77 NRC 233 (2013)
- presiding officers may make a determination about the validity of a deliberative process privilege claim without reviewing a document *in camera* if the affidavit outlining the reasons for nondisclosure is sufficiently detailed; LBP-13-5, 77 NRC 233 (2013)
- privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 233 (2013)
- privilege has been extended to draft documents, proposals, suggestions, instructions to work deletions and alterations into drafts, instructions to conduct an investigation, documents reflecting personal and advisory opinions, and rejections of recommendations; LBP-13-5, 77 NRC 233 (2013)
- privilege logs that contain only cursory statements are inadequate to permit a court to decide whether the privilege was properly claimed; LBP-13-5, 77 NRC 233 (2013)
- privilege may be defeated by a showing of evidentiary need by a plaintiff that outweighs the harm that disclosure of such information may cause to the defendant; LBP-13-5, 77 NRC 233 (2013)
- privilege must be asserted by an individual who holds a sufficiently senior position such that he or she has control over the requested information and possesses a balanced perspective that enables him or her to discern the nature of the material at issue; LBP-13-5, 77 NRC 233 (2013)
- privilege serves to protect creative debate and candid consideration of alternatives within an agency, to guard against public confusion that could result from the release of policy-oriented discussions that occur prior to policy being made, and to protect the integrity of the decisionmaking process; LBP-13-5, 77 NRC 233 (2013)
- qualified persons, such as head of a department or division, having both expertise and an overview-type perspective concerning the balance between the agency's duty of disclosure versus its need to conduct frank internal debate must sign an affidavit asserting deliberative process privilege; LBP-13-5, 77 NRC 233 (2013)
- role of the government in the litigation favors disclosure when the government is a party to the litigation and has been accused of unlawful conduct; LBP-13-5, 77 NRC 233 (2013)
- senior reactor operator license applicant's motion to compel NRC Staff to produce documents that had been withheld under a claim of deliberative process privilege is granted; LBP-13-5, 77 NRC 233 (2013)
- seriousness of the litigation supports disclosure of material for which deliberative process privilege is sought; LBP-13-5, 77 NRC 233 (2013)
- strong competing interests must be weighed against the government's interest in nondisclosure and foremost is the interest of the litigants, and ultimately of society, in accurate judicial factfinding; LBP-13-5, 77 NRC 233 (2013)
- to qualify for the privilege, documents must be generated as part of a definable decisionmaking process that results in a final agency decision and must reflect the flow of opinions, recommendations, or advice between policymakers in formulating some type of definitive and conclusive ruling; LBP-13-5, 77 NRC 233 (2013)
- when government conduct is challenged, claims of privilege may be used to obtain a litigating advantage; LBP-13-5, 77 NRC 233 (2013)
- without indicating any specific, policy-oriented communication or proffering any cogent reason for protecting it, the bare assertion that internal agency discussions will be "chilled" is nothing but a legal platitude asserted in the abstract; LBP-13-5, 77 NRC 233 (2013)
- DEMAND FOR HEARING**
- applicant denied a senior reactor operator license has the right to demand a hearing, rather than being required to negotiate the contention admissibility requirements and a possible appeal in the event a hearing is granted; LBP-13-3, 77 NRC 82 (2013)
- because an applicant denied an operator's license (or a byproduct, source, special materials, or facility license) would be entitled to demand a hearing, rather than merely request a hearing, no more than 20

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- days would be required to prepare a document that would satisfy the conditions precedent to obtaining the hearing; LBP-13-3, 77 NRC 82 (2013)
- contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2), and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)
- “demand” for a hearing is understood to confer the right to a hearing; LBP-13-3, 77 NRC 82 (2013); LBP-14-4, 79 NRC 319 (2014)
- enforcement orders must inform licensee or any other person adversely affected by the order of his or her right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)
- hearing demand under section 2.103(b)(2) has only to meet the prescribed filing deadline and specify the reasons why the demander deemed the denial of the sought operator’s license to have been unjustified; LBP-13-3, 77 NRC 82 (2013)
- hearing on denial of application for a senior reactor operator license is granted; LBP-13-3, 77 NRC 82 (2013)
- if an enforcement order blacklists a worker by name, under 10 C.F.R. 2.202(a)(3) he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 319 (2014)
- one demanding a hearing on a challenge to an enforcement order need not comply with the requirements of 10 C.F.R. 2.309(f)(1); LBP-13-3, 77 NRC 82 (2013); LBP-14-4, 79 NRC 319 (2014)
- period allotted for the filing of challenges to enforcement orders that impose some sanction is 20 days; LBP-13-3, 77 NRC 82 (2013)
- person adversely affected by an enforcement order has a legal right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)
- senior reactor operator license applicant who does not accept a proposed license denial may, within 20 days of the date of the denial letter, demand a hearing; LBP-14-2, 79 NRC 131 (2014)
- subject of an enforcement order has an automatic right to demand a hearing without regard to satisfying section 2.309; LBP-14-4, 79 NRC 319 (2014)
- target of an enforcement order has the right to demand and receive, not merely request, a hearing; LBP-14-11, 80 NRC 125 (2014)
- union’s argument that it may demand a hearing on a confirmatory order without complying with intervention requirements of section 2.309(a) is incorrect; LBP-14-4, 79 NRC 319 (2014)
- usual rule of regulatory interpretation is that different language is intended to mean different things, and thus a demand for a hearing is not to be treated as a mere request for a hearing; LBP-13-3, 77 NRC 82 (2013)
- DEMAND FOR INFORMATION**
- administrative action of issuing a demand for information is described; DD-15-11, 82 NRC 361 (2015)
- petitioners request that NRC issue a demand for information to compel boiling-water reactor licensees with Mark I and Mark II containment designs to describe how their individual facilities comply with 10 C.F.R. Part 50, Appendix A, GDC 44 and 10 C.F.R. 50.49; DD-15-11, 82 NRC 361 (2015)
- request that NRC issue a demand for information from licensee relating to adequacy of financial assurances for decommissioning is denied; DD-11-4, 73 NRC 713 (2011)
- DEMAND-SIDE MANAGEMENT**
- applicant who is a state-regulated utility is in a position to implement and promote programs such as energy conservation, efficiency, and load management such that the need for additional generation capacity may be reduced; LBP-11-6, 73 NRC 149 (2011)
- energy efficiency alternative is excluded because it would not advance applicant’s goal to provide additional baseload electrical generation capacity for use in the owner’s current markets and/or for potential sale on the wholesale markets; LBP-11-7, 73 NRC 254 (2011)
- NEPA’s rule of reason would not exclude consideration of demand-side management as part of an alternatives analysis when applicant is a state-regulated utility; LBP-11-6, 73 NRC 149 (2011)
- DENIAL OF LICENSE**
- any action concerning applicant’s proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives may be grounds for denial of a license; LBP-14-9, 80 NRC 15 (2014)

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- applicant denied a senior reactor operator license has the right to demand a hearing, rather than being required to negotiate the contention admissibility requirements and a possible appeal in the event a hearing is granted; LBP-13-3, 77 NRC 82 (2013)
- applicants may prevail against NRC Staff if they prove that a particular contested assessment of a deficiency was inappropriate or unjustified; LBP-14-2, 79 NRC 131 (2014)
- because an applicant denied an operator's license (or a byproduct, source, special materials, or facility license) would be entitled to demand a hearing, rather than merely request a hearing, no more than 20 days would be required to prepare a document that would satisfy the conditions precedent to obtaining the hearing; LBP-13-3, 77 NRC 82 (2013)
- contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)
- demand for hearing on denial of application for a senior reactor operator license is granted; LBP-13-3, 77 NRC 82 (2013)
- hearing demand under section 2.103(b)(2) has only to meet the prescribed filing deadline and specify the reasons why the demander deemed the denial of the sought operator's license to have been unjustified; LBP-13-3, 77 NRC 82 (2013)
- in assessing whether a senior reactor operator applicant satisfies the burden of establishing that NRC Staff's determination of applicant's performance was inappropriate, unjustified, arbitrary, or an abuse of discretion, the board should consult NUREG-1021; LBP-14-2, 79 NRC 131 (2014)
- licensing boards have limited their review of NRC Staff reactor operator licensing decisions to those issues that were resolved against the license applicant in the Staff's informal review; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff cannot defend its decision on a basis inconsistent with its own informal review; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff is instructed to promptly issue its approval or denial of an application consistent with its findings, despite the pendency of a hearing; LBP-15-16, 81 NRC 618 (2015)
- NRC Staff may not issue a notice of violation for failure to satisfy Appendix B requirements during the preapplication period, but it may deny a combined license for failure to satisfy the standards and requirements of NRC regulations; LBP-14-7, 79 NRC 451 (2014)
- NRC Staff's decision at the conclusion of its administrative reviews is the final Staff position and hence the only Staff position open to applicant's challenge before the presiding officer; LBP-14-2, 79 NRC 131 (2014)
- senior reactor operator applicant who was denied a license after the first examination may elect to retake the tests; LBP-14-2, 79 NRC 131 (2014)
- whatever the ground for the agency's departure from prior norms, it must be clearly set forth so that the reviewing court may understand the basis of the agency's action; LBP-14-2, 79 NRC 131 (2014)
- DENIAL OF RULEMAKING**
- results of judicial review of rulemaking petition denial would be implemented in a meaningful way where petitioner had timely taken every conceivable procedural step to ensure that the ultimate outcome of its rulemaking petition would inform the NEPA analysis of the licensing proceedings; CLI-14-6, 79 NRC 445 (2014)
- DEPARTMENT OF ENERGY**
- DOE has independent records retention obligations regarding creation, management, and disposal of records; CLI-11-13, 74 NRC 635 (2011)
- responsibility for constructing and operating a waste repository was assigned to the Department of Energy, not NRC; CLI-15-4, 81 NRC 221 (2015)
- DEPLETED URANIUM**
- possession of depleted uranium at multiple installations without an NRC license and performance of decommissioning at a military installation without proper NRC authorization is a violation of 10 C.F.R. 40.3; DD-11-5, 74 NRC 399 (2011)
- request for enforcement action against U.S. Army for post-license-expiration possession and release into the environment of depleted uranium from spent spotting rounds is granted in part and denied in part; DD-11-5, 74 NRC 399 (2011)

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DEPOSITIONS

NRC Staff counsel may take the deposition of the target of an enforcement order or any other person; LBP-14-11, 80 NRC 125 (2014)
target of an enforcement order may require NRC Staff to attend a prehearing meeting where he can require that Staff member to answer questions orally under oath; LBP-14-11, 80 NRC 134 (2014); LBP-14-11, 80 NRC 125 (2014)

DESIGN

assurance of adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant; LBP-11-16, 73 NRC 645 (2011)
challenges to the design of the nuclear power plant are outside the scope of the license renewal proceeding; LBP-11-23, 74 NRC 287 (2011)
deviations from the original design must be evaluated against the criteria in 10 C.F.R. 70.72 to determine if a license amendment is required or if applicant could make the change without NRC approval; LBP-12-21, 76 NRC 218 (2012)
every change request is reviewed against the criteria in the license application and the criteria in 10 C.F.R. 70.72 to determine whether NRC approval is required prior to implementing the change; LBP-12-21, 76 NRC 218 (2012)
failure to verify adequacy of thermal-hydraulic and flow-induced vibration design of the replacement steam generators was determined to be of very low safety significance, because the tubes did not leak and continued to meet the required structural integrity criterion; DD-15-7, 82 NRC 257 (2015)
features to be included in the technical specifications are those features of the facility such as materials of construction and geometric arrangements, which, if altered or modified, would have a significant effect on safety and are not covered by other TSs; DD-13-3, 78 NRC 571 (2013)
level of detail required for a licensing decision does not require a final facility design or an absolutely complete identification of all items relied on for safety and accident sequences, but instead sufficient information must be provided to understand the process and functions of items relied on for safety and to afford reasonable assurance that the integrated safety analysis is complete; LBP-12-21, 76 NRC 218 (2012)
process designs for uranium enrichment facilities should be described in a level of detail in the integrated safety analysis that is sufficient to allow a Staff reviewer to understand the theory of operation for the process; LBP-11-11, 73 NRC 455 (2011)
section 50.59 is not a process for verifying design adequacy, and required design control measures for verifying adequacy of design are expected to be implemented before entering the section 50.59 process; DD-15-7, 82 NRC 257 (2015)
spent fuel storage systems must be designed to ensure adequate safety under normal and postulated accident conditions; CLI-15-4, 81 NRC 221 (2015)
See also Containment Design

DESIGN BASIS

admissibility of contention that a license amendment will be required for licensee to update and maintain accurate design basis documents is decided; CLI-15-5, 81 NRC 329 (2015)
construction permit applications must include the principal design criteria for a proposed facility and describe the design bases and their relationship to the principal design criteria in the preliminary safety analysis report; DD-13-3, 78 NRC 571 (2013)
current licensing basis for an independent spent fuel storage installation includes plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report; LBP-12-24, 76 NRC 503 (2012)
current licensing basis includes plant-specific design-basis information as documented in the most recent final safety analysis report; LBP-11-21, 74 NRC 115 (2011)
“design bases” means information that identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for a design; DD-15-11, 82 NRC 361 (2015); LBP-13-7, 77 NRC 307 (2013)
design basis is information that identifies specific functions to be performed by a structure, system, or component of a facility; LBP-12-24, 76 NRC 503 (2012)

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design of new uranium enrichment facilities must provide for adequate protection against natural phenomena, fires and explosions, chemical risks produced from licensed material, facility conditions, and hazardous chemicals produced from licensed material; LBP-12-21, 76 NRC 218 (2012)

existing containment vent systems at BWRs with Mark I containments provide a capability to vent the containment under design-basis conditions; DD-15-1, 81 NRC 193 (2015)

if evidence subsequently indicates that the design basis of an operating nuclear power plant will not withstand a maximum flooding event, members of the public may file a request to institute a proceeding to modify, suspend, or revoke a license; LBP-11-15, 73 NRC 629 (2011)

licensee must seek a license amendment before implementing a test or experiment that will result in a departure from a method of evaluation described in the updated final safety analysis report used in establishing the design basis or in the safety analysis; LBP-13-7, 77 NRC 307 (2013)

NRC Staff ensures that applicant's design basis for the new units will protect public health and safety by verifying that the design basis will withstand maximum flooding events; LBP-11-6, 73 NRC 149 (2011)

NRC Staff, incident to its preparation of the safety evaluation report, is obliged to ensure that applicant's design basis for the new units will protect public health and safety; LBP-11-6, 73 NRC 149 (2011)

operating license applicant must present the design bases of the facility and safety analyses of the facility as a whole in the final SAR; DD-15-11, 82 NRC 361 (2015)

request that NRC order licensees to reevaluate seismic and flooding hazards at their sites against current NRC requirements and guidance, and if necessary, update the design basis and structures, systems, and components important to safety to protect against the updated hazards is addressed; DD-14-2, 79 NRC 489 (2014)

safety features for each nuclear power plant take into account the potential effects of two levels of earthquake motion; DD-12-1, 75 NRC 573 (2012)

set of regulations adopted without regard to their cost as fundamentally required for all NRC standards that set requirements for adequate protection of health and safety forms the design basis; LBP-12-18, 76 NRC 127 (2012)

DESIGN BASIS ACCIDENT

although the likelihood of severe accidents occurring is lower than that for design basis accidents, consequences of severe accidents are generally greater; LBP-11-38, 74 NRC 817 (2011)

licensees must establish an environmental qualification program for electrical equipment important to safety that would be exposed to harsh environmental conditions expected to develop as a result of design-basis accidents; DD-15-11, 82 NRC 361 (2015)

nuclear power reactors must have emergency plans in place to respond to accidents despite the fact that Table B-1 within 10 C.F.R. Part 51 concludes that the environmental impacts of both design basis and severe accidents at a nuclear reactor are small for all plants; LBP-13-13, 78 NRC 246 (2013)

severe accidents are reactor accidents more severe than design basis accidents and involve substantial damage to the reactor core; LBP-11-38, 74 NRC 817 (2011)

DESIGN BASIS EARTHQUAKE

design bases for earthquakes are to be determined through evaluation of the geologic and seismic history of the site and surrounding region; DD-12-1, 75 NRC 573 (2012)

DESIGN BASIS EVENTS

DBEs are defined in 10 C.F.R. 50.49; DD-15-11, 82 NRC 361 (2015)

facility design and operation should ensure that radiological consequences of design basis events do not exceed 10 percent of dose limits; LBP-12-7, 75 NRC 503 (2012)

request that NRC order licensees to provide reasonable protection for equipment from the effects of design-basis external events and to add equipment as needed to address multiunit events while other requirements are being revised and implemented is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)

DESIGN CERTIFICATION

all environmental issues concerning severe accident mitigation design alternatives associated with the information in NRC's final environmental assessment for certified reactor design are deemed resolved for plants whose site parameters are within those specified in the technical support document; LBP-11-7, 73 NRC 254 (2011)

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applicant has described the kinds and quantities of radioactive materials expected to be produced in the operation to the extent its combined license application references a standardized design; LBP-11-6, 73 NRC 149 (2011)

applicants may incorporate a certified reactor design in a combined license application; LBP-11-10, 73 NRC 424 (2011)

applicants referencing a certified design must provide sufficient information for NRC Staff to determine whether the site's characteristics fall within the design's parameters; CLI-15-13, 81 NRC 555 (2015)

applications for certified reactor designs include a probabilistic risk assessment for severe accidents; LBP-11-38, 74 NRC 817 (2011)

challenging features of the standard reactor design is a matter for a design certification rulemaking, not a combined license proceeding; CLI-11-8, 74 NRC 214 (2011); LBP-11-38, 74 NRC 817 (2011)

combined license applicant may reference a docketed-but-not-yet-certified design in its application, but does so at its own risk; CLI-12-9, 75 NRC 421 (2012); LBP-11-10, 73 NRC 424 (2011)

combined license applicant will have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-11-10, 73 NRC 424 (2011)

combined license application included a request for a departure from the wet-bulb noncoincident temperature, which is considered Tier 1 information and part of the certified design and thus a regulatory exemption is required; CLI-12-9, 75 NRC 421 (2012)

combined license applications may reference a standard design certification and an early site permit; CLI-12-2, 75 NRC 63 (2012)

Commission administratively exempted from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 421 (2012)

compliance with design-related information contained in the generic design control document that is approved but not certified (Tier 2 information) is required, but generic changes to and plant-specific departures from Tier 2 are governed by 10 C.F.R. Part 52, App. D, § VIII; CLI-12-2, 75 NRC 63 (2012)

each combined license applicant will have to determine whether it will adopt in toto the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-11-10, 73 NRC 424 (2011)

exemption from any part of a referenced design certification rule may be granted if NRC determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with 10 C.F.R. 52.63 if there are no applicable exemption provisions in the referenced rule; LBP-11-10, 73 NRC 424 (2011)

exemption requests are subjected to the same level of litigation as other issues that could be admissibly raised in a COL proceeding; LBP-11-10, 73 NRC 424 (2011)

grants of exemptions from referenced design certification rules are conditioned on the Commission's finding that the request complies with section 52.7 and that the special circumstances provided for section 52.7 outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; LBP-11-10, 73 NRC 424 (2011)

in making its combined license findings, the Commission will treat as resolved those matters resolved in the issuance of a design certification rule; LBP-11-38, 74 NRC 817 (2011)

in making the findings required for issuance of a combined license, finality is afforded to those matters resolved in connection with a design certification; LBP-11-7, 73 NRC 254 (2011)

licenses may be amended to add appropriate conditions, depending on whether the conditions are within the scope of the certified design; CLI-12-9, 75 NRC 421 (2012)

NRC has authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-8, 74 NRC 214 (2011); CLI-11-10, 74 NRC 251 (2011)

NRC Staff found acceptable combined license applicant's plan to use a single technical support center for existing and proposed units, to be collocated in the basement of the new nuclear operations building, between the protected areas of the three units, which is a departure from the certified design; CLI-12-9, 75 NRC 421 (2012)

NRC Staff's creation of a list of site parameters for use in the combined license proceeding cannot cure the absence of a list of site parameters in the technical support document, rendering it impossible to

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resolve severe accident mitigation design alternatives issues by rule; LBP-11-7, 73 NRC 254 (2011)
under its certified design, the Economic Simplified Boiling Water Reactor could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 249 (2015)
where the combined license application references a certified design, elements of the licensing basis already have been established, and thus NRC would have to establish a regulatory basis for any change to the established design regardless of whether the COLs have issued; CLI-12-9, 75 NRC 421 (2012)

DESIGN CONTROL PROGRAMS

compliance with design-related information contained in the generic design control document that is approved but not certified (Tier 2 information) is required, but generic changes to and plant-specific departures from Tier 2 are governed by 10 C.F.R. Part 52, App. D, § VIII; CLI-12-2, 75 NRC 63 (2012)
“Tier 2” means the portion of the Tier 2 information, designated as such in the generic design control document, that is subject to the change process in 10 C.F.R. Part 52, App. D, § VIII.B.6; CLI-12-2, 75 NRC 63 (2012)

DICTA

holding that “petitioner does not have standing is dispositive of this case and the board need not decide this issue” is dicta; LBP-14-4, 79 NRC 319 (2014)

DIESEL GENERATORS

equipment operability for emergency diesel generators is discussed; DD-14-5, 80 NRC 205 (2014)
under its certified design, the Economic Simplified Boiling Water Reactor could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 249 (2015)

DIFFERING PROFESSIONAL OPINION

agency was not precluded from conducting licensing reviews or making licensing decisions prior to a resolution of the DPO by the NRC Staff; LBP-12-21, 76 NRC 218 (2012)

DIRECTORS' DECISIONS

section 2.206 process provides stakeholders a forum to advance concerns and obtain full or partial relief, or written reasons why the requested relief is not warranted; CLI-14-11, 80 NRC 167 (2014)

DISCLOSURE

agencies are required to use alternative means for obtaining information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 223 (2013)
agencies must make available certain records to members of the public upon specific request for those records except to the extent that the records (or portions of them) are exempt from public disclosure by one of the nine enumerated exemptions or are excluded from disclosure; CLI-13-5, 77 NRC 223 (2013)
agencies must make available for public inspection a broad range of information, including the agency's organization, general methodology, rules of procedure, substantive rules, final opinions, and statements of policy and interpretation that have been adopted by the agency; LBP-13-5, 77 NRC 233 (2013)
all disclosures under section 2.336(c) must be accompanied by a certification in the form of a sworn affidavit that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification; LBP-14-2, 79 NRC 131 (2014)
all parties, including NRC Staff, are obligated to bring any significant new information to the board's attention; LBP-14-2, 79 NRC 131 (2014)
any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-11-5, 73 NRC 131 (2011)
because parties to a Subpart L proceeding may not seek discovery from the other parties to the proceeding, all such parties must make periodic mandatory disclosures; LBP-14-2, 79 NRC 131 (2014)
board determination of expert's need to know with regard to a document withheld as safeguards information was reversed; LBP-11-9, 73 NRC 391 (2011)
board suspended mandatory disclosure obligations until further notice; CLI-12-14, 75 NRC 692 (2012)
claims and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-12-3, 75 NRC 164 (2012)
counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 125 (2014)

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deliberative process privilege does not protect documents in their entirety and if the government can segregate and disclose nonprivileged factual information within a document, it must; LBP-13-5, 77 NRC 233 (2013)

“disclosing party” means the party required to make mandatory disclosures; LBP-11-5, 73 NRC 131 (2011)

disclosure to intervenors of the names of power plant employees who provided NRC with information during the course of its investigation would be inappropriate, even with a protective order in place; CLI-13-5, 77 NRC 223 (2013)

“document” means any medium (electronic, paper, or any other kind) that contains or stores any information, including text, data, audio, video, computer software, or computer modeling information; LBP-11-5, 73 NRC 131 (2011)

each party to a proceeding must disclose all documents relevant to the admitted contentions, except those documents for which a claim of privilege or protected status is made; LBP-11-5, 73 NRC 131 (2011)

even where the government identifies significant reasons for nondisclosure, the interest in accurate judicial factfinding is predominant, especially where no satisfactory alternative source of information exists; LBP-13-5, 77 NRC 233 (2013)

factors that boards should consider in balancing applicant’s need for disclosure against the agency’s interest in confidentiality are described; LBP-13-5, 77 NRC 233 (2013)

government may withhold from disclosure the identity of persons who furnish information on violations of law to officers charged with enforcement of the law; CLI-13-5, 77 NRC 223 (2013)

hearing file consists of any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action; LBP-14-2, 79 NRC 131 (2014)

if NRC Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by Staff for its significance, consistent with NEPA requirements; CLI-12-19, 76 NRC 377 (2012)

if the Commission determines on appeal that information withheld under a protective order should have been publicly disclosed, it will direct that such information and the transcript of the related *in camera* session be made publicly available; CLI-15-24, 82 NRC 331 (2015)

in a Subpart L proceeding, NRC Staff must disclose or provide documents that support Staff’s review of the application or proposed action, together with a list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made; LBP-13-5, 77 NRC 233 (2013)

lead agency must make available to the public the results of relevant monitoring of mitigation measures; LBP-15-16, 81 NRC 618 (2015)

licensee’s motion to quash a subpoena duces tecum because production of the requested file would compromise its employee concerns program by potentially subjecting information contained in the file to public disclosure as an official agency record under FOIA is denied; CLI-13-5, 77 NRC 223 (2013)

NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 389 (2015)

NRC considers whether Exemption 7 would prevent public disclosure of allegation and investigation information from release; CLI-13-5, 77 NRC 223 (2013)

NRC Staff and its counsel, like the board and its staff, are federal government employees and are thus subject to stringent sanctions for the unauthorized disclosure of the protected information or protected documents; LBP-11-5, 73 NRC 131 (2011)

NRC Staff is exempted from the obligations of the protective order, even though Staff might hold many documents that are subject to the mandatory disclosure requirements; LBP-11-5, 73 NRC 131 (2011)

NRC Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 131 (2014)

NRC Staff violated requirements for initial disclosure of all relevant documents; LBP-14-2, 79 NRC 131 (2014)

NRC subpoena was upheld notwithstanding assertion of First Amendment freedom of association rights, where the subpoena was narrowly tailored to documents supporting specific allegations; CLI-13-5, 77 NRC 223 (2013)

parties must list documents claimed to be privileged or protected on a privilege log; LBP-11-5, 73 NRC 131 (2011)

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parties to a Subpart L proceeding must update their disclosures every month after initial disclosures on a due date selected by the presiding officer in the order admitting contentions; LBP-14-2, 79 NRC 131 (2014)

parties, including NRC Staff, may be sanctioned for noncompliance with the disclosure regulations; LBP-14-2, 79 NRC 131 (2014)

petitioner was denied access to a safeguards-protected design-related document on the basis of his lacking a need to know; LBP-11-9, 73 NRC 391 (2011)

presiding officer may impose sanctions on a party that fails to provide any document required to be disclosed, unless the party demonstrates good cause for its failure to make the disclosure; LBP-14-2, 79 NRC 131 (2014)

principle that justice cannot survive behind walls of silence has long been reflected in the Anglo-American distrust for secret trials; LBP-11-5, 73 NRC 131 (2011)

proposed questions filed by all parties will be publicly released by order of the board 30 days after its decision; LBP-13-13, 78 NRC 246 (2013)

questions proposed by all parties will be publicly released by order of the board 30 days after issuance of its partial initial decision; LBP-14-3, 79 NRC 267 (2014)

“receiving party” means the party to whom the mandatory disclosure must be made; LBP-11-5, 73 NRC 131 (2011)

“representative” means the attorney or other authorized representative of a party who has entered a notice of appearance; LBP-11-5, 73 NRC 131 (2011)

review at the end of a case would be meaningless if the Commission could not later, on appeal from a final board decision, rectify an erroneous disclosure order; CLI-13-3, 77 NRC 51 (2013)

role of the government in the litigation favors disclosure when the government is a party to the litigation and has been accused of unlawful conduct; LBP-13-5, 77 NRC 233 (2013)

scope of mandatory disclosures that parties must make under Subpart G is defined by the disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 125 (2014)

seriousness of the litigation supports disclosure of material for which deliberative process privilege is sought; LBP-13-5, 77 NRC 233 (2013)

SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)

target of an enforcement order must be provided a copy of all NRC Staff documents that are relevant to disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 125 (2014)

there can be no “hard look” at the costs and benefits of a proposed action unless all costs are disclosed; LBP-12-18, 76 NRC 127 (2012)

under appropriate circumstances, First Amendment rights give way to the compelling government interest in nuclear safety; CLI-13-5, 77 NRC 223 (2013)

under certain circumstances, a licensee or vendor might be required to disclose confidential ECP information (including the identity of a concerned individual) at the behest of a government agency (including the NRC), or in response to a subpoena; CLI-13-5, 77 NRC 223 (2013)

updates in Subpart L proceedings shall include any documents subject to disclosure that were not included in any previous disclosure update; LBP-14-2, 79 NRC 131 (2014)

when government conduct is challenged, claims of privilege may be used to obtain a litigating advantage; LBP-13-5, 77 NRC 233 (2013)

where the adverse impact of disclosure would occur immediately, the alleged harm is immediate for purpose of interlocutory review; CLI-13-3, 77 NRC 51 (2013)

within 45 days of the initial scheduling order, target of the enforcement order must provide certain information and documents to the NRC enforcement director; LBP-14-11, 80 NRC 125 (2014)

DISCOVERY

although intervenors may use discovery to develop a case once contentions are admitted, contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact(s) demonstrating a genuine material dispute with the applicant; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

discovery may not begin until 10 days after petitioner and the Director have held the mandatory consultation; LBP-14-11, 80 NRC 125 (2014)

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intervenor is not entitled to NRC Staff's review documents as a discovery tool; CLI-12-17, 76 NRC 207 (2012)

lack of clarity in the terms and application of the agency's newly established SUNSI policy contributed to intervenors' misapprehension that they were required to demonstrate a need for the information in order to request SUNSI documents; LBP-11-9, 73 NRC 391 (2011)

NRC Staff counsel may require the target of an enforcement order to provide the Director with a copy of any designated relevant document that is within his possession, custody, or control; LBP-14-11, 80 NRC 125 (2014)

petitioners have an affirmative obligation to request confidential and proprietary information that has not been made publicly available in order to support a proposed contention; LBP-11-9, 73 NRC 391 (2011)

procedural rulings involving discovery rarely meet the standard for interlocutory review; CLI-15-24, 82 NRC 331 (2015)

request that board impose additional discovery activities as a requirement of withdrawal of license amendment request is too broad because it goes beyond the scope of the admitted contentions and discovery is peculiarly related to particular proceedings and particular contentions; LBP-15-28, 82 NRC 233 (2015)

requests for protected documents shall be filed within 60 days of the listing of the document on the privilege log and, in any event, no later than 10 days after the deadline for filing rebuttal testimony; LBP-11-5, 73 NRC 131 (2011)

scope of discovery under Subpart G covers any matter that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party; LBP-14-11, 80 NRC 125 (2014)

SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)

until the safety evaluation report and all necessary environmental impact statements are completed, discovery cannot be completed nor can the evidentiary hearing be held; CLI-13-8, 78 NRC 219 (2013)

DISCOVERY AGAINST NRC STAFF

AEA does not guarantee all private parties the right to have NRC Staff studies as a sort of precomplaint discovery tool; CLI-12-14, 75 NRC 692 (2012)

although deliberative process privilege is a qualified privilege and the agency claiming the privilege bears the initial burden of demonstrating that it is applicable, once this demonstration is made, the moving party can only defeat the privilege by a demonstration of an overriding need for the material; LBP-13-5, 77 NRC 233 (2013)

board may employ case law interpreting FOIA Exemption 5 when determining whether the deliberative process privilege applies in an NRC proceeding; LBP-13-5, 77 NRC 233 (2013)

documents at issue are presumed to be public unless NRC Staff can demonstrate that they are protected by the deliberative process privilege; LBP-13-5, 77 NRC 233 (2013)

factors that boards should consider in balancing applicant's need for disclosure against the agency's interest in confidentiality are described; LBP-13-5, 77 NRC 233 (2013)

in a Subpart L proceeding, NRC Staff must disclose or provide documents that support Staff's review of the application or proposed action, together with a list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made; LBP-13-5, 77 NRC 233 (2013)

NRC Staff is exempted from the obligations of the protective order, even though Staff might hold many documents that are subject to the mandatory disclosure requirements; LBP-11-5, 73 NRC 131 (2011)

NRC Staff violated requirements for initial disclosure of all relevant documents; LBP-14-2, 79 NRC 131 (2014)

overriding need or special circumstances would support granting a motion to compel; LBP-13-5, 77 NRC 233 (2013)

senior reactor operator license applicant's motion to compel NRC Staff to produce documents that had been withheld under a claim of deliberative process privilege is granted; LBP-13-5, 77 NRC 233 (2013)

target of an enforcement order may serve interrogatories on NRC Staff, must show that answers to the interrogatories are necessary to a proper decision in the proceeding, and may ask the board to direct NRC Staff to answer those interrogatories; LBP-14-11, 80 NRC 125 (2014)

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- within certain constraints, target of an enforcement order may pursue discovery against the NRC Staff; LBP-14-11, 80 NRC 125 (2014)
- DISMISSAL OF PROCEEDING**
- despite rulings dismissing a contention as moot and declining to admit two other contentions, the licensing proceeding remains in existence; LBP-11-22, 74 NRC 259 (2011)
- dismissal of an appeal with prejudice, similar to termination of a proceeding with prejudice, generally implies that the Commission has ruled on the merits of the appeal and such ruling is reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general; CLI-13-10, 78 NRC 563 (2013)
- dismissal of license amendment request is conditioned on requirement that licensee provide notice to petitioner of submission of a similar LAR so that petitioner has a fair opportunity to relitigate issues previously found admissible; LBP-15-28, 82 NRC 233 (2015)
- dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the license amendment request; LBP-15-28, 82 NRC 233 (2015)
- if an application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding; CLI-13-10, 78 NRC 563 (2013)
- if the parties settle their dispute after a hearing, the board should dismiss the adjudication; LBP-11-22, 74 NRC 259 (2011)
- opposing party's litigation expenses do not provide a basis for departing from the usual rule that a dismissal should be without prejudice; CLI-13-10, 78 NRC 563 (2013)
- possibility that an issue may arise in the future is not grounds to continue with an appeal in a proceeding where no live controversy remains between the litigants; CLI-13-10, 78 NRC 563 (2013)
- public interest does not require additional adjudication of an enforcement matter and, given that all matters required to be adjudicated as part of the proceeding have been resolved, the proceeding is dismissed; LBP-11-3, 73 NRC 81 (2011)
- purpose of the rule to dismiss proceedings on conditions is primarily to prevent voluntary dismissals that unfairly affect the other side, and to permit the imposition of curative conditions; LBP-15-28, 82 NRC 233 (2015)
- standard for dismissal with prejudice is not met because the prospect of future litigation is not unusual, being inherent in any dismissal without prejudice; LBP-15-28, 82 NRC 233 (2015)
- DOCUMENT PRODUCTION**
- "document" means any medium (electronic, paper, or any other kind) that contains or stores any information, including text, data, audio, video, computer software, or computer modeling information; LBP-11-5, 73 NRC 131 (2011)
- NRC Staff was admonished for having imposed a stricter-than-necessary standard of "need" for access to SUNSI; LBP-11-9, 73 NRC 391 (2011)
- rules governing access to SUNSI apply only to potential parties, whereas party access to SUNSI is governed by protective orders and nondisclosure agreements; LBP-11-9, 73 NRC 391 (2011)
- DOCUMENTARY MATERIAL**
- all the information that applicant uses to support its license renewal application has to be maintained in an auditable and retrievable form; LBP-13-13, 78 NRC 246 (2013)
- Commission exercises its inherent supervisory authority to direct the board to complete all necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding; CLI-11-7, 74 NRC 212 (2011)
- "environmental document" includes environmental assessment, environmental impact statement, finding of no significant impact, and notice of intent; LBP-15-16, 81 NRC 618 (2015)
- DOCUMENTATION**
- admissibility of contention that a license amendment will be required for licensee to update and maintain accurate design basis documents is decided; CLI-15-5, 81 NRC 329 (2015)
- agency's reliance on mitigation in making a finding of no significant impact must be justified; LBP-14-7, 79 NRC 451 (2014)
- along with the requirement to perform an integrated safety analysis is the requirement for applicant to provide the NRC Staff with an ISA summary, the content of which is specified in 10 C.F.R. 70.65(b); LBP-11-11, 73 NRC 455 (2011)

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- license renewal applicant must present an aging management plan with sufficient information that NRC will be able to draw its own independent conclusion as to whether the applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)
- license renewal applicant must provide a general description of the corporate-wide and plant-specific procedures sufficient to show that the ten elemental attributes of GALL have been addressed so as to demonstrate that the effects of aging on buried pipes will be adequately managed throughout the period of extended operation; LBP-13-13, 78 NRC 246 (2013)
- license renewal applicants must submit documentation of compliance with sections 316(a) and (b) of the Clean Water Act concerning thermal discharges; LBP-12-16, 76 NRC 44 (2012)
- licensee must maintain records of changes in the facility made pursuant to section 50.59(c)(1) that include a written evaluation that provides the bases for the determination that the change does not require a license amendment pursuant to section 50.59(c)(2); CLI-14-11, 80 NRC 167 (2014)
- licensing board directed parties defending depositions to make efforts to identify and obtain Licensing Support Network documents that must be indexed for the benefit of other parties and to circulate those indexes as soon as practicable; CLI-11-13, 74 NRC 635 (2011)
- ruling that supplements the record should state clearly what evidence the board found credible, whether the evidence supports or alters NRC Staff's conclusions in the environmental impact statement, and what the impact of the proposed action for the specific issue is expected to be; CLI-15-6, 81 NRC 340 (2015)
- simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-12-27, 76 NRC 583 (2012)
- See also Recordkeeping
- ### DOSE LIMITS
- acceptance criteria for Type A leak rate limits embodied in the technical specifications ensure that, in the event of a design-basis accident, the dose received by a member of the general public will not exceed regulatory limits; LBP-15-26, 82 NRC 163 (2015)
- ALARA analysis required under section 20.1403(a) calls for a licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls; CLI-13-6, 78 NRC 155 (2013)
- ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-11-12, 74 NRC 460 (2011)
- ALARA principle as used in NRC regulations does not mean as low as achievable as a comparison between achievable doses, but rather as low as reasonably achievable below the dose limits; CLI-11-12, 74 NRC 460 (2011)
- ALARA principle has been incorporated into the restricted-use portion of the license termination rule to screen out sites that should be removing contamination to achieve unrestricted use; CLI-11-12, 74 NRC 460 (2011)
- ALARA principle, either as a general regulatory principle or as used in NRC's license termination rule, does not incorporate or call for any comparative analysis of doses from restricted and unrestricted release; CLI-11-12, 74 NRC 460 (2011)
- annual 100-millirem limit for members of the public is defined to include radiation exposure to construction workers; CLI-12-2, 75 NRC 63 (2012)
- board provides textual analysis and additional clarifying explanation of its interpretation of 10 C.F.R. 20.1403(a); CLI-13-6, 78 NRC 155 (2013)
- doses yielded by the restricted-release and unrestricted-release decommissioning options are not susceptible to being compared meaningfully because of the significantly different risks and uncertainties associated with each option; CLI-13-6, 78 NRC 155 (2013)
- even with the additional conservatisms, concentrations at potential receptor locations resulting from bounding accidental effluent release scenarios remain within applicable regulatory limits; CLI-12-9, 75 NRC 421 (2012)
- facility design and operation should ensure that radiological consequences of design basis events do not exceed 10 percent of dose limits; LBP-12-7, 75 NRC 503 (2012)

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- for license termination under restricted conditions, licensee must provide legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year; CLI-13-6, 78 NRC 155 (2013)
- if institutional controls fail and engineered barriers have degraded over a period of time, the dose to a member of the public will not exceed 100 mrem per year, or 500 mrem per year under certain circumstances, and is as low as reasonably achievable; CLI-11-12, 74 NRC 460 (2011)
- if licensee demonstrates, through either of the two cost-benefit approaches, that removing radioactive contamination to the unrestricted-use level would not be cost-beneficial, then licensee then must show that, with the addition of engineered barriers and institutional controls, the average annual dose to the public will not exceed 25 mrem per year and is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)
- independent spent fuel storage installation licensees must limit releases of radioactive materials to as low as is reasonably achievable, and establish operational limits to prevent doses to the public that exceed the limits of 10 C.F.R. 72.104(a)-(c); LBP-12-24, 76 NRC 503 (2012)
- keeping radionuclides below the EPA limit is necessary to maintain public safety at a decommissioning facility; LBP-15-24, 82 NRC 68 (2015)
- licensee must show that, if institutional controls fail, enough residual radioactivity has been removed from the site so that the average annual dose to the public will not exceed 100 mrem per year and is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)
- limit for individual members of the public from a licensed activity is a total effective dose equivalent of 100 millirem per year; CLI-11-12, 74 NRC 460 (2011)
- limit for license termination is a constraint within the public dose limit of 25 mrem per year to members of the public; CLI-11-12, 74 NRC 460 (2011)
- nothing in NRC license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 155 (2013)
- NRC regulations neither explicitly nor implicitly require a comparison of the levels of protection afforded by the unrestricted and restricted decommissioning options; CLI-11-12, 74 NRC 460 (2011)
- public doses for all Part 20 radiation protection programs must be as low as reasonably achievable and a basic radiation protection public dose standard of 100 mrem per year is required; CLI-11-12, 74 NRC 460 (2011)
- sites will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a Total Effective Dose Equivalent to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable; CLI-13-6, 78 NRC 155 (2013)
- small doses of radiation below dose limits, while safe and acceptable, may have some associated risk and should be reduced below limits when reasonable; CLI-11-12, 74 NRC 460 (2011)
- to provide adequate protection to the public upon license termination, NRC has established a maximum dose level to the public of 25 mrem per year, which licensee must satisfy without regard to cost, and regardless of whether decommissioning is to be accomplished through restricted or unrestricted release; CLI-13-6, 78 NRC 155 (2013)
- uranium enrichment facility licensee must survey radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits in section 20.1301 for individual members of the public; LBP-12-21, 76 NRC 218 (2012)
- words "further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402" are analyzed; CLI-13-6, 78 NRC 155 (2013)
- See also ALARA; ALARA Principle; Total Effective Dose Equivalent
- DOSE, RADIOLOGICAL**
- challenges to the \$2000/person-rem conversion factor, to use of a single dose-rate reduction effectiveness factor, and to evacuation times and assumptions are not admissible because petitioners presented no facts or expert opinion of error; LBP-11-2, 73 NRC 28 (2011)

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- NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the ALARA dose objectives; DD-11-1, 73 NRC 7 (2011)
- NRC-endorsed guidance on SAMA analysis methodology specifies use of the mean annual offsite dose and economic impact; CLI-12-1, 75 NRC 39 (2012)
- Staff guidance documents outline acceptable methods for designing a radiological monitoring program and submitting required semiannual reports specifying principal radionuclide releases to unrestricted areas for the purpose of estimating maximum potential annual public doses from such releases; LBP-11-26, 74 NRC 499 (2011)
- uranium enrichment facility licensee must submit biannual reports to the NRC specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous 6 months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases; LBP-12-21, 76 NRC 218 (2012)
- See also Total Effective Dose Equivalent
- DOSIMETRY**
- evaluation of existing dose projection models or a dose assessment is not required by 10 C.F.R. 52.80(d) and 50.54(hh)(2); CLI-11-9, 74 NRC 233 (2011)
- request that NRC order licensees to add guidance to emergency plans that documents how to perform a multiunit dose assessment (including releases from spent fuel pools) using licensee's site-specific dose assessment software and approach until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- DRAFT ENVIRONMENTAL IMPACT STATEMENT**
- absent voluntary action by applicant to amend its environmental report, intervenor wishing to raise new or revised post-ER environmental concerns must await issuance of Staff's DEIS; LBP-11-37, 74 NRC 774 (2011)
- additional content is required in a final environmental impact statement compared to a draft EIS; LBP-15-3, 81 NRC 65 (2015)
- adequacy of DEIS that relied on applicant's mitigation measure that a state agency might not require the applicant to implement was challenged; LBP-13-4, 77 NRC 107 (2013)
- agencies shall prepare supplements to either draft or final EISs if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-15-13, 81 NRC 456 (2015)
- although a contention contesting applicant's environmental report generally may be viewed as a challenge to NRC Staff's subsequent DEIS, new claims must be raised in a new or amended contention; LBP-14-5, 79 NRC 377 (2014)
- although a draft supplemental environmental impact statement may rely in part on applicant's environmental report, NRC Staff must independently evaluate and be responsible for the reliability of all information used in the DSEIS; LBP-15-3, 81 NRC 65 (2015)
- although NRC has issued a generic environmental impact statement for in situ uranium recovery facilities that assesses potential ISR facility construction/operation/decommissioning impacts, for the initial licensing of each individual ISR facility, NRC Staff will first prepare a draft supplemental EIS; LBP-15-3, 81 NRC 65 (2015)
- analysis for all draft and final EISs, by virtue of section 51.90, will, to the fullest extent practicable, quantify the various factors considered; LBP-15-3, 81 NRC 65 (2015)
- any new and significant information that arises in the interval after the applicant files its originally compliant environmental report must be captured and addressed; LBP-11-32, 74 NRC 654 (2011)
- as long as the DEIS takes a hard look at the environmental impacts from licensing a plant, nothing in NEPA requires NRC Staff's analysis to preclude any particular environmental impact; LBP-15-19, 81 NRC 815 (2015)
- boards must reject intervenors' arguments that fail to specifically address the DEIS; LBP-13-9, 78 NRC 37 (2013)
- both the content of the DEIS and the additional material submitted by the parties form part of the adjudicatory record; LBP-12-23, 76 NRC 445 (2012)
- challenges to only the DEIS apply equally to the final environmental impact statement under the migration tenet; LBP-12-5, 75 NRC 227 (2012)

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claim that the DEIS does not adequately assess the impacts to threatened and endangered species is rejected; LBP-13-9, 78 NRC 37 (2013)

contention asserting DEIS must include the Corps of Engineers Clean Water Act section 404 permit analysis in order to satisfy NEPA fails to raise a material issue; LBP-15-23, 82 NRC 55 (2015)

contention challenging sufficiency of the DEIS as it pertains to the protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 37 (2013)

contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of NRC Staff's draft environmental impact statement; LBP-15-5, 81 NRC 249 (2015)

contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 253 (2013)

contention submitted for the first time after the DEIS is issued will be deemed untimely; LBP-12-12, 75 NRC 742 (2012)

contention that DEIS fails to adequately analyze cumulative impacts is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to adequately assess cumulative impacts of the proposed action and another proposed ISL uranium mining operation is inadmissible; LBP-13-10, 78 NRC 117 (2013)

contention that DEIS fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to analyze the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that DEIS fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to include adequate hydrological information to demonstrate applicant's ability to contain groundwater fluid migration is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that DEIS fails to include an adequate hydrogeological analysis to assess adequate confinement and potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that DEIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 815 (2015)

contention that DEIS must identify the percentage of radial collector well water drawn from underneath the industrial wastewater facility is inadmissible; LBP-15-19, 81 NRC 815 (2015)

contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 117 (2013)

DEIS does not and cannot treat identified environmental concerns in a vacuum; LBP-11-7, 73 NRC 254 (2011)

DEIS indicates what other interests and considerations of federal policy, including factors not related to environmental quality, if applicable, are relevant to the consideration of environmental effects of the proposed action; LBP-14-6, 79 NRC 404 (2014)

DEIS might cure alleged omissions or deficiencies in the environmental report by including additional analysis that addresses such omissions or deficiencies; LBP-11-7, 73 NRC 254 (2011)

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DEIS must include a preliminary analysis that considers and weighs the environmental effects of and alternatives to the proposed action and alternatives available for reducing or avoiding adverse environmental effects; LBP-14-9, 80 NRC 15 (2014)

DEIS, like the environmental report, must cover all significant environmental impacts associated with the combined license, including offsite environmental impacts; LBP-11-1, 73 NRC 19 (2011)

DEISs need not contain more information on mitigation measures than a description of the mitigation measures on which the NRC relies and the explanation of the limiting effect of the mitigation measures on environmental impacts; LBP-13-9, 78 NRC 37 (2013)

duties of NRC Staff and not an applicant, such as consultation with other federal agencies, could not be raised at the environmental report stage, and therefore such a contention will not be rejected as untimely when filed after the release of the DEIS; LBP-12-12, 75 NRC 742 (2012)

final EIS will include responses to any comments on the draft EIS; LBP-13-13, 78 NRC 246 (2013)

future actions on which the DEIS purports to rely in its analysis of impacts constitute a license condition, the use of which is permitted in NEPA documents; LBP-13-9, 78 NRC 37 (2013)

if attempting to raise a new issue based on new information in the final supplemental environmental impact statement, intervenor must file a new contention if information in the FSEIS is sufficiently different from information in the DSEIS that supported the original contention's admission; LBP-14-5, 79 NRC 377 (2014)

if recommendations of the NRC's Near-Term Task Force review of the Fukushima Dai-ichi accident constitute relevant new and significant information, then the DEIS must address them; LBP-11-28, 74 NRC 604 (2011)

in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)

intervenor attempting to litigate an issue based on expressed concerns about the DEIS may need to amend the admitted contention or submit a new contention if information in the DEIS is sufficiently different from information in the environmental report that supported the original contention's admission; LBP-13-9, 78 NRC 37 (2013)

intervenor may file a new or amended contention challenging relevant new portions of the DEIS that differ from applicant's environmental report; LBP-11-1, 73 NRC 19 (2011)

intervenors and potential intervenors have a period of time to file new or amended contentions in response to a DEIS; LBP-13-9, 78 NRC 37 (2013)

intervenors are not permitted to wait until information reappears in the DEIS to file their contentions; LBP-13-9, 78 NRC 37 (2013)

intervenors fail to show that, with respect to terrestrial and wetland mitigation plans, there are data or conclusions in the DEIS that differ significantly from the data or conclusions in applicant's documents; LBP-12-12, 75 NRC 742 (2012)

intervenors fail to specify what other alternatives to the license renewal application should be discussed in the draft supplemental environmental impact statement, much less show that any proposed alternative would satisfy the purpose of applicant's proposed action; LBP-15-1, 81 NRC 15 (2015)

intervenors may file new or amended contentions in response to the DEIS if they can satisfy the test of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-12, 75 NRC 742 (2012)

intervenors may question whether the DEIS includes a sufficient justification for its reliance on future actions of a state agency; LBP-12-23, 76 NRC 445 (2012)

intervenors' challenge concerning the DEIS's alleged failure to discuss the Great Lakes Compact's process for regional review of its application for a consumptive water use permit is inadmissible; LBP-12-12, 75 NRC 742 (2012)

intervenors' challenges to adequacy of applicant's environmental report with respect to environmental impacts of dewatering associated with the proposed nuclear plant continue to serve as viable challenges to similar sections of Staff's DEIS and thus are not moot; LBP-11-1, 73 NRC 19 (2011)

it is applicant's responsibility to include information in the environmental report that NRC Staff needs to prepare the DEIS, including information on alternatives available for reducing or avoiding adverse environmental effects; LBP-12-12, 75 NRC 742 (2012)

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it is not clear NRC Staff relied upon the generic environmental impact statement when preparing the draft supplemental environmental impact statement because it was not incorporated by reference or mentioned in any other manner; LBP-15-11, 81 NRC 401 (2015)

late-filed contentions lack good cause when they are based on a DEIS that contains no new information relevant to the contention; LBP-13-9, 78 NRC 37 (2013)

legal requirements applicable to a draft EIS, as specified in sections 51.70(b) and 51.71, are imposed on a final EIS; LBP-15-3, 81 NRC 65 (2015)

mere listing of proposed mitigation measures in the DEIS is insufficient under NEPA; LBP-15-23, 82 NRC 55 (2015)

migration tenet applies only as long as the DEIS analysis or discussion at issue is essentially *in para materia* with the environmental report analysis or discussion that is the focus of the contention; LBP-12-12, 75 NRC 742 (2012)

migration tenet applies when information in the draft environmental impact statement is sufficiently similar to information in applicant's environmental report, and allows previously admitted contentions challenging the environmental report to apply to relevant portions of the DSEIS; LBP-15-16, 81 NRC 618 (2015)

migration tenet applies when the information in the final supplemental environmental impact statement is sufficiently similar to the information in the draft SEIS; LBP-14-5, 79 NRC 377 (2014)

NEPA does not require the DEIS to include a fully formulated or adopted mitigation plan, but its discussion must provide sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-15-23, 82 NRC 55 (2015)

NEPA requires an agency's DEIS to contain a detailed discussion of possible mitigation measures; LBP-15-23, 82 NRC 55 (2015)

new or amended contentions related to portions of the DEIS that differ from the environmental report must be timely filed under section 2.309(c), and meet the contention admissibility standards of section 2.309(f)(1) to be admitted; LBP-13-9, 78 NRC 37 (2013)

NRC rules provide a process to prepare supplemental draft or final environmental impact statements when the agency identifies new and significant information; CLI-14-7, 80 NRC 1 (2014)

NRC Staff cannot release NEPA documents that blindly parallel the applicant's information and omissions and then be allowed to argue that applicant's omissions prevent filing of new contentions concerning the newly released NEPA document; LBP-13-9, 78 NRC 37 (2013)

NRC Staff is not obligated to fully adopt, or agree with, all comments to the DEIS regarding the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

NRC Staff must address matters specified in 10 C.F.R. 51.45; LBP-14-9, 80 NRC 15 (2014)

NRC Staff must consider the economic, technical, and other benefits and costs of the proposed action; LBP-11-7, 73 NRC 254 (2011)

NRC Staff must prepare a final environmental impact statement in accordance with the requirements of 10 C.F.R. 51.71 for a DEIS; LBP-12-18, 76 NRC 127 (2012)

NRC Staff must supplement the DEIS if there are substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

NRC Staff will independently evaluate and be responsible for the reliability of all information used in the DEIS; LBP-13-4, 77 NRC 107 (2013)

NRC Staff's DEIS is required to list required federal permits and approvals and the current status of compliance with those requirements; LBP-12-12, 75 NRC 742 (2012)

NRC will consider all comments on the draft supplemental EIS regardless of whether the comment is directed to impacts in Category 1 or 2; CLI-13-7, 78 NRC 199 (2013)

NRC's NEPA regulations require a request for public comment on a DEIS and a supplement to a DEIS distributed in accordance with 10 C.F.R. 51.74 and on any supplement to the FEIS prepared pursuant to 10 C.F.R. 51.92(a) or (b); LBP-14-9, 80 NRC 15 (2014)

petitioner may amend NEPA contentions or file new NEPA contentions if there are data or conclusions in the NRC draft or final EIS, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-12-12, 75 NRC 742 (2012); LBP-12-13, 75 NRC 784 (2012)

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petitioner may submit to NRC Staff any information that it believes to be new and significant by participating in NRC's parallel NEPA process wherein an opportunity for public comment on the draft supplemental EIS is provided; CLI-13-7, 78 NRC 199 (2013)

petitioners may amend their contentions or file new contentions if the supplemental DEIS differs significantly from the data or conclusions in applicant's documents; LBP-11-34, 74 NRC 685 (2011)

placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage is inadmissible; CLI-15-27, 82 NRC 414 (2015)

policies set forth by NEPA prevent NRC Staff from segmenting the disposal issues from the inquiry into whether applicant will be allowed to create 11e(2) byproduct material in the first instance; LBP-13-9, 78 NRC 37 (2013)

preliminary analysis that considers and weighs alternatives available for reducing or avoiding adverse environmental effects must be included; LBP-12-18, 76 NRC 127 (2012)

public comment period is required for draft and supplemental EIS; CLI-12-16, 76 NRC 63 (2012)

publication of NRC Staff's DEIS may moot a contention challenging the environmental analysis in the applicant's environmental report, if the DEIS dispenses with the issues raised in the original contention challenging the ER; LBP-11-1, 73 NRC 19 (2011)

publication of the DEIS does not provide an opportunity to renew previously filed (and rejected) contentions, but rather, petitioner must demonstrate that the DEIS actually contains new data or conclusions; LBP-12-12, 75 NRC 742 (2012)

recirculation of the DEIS is required only when the information presents a seriously different picture of the environmental impacts; LBP-13-9, 78 NRC 37 (2013)

relative to an individual ISR facility, when NRC Staff formulates its draft and final supplemental environmental impact statement conclusions regarding the environmental impacts of a proposed action or alternative actions, it uses as guidance a standard scheme to categorize or quantify the impacts; LBP-15-3, 81 NRC 65 (2015)

supplement to the DEIS or FEIS is required if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-32, 74 NRC 654 (2011)

there is no enumeration of the required contents of the DEIS regarding endangered or threatened species; LBP-12-12, 75 NRC 742 (2012)

under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final EIS without the necessity for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 742 (2012)

until NRC Staff issues its DEIS or FEIS, it cannot plausibly be argued that the document is inadequate or otherwise fails to satisfy NEPA; LBP-11-33, 74 NRC 675 (2011)

when an agency's conclusions are different from the Fish and Wildlife Service's regarding endangered species, the agency must clearly articulate its reasons for disagreement; LBP-13-9, 78 NRC 37 (2013)

DREDGING

when a proposed project would cause discharge of dredged or fill material into wetlands, applicant must seek a permit from the Corps of Engineers; LBP-15-23, 82 NRC 55 (2015)

DRY CASK STORAGE

licensee determined that dry cask storage cask displacement and damage to the NUHOMS HD 32PTH caused by an earthquake exceeding the design basis were not reportable; DD-12-2, 76 NRC 391 (2012)

licensee's assessment of the structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS HD dry cask storage systems following an earthquake exceeding the plant's design basis is described; DD-12-2, 76 NRC 391 (2012)

structural integrity of GE Mark I boiling water reactor spent fuel pools and spent fuel management in dry storage casks are discussed; DD-15-1, 81 NRC 193 (2015)

suspension request that would have halted final licensing decisions pending action on a petition for rulemaking regarding NRC Staff's review of the potential expedited transfer of spent fuel from pools to dry casks was denied; CLI-15-13, 81 NRC 555 (2015)

DRY STORAGE CASKS

loss of spent fuel confinement would produce a dose of 0.15 rem at the nearest site boundary, which is less than the 5-rem limit; LBP-12-24, 76 NRC 503 (2012)

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pressure monitoring system that functions to alert independent spent fuel storage installation operators of potential storage problems, specifically a leak of one of the seals, is intended to meet the requirements for monitoring of dry spent fuel storage; LBP-12-24, 76 NRC 503 (2012)

DUE PROCESS

agencies must set and complete proceedings on license applications with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time; CLI-12-6, 75 NRC 352 (2012)

health, safety, and environmental concerns do not constitute liberty or property subject to due process protection; LBP-11-4, 73 NRC 91 (2011)

intervenor in reactor licensing proceedings ordinarily cannot raise constitutional due process issues with respect to NRC hearing procedures, inasmuch as intervenors cannot claim government deprivation of life, liberty, or property as a result of the NRC's licensing action; LBP-11-4, 73 NRC 91 (2011)

prospective intervenors must show a direct, substantial, and legally protectable interest, the test for which is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process; LBP-11-4, 73 NRC 91 (2011)

there is no fundamental right to participate in administrative adjudications; LBP-11-4, 73 NRC 91 (2011)

there is nothing in the legislative history of the Equal Access to Justice Act or the pertinent case law to suggest a congressional intent to extend the EAJA to cases in which due process, rather than a statute, requires an Administrative Procedure Act § 554 hearing; LBP-11-8, 73 NRC 349 (2011)

unless a schedule is so onerous or unfair that it deprives a party of procedural due process, scheduling is a matter of licensing board discretion; LBP-15-29, 82 NRC 246 (2015)

DUST

fugitive dust generated onsite at a facility, particularly during construction, can be a concern in the vicinity of a facility; LBP-12-3, 75 NRC 164 (2012)

health-impact potential of facility traffic-associated dust, if properly pleaded, could provide a basis for standing; LBP-12-3, 75 NRC 164 (2012)

licensing board, construing the petition in favor of petitioners, based its standing finding on potential harm from traffic-generated dust and light pollution; CLI-12-12, 75 NRC 603 (2012)

standing can be based on diminishment of recreational enjoyment of wildlife area due to, among other factors, an increase in dust due to traffic on adjacent highway; CLI-12-12, 75 NRC 603 (2012)

EARLY SITE PERMIT APPLICATION

applicant need not submit information regarding control room habitability and ventilation system design in the site safety analysis report portion of an early site permit application; LBP-11-16, 73 NRC 645 (2011)

applicant's site safety analysis report must provide sufficient data to enable the requisite determination of the potential for surface deformation as a result of growth faults at the site; LBP-11-16, 73 NRC 645 (2011)

applicants may propose complete and integrated emergency plans for review and approval in conjunction with their application, but they are not required to do so; CLI-12-2, 75 NRC 63 (2012)

climate change is considered an environmental impact that must be addressed; LBP-11-16, 73 NRC 645 (2011)

even though a cooling pond is not a safety-related structure, knowledge of faulting under the pool and the impact this faulting might have on the pool's operation are required; LBP-11-16, 73 NRC 645 (2011)

geologic and seismic siting factors considered for design must include a determination of the safe shutdown earthquake ground motion for the site and the potential for surface tectonic and nontectonic deformations; LBP-11-16, 73 NRC 645 (2011)

EARLY SITE PERMIT PROCEEDINGS

contention claiming that the environmental report's discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with NRC requirements is admissible; LBP-11-16, 73 NRC 645 (2011)

contention should be deemed resolved if the subject of the contention was actually litigated and decided during the ESP proceeding, or, although not actually litigated, was decided by the Staff, was necessary for the Staff to resolve in the ESP proceeding, and was within the scope of that proceeding as defined in the Federal Register notice of opportunity for a hearing; LBP-11-10, 73 NRC 424 (2011)

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contention that alleges an omission, not an inadequacy, of an environmental report's analysis of socioeconomic impacts raises an issue that is not material to any finding NRC must make; LBP-11-16, 73 NRC 645 (2011)

contentions concerning benefits assessment shall not be admitted if applicant does not address those issues in the ESP application; LBP-11-16, 73 NRC 645 (2011)

insofar as a contention requests consideration of a dry cooling design alternative, that matter must be considered resolved in the ESP proceeding; LBP-11-10, 73 NRC 424 (2011)

matter resolved in an ESP proceeding may be revisited in the combined license proceeding when new and significant information is presented; LBP-11-10, 73 NRC 424 (2011)

uncontested proceeding is subject to mandatory hearing requirements; LBP-11-10, 73 NRC 424 (2011)

where seismic suitability of a site was evaluated at the early site permit stage, further litigation of a geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 519 (2014)

EARLY SITE PERMITS

agency responsible for preparing the environmental impact statement must define the scope of the issues it will address; LBP-11-10, 73 NRC 424 (2011)

applicant's environmental report must identify and discuss the status of all permits, licenses, and other approvals that are required from federal, state, and local agencies; LBP-11-16, 73 NRC 645 (2011)

applicants must evaluate alternative sites to determine whether there is any obviously superior alternative to the site proposed; LBP-11-16, 73 NRC 645 (2011)

combined license applications may reference a standard design certification and an early site permit; CLI-12-2, 75 NRC 63 (2012)

entity is allowed to bank a site for the possible future construction of a specified number of new nuclear power generation facilities; LBP-11-16, 73 NRC 645 (2011)

entity may apply for an early site permit authorizing it to resolve key site-related environmental, safety, and emergency planning issues before selecting the design of a nuclear power facility for the subject site; LBP-11-16, 73 NRC 645 (2011)

ESP authorizes the use of a specific site for the construction and operation of a new nuclear power plant, with the actual construction and operation authorized by a subsequently issued combined license; LBP-11-10, 73 NRC 424 (2011)

ESP is valid for 20 to 40 years from the date of issuance; LBP-11-16, 73 NRC 645 (2011)

if an assessment of alternatives to the proposed action was prepared at the early site permit stage and no new information in the areas of energy alternatives or system design alternatives has been identified at the combined license stage, conclusions made at the ESP stage remain valid; CLI-12-2, 75 NRC 63 (2012)

if applicant did not pursue an early site permit, all relevant site characteristics, including site geology, hydrology, seismology, and man-made hazards, as well as potential environmental impacts of the project, were studied as part of NRC Staff's combined license review and are within the scope of the Commission decision; CLI-15-13, 81 NRC 555 (2015)

in determining whether a license amendment, construction permit, or early site permit will be issued to applicant, the Commission is guided by the considerations that govern issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate; LBP-15-20, 81 NRC 829 (2015)

issuance of an ESP and the subsequent authorization of construction and operation of a new nuclear power plant qualify as connected actions under 40 C.F.R. 1508.25 and should be evaluated in one environmental impact statement; LBP-11-10, 73 NRC 424 (2011)

licensee who has obtained an ESP is not required to apply for a combined license or to actually construct and operate a nuclear power plant at the authorized site; LBP-11-10, 73 NRC 424 (2011)

section 50.54(hh)(2) applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52; LBP-11-21, 74 NRC 115 (2011)

to issue an ESP, NRC must comply with the National Environmental Policy Act by including in an environmental impact statement a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action; LBP-11-10, 73 NRC 424 (2011)

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when an environmental impact statement is prepared at the ESP stage, NRC Staff must prepare a supplemental EIS for the combined license focusing on issues related to the impacts of construction and operation for which new and significant information has been identified; CLI-12-2, 75 NRC 63 (2012)

EARTHQUAKE MOTION

licensee is required to shut down a nuclear power plant when the vibratory ground motion exceeds that of the operating basis earthquake; DD-12-2, 76 NRC 391 (2012)

request that NRC suspend the operating licenses until completion of a set of activities related to the effects of an earthquake that exceeded the plant's operating basis earthquake is granted in part and denied in part; DD-12-2, 76 NRC 391 (2012)

EARTHQUAKE ZONES

request that NRC order the immediate shutdown of all nuclear power reactors that are known to be located on or near an earthquake fault line is denied; DD-15-6, 81 NRC 884 (2015)

EARTHQUAKES

ability of a facility to shut down safely following a potential earthquake is a current operating issue, and is not unique to whether licenses should be renewed; LBP-15-6, 81 NRC 314 (2015)

admissibility of contention that environmental assessment failed to analyze impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 401 (2015)

before restart, licensee is required to demonstrate to NRC that no functional damage from seismic events has occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 573 (2012)

contention that operating license should not be renewed unless and until applicant establishes that the plant can withstand and be safely shut down following an earthquake is not within the scope of a license renewal proceeding; LBP-15-6, 81 NRC 314 (2015)

design basis of safety features for each nuclear power plant takes into account the potential effects of two levels of earthquake motion; DD-12-1, 75 NRC 573 (2012)

highly site-specific seismic hazard analysis reflects consideration not only of the location and magnitude of historic earthquakes, but also the nature of the bedrock and the style of faulting in the surrounding region; LBP-11-11, 73 NRC 455 (2011)

inspections of electrical systems and components following an earthquake that resulted in loss of offsite power are described; DD-12-1, 75 NRC 573 (2012)

licensee assessed the structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS-HD dry cask storage systems following an earthquake and reviewed the event for reportability; DD-12-1, 75 NRC 573 (2012)

licensee determined that dry cask storage cask displacement and damage to the NUHOMS HD 32PTH caused by an earthquake exceeding the design basis were not reportable; DD-12-2, 76 NRC 391 (2012)

licensee's assessment of the structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS HD dry cask storage systems following an earthquake exceeding the plant's design basis is described; DD-12-2, 76 NRC 391 (2012)

NRC and licensee inspections to assess the integrity of the North Anna plant following a seismic event that exceeded the operating basis and design basis earthquake are described; DD-12-1, 75 NRC 573 (2012)

NRC's independent technical evaluation of information submitted by licensee to demonstrate that no functional damage occurred as a result of an earthquake is described; DD-15-9, 82 NRC 274 (2015)

reactors must be shut down and remain shut down until licensee demonstrates to NRC that an earthquake exceeding its operating basis caused no functional damage to features necessary for continued operation without undue risk; DD-15-9, 82 NRC 274 (2015)

to demonstrate that no functional damage occurred as a result of the earthquake, licensee performed inspections, tests, and analyses to address the requirements of 10 C.F.R. Part 100, Appendix A; DD-15-9, 82 NRC 274 (2015)

when an earthquake results in ground accelerations greater than those assumed in the design of the nuclear power plant, the plant is required to be shut down and to remain shut down until licensee demonstrates to NRC that no functional damage occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 573 (2012)

See also Seismic Analysis; Seismic Design

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ECONOMIC EFFECTS

ability of a totally unfunded group to provide testimony from experts is not taken into account in ruling on motions to reopen; LBP-11-20, 74 NRC 65 (2011)

discussion of the economic costs and benefits of the proposed action and alternatives is required if such costs and benefits are essential for a determination regarding the inclusion of an alternative in the range of alternatives considered; LBP-11-21, 74 NRC 115 (2011)

NRC-endorsed guidance on SAMA analysis methodology specifies use of the mean annual offsite dose and economic impact; CLI-12-1, 75 NRC 39 (2012)

petitioner's failure to address applicant's supplemental economic analyses, demonstrate specific knowledge of the analysis, and not indicate, even broadly that the SAMA economic cost-benefit conclusions are not sufficiently conservative renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

supplemental environmental impact statements for license renewal are not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 246 (2013)

See also Benefit-Cost Analysis

ECONOMIC INJURY

if an enforcement order blacklists a worker by name, he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 319 (2014)

more subjective appraisal of declining property values might be permissible in the context of a licensing action associated with an applicant or facility shown to have engaged in a continuous and pervasive course of illegal conduct; LBP-12-3, 75 NRC 164 (2012)

opposing party's litigation expenses do not provide a basis for departing from the usual rule that a dismissal should be without prejudice; CLI-13-10, 78 NRC 563 (2013)

whether economic concerns relating to job loss qualify as adverse effects within the meaning of 10 C.F.R. 2.202(a)(3) is discussed; LBP-14-4, 79 NRC 319 (2014)

ECONOMIC INTERESTS

intervenor may be granted standing based on purely economic interests; LBP-14-4, 79 NRC 319 (2014)

nonlicensee with a purely economic interest has an automatic right to demand a hearing under section 2.202(a)(3) without showing standing or proffering an admissible contention; LBP-14-4, 79 NRC 319 (2014)

ratepayers' economic injuries are not particularized or distinct to the extent required to support standing, but are instead generalized and shared by a large class; LBP-14-4, 79 NRC 319 (2014)

standing has been granted to a utilities commission based on injuries that would increase costs to regulated utilities; LBP-14-4, 79 NRC 319 (2014)

taxpayer interest is too generalized and attenuated to support Article III standing; LBP-14-4, 79 NRC 319 (2014)

ECONOMIC ISSUES

generalized economic cost arguments, unsupported by asserted facts or expert opinion, are insufficient to show a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)

generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing; LBP-12-3, 75 NRC 164 (2012)

quibbling over the details of an economic analysis would effectively stand NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-11-7, 73 NRC 254 (2011)

standing claims based on economic impacts are only cognizable in NRC proceedings with regard to NEPA-based concerns; LBP-12-3, 75 NRC 164 (2012)

See also Costs; Financial Assurance

ECONOMIC SIMPLIFIED BOILING WATER REACTOR

under its certified design, the ESBWR could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 249 (2015)

EFFECTIVENESS

NRC regulations appropriately require a hearing before the proposed license amendment becomes effective whenever the amendment creates the possibility of a new or different kind of accident; LBP-15-20, 81 NRC 829 (2015)

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senior reactor operator licenses shall be effective as of the date issued and shall be subject to the usual terms and conditions; LBP-14-2, 79 NRC 131 (2014)

See also Immediate Effectiveness; Stay of Effectiveness

ELECTRICAL DISTRIBUTION SYSTEM

although NRC does not license construction or operation of a transmission corridor, it has the authority to deny the license for a proposed nuclear plant if, for example, the total environmental costs of the new reactor and connected actions exceed the benefits; LBP-12-12, 75 NRC 742 (2012)

construction of a transmission line is defined as a preconstruction activity; LBP-12-12, 75 NRC 742 (2012)

even if the transmission corridor is a preconstruction activity and outside the NRC's regulatory jurisdiction, the construction and maintenance of the transmission corridor likely qualifies as a connected action under governing NRC and Council on Environmental Quality regulations, and therefore must be analyzed in the FEIS; LBP-12-12, 75 NRC 742 (2012)

to require detailed analysis in the final environmental impact statement, a transmission corridor must be a proposed action rather than one that is merely contemplated; LBP-12-12, 75 NRC 742 (2012)

transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded from an aging management review; CLI-12-5, 75 NRC 301 (2012)

See Transmission Lines

ELECTRICAL EQUIPMENT

amendment to aging management plan extended the AMP for medium-voltage cables to also cover low-voltage cables; LBP-11-20, 74 NRC 65 (2011)

board reviews whether transformers are subject to replacement based on a qualified life or specified time period; LBP-13-13, 78 NRC 246 (2013)

high temperature in the engineered safety feature switchgear rooms is discussed; DD-14-5, 80 NRC 205 (2014)

inspection to determine effects of wet or underwater conditions on underground safety-related electrical cables is discussed; DD-15-1, 81 NRC 193 (2015)

inspections of electrical systems and components following an earthquake that resulted in loss of offsite power are described; DD-12-1, 75 NRC 573 (2012)

licensees are required to establish a program for qualifying certain defined electric equipment; LBP-11-20, 74 NRC 65 (2011)

request for enforcement action to address concerns about operability of the submerged and/or wetted non-environmentally qualified inaccessible cables is denied; DD-13-2, 78 NRC 185 (2013)

safety contention challenging aging management of electrical transformers is decided; LBP-13-13, 78 NRC 246 (2013)

safety-related equipment that must be environmentally qualified is described; LBP-11-20, 74 NRC 65 (2011)

structural limits on the block wall between the engineered safety feature switchgear rooms is discussed; DD-14-5, 80 NRC 205 (2014)

transformer is an active component because it undergoes a change in properties when it performs its intended function; CLI-15-6, 81 NRC 340 (2015)

transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded from an aging management review; CLI-12-5, 75 NRC 301 (2012); LBP-13-13, 78 NRC 246 (2013)

variety of electrical and instrumentation and control components are excluded from an aging management review for license renewal; CLI-12-5, 75 NRC 301 (2012)

whether petitioners have adequately raised an issue as to whether transformers constitute active or passive components survived a motion for summary disposition; LBP-11-2, 73 NRC 28 (2011)

See also Environmental Qualification of Electrical Equipment

ELECTRICAL POWER

"baseload power" is defined as power generating energy intended to continuously produce electricity at or near full capacity, with high availability; LBP-12-15, 76 NRC 14 (2012)

baseload generation is different than peaking power, which provides supplemental power during hours of the day when demand is highest; LBP-11-13, 73 NRC 534 (2011)

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- for an electrical generation alternative to qualify for in-depth review, the alternative must be able to provide 1190 MWe of baseload power during the license renewal term; LBP-12-15, 76 NRC 14 (2012)
- ELECTRONIC FILING**
- Commission exercises its discretion to consider briefs that were not filed via the agency's E-Filing system; LBP-15-4, 81 NRC 156 (2015)
- e-filing is required unless an exemption is granted permitting an alternative filing method for good cause shown, or unless the filing falls within the scope of the exception identified in 10 C.F.R. 2.302(g)(1); CLI-13-9, 78 NRC 551 (2013); CLI-14-3, 79 NRC 31 (2014)
- failure to comply with NRC's e-filing requirements without good cause or without obtaining an exemption from the requirements under 10 C.F.R. 2.302(g) can result in rejection of a pleading; LBP-15-4, 81 NRC 156 (2015)
- filing is only complete when the filer performs the last act that it must perform to transmit a document in its entirety; LBP-11-13, 73 NRC 534 (2011)
- good cause doesn't exist where petitioner's late-filed contention is due to careless inadvertence and not, as petitioner claimed, attributable to technical difficulties with the E-Filing system; LBP-15-4, 81 NRC 156 (2015)
- persistent difficulties with the NRC electronic filing system despite petitioners' good-faith efforts is good cause for late filing; LBP-11-2, 73 NRC 28 (2011)
- persons without digital ID certificates may sign electronically by typing "Executed in Accord with 10 C.F.R. 2.304(d)" or its equivalent on the signature line and including the date of signature and the signatory's name, capacity, address, phone number, and e-mail address; LBP-11-2, 73 NRC 28 (2011)
- State intervenor provided good cause for its late E-filing submission because the State submitted its petition to NRC by e-mail before the deadline lapsed and the delay was purely a matter of obtaining digital credentials for the system, not an attempt to gain extra time to prepare a pleading or otherwise to flout NRC's procedural requirements; LBP-15-4, 81 NRC 156 (2015)
- EMBRITTLMENT**
- application to use alternate pressurized thermal shock rule must contain the projected embrittlement reference temperatures along various portions of the reactor pressure vessel, from the present to a future point, compared to the alternate screening criteria; LBP-15-17, 81 NRC 753 (2015)
- application to use alternate pressurized thermal shock rule must contain an assessment of flaws in the reactor pressure vessel; LBP-15-17, 81 NRC 753 (2015)
- consistency check compares mean and slope of the embrittlement model curve against surveillance data and checks to confirm that outliers fall within acceptable residual values provided in the regulation; LBP-15-17, 81 NRC 753 (2015)
- consistency check seeks to compare, for a specific material type, the model's projected embrittlement with the actual embrittlement values at the same fluence provided by material samples; LBP-15-17, 81 NRC 753 (2015)
- differing amounts of copper, nickel, phosphorus, and manganese between material samples for the consistency check are accounted for; LBP-15-17, 81 NRC 753 (2015)
- if fewer than three surveillance data points exist for a specific material, then the embrittlement model must be used without performing the consistency check; LBP-15-17, 81 NRC 753 (2015)
- if the embrittlement model deviates from the physical samples over the limits specified in 10 C.F.R. 50.61a(f)(6)(vi), licensee must submit additional evaluations and seek approval for the deviations from the Director of the Office of Nuclear Reactor Regulation; LBP-15-17, 81 NRC 753 (2015)
- if the reference values projected at specific areas of the reactor pressure vessel for the end of life of the plant surpass the current screening criteria, licensee must submit a safety analysis and obtain NRC approval to continue to operate; LBP-15-17, 81 NRC 753 (2015)
- if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 753 (2015)
- in calculating embrittlement reference temperatures, licensee must calculate neutron flux through the reactor pressure vessel using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases; LBP-15-17, 81 NRC 753 (2015)
- information that license amendment request must contain to use updated embrittlement model is described; CLI-15-22, 82 NRC 310 (2015)

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integrated surveillance program among similar reactors is allowed if the reactors have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage; LBP-15-17, 81 NRC 753 (2015)

license amendments related to reactor pressure vessel embrittlement present an obvious potential for offsite public health and safety consequences; LBP-15-17, 81 NRC 753 (2015)

licensee is not required to collect additional surveillance data from the subject plant, but rather licensee must use any data that demonstrate the embrittlement trends for the materials, including surveillance programs at other plants with or without a surveillance program integrated under Part 50, Appendix H; CLI-15-22, 82 NRC 310 (2015)

licensee must perform a consistency check of its embrittlement model against available surveillance data; LBP-15-17, 81 NRC 753 (2015)

licensees have some discretion in considering other plant-specific information that may be helpful in aligning their embrittlement models with the surveillance data; LBP-15-17, 81 NRC 753 (2015)

licensing actions that could increase reactor vessel embrittlement, such as license renewals, hold the potential for offsite consequences that are obvious; LBP-15-17, 81 NRC 753 (2015)

model projects the reference temperatures for various parts of the reactor pressure vessel at the end of life of the plant; LBP-15-17, 81 NRC 753 (2015)

neutron radiation embrittlement of reactor pressure vessel walls, decreasing their fracture toughness, is discussed; LBP-15-17, 81 NRC 753 (2015)

pressurized thermal shock rule and embrittlement screening program are discussed; LBP-15-17, 81 NRC (2015); LBP-15-17, 81 NRC 753 (2015)

probabilistic embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data in a process called the consistency check; LBP-15-17, 81 NRC 753 (2015)

purpose of the consistency check is to determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 753 (2015)

surveillance data are continuously integrated into future embrittlement projections; LBP-15-17, 81 NRC 753 (2015)

surveillance data include any data that demonstrate embrittlement trends for the beltline materials; LBP-15-17, 81 NRC 753 (2015)

surveillance data need not be obtained from the same reactor pressure vessel that is the subject of the license amendment; LBP-15-17, 81 NRC 753 (2015)

updated embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data; CLI-15-22, 82 NRC 310 (2015)

EMERGENCIES

licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent; DD-11-6, 74 NRC 420 (2011)

where NRC finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment; LBP-15-13, 81 NRC 456 (2015)

EMERGENCY BACKUP POWER

combined license applicant's emergency plan must contain and describe adequate provisions for emergency facilities and equipment, including at least one onsite and one offsite communication system, each of which shall have a backup power source; LBP-11-15, 73 NRC 629 (2011)

equipment operability for emergency diesel generators is discussed; DD-14-5, 80 NRC 205 (2014)

NRC imposed requirements to provide makeup water independent of offsite power and the normal emergency alternating current power sources to maintain or restore spent fuel pool cooling capability in the event of an accident; DD-15-1, 81 NRC 193 (2015)

EMERGENCY CORE COOLING SYSTEM

Commission imposed a license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities following a

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beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink; CLI-12-9, 75 NRC 421 (2012)

each nuclear power plant must be able to cool the reactor core and maintain containment integrity in the event of a station blackout of a specified duration; LBP-12-18, 76 NRC 127 (2012)

in the event of a severe accident in an AP1000, squib valves, which are explosively activated, reduce pressure and inject water as needed into the reactor vessel; CLI-15-13, 81 NRC 555 (2015)

EMERGENCY EXERCISES

every 2 years, licensee stages full-participation emergency exercises, which are evaluated by both FEMA and NRC; CLI-12-9, 75 NRC 421 (2012)

licensee must maintain an emergency plan, review it annually through an independent reviewer, and conduct periodic exercises to measure the plan's effectiveness; CLI-15-6, 81 NRC 340 (2015)

offsite emergency plans are reviewed biennially by NRC and the Federal Emergency Management Agency in a comprehensive emergency preparedness exercise; CLI-15-6, 81 NRC 340 (2015)

request that NRC order licensees to conduct periodic training and exercises for multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

whether exercise frequency is adequate to maintain personnel knowledge and skill to implement emergency responsibilities for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

EMERGENCY OPERATING PROCEDURES

licensees must activate the ERDS as soon as possible but not later than 1 hour after declaring an Emergency Class of alert, site area emergency, or general emergency; LBP-15-4, 81 NRC 156 (2015)

request that NRC modify the administrative controls section of the standard technical specifications for each operating reactor design to reference the approved EOP technical guidelines for that plant design is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to modify the technical guidelines to include emergency operations procedures, severe accident mitigation guidelines, and extensive damage mitigation guidelines in an integrated manner, specify clear command and control strategies for their implementation, and stipulate appropriate qualification and training for those who make decisions during emergencies is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

station blackout is a beyond-design-basis event and therefore regulations requiring emergency operating procedures do not apply, and so operators would follow a set of procedures required by 10 C.F.R. 50.63(c)(ii) & (iii); LBP-12-18, 76 NRC 127 (2012)

EMERGENCY OPERATIONS FACILITY

combined license applicant's emergency plan must contain and describe adequate provisions for emergency facilities and equipment, including at least one onsite and one offsite communication system, each of which shall have a backup power source; LBP-11-15, 73 NRC 629 (2011)

ERDS is a direct electronic data link between licensees of operating reactors and the NRC Operations Center, and its objective is to allow NRC to monitor critical parameters during an emergency; LBP-15-4, 81 NRC 156 (2015)

request that NRC order licensees to ensure that emergency planning equipment and facilities are sufficient for dealing with multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

EMERGENCY PLANNING ZONES

combined license application must include an emergency plan that contains, in the event of a reactor emergency resulting in a radiological release, a range of protective actions for the public located within about a 10-mile radius from the plant; LBP-11-15, 73 NRC 629 (2011)

EPZs are approximately a 10-mile radius around a reactor unit as adjusted to reflect the road network and land use; CLI-12-9, 75 NRC 421 (2012)

ingestion exposure pathway consists of an area about 50 miles in radius around a plant and its principal concern is ingestion of contaminated water or foods; LBP-11-15, 73 NRC 629 (2011)

NRC's safety regulations cover a 50-mile planning area; LBP-14-4, 79 NRC 319 (2014)

pertinent zone in operating license renewal proceedings and other power reactor license matters is the area within a 50-mile radius of the site; LBP-11-2, 73 NRC 28 (2011)

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plume exposure pathway consists of an area about 10 miles in radius around a plant, the principal concern of which is radiation exposure to the public (whole-body external exposure and inhalation exposure) from a radioactive plume; LBP-11-15, 73 NRC 629 (2011)
to the extent petitioner seeks to raise a generic challenge to the 10-mile plume exposure pathway EPZ, such an argument constitutes an impermissible challenge to this regulation; LBP-11-15, 73 NRC 629 (2011)

EMERGENCY PLANNING

all Part 50 licensees must meet emergency planning requirements, regardless of whether the facility is operating or has been permanently shut down and defueled; LBP-15-18, 81 NRC 793 (2015)
before issuing a combined license, NRC must conclude that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-11-6, 73 NRC 149 (2011)
challenges to emergency planning fall outside the scope of a license renewal proceeding; CLI-15-6, 81 NRC 340 (2015); LBP-15-5, 81 NRC 249 (2015)
contention is neither germane to age-related degradation nor unique to the period covered by a license renewal application; LBP-11-35, 74 NRC 701 (2011)
in any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability; LBP-11-6, 73 NRC 149 (2011)
proximity of the nuclear power plant site to the Canadian border is considered in the contexts of environmental and safety reviews; CLI-15-13, 81 NRC 555 (2015)
sheltering must be considered in developing the recommended range of protective actions in an emergency plan; LBP-11-6, 73 NRC 149 (2011)
this issue is beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

EMERGENCY PLANS

because current levels of emergency planning are required by regulation, licensee cannot make changes contemplated in its license amendment request without first receiving certain regulatory exemptions; LBP-15-18, 81 NRC 793 (2015)
before licensee may change its emergency plan to discontinue the ERDS link, it must perform and retain an analysis that concludes that the removal of ERDS is not a reduction in emergency plan effectiveness; LBP-15-4, 81 NRC 156 (2015)
combined license applicant's emergency plan must contain and describe adequate provisions for emergency facilities and equipment, including at least one onsite and one offsite communication system, each of which shall have a backup power source; LBP-11-15, 73 NRC 629 (2011)
combined license application must include an emergency plan that contains, in the event of a reactor emergency resulting in a radiological release, a range of protective actions for the public located within about a 10-mile radius from the plant; LBP-11-15, 73 NRC 629 (2011)
combined license applications must provide an emergency plan for the site; CLI-12-9, 75 NRC 421 (2012)
concerns about a facility's emergency plans may be raised at any time pursuant to 10 C.F.R. 2.206; CLI-15-6, 81 NRC 340 (2015)
contention that, in the event of a core-melt accident, applicant's emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks NRC's emergency planning regulation; LBP-11-15, 73 NRC 629 (2011)
early site permit applicants may propose complete and integrated emergency plans for review and approval in conjunction with their application, but they are not required to do so; CLI-12-2, 75 NRC 63 (2012)
holder of a combined license for a newly built reactor may not load fuel or operate except as provided in accordance with Part 50, Appendix E; LBP-15-4, 81 NRC 156 (2015)
holder of a license under Part 50, or a combined license under Part 52, shall follow and maintain the effectiveness of an emergency plan that meets the requirements in Part 50, Appendix E; LBP-15-4, 81 NRC 156 (2015)
in any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation ability of state and local emergency plans; LBP-15-4, 81 NRC 156 (2015)

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- in developing the range of protective actions, consideration will be given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide, as appropriate; LBP-11-15, 73 NRC 629 (2011)
- lack of detail for emergency sheltering option is not significant because size of sheltering population is very small; LBP-15-18, 81 NRC 793 (2015)
- license amendment request does not require an updated or separate emergency plan unless such a plan would be germane to the type of license amendment request under review or is part of a licensee's periodic update of emergency plans; LBP-11-29, 74 NRC 612 (2011)
- licensee changes to its plan must not reduce the effectiveness of the plan; CLI-15-20, 82 NRC 211 (2015)
- licensee is forbidden to change its emergency plan unless it performs and retains an analysis that demonstrates the changes do not reduce the effectiveness of the plan as changed; LBP-15-4, 81 NRC 156 (2015)
- licensee may change its emergency plan without prior NRC approval if licensee completes and retains an analysis demonstrating that the revised emergency plan satisfies a two-part test; CLI-15-20, 82 NRC 211 (2015)
- licensee must comply with the requirements of 10 C.F.R. 50.54(q)(3) before it effects a change to its emergency plan to delete references to ERDS or its use during an emergency; LBP-15-4, 81 NRC 156 (2015)
- licensee must maintain an emergency plan, review it annually through an independent reviewer, and conduct periodic exercises to measure the plan's effectiveness; CLI-15-6, 81 NRC 340 (2015)
- licensees whose emergency plan describes emergency response data system or its use during an emergency would need to process a change to their emergency plans; CLI-15-20, 82 NRC 211 (2015)
- NRC Staff considers FEMA's findings on emergency plans in making its necessary finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; CLI-12-9, 75 NRC 421 (2012)
- nuclear power reactors must have emergency plans in place to respond to accidents despite the fact that Table B-1 within 10 C.F.R. Part 51 concludes that the environmental impacts of both design basis and severe accidents at a nuclear reactor are small for all plants; LBP-13-13, 78 NRC 246 (2013)
- offsite emergency plans are reviewed biennially by NRC and the Federal Emergency Management Agency in a comprehensive emergency preparedness exercise; CLI-15-6, 81 NRC 340 (2015)
- plans are approved by NRC and FEMA and are updated on an ongoing basis; CLI-15-6, 81 NRC 340 (2015)
- range of protective actions for persons within about a 10-mile radius is required, and guidelines for the choice of protective actions during an emergency, consistent with federal guidance, must be developed and in place; LBP-11-15, 73 NRC 629 (2011)
- reduction in emergency plan effectiveness means a reduction in licensee's capability to perform an emergency planning function in the event of a radiological emergency; CLI-15-20, 82 NRC 211 (2015)
- request that NRC order licensees to add guidance to emergency plans that documents how to perform a multiunit dose assessment (including releases from spent fuel pools) using licensee's site-specific dose assessment software and approach until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- revised plan must continue to meet the requirements in Part 50, Appendix E and the standards in section 50.47(b); CLI-15-20, 82 NRC 211 (2015)
- EMERGENCY POWER**
- request that NRC order licensees to provide means to power communications equipment needed to communicate onsite and offsite during a prolonged station blackout until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to provide safety-related AC electrical power for the spent fuel pool makeup system is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to revise their technical specifications to address requirements to have one train of onsite emergency electrical power operable for spent fuel pool makeup and spent fuel pool instrumentation when there is irradiated fuel in the spent fuel pool, regardless of the operational mode of the reactor is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

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EMERGENCY PREPAREDNESS

offsite emergency plans are reviewed biennially by NRC and the Federal Emergency Management Agency in a comprehensive emergency preparedness exercise; CLI-15-6, 81 NRC 340 (2015)

proposed staffing changes meet emergency plan standards and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency commensurate with credible accidents in the permanently shutdown and defueled condition; CLI-15-20, 82 NRC 211 (2015)

whether exercise frequency is adequate to maintain personnel knowledge and skill to implement emergency responsibilities for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

EMERGENCY RESPONSE DATA SYSTEM

activation requirements are specified in 10 C.F.R. 50.72(a)(4); CLI-15-20, 82 NRC 211 (2015)

all nuclear power facilities that are shut down permanently or indefinitely are exempted from participating in the ERDS program; LBP-15-4, 81 NRC 156 (2015)

all operational nuclear power plants except Big Rock Point must participate in the ERDS program by providing onsite hardware at each unit to interface with NRC receiving station; LBP-15-4, 81 NRC 156 (2015)

any alleged ambiguity in the exception provision of 10 C.F.R. Part 50, Appendix E, § VI is eliminated when the regulatory language is examined in light of the regulatory history and framework; LBP-15-4, 81 NRC 156 (2015)

any facility with an operating reactor unit is required to provide ERDS for that unit, regardless of the status of other reactors at the facility; LBP-15-4, 81 NRC 156 (2015)

before licensee may change its emergency plan to discontinue the ERDS link, it must perform and retain an analysis that concludes that the removal of ERDS is not a reduction in emergency plan effectiveness; LBP-15-4, 81 NRC 156 (2015)

collateral challenge to NRC emergency response data system rule is inadmissible; CLI-15-20, 82 NRC 211 (2015)

each licensee shall complete implementation of the ERDS by February 13, 1993, or before initial escalation to full power, whichever comes later; LBP-15-4, 81 NRC 156 (2015)

ERDS is a direct electronic data link between licensees of operating reactors and the NRC Operations Center, and its objective is to allow NRC to monitor critical parameters during an emergency; LBP-15-4, 81 NRC 156 (2015)

except Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware for the emergency response data system shall be provided at each unit by the licensee to interface with the NRC receiving system; CLI-15-20, 82 NRC 211 (2015)

exception in 10 C.F.R. 50.72 is most reasonably interpreted as exempting from the ERDS program all nuclear reactors that have permanently ceased operations and defueled, i.e., that are permanently shut down; LBP-15-4, 81 NRC 156 (2015)

if 10 C.F.R. Part 50, Appendix E, § VI were a one-time requirement that applied only to units existing in 1991, that would mean it was not intended to apply prospectively to newly built reactors; LBP-15-4, 81 NRC 156 (2015)

if licensee of a permanently shutdown reactor is never required to activate the ERDS link, it must be concluded that such a licensee is exempt from the ERDS program; LBP-15-4, 81 NRC 156 (2015)

licensee must activate the ERDS as soon as possible but not later than 1 hour after declaring an Emergency Class of alert, site area emergency, or general emergency; LBP-15-4, 81 NRC 156 (2015)

licensee must comply with the requirements of 10 C.F.R. 50.54(q)(3) before it effects a change to its emergency plan to delete references to ERDS or its use during an emergency; LBP-15-4, 81 NRC 156 (2015)

licensees must activate the ERDS as soon as possible but not later than 1 hour after declaring an Emergency Class of alert, site area emergency, or general emergency; CLI-15-20, 82 NRC 211 (2015)

licensees whose emergency plan describes the ERDS or its use during an emergency would need to process a change to their emergency plans; CLI-15-20, 82 NRC 211 (2015)

parameters from which ERDS transmits data points for boiling water reactors are identified in 10 C.F.R. Part 50, App. E, § VI.2(a)(ii); LBP-15-4, 81 NRC 156 (2015)

participation in the ERDS is mandatory; CLI-15-20, 82 NRC 211 (2015)

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regulatory history, like 10 C.F.R. Part 50, App. E, § VI itself, is focused entirely on implementation and maintenance of the ERDS operations with not one word about decommissioning the system; LBP-15-4, 81 NRC 156 (2015)

scope of the ERDS exception is informed by the regulatory history, which states that ERDS is to be used by licensees of operating reactors; LBP-15-4, 81 NRC 156 (2015)

section 50.72(a)(4) describes implementation, maintenance, and activation of the ERDS system in the event of an emergency; LBP-15-4, 81 NRC 156 (2015)

section 50.72(a)(4) directing licensees to activate ERDS during exigent circumstances applies only to operating nuclear power reactors; LBP-15-4, 81 NRC 156 (2015)

to the extent a contention would require licensee to maintain the ERDS link or to create another ERDS-like system after its reactor is permanently shut down and defueled, it is an impermissible collateral attack on a regulation; LBP-15-4, 81 NRC 156 (2015)

when selected plant data are not available on licensee's onsite computer system, retrofitting of data points is not required; CLI-15-20, 82 NRC 211 (2015)

EMERGENCY RESPONSE PERSONNEL

request that NRC order licensees to determine and implement required staff to fill all necessary positions for responding to a multiunit event until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to modify the technical guidelines to include emergency operations procedures, severe accident mitigation guidelines, and extensive damage mitigation guidelines in an integrated manner, specify clear command and control strategies for their implementation, and stipulate appropriate qualification and training for those who make decisions during emergencies is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

EMERGENCY RESPONSE PLANS

arrangements for requesting and effectively using assistance resources should be identified and supported by appropriate letters of agreement; LBP-15-18, 81 NRC 793 (2015)

radiological emergency response plan was developed by the State and approved by the Federal Emergency Management Agency to ensure that the State is prepared to handle the offsite effects of a radiological emergency; LBP-15-4, 81 NRC 156 (2015)

EMERGENCY RESPONSE

adequate provisions must exist for prompt communications among principal response organizations to emergency personnel and to the public; LBP-15-4, 81 NRC 156 (2015)

during a nuclear emergency in the United States, the individual licensee and the appropriate state and local government officials have direct responsibilities for the coordinated response to the event; LBP-11-15, 73 NRC 629 (2011)

NRC, in its capacity as the federal agency charged with regulating the nuclear industry in a manner that protects public health and safety, monitors nuclear emergencies; LBP-11-15, 73 NRC 629 (2011)

request that licensees should be required to maintain Emergency Response Data System capability throughout an accident will be addressed by an advance notice of proposed rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to complete the Emergency Response Data System modernization initiative by June 2012 to ensure multiunit site monitoring capability is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to have an installed, seismically qualified means to spray water into the spent fuel pools, including an easily accessible connection to supply the water (e.g., using a portable pump or pumper truck) at grade outside the building is addressed; DD-14-2, 79 NRC 489 (2014)

whether exercise frequency is adequate to maintain personnel knowledge and skill to implement emergency responsibilities for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

EMPLOYEE PROTECTION

disclosure to intervenors of the names of power plant employees who provided NRC with information during the course of its investigation would be inappropriate, even with a protective order in place; CLI-13-5, 77 NRC 223 (2013)

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licensee's motion to quash a subpoena duces tecum because production of the requested file would compromise its employee concerns program by potentially subjecting information contained in the file to public disclosure as an official agency record under FOIA is denied; CLI-13-5, 77 NRC 223 (2013)

EMPLOYMENT

if an enforcement order blacklists a worker by name, under 10 C.F.R. 2.202(a)(3) he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 319 (2014)

ENDANGERED SPECIES

acting agency shall request information from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on whether any species that is listed or proposed to be listed may be present in the area of the action; LBP-12-11, 75 NRC 731 (2012)

acting agency submits its completed biological assessment to the appropriate Service and awaits its determination of concurrence or nonconcurrence, which under the Services' regulations is to be returned within 30 days; LBP-12-10, 75 NRC 633 (2012)

admissibility of contention that environmental assessment failed to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 401 (2015)

agencies are encouraged to incorporate consultation procedures on endangered/threatened species and essential fish habitat into their NEPA review; LBP-12-10, 75 NRC 633 (2012)

agencies are required to confer with the Fish and Wildlife Service on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat; LBP-13-9, 78 NRC 37 (2013)

biological assessment of listed species shall be completed before any contract for construction is entered into and before construction is begun with respect to such action; LBP-12-12, 75 NRC 742 (2012)

board rules in favor of NRC Staff on contention challenging adequacy of assessment of impacts on the eastern fox snake contained within the final environmental impact statement; LBP-14-7, 79 NRC 451 (2014)

claim that the draft environmental impact statement does not adequately assess the impacts to threatened and endangered species is rejected; LBP-13-9, 78 NRC 37 (2013)

clarification is provided in 50 C.F.R. 402.12 on the requirements with respect to biological assessments; LBP-12-11, 75 NRC 731 (2012)

consultation with appropriate agencies is needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected; LBP-12-10, 75 NRC 633 (2012)

consultation with U.S. Fish & Wildlife Service is legally mandated for any agency action that may affect listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)

content of the biological assessment is at the discretion of the federal agency; LBP-12-11, 75 NRC 731 (2012)

contention questioning whether the final supplemental environmental impact statement's impact analyses relevant to greater sage grouse, whooping crane, and black-footed ferret are sufficient is admissible; LBP-14-5, 79 NRC 377 (2014)

contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 377 (2014)

determination of possible effects on an endangered species is ultimately the acting agency's responsibility; LBP-12-10, 75 NRC 633 (2012)

federal agencies shall request information from the Secretary of the Interior whether any species listed or proposed to be listed may be present in the area of the proposed action; LBP-12-12, 75 NRC 742 (2012)

formal consultation includes preparation of a biological opinion by the Service, detailing the likely effects of the action on listed species or habitat as well as mitigation alternatives; LBP-12-10, 75 NRC 633 (2012)

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- if an agency determines that a particular action will have no effect on an endangered or threatened species, the U.S. Fish & Wildlife Service consultation requirements are not triggered; LBP-15-11, 81 NRC 401 (2015)
- if the acting agency concludes in the biological assessment that the action is not likely to affect listed habitats or species, and the Service concurs, the acting agency need not enter formal consultation; LBP-12-10, 75 NRC 633 (2012)
- if the acting agency makes a “likely to affect” determination in the biological assessment, it is required to enter into formal consultation with the appropriate Service; LBP-12-10, 75 NRC 633 (2012)
- if the Secretary of the Interior advises that listed species may be present, the agency shall conduct a biological assessment for the purpose of identifying any species that is likely to be affected by the action; LBP-12-12, 75 NRC 742 (2012)
- if the Service does not concur with the agency’s “not likely to affect” determination, it may request that the acting agency enter into formal consultation; LBP-12-10, 75 NRC 633 (2012)
- if the Services advise that listed species are present, the acting agency is to prepare a biological assessment to identify any species that is likely to be affected by such action; LBP-12-11, 75 NRC 731 (2012)
- it is unlawful for any person to harvest, possess, or sell river herring in the Commonwealth of Massachusetts or in waters under its jurisdiction; LBP-12-16, 76 NRC 44 (2012)
- “informal” consultation is an optional process that includes all discussions, correspondence, etc., between the U.S. Fish and Wildlife Service and the federal agency designed to assist the federal agency in determining whether formal consultation or a conference is required with the Service under section 402.13; LBP-15-11, 81 NRC 401 (2015)
- preparation of the biological assessment may be consolidated with interagency cooperation procedures required by other statutes, such as NEPA; LBP-12-11, 75 NRC 731 (2012)
- this is a Category 2 issue that requires site-specific analysis in the supplemental environmental impact statement; LBP-12-10, 75 NRC 633 (2012)
- to prepare a biological assessment, the acting agency must first request from the Services a list of endangered or threatened species or habitat that may be present in the area of the action, or provide to the Services its own list for their review; LBP-12-10, 75 NRC 633 (2012)
- untimely motion to reopen the proceeding and admit a new contention concerning licensee’s impacts on the roseate tern, a federally listed endangered species, is denied; LBP-12-11, 75 NRC 731 (2012)
- when an agency’s conclusions are different from the Fish and Wildlife Service’s regarding endangered species, the agency must clearly articulate its reasons for disagreement; LBP-13-9, 78 NRC 37 (2013)
- when engaging in informal consultation, an agency must provide its determination as to whether the proposed action will affect threatened and endangered species to U.S. Fish & Wildlife Service and request FWS concurrence; LBP-15-11, 81 NRC 401 (2015)
- where an acting agency is engaged in major construction activities, the acting agency is to evaluate, through preparation of a biological assessment, whether the action is likely to adversely affect species or habitat; LBP-12-10, 75 NRC 633 (2012)
- whether NRC Staff undertakes formal consultation with the Services in the event that they disagree with a finding by the NRC of “no effect” or “not likely adversely to affect” depends upon the NRC’s own regulations and its interpretation of its duty under the ESA to ensure that any action is not likely to jeopardize listed species or habitat; LBP-12-10, 75 NRC 633 (2012)
- whooping crane and black-footed ferret are listed as threatened or endangered under the Endangered Species Act; LBP-15-11, 81 NRC 401 (2015)
- ENDANGERED SPECIES ACT**
- agencies cannot unilaterally determine that an action will not jeopardize species listed under the act; LBP-12-10, 75 NRC 633 (2012)
- agency must ensure that any action that it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of critical habitat of such species; CLI-15-13, 81 NRC 555 (2015)
- Biological Opinion and its accompanying Incidental Take Statement issued by U.S. Fish and Wildlife Service were arbitrary and capricious because they were based in part on a conservation plan that was not enforceable under the Act; LBP-12-23, 76 NRC 445 (2012)

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- candidate species have no legal status and are accorded no protection under the act; LBP-12-10, 75 NRC 633 (2012)
- contention asserting that the NRC's environmental review of the license renewal application has not met the requirements of the act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)
- contention questioning whether an appropriate consultation was conducted pursuant to the Endangered Species Act and implementing regulations is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the ESA and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 37 (2013)
- each agency proposing to take an action that might be covered by the act is to review its actions at the earliest possible time to determine whether any listed species or critical habitat may be affected; LBP-12-10, 75 NRC 633 (2012)
- even if the National Marine Fisheries Service disagrees with NRC's no-effect determination, it may only request that NRC enter formal consultation, but NRC is not required to consent to the request; LBP-12-10, 75 NRC 633 (2012)
- federal agencies must consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any species that has been listed as threatened or endangered, or to destroy or adversely modify critical habitat; LBP-12-11, 75 NRC 731 (2012); LBP-12-12, 75 NRC 742 (2012)
- federal agency is required to consult if an action may affect listed species or designated critical habitat, even if the effects are expected to be beneficial; LBP-15-11, 81 NRC 401 (2015)
- federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under section 402.12 or as a result of informal consultation with the Service under section 402.13, the federal agency determines, with the written concurrence of the U.S. Fish and Wildlife Service Director, that the proposed action is not likely to adversely affect any listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)
- formal consultation follows only if a biological assessment shows that the action may affect listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)
- formal consultation under the act includes preparation of a biological opinion by the Service, detailing the likely effects of the action on listed species or habitat as well as mitigation alternatives; LBP-12-10, 75 NRC 633 (2012)
- if an agency determines that a particular action will have no effect on an endangered or threatened species, the consultation requirements are not triggered, and the finding of no effect obviates the need for formal consultation under the act; LBP-12-10, 75 NRC 633 (2012)
- if NRC engages in an informal consultation with the Fish and Wildlife Service and it is determined that the project will not adversely affect listed species or critical habitat, it need not engage in formal consultation; LBP-13-9, 78 NRC 37 (2013)
- in determining that a federal action is not likely to jeopardize species or modify habitat, the acting agency is to proceed in consultation with and with the assistance of the Secretary of Interior or Commerce; LBP-12-10, 75 NRC 633 (2012)
- "informal consultation" is any communication between the acting agency and one of the Services designed to assist the acting agency in determining whether formal consultation is required; LBP-12-10, 75 NRC 633 (2012)
- license renewal applicants must assess the impact of the proposed action on threatened or endangered species in accordance with the act as part of their environmental report; LBP-12-10, 75 NRC 633 (2012)
- neither formal nor informal consultation is required by the act if an agency determines that its proposed activity will not affect any listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)
- NRC does not have authority to rule on challenges to Fish and Wildlife's compliance with the Endangered Species Act; CLI-12-21, 76 NRC 491 (2012)
- NRC must ensure that any action that it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species; LBP-12-10, 75 NRC 633 (2012)

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NRC Staff, not the applicant, has the legal duty to engage in consultation under the act; LBP-12-12, 75 NRC 742 (2012)

only mandatory trigger for initiating formal consultation is if the acting agency itself determines that its action may affect listed species or critical habitat; LBP-12-10, 75 NRC 633 (2012)

only species listed as threatened or endangered under the Act are covered by the Act's formal consultation requirements; LBP-15-11, 81 NRC 401 (2015)

portions of a contention relevant to the completion of the Endangered Species Act § 7 consultation process and the adequacy of the NRC Staff's impact analyses relevant to the three named species meet the admissibility standards; LBP-13-9, 78 NRC 37 (2013)

satisfying the requirements of other statutes does not in itself relieve a federal agency of its obligations to comply with the procedures set forth in the ESA; LBP-12-10, 75 NRC 633 (2012)

section 7 applies only where threatened and endangered species or critical habitats are present and impacts on a species are expected as a result of the proposed project; LBP-13-9, 78 NRC 37 (2013)

there is no requirement enumerating the required contents of a draft environmental impact statement; LBP-12-12, 75 NRC 742 (2012)

U.S. Fish & Wildlife Service and National Marine Fisheries Service perform strictly an advisory function and the federal agency makes the ultimate decision as to whether its proposed action will satisfy the ESA requirements; LBP-12-10, 75 NRC 633 (2012)

when it enacted the ESA, Congress delegated broad administrative and interpretive power to the Secretary of the Interior; LBP-12-10, 75 NRC 633 (2012)

ENERGY
See Department of Energy; Renewable Energy Sources; Wind Energy

ENERGY EFFICIENCY
analysis and response to state's extensive comments to the draft supplemental environmental impact statement regarding state-specific energy conservation and efficiency as a replacement alternative fulfills NRC Staff's obligation to take a hard look at alternatives; LBP-13-13, 78 NRC 246 (2013)

costs and benefits of the energy-efficient building code are essential to determine whether the adoption of an energy-efficient building code should be included as an alternative; LBP-11-21, 74 NRC 115 (2011)

ENERGY REORGANIZATION ACT
action of the Commission shall be determined by a majority vote of the members present; CLI-12-17, 76 NRC 207 (2012)

basis for NRC authority to regulate the use of special nuclear material in facilities like nuclear power reactors is established; CLI-15-4, 81 NRC 221 (2015)

if there were any doubt over the intent of Congress not to require a safety finding on spent fuel disposal, it was laid to rest by enactment of the ERA; CLI-15-4, 81 NRC 221 (2015)

ENFORCEMENT
administrative subpoena duces tecum is judicially enforceable where the inquiry is within the authority of the agency, the demand for production is neither too indefinite nor unreasonably broad nor burdensome, and the information sought is reasonably relevant to the authorized inquiry; CLI-13-5, 77 NRC 223 (2013)

Biological Opinion and its accompanying Incidental Take Statement issued by U.S. Fish and Wildlife Service were arbitrary and capricious because they were based in part on a conservation plan that was not enforceable under the Endangered Species Act; LBP-12-23, 76 NRC 445 (2012)

compliance with orders issued as part of NRC's ongoing oversight program are enforcement issues that are not within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

for agency decisions such as a combined license that are based on an environmental impact statement, a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation; LBP-12-23, 76 NRC 445 (2012)

monitoring and enforcement program must be adopted where applicable for any mitigation; LBP-15-16, 81 NRC 618 (2015)

NEPA does not impose a substantive obligation for a reviewing agency to require or enforce mitigation measures discussed in an environment assessment; LBP-14-6, 79 NRC 404 (2014)

not all license commitments must be converted into license conditions in order to be enforceable; LBP-14-3, 79 NRC 267 (2014)

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petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of the NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 149 (2011)

See also Request for Action

ENFORCEMENT ACTIONS

applicants may prevail against NRC Staff if they prove that a particular contested assessment of a deficiency was inappropriate or unjustified; LBP-14-2, 79 NRC 131 (2014)

assertion that the section 2.206 process does not provide a viable forum for relief is rejected; CLI-15-14, 81 NRC 729 (2015)

board determined that confirmatory action letter was a de facto license amendment, which allows for public intervention; LBP-14-1, 79 NRC 39 (2014)

board refused to let a matter turn on attempts by NRC Staff and applicant to label a controversial matter in a way that would avoid adjudication; LBP-14-1, 79 NRC 39 (2014)

Commission denies portions of a hearing request but refers petitioner's underlying concerns to the Executive Director for Operations for consideration as an enforcement action; CLI-15-14, 81 NRC 729 (2015)

concerns about how some aspect of a settlement agreement is being implemented or enforced can be brought to the attention of the Commission, which retains supervisory authority over the parties' agreement; LBP-15-21, 82 NRC 1 (2015)

confirmatory action letter is an enforcement process that does not allow for public intervention; LBP-14-1, 79 NRC 39 (2014)

current licensing basis includes licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports; LBP-11-21, 74 NRC 115 (2011)

director of NRC office with responsibility for the subject matter shall either institute the requested proceeding or advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request and the reason for the decision; DD-15-7, 82 NRC 257 (2015)

dissatisfaction with regulatory requirements of 10 C.F.R. 50.75 are outside an enforcement petition; DD-11-4, 73 NRC 713 (2011)

if NRC Staff makes a finding of no reasonable assurance, NRC reserves the right to take steps to ensure a licensee's adequate accumulation of decommissioning funds; DD-11-4, 73 NRC 713 (2011)

if petitioner has a credible basis to question the adequacy of licensee's compliance with 10 C.F.R. 50.54(q)(3), it may petition for enforcement action; LBP-15-4, 81 NRC 156 (2015)

in any enforcement action, especially one that has been settled to NRC's satisfaction without creating a formal record, NRC's choice of sanctions is quintessentially a matter of the Commission's sound discretion; LBP-14-4, 79 NRC 319 (2014)

licensee is banned from engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations and must complete a formal radiation safety officer training course; LBP-15-21, 82 NRC 1 (2015)

meaning of "other person adversely affected by the order" in 10 C.F.R. 2.202(a)(3) is discussed; LBP-14-4, 79 NRC 319 (2014)

NRC can issue an order suspending an individual from working anywhere in the nuclear industry who fails to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC can order an individual to pay civil penalties of up to \$100,000 for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC can take criminal enforcement action against an individual for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

oversight activities at times involve enforcement actions, including orders and civil penalties, to which a hearing right or opportunity attaches; CLI-15-5, 81 NRC 329 (2015)

pending tax litigation would not have a significant implication for public health and safety and, to the extent the claim is viable, it would be better handled through a petition for enforcement action; LBP-15-15, 81 NRC 598 (2015)

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petitioners can raise compliance issues only under 10 C.F.R. 2.206, which would allow them to petition NRC to take an enforcement action; LBP-15-5, 81 NRC 249 (2015)

public interest does not require additional adjudication of an enforcement matter and, given that all matters required to be adjudicated as part of this proceeding have been resolved, the proceeding is dismissed; LBP-11-3, 73 NRC 81 (2011)

request for action against reactor facilities that have projected shortfalls in their decommissioning trust funds is denied in part and granted in part; DD-11-7, 74 NRC 787 (2011)

request for cold shutdown because of inoperability of main steam safety relief valves is denied but petitioner's concern about the SRVs have been resolved; DD-11-6, 74 NRC 420 (2011)

request for enforcement action against U.S. Army for post-license-expiration possession and release into the environment of depleted uranium from spent spotting rounds is granted in part and denied in part; DD-11-5, 74 NRC 399 (2011)

request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise technical specifications for spent fuel pool instrumentation is denied; DD-13-3, 78 NRC 571 (2013)

request that NRC issue a demand for information from licensee relating to adequacy of financial assurances for decommissioning is denied; DD-11-4, 73 NRC 713 (2011)

section 2.206 provides a process for stakeholders to advance concerns and obtain full or partial relief, or written reasons why the requested relief is not warranted; CLI-15-20, 82 NRC 211 (2015); LBP-15-4, 81 NRC 156 (2015)

upon review of a settlement agreement, the board is satisfied that its terms reflect a fair and reasonable settlement in keeping with the objectives of the NRC's enforcement policy, and satisfy the requirements of 10 C.F.R. 2.338(g) and (h); LBP-11-3, 73 NRC 81 (2011)

when the police power of the federal government is deployed to order a person to perform certain actions, under pain of losing his or her livelihood, liberty, and/or property, then that person has a right to challenge the order, and have a hearing to determine what the order means and whether it comports with the law; LBP-14-4, 79 NRC 319 (2014)

ENFORCEMENT ORDERS

allowing licensee to propose its own strategies for coming into compliance with an enforcement order rather than mandating a certain set of plant alterations does not change the fundamental character of the order and transform it into an approval; LBP-12-15, 76 NRC 14 (2012)

as de facto targets of an enforcement order, licensee employees have automatic standing if they are adversely affected by an enforcement order; LBP-14-4, 79 NRC 319 (2014)

Commission did not intend to relieve third-party individuals who are not the subject of an enforcement order, but who nonetheless seek a hearing on the order, from satisfying the requirements for a petition for intervention in section 2.309; LBP-14-4, 79 NRC 319 (2014)

contents of licensee's behavioral observation program cannot substitute for the duty of NRC Staff to be reasonably clear as to what is required of workers who are trying to comply with their legal obligation to report on their co-workers; LBP-14-4, 79 NRC 319 (2014)

demand for a hearing by the subject of an enforcement order is automatic without regard to satisfying section 2.309; LBP-14-4, 79 NRC 319 (2014)

if an order blacklists a worker by name, under 10 C.F.R. 2.202(a)(3) he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 319 (2014)

immediately effective enforcement orders must be based on preliminary investigation or other emerging information that is reasonably reliable and indicates the need for immediate action; LBP-11-8, 73 NRC 349 (2011)

licensee and any other person adversely affected by an enforcement order have equal rights to a hearing; LBP-14-4, 79 NRC 319 (2014)

licensee is not required to list an enforcement order and its compliance with the order's terms in the environmental report supporting its operating license renewal application; LBP-12-15, 76 NRC 14 (2012)

licensee or any other person adversely affected by the order must be informed of his or her right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)

SUBJECT INDEX

no one can challenge an enforcement order as long as the order, in any way, improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

NRC requires that workers report any observed “illegal, unusual, or aberrant” behavior by their co-workers, words not appearing in 10 C.F.R. 73.56(f); LBP-14-4, 79 NRC 319 (2014)

NRC’s enforcement order does not state that any reportable illegal, unusual, or aberrant behavior must have a nexus to public health and safety or the common defense and security in order to be reportable; LBP-14-4, 79 NRC 319 (2014)

one demanding a hearing on a challenge to an enforcement order need not comply with the requirements of 10 C.F.R. 2.309(f)(1); LBP-13-3, 77 NRC 82 (2013); LBP-14-4, 79 NRC 319 (2014)

period allotted for the filing of challenges to enforcement orders that impose some sanction is 20 days; LBP-13-3, 77 NRC 82 (2013)

person adversely affected by an enforcement order has a legal right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)

petition challenging an immediately effective enforcement order asking that licensee to take certain physical security measures in addition to those already required by NRC regulations, to protect the spent fuel it planned to store at its power plant site was rejected; LBP-12-14, 76 NRC 1 (2012)

reactors subject to the section 2.202 confirmatory orders would not have to shut down if the orders were not sustained; CLI-13-2, 77 NRC 39 (2013)

Staff enforcement orders are essentially directives to licensee to achieve compliance with the order’s requirements by a certain date; LBP-12-15, 76 NRC 14 (2012)

standard that must be met before NRC Staff can issue an immediately effective enforcement order is one of adequate evidence, which is akin to the test for probable cause; LBP-11-8, 73 NRC 349 (2011)

target of an enforcement order has the right to demand and receive, not merely request, a hearing; LBP-14-11, 80 NRC 125 (2014)

third-party requests for a hearing on an enforcement order have been treated as a petition for intervention under the Commission’s generally applicable rules; LBP-14-4, 79 NRC 319 (2014)

to the extent petitioner seeks to have applicant implement safety measures in addition to those ordered, its recourse is to petition for rulemaking or to petition for license modification, suspension, or revocation; LBP-12-14, 76 NRC 1 (2012)

where a licensed and operating plant has been found unsafe, where the Commission has ordered some remedial amendment, and where licensee has accepted that amendment, there is no public interest in the proceeding; LBP-14-4, 79 NRC 319 (2014)

where an enforcement order imposes measures to enhance safety, a petitioner cannot obtain a hearing to litigate whether additional safety measures should be imposed; CLI-13-2, 77 NRC 39 (2013)

whether licensee or other person consents to an enforcement order, other persons adversely affected by an order issued under section 2.202 will be offered an opportunity for a hearing consistent with current practice and the authority of the Commission to define the scope of the proceeding on an enforcement order; LBP-14-4, 79 NRC 319 (2014)

within 30 days of the Commission’s decision upholding the board majority decision setting aside the NRC Staff’s immediately effective enforcement order, petitioner applied for an award of over \$250,000 in attorneys’ fees; LBP-11-8, 73 NRC 349 (2011)

ENFORCEMENT POLICY

NRC’s policy of imposing graduated civil penalties takes into account the gravity of the violation as the primary consideration and the ability to pay as a secondary consideration; DD-15-3, 81 NRC 713 (2015)

ENFORCEMENT PROCEEDINGS

as soon as practicable after issuance of the initial scheduling order, parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the proceeding or any portion thereof, to make or arrange for the disclosures required by section 2.704, and to develop a proposed discovery plan; LBP-14-11, 80 NRC 125 (2014)

before any hearing is granted on an order issued pursuant to 10 C.F.R. 2.202, a threshold question, intertwined with both standing and contention admissibility issues, is whether the hearing requests are within the scope of the proceeding; CLI-13-2, 77 NRC 39 (2013)

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board conducted an initial scheduling conference to discuss development of an initial scheduling order that would help achieve just resolution of a dispute as efficiently and expeditiously as possible; LBP-14-11, 80 NRC 125 (2014)

both standing (redressability) and contention admissibility (scope) in the context of an NRC enforcement order are addressed; LBP-14-4, 79 NRC 319 (2014)

challenges to NRC enforcement orders are limited to whether the order should be sustained; LBP-14-4, 79 NRC 319 (2014)

concern that involves safety will not support standing in an enforcement proceeding if petitioner seeks merely a better settlement, i.e., one that promises greater improvements to safety than the settlement that was actually negotiated; LBP-14-4, 79 NRC 319 (2014)

discovery may not begin until 10 days after petitioner and the Director have held the mandatory consultation; LBP-14-11, 80 NRC 125 (2014)

enforcement proceedings are typically conducted pursuant to the procedures in Subpart G; LBP-13-3, 77 NRC 82 (2013)

for an enforcement order, the threshold question, related to both standing and admissibility of contentions, is whether the hearing request is within the scope of the proceeding as outlined in the order; LBP-14-4, 79 NRC 319 (2014)

hearing on a confirmatory order is limited solely to whether, on the basis of matters set forth in the order, the order should be sustained; LBP-14-4, 79 NRC 319 (2014)

if petitioner could avoid the Commission's limitation on the scope of an enforcement order simply by characterizing its petition as opposing the order unless additional measures are granted, the Commission would never be able to limit its proceedings; LBP-12-14, 76 NRC 1 (2012)

in cases involving license suspension or revocation, where the Atomic Energy Commission's staff is cast in an accusatory role, the precautions prescribed by the Administrative Procedure Act should be carefully observed; LBP-11-8, 73 NRC 349 (2011)

initial scheduling orders set forth issues or matters in controversy to be determined in the proceeding; LBP-14-11, 80 NRC 125 (2014)

issue to be determined at hearing is whether the order should be sustained or denied, not whether the order should be enhanced; CLI-13-2, 77 NRC 39 (2013)

labor disputes are not within the scope of enforcement proceedings; LBP-14-4, 79 NRC 319 (2014)

NRC has authority to define the scope of its proceedings, which, in enforcement proceedings, is to permit challenges solely on whether an order should be sustained; LBP-12-14, 76 NRC 1 (2012)

NRC has never adopted a "clear and convincing" standard as the evidentiary yardstick in its enforcement proceedings, nor is it required to do so under the Atomic Energy Act or the Administrative Procedure Act; LBP-14-2, 79 NRC 131 (2014)

NRC Staff counsel may file written interrogatories that the target of an enforcement order must answer; LBP-14-11, 80 NRC 125 (2014)

NRC Staff counsel may require the target of an enforcement order to provide the Director with a copy of any designated relevant document that is within his possession, custody, or control; LBP-14-11, 80 NRC 125 (2014)

NRC Staff counsel may take the deposition of the target of an enforcement order or any other person; LBP-14-11, 80 NRC 125 (2014)

NRC Staff's position in an enforcement proceeding is not itself dispositive of whether an enforcement agreement should be approved, but regulatory instruction to accord that position due weight is dispositive proof of the importance of Staff's views; LBP-15-21, 82 NRC 1 (2015)

parties who prevail against the government in certain types of agency proceedings are allowed to recover attorneys' fees and other expenses incurred in connection with the proceeding unless the government's position was substantially justified, or other special circumstances render an award unjust; LBP-11-8, 73 NRC 349 (2011)

petition seeking additional enforcement measures beyond those prescribed by the order was properly denied; LBP-12-14, 76 NRC 1 (2012)

petitioner argued against an enforcement order unless it were modified to clarify various points, including the costs of state and local law enforcement resources that would be needed to implement the order, but the board based its analysis on whether petitioner had shown that the requirements, as stated in the order, would make the facility less safe; CLI-13-2, 77 NRC 39 (2013)

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- petitioner cannot create a hearing opportunity merely by claiming that a facility is improperly operating outside its licensing basis, but such claims are appropriately raised in a petition to initiate an enforcement proceeding; LBP-15-27, 82 NRC 184 (2015)
- petitioner does not meet the redressability requirement for standing, because vacating the confirmatory orders would not ameliorate the injury of which Pilgrim Watch complains; CLI-13-2, 77 NRC 39 (2013)
- petitioner has standing when seeking to intervene to ensure that an enforcement order will be upheld; CLI-13-2, 77 NRC 39 (2013)
- petitioners' argument opposing an order that imposed additional security measures at a spent fuel storage facility, because it created a false sense of security was rejected because petitioners did not explain how they would be better off without the measures in the order; CLI-13-2, 77 NRC 39 (2013)
- proceedings must be conducted under the procedures of Subpart G unless all parties agree otherwise; LBP-14-11, 80 NRC 125 (2014)
- record before the board falls far short of rebutting the presumption that 10 C.F.R. 2.206 is a meaningful avenue for seeking administrative relief; CLI-12-20, 76 NRC 437 (2012)
- relevant legal standards when evaluating a third-party petition for hearing on a confirmatory order is section 2.309(d) and (f); LBP-14-4, 79 NRC 319 (2014)
- scope of a section 2.202 proceeding is limited to the narrow issues of whether the facts stated in the order are true and whether the remedy selected is supported by those facts; CLI-13-2, 77 NRC 39 (2013)
- scope of discovery under Subpart G covers any matter that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party; LBP-14-11, 80 NRC 125 (2014)
- scope of mandatory disclosures that parties must make under Subpart G is defined by the disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 125 (2014)
- settlement is encouraged, but the fact that a possible settlement is being negotiated does not change any of the deadlines set forth in the initial scheduling order; LBP-14-11, 80 NRC 125 (2014)
- settlements may become illusory if licensees consent to confirmatory orders and are nonetheless subjected to formal proceedings, possibly leading to different or more severe enforcement actions; LBP-14-4, 79 NRC 319 (2014)
- standing to challenge a confirmatory order exists only when a petitioner credibly alleges that a settlement somehow actually reduces safety; LBP-14-4, 79 NRC 319 (2014)
- target of an enforcement order may require NRC Staff to attend a prehearing meeting where he can require that Staff member to answer questions orally under oath; LBP-14-11, 80 NRC 134 (2014); LBP-14-11, 80 NRC 125 (2014)
- target of an enforcement order may serve interrogatories on NRC Staff, must show that answers to the interrogatories are necessary to a proper decision in the proceeding, and may ask the board to direct NRC Staff to answer those interrogatories; LBP-14-11, 80 NRC 125 (2014)
- target of an enforcement order must be provided a copy of all NRC Staff documents that are relevant to disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 125 (2014)
- that the corrective measures outlined in a confirmatory order do not improve petitioner's personal situation does not provide grounds to rescind the confirmatory order; CLI-13-2, 77 NRC 39 (2013)
- too freely allowing third parties to contest enforcement settlements at hearings would undercut the NRC's policy favoring enforcement settlements; LBP-14-4, 79 NRC 319 (2014)
- whether and to what extent measures a state sought were needed to make the facility safer was essentially irrelevant because those additional measures were outside the scope of the enforcement order; CLI-13-2, 77 NRC 39 (2013)
- within 45 days of the initial scheduling order, target of the enforcement order must provide certain information and documents to the NRC enforcement director; LBP-14-11, 80 NRC 125 (2014)
- within certain constraints, target of an enforcement order may pursue discovery against NRC Staff; LBP-14-11, 80 NRC 125 (2014)
- ENGINEERED SAFETY FEATURES**
- high temperature in the engineered safety feature switchgear rooms is discussed; DD-14-5, 80 NRC 205 (2014)

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- structural limits on the block wall between the engineered safety feature switchgear rooms is discussed; DD-14-5, 80 NRC 205 (2014)
- ENVIRONMENTAL ANALYSIS
- agencies are required to use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in decisionmaking that may impact the environment; CLI-12-9, 75 NRC 421 (2012)
- agency conducting a NEPA analysis must examine both the probability of a given harm occurring and the consequences of that harm if it does occur; CLI-15-6, 81 NRC 340 (2015)
- although NEPA does not require an agency preparing an environmental impact statement to respond to EPA concerns, an agency's failure even to address them in the EIS at the very least brings into question the sufficiency of the agency's analysis; LBP-14-9, 80 NRC 15 (2014)
- challenge to NRC Staff's environmental analysis, which may come in the form of a categorical exclusion, may be filed as a timely motion to add a new contention once that analysis is complete; LBP-15-24, 82 NRC 68 (2015)
- commencement of construction is prohibited prior to a NEPA determination; LBP-15-16, 81 NRC 618 (2015)
- Commission declined to conduct a generic NEPA analysis on the effects of Fukushima-related events; CLI-12-7, 75 NRC 379 (2012)
- compliance with the Clean Water Act does not negate the requirement for NRC to weigh all environmental effects of a proposed action; LBP-12-16, 76 NRC 44 (2012)
- discussion of any environmental impact of spent fuel storage during the period following the term of the reactor operating license in any environmental impact statement, environmental assessment, environmental report, or other analysis prepared in connection with enumerated power reactor and dry cask licenses is excluded; CLI-14-8, 80 NRC 71 (2014)
- discussion of steps that can be taken to mitigate adverse environmental consequences plays an important role in the environmental analysis under NEPA; LBP-12-18, 76 NRC 127 (2012)
- environmental assessment cannot import previous environmental analyses without considering subsequent developments at the site and to hold otherwise would render meaningless NEPA's requirement to supplement an environmental impact statement or environmental assessment; CLI-15-25, 82 NRC 389 (2015)
- environmental impacts will be considered irrespective of whether a certification or license from the appropriate authority has been obtained; LBP-15-16, 81 NRC 618 (2015)
- environmental reports need only discuss reasonably foreseeable environmental impacts of a proposed action; LBP-12-7, 75 NRC 503 (2012)
- heated debate would not have occurred unless the label attached to the actions made a difference to the content, scope, and/or depth of environmental analysis; LBP-14-9, 80 NRC 15 (2014)
- if the NRC Staff safety review reveals any new and significant information relating to the environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 404 (2014)
- license transfer applications need not include an environmental analysis under NEPA; CLI-15-8, 81 NRC 500 (2015)
- NEPA does not require NRC Staff to analyze every conceivable aspect of the proposed project; LBP-15-16, 81 NRC 618 (2015)
- NEPA does not require NRC to use the absolutely best scientific methodology available; LBP-13-4, 77 NRC 107 (2013)
- NEPA imposes procedural obligations on federal agencies proposing to take actions significantly affecting the quality of the human environment; LBP-11-39, 74 NRC 862 (2011)
- non-NEPA document, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 401 (2015)
- non-NRC permits are interdependent parts of applicant's proposed action and thus are connected actions; LBP-15-16, 81 NRC 618 (2015)
- NRC limits the scope of environmental analysis of preconstruction activities to activities falling within the scope of its regulatory authority; CLI-12-9, 75 NRC 421 (2012)

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only if the harm in question is so remote and speculative as to reduce the effective probability of its occurrence to zero may the agency dispense with the consequences portion of its EA; LBP-13-13, 78 NRC 246 (2013)

only those NRC-regulated facilities located within the Ninth Circuit's jurisdictional boundaries are required to conduct environmental analyses of possible terrorist acts; LBP-14-6, 79 NRC 404 (2014)

psychological fears or stigma effects are not cognizable NEPA claims; CLI-12-5, 75 NRC 301 (2012)

requests for a generic NEPA analysis were premature where the NRC evaluation of the Fukushima Dai-ichi events was still ongoing; LBP-15-24, 82 NRC 68 (2015)

restricted environmental analysis that fails to consider cumulative impacts would impermissibly subject the decisionmaking process contemplated by NEPA to the tyranny of small decisions; LBP-14-6, 79 NRC 404 (2014)

section 51.92(a)(2) does not apply to the question whether the environmental assessment adequately describes the current environment, but rather applies when considering whether to supplement an environmental analysis for the period between issuance of the final document and before the agency has taken the proposed action; CLI-15-25, 82 NRC 389 (2015)

shared transmission corridor is an offsite transmission line excluded from environmental impact analysis; LBP-15-5, 81 NRC 249 (2015)

to ensure that NEPA's broad national commitment to protecting and promoting environmental quality is infused in the actions of the federal government, the Act establishes certain action-forcing procedures on each federal agency; LBP-13-4, 77 NRC 107 (2013)

whether the NEPA analysis is generic or site-by-site, it must be thorough and comprehensive; LBP-12-18, 76 NRC 127 (2012)

See also Cumulative Impacts Analysis

ENVIRONMENTAL ASSESSMENT

admissibility of contention that EA fails to adequately describe and analyze aquifer restoration goals in light of new standards for determining alternative control limits is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that EA fails to adequately describe and analyze impacts of maintaining post-operational wellfields as long-term hazardous waste facilities is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that EA fails to adequately describe and analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 401 (2015)

admissibility of contention that EA fails to analyze impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 401 (2015)

admissibility of contention that EA fails to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 401 (2015)

admissibility of contention that EA fails to describe and analyze the environmental impacts of new porosity and permeability in the aquifer caused by mining activity is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that EA violates the National Environmental Policy Act in its failure to analyze groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 401 (2015)

admissibility of contention that environmental documents and associated monitoring values and restoration goals rely on baseline data calculations that are inadequate and unacceptable is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that environmental documents lack an adequate description of financial assurances for payment of the costs of restoration and long-term monitoring of up to 30 years is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that final EA fails to adequately analyze cumulative impacts is decided; LBP-15-11, 81 NRC 401 (2015)

admissibility of contention that final EA fails to adequately evaluate adverse impacts on public health and safety is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that final EA fails to conduct the required hard look at impacts of the proposed mine associated with restoration standards and difficulty and cost in achieving them and the

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- use of the alternative standards permitted under the proposed rules is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that final EA fails to satisfy NRC's requirement for an environmental impact statement when there are unresolved conflicts concerning reasonable alternatives is decided; LBP-15-15, 81 NRC 598 (2015)
- agencies can, consistent with NEPA regulations, incorporate by reference analyses and information from existing documents into an EA or environmental impact statement, provided the material has been appropriately cited and described; LBP-15-11, 81 NRC 401 (2015)
- agency did not need to assess site-specific impacts of continuing to store the spent fuel in either an onsite or offsite storage facility in new reactor licensing environmental impact statements or environmental assessments beyond the expiration dates of reactor licenses; LBP-14-16, 80 NRC 183 (2014)
- agency's decision to issue a finding of no significant impact rather than prepare an environmental impact statement was arbitrary because the agency had obligated itself contractually to issue a FONSI before it conducted an environmental assessment; LBP-14-6, 79 NRC 404 (2014)
- allegations of inadequacies and omissions in NRC Staff's EA satisfy the requirement to provide a specific statement of the issue of law or fact to be raised; LBP-15-13, 81 NRC 456 (2015)
- alternatively to preparing an environmental impact statement, NRC can conduct an environmental assessment and make a finding of no significant impact; LBP-13-13, 78 NRC 246 (2013)
- categorical exclusion from the NEPA requirement to prepare an EA or environmental impact statement for the issuance of import licenses involving low-level radioactive waste is provided; CLI-11-3, 73 NRC 613 (2011)
- considering the reasonable alternatives analysis, it is only in the depth of the consideration and in the level of detail provided in the corresponding environmental documents that an EA and an environmental impact statement will differ; LBP-15-11, 81 NRC 401 (2015)
- contention alleging that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 456 (2015)
- contention challenging the adequacy/propriety of a Staff determination to prepare an EA in lieu of a supplemental EIS would need to await the issuance of the draft EA; LBP-13-6, 77 NRC 253 (2013)
- contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the EA, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 598 (2015)
- contention that draft environmental assessment fails to adequately address potential impacts of the reasonably foreseeable expansion of an independent spent fuel storage installation on cultural and historic resources is admissible; LBP-14-6, 79 NRC 404 (2014)
- contention that EA fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 401 (2015)
- contention that final EA fails to adequately analyze all reasonable alternatives is inadmissible; LBP-15-11, 81 NRC 401 (2015)
- contention that final EA fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)
- contention that final EA fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-15-11, 81 NRC 401 (2015)
- Corps of Engineers improperly constrained NEPA analysis; LBP-14-6, 79 NRC 404 (2014)
- deference can be given to a state permit's findings as to the acceptability of environmental impacts; LBP-15-11, 81 NRC 401 (2015)
- EA and associated finding of no significant impact must contain sufficient discussion of environmental impacts and the reasons why the proposed action will not have a significant effect on the quality of the human environment; LBP-15-13, 81 NRC 456 (2015)
- environmental assessment can be the basis of a finding under section 51.32 that the proposed agency action will not have a significant effect upon the environment such that a full-blown EIS (or supplemental EIS) is not required; LBP-13-6, 77 NRC 253 (2013)

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failure of decision underlying the Clean Water Act § 404 permit to analyze the cumulative impacts reasonably foreseeable from the expected addition of a second generation unit at the plant is one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)

failure to have made any effort to evaluate the cumulative impact of the ISFSI expansion on archaeological sites has been held to be one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)

for operating license renewal, if NRC Staff has not previously considered severe accident mitigation alternatives for applicant's plant in an environmental impact statement or related supplement or in an EA, applicant's environmental report must contain a consideration of alternatives to mitigate severe accidents; LBP-11-18, 74 NRC 29 (2011); LBP-11-21, 74 NRC 115 (2011)

given that so many more environmental assessments are prepared than environmental impact statements, adequate consideration of cumulative effects requires that EAs address them fully; LBP-14-6, 79 NRC 404 (2014)

if NRC determines that changes to its current environmental assessment rules are warranted, it can revisit whether an individual licensing review or adjudication should be held in abeyance pending the outcome of a relevant rulemaking; CLI-14-7, 80 NRC 1 (2014)

if the board's findings after the evidentiary hearing affect NRC Staff's conclusions in the EA, then those conclusions would have to be revisited; CLI-15-17, 82 NRC 33 (2015)

importing analysis from a previously completed EA while disregarding intervening events would render meaningless NEPA's requirement to supplement an environmental impact statement or EA; LBP-15-13, 81 NRC 456 (2015)

in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)

increase in noise levels is a significant impact because the agency's environmental assessment made no firm commitment to any noise mitigation measures; LBP-12-23, 76 NRC 445 (2012)

issuance of an EA is appropriate where NRC Staff determines that the proposed project will result in no significant impacts; LBP-15-11, 81 NRC 401 (2015)

it is appropriate for NRC Staff to give substantial weight to state agency's decision that issuing the NPDES permit would be environmentally acceptable; LBP-15-11, 81 NRC 401 (2015)

it would be incongruous with NEPA's approach to environmental protection, and with NEPA's manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval; LBP-15-13, 81 NRC 456 (2015)

level of analysis required by NEPA in an environmental impact statement is more rigorous than is required when the agency has determined on the basis of its environmental assessment that the project as proposed will not result in significant environmental impact; LBP-14-7, 79 NRC 451 (2014)

NEPA does not impose a substantive obligation for a reviewing agency to require or enforce mitigation measures discussed in an EA; LBP-14-6, 79 NRC 404 (2014)

NEPA does not require circulation of a draft EA in all cases; CLI-15-17, 82 NRC 33 (2015)

NEPA requires a hard look at the environmental effects of the planned action, not a circular restatement of NRC Staff's own conclusions; LBP-15-11, 81 NRC 401 (2015)

NRC Staff cannot import previous environmental analyses without considering subsequent developments at the site and to hold otherwise would render meaningless NEPA's requirement to supplement an environmental impact statement or environmental assessment; CLI-15-25, 82 NRC 389 (2015)

NRC Staff must describe the potential environmental impact of a proposed action and discuss any reasonable alternatives; LBP-15-11, 81 NRC 401 (2015)

NRC Staff's issuance of an environmental assessment under NEPA does not necessarily moot contentions challenging an applicant's environmental report; LBP-14-6, 79 NRC 404 (2014)

petitioner may amend NEPA contentions or file new NEPA contentions if there are data or conclusions in the NRC draft or final environmental impact statement, EA, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-12-12, 75 NRC 742 (2012)

petitioner must provide sufficient information to show that a genuine dispute exists with the environmental assessment on a material issue of law or fact; CLI-15-25, 82 NRC 389 (2015)

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petitioner's issue of NRC Staff's compliance with its NEPA obligation to undertake a full evaluation of the environmental impacts associated with a proposed federal action is within the scope of an operating license amendment proceeding and material to the findings NRC must make; LBP-15-13, 81 NRC 456 (2015)

prior environmental analyses need not be revisited in the environmental assessment; CLI-15-25, 82 NRC 389 (2015)

public comment will be afforded in advance on any generic waste confidence document that NRC issues on remand, be it a fresh rule, a policy statement, an environmental assessment, or an environmental impact statement; CLI-12-16, 76 NRC 63 (2012)

question whether the environmental assessment is sufficient to satisfy NRC Staff's NEPA requirements must await consideration at a full evidentiary hearing; LBP-15-13, 81 NRC 456 (2015)

reasonably foreseeable actions must be the subject of a cumulative impacts analysis; LBP-14-6, 79 NRC 404 (2014)

reliance on a state permit, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 401 (2015)

section 51.92(a)(2) does not apply to the question whether the environmental assessment adequately describes the current environment, but rather applies when considering whether to supplement an environmental analysis for the period between issuance of the final document and before the agency has taken the proposed action; CLI-15-25, 82 NRC 389 (2015)

standard for preparing a supplemental EA is the same as for preparing a supplemental environmental impact statement; LBP-15-13, 81 NRC 456 (2015)

when an environmental assessment is appropriate, it need only include a brief discussion of environmental impacts of the proposed action; LBP-14-6, 79 NRC 404 (2014)

where an EA resulted in a finding of no significant impact, a full environmental impact statement is unnecessary; CLI-15-17, 82 NRC 33 (2015)

ENVIRONMENTAL EFFECTS

actions that the Commission, by rule or regulation, has declared to be a categorical exclusion do not individually or cumulatively have a significant effect on the human environment; LBP-14-6, 79 NRC 404 (2014)

adverse environmental effects that must be assessed under NEPA include aesthetic, historic, cultural, economic, social, or health effects; LBP-15-16, 81 NRC 618 (2015)

any action concerning applicant's proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives may be grounds for denial of a license; LBP-14-9, 80 NRC 15 (2014)

approval of permits to a nuclear power plant was conditioned on the rerouting of two offsite transmission lines to avoid environmental impacts on marshlands, tree species, and migratory waterfowl; LBP-14-9, 80 NRC 15 (2014)

as an alternative ground for excluding a NEPA terrorism contention, NRC Staff's determination in the generic environmental impact statement that the environmental impacts of a terrorist attack were bounded by those resulting from internally initiated events is sufficient to address the environmental impacts of terrorism; CLI-11-11, 74 NRC 427 (2011)

assertion that final environmental impact statement inadequately addresses, and inappropriately characterizes as small, the plant's dewatering-associated impacts to wetlands, floodplains, special aquatic sites, and other waters is litigated; LBP-13-4, 77 NRC 107 (2013)

because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petition and motions itself; CLI-14-9, 80 NRC 147 (2014)

by 1974, NRC had adopted an aggressive approach to its environmental responsibilities in the context of transmission line siting; LBP-14-9, 80 NRC 15 (2014)

Category 2 issues focus on severe accident mitigation, to further reduce severe accident risk (probability or consequences); CLI-12-19, 76 NRC 377 (2012)

confinement of aquifers is material to the environmental impacts of the licensing action; CLI-14-2, 79 NRC 11 (2014)

contention alleging a material deficiency must link the claimed deficiency to a public health and safety or an environmental impact; LBP-15-1, 81 NRC 15 (2015)

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- cumulative impact is the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions; LBP-13-4, 77 NRC 107 (2013); LBP-15-16, 81 NRC 618 (2015)
- cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-11-7, 73 NRC 254 (2011); LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013)
- DEIS, like the environmental report, must cover all significant environmental impacts associated with the combined license, including offsite environmental impacts; LBP-11-1, 73 NRC 19 (2011)
- direct effects are caused by the action and occur at the same time and place; LBP-13-4, 77 NRC 107 (2013)
- direct impacts are those caused by the action that is the subject of the environmental impact statement, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-11-7, 73 NRC 254 (2011); LBP-11-26, 74 NRC 499 (2011)
- draft environmental impact statement indicates what other interests and considerations of federal policy, including factors not related to environmental quality, if applicable, are relevant to the consideration of environmental effects of the proposed action; LBP-14-6, 79 NRC 404 (2014)
- effects and impacts as used in 10 C.F.R. 51.14(b) are synonymous with terms in 40 C.F.R. 1508.8; LBP-13-4, 77 NRC 107 (2013)
- “effects” include both direct effects, which are caused by the action and occur at the same time and place, and indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-14-9, 80 NRC 15 (2014)
- “effects” include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative; LBP-14-9, 80 NRC 15 (2014)
- Fukushima accident does not provide a seriously different picture of the environmental impact of a proposed uranium enrichment facility from what was previously envisioned; LBP-11-26, 74 NRC 499 (2011)
- if NRC Staff review reveals any new and significant information relating to environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 404 (2014)
- if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-7, 73 NRC 254 (2011); LBP-13-4, 77 NRC 107 (2013)
- if the cost of obtaining information is exorbitant, NRC must still include in the environmental impact statement a statement that the information is unavailable, the relevance of the unavailable information, a summary of existing credible scientific evidence, and the agency’s evaluation of the impacts that might be caused; LBP-14-9, 80 NRC 15 (2014)
- immediate, irreparable harm is not presumed by a NEPA violation, even assuming such a violation has occurred; CLI-15-17, 82 NRC 33 (2015)
- in areas with a designated use as aquatic habitat, cooling water intake structures hinder the attainment of water quality standards; LBP-12-16, 76 NRC 44 (2012)
- in enacting NEPA, Congress’s twin aims were to require an agency to consider every significant aspect of the environmental impact of a proposed action and ensure that the agency will inform the public that it has considered environmental concerns in its decisionmaking process; LBP-11-6, 73 NRC 149 (2011)
- in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 221 (2015)
- in light of the dim prospects for moving forward with a geologic repository in the contemporary political environment, NRC must consider the environmental effects of storing waste in spent fuel pools or casks for extended periods; LBP-12-24, 76 NRC 503 (2012)
- indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; LBP-13-4, 77 NRC 107 (2013)

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irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation, NRC regulations categorize impacts into direct, indirect, and cumulative; LBP-11-26, 74 NRC 499 (2011)

it is the continuing policy of the federal government to use all practicable means and measures to create and maintain conditions under which man and nature can exist in productive harmony; LBP-13-4, 77 NRC 107 (2013)

large effects are clearly noticeable and are sufficient to destabilize important attributes of the resource; LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013)

license applicants were permitted to omit any discussion of any environmental impact of spent fuel storage in independent spent fuel storage installations for the period following the term of the initial ISFSI license in any environmental report, environmental impact statement, environmental assessment, or other analysis; LBP-12-24, 76 NRC 503 (2012)

moderate effects are sufficient to noticeably alter but not to destabilize important attributes of the resource; LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013)

multiple projects are often deemed connected actions despite being undertaken by separate entities; LBP-14-9, 80 NRC 15 (2014)

NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-13-13, 78 NRC 246 (2013)

NEPA does not require agencies to elevate environmental concerns over other appropriate considerations; LBP-14-9, 80 NRC 15 (2014)

NEPA does not require NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-11-11, 74 NRC 427 (2011)

NEPA regulations do not apply to any environmental effects that NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations; LBP-12-12, 75 NRC 742 (2012)

NEPA requires a reasonably close causal relationship between the environmental effect and the alleged cause; LBP-12-21, 76 NRC 218 (2012)

nothing in 10 C.F.R. Part 40, Appendix A, Criterion 5B precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's preclicensing program were adequate to provide the necessary information to characterize properly the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 65 (2015)

NRC adopted the Council on Environmental Quality's definition of "effects" in 40 C.F.R. 1508.8; LBP-14-9, 80 NRC 15 (2014)

NRC authority to review offsite impacts of transmission lines goes beyond merely factoring them into a final cost-benefit balance and includes as well the authority where necessary to impose license conditions to minimize those impacts; LBP-11-6, 73 NRC 149 (2011)

NRC can, as a condition of licensure, insist that offsite transmission lines built solely to serve a nuclear facility be designed to minimize environmental disturbance; LBP-14-9, 80 NRC 15 (2014)

NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 15 (2014)

NRC is clearly authorized to require licensees to protect the environment and to prevent them from causing adverse environmental impacts; LBP-13-4, 77 NRC 107 (2013)

nuclear power reactors must have emergency plans in place to respond to accidents despite the fact that Table B-1 within 10 C.F.R. Part 51 concludes that the environmental impacts of both design basis and severe accidents at a nuclear reactor are small for all plants; LBP-13-13, 78 NRC 246 (2013)

offsite land use is a Category 2 impact because land use changes may be perceived by some community members as adverse and by others as beneficial, and so, NRC Staff is unable to assess generically the potential significance of site-specific offsite land use impacts; LBP-13-13, 78 NRC 246 (2013)

programmatic agreement may be used to implement the NHPA § 106 process in situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking, such as where an applicant proposes a phased approach to developing its project; LBP-15-16, 81 NRC 618 (2015)

proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-14-7, 79 NRC 451 (2014)

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- proposed plant will impact at least 668 acres of wetlands and therefore its construction and operation will require a permit from U.S. Army Corps of Engineers; LBP-13-4, 77 NRC 107 (2013)
- small effects are not detectable or are so minor that they would neither destabilize nor noticeably alter any important attribute of the resource; LBP-11-26, 74 NRC 499 (2011); LBP-13-4, 77 NRC 107 (2013); LBP-13-13, 78 NRC 246 (2013)
- “small,” “moderate,” and “large” environmental impacts are defined; LBP-13-8, 78 NRC 1 (2013)
- to reopen a record, petitioners must reveal a seriously different picture of the environmental impact of a proposed project; LBP-12-16, 76 NRC 44 (2012)
- to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in this license renewal proceeding, the Commission must conclude that the rule’s strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 427 (2011)
- under NEPA, defining the scope of effects of a project requires engagement with governments of affected tribes through an early and open process aimed at identifying concerns, potential impacts, relevant effects of past actions, and possible alternative actions; LBP-15-16, 81 NRC 618 (2015)
- under NEPA, federal agencies must use all practicable means to avoid environmental degradation to the extent consistent with other essential considerations of national policy; LBP-14-9, 80 NRC 15 (2014)
- under the Atomic Energy Act, NRC can issue conditional licenses for regulatory purposes, and thus there can be no objection to its use of the same means to achieve environmental ends as well; LBP-14-9, 80 NRC 15 (2014)
- when an action is divided into component parts, each involving action with less significant environmental effects, segmentation or piecemealing occurs; LBP-14-9, 80 NRC 15 (2014)
- when an environmental assessment is appropriate, it need only include a brief discussion of environmental impacts of the proposed action; LBP-14-6, 79 NRC 404 (2014)
- when information relevant to a reasonably foreseeable environmental effect is incomplete or unavailable, an agency is required to obtain the unavailable information and include it in the environmental impact statement as long as the costs are not exorbitant; LBP-14-9, 80 NRC 15 (2014)
- within the geographic boundary of the Ninth Circuit, NRC may not exclude NEPA terrorism contentions categorically; CLI-11-11, 74 NRC 427 (2011)
- ENVIRONMENTAL FUNCTIONS**
- if impacts are unavoidable, applicant shall provide mitigation measures that must be, to the extent practicable, sufficient to replace lost aquatic resource functions; LBP-15-23, 82 NRC 55 (2015)
- ENVIRONMENTAL IMPACT STATEMENT**
- action with potential impacts subsequent to the initial federal action may not constitute a proposed action if it is insufficiently certain; LBP-14-9, 80 NRC 15 (2014)
- actions requiring an EIS or a supplement to an EIS are a limited work authorization, construction permit for a nuclear power reactor, testing facility, or fuel reprocessing plant, or an early site permit; LBP-11-10, 73 NRC 424 (2011)
- adjudicatory hearings are not EIS editing sessions; CLI-12-1, 75 NRC 39 (2012); CLI-12-6, 75 NRC 352 (2012)
- adjudicatory records, board decisions, and any Commission decisions become effectively part of the environmental review document; CLI-12-1, 75 NRC 39 (2012)
- admissibility of contention that final environmental assessment fails to satisfy NRC’s requirement for an EIS when there are unresolved conflicts concerning reasonable alternatives is decided; LBP-15-15, 81 NRC 598 (2015)
- admitted contentions challenging applicant’s environmental report may, in appropriate circumstances, function as challenges to similar portions of NRC Staff’s EIS; LBP-14-5, 79 NRC 377 (2014)
- agencies are given broad discretion to keep their NEPA inquiries within appropriate and manageable boundaries; LBP-15-3, 81 NRC 65 (2015)
- agencies are required to create an EIS, and the moment at which an agency must have a final statement ready is the time at which it makes a recommendation or report on a proposal for federal action; LBP-13-10, 78 NRC 117 (2013)
- agencies are to use the parameters laid out in 40 C.F.R. 1508.25 when defining the scope of the EIS; LBP-13-10, 78 NRC 117 (2013)

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agencies can, consistent with NEPA regulations, incorporate by reference analyses and information from existing documents into an environmental assessment or environmental impact statement provided the material has been appropriately cited and described; LBP-15-11, 81 NRC 401 (2015)

agencies may not undertake a piecemeal review of environmental impacts; LBP-13-9, 78 NRC 37 (2013)

agencies must consider the impact of other proposed projects only if the projects are so interdependent that it would be unwise or irrational to complete one without the other; LBP-13-10, 78 NRC 117 (2013)

agencies must devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-12-17, 76 NRC 71 (2012)

agencies must make sure that the proposal that is the subject of an EIS is properly defined; LBP-13-10, 78 NRC 117 (2013)

agencies must prepare an EIS before approving any major federal action that will significantly affect the quality of the human environment; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-12-17, 76 NRC 71 (2012); LBP-12-23, 76 NRC 445 (2012)

agencies must rigorously explore and objectively evaluate all reasonable alternatives and briefly discuss reasons for eliminating alternatives; LBP-12-17, 76 NRC 71 (2012)

agencies need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequential small; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

agencies shall use the criteria for scope in 40 C.F.R. 1508.25 to determine which proposal shall be the subject of a particular statement; LBP-11-10, 73 NRC 424 (2011); LBP-14-6, 79 NRC 404 (2014)

agencies should consider both the context and intensity of environmental impacts; LBP-11-26, 74 NRC 499 (2011)

agencies violate NEPA when their EIS fails to adequately respond to the critical opinions of their own experts; LBP-12-18, 76 NRC 127 (2012)

agency did not need to assess site-specific impacts of continuing to store spent fuel in either an onsite or offsite storage facility in new reactor licensing environmental impact statements or environmental assessments beyond the expiration dates of reactor licenses; LBP-14-16, 80 NRC 183 (2014)

agency does not have to follow the Environmental Protection Agency's comments, just take them seriously; LBP-14-9, 80 NRC 15 (2014)

agency preparing the NEPA document must explain the statutory or regulatory requirements it is relying on and its reasons for concluding that the application of those requirements will actually result in the mitigation and monitoring it assumes will occur; LBP-15-11, 81 NRC 401 (2015)

agency responsible for preparing the EIS must define the scope of the issues it will address; LBP-11-10, 73 NRC 424 (2011)

agency that has prepared an EIS cannot simply rest on the original document but must be alert to new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned action, even after a proposal has received initial approval; LBP-12-18, 76 NRC 127 (2012)

all adverse effects to any NRHP-eligible historic or cultural resource must be considered during any federal undertaking; LBP-11-26, 74 NRC 499 (2011)

all connected actions must be included; LBP-14-6, 79 NRC 404 (2014)

all cumulative environmental impacts even if they occur offsite (e.g., beyond the licensee's property line) must be addressed; LBP-13-4, 77 NRC 107 (2013)

alleged defects in applicant's environmental report may be mooted by the content of NRC's EIS or supplemental EIS; LBP-11-28, 74 NRC 604 (2011)

allowing an environmental challenge to continue after the EIS has issued does not constitute a merits ruling that the Staff's review document is inadequate; CLI-11-6, 74 NRC 203 (2011)

almost every EIS contains some original research, and almost every time an EIS is ruled inadequate by a court, it is because more data or research is needed; LBP-14-9, 80 NRC 15 (2014)

alternative energy sources that will be dependent on future environmental safeguards and technological developments may be excluded from the NEPA alternatives discussion; LBP-15-3, 81 NRC 65 (2015)

alternatively to preparing an environmental impact statement, NRC can conduct an environmental assessment and make a finding of no significant impact; LBP-13-13, 78 NRC 246 (2013)

alternatives analysis is the heart of the environmental impact statement; CLI-12-9, 75 NRC 421 (2012); LBP-11-16, 73 NRC 645 (2011); LBP-12-17, 76 NRC 71 (2012); LBP-14-9, 80 NRC 15 (2014)

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alternatives discussion need not include every possible alternative, but rather every reasonable alternative; LBP-15-3, 81 NRC 65 (2015)

although contention contesting applicant's environmental report generally may be viewed as a challenge to NRC Staff's subsequent draft environmental impact statement, new claims must be raised in a new or amended contention; LBP-13-10, 78 NRC 117 (2013)

although environmental contentions ultimately challenge NRC's compliance with the National Environmental Policy Act, applicant may advocate for a particular challenged position set forth in the environmental impact statement; LBP-12-5, 75 NRC 227 (2012)

although environmental contentions ultimately challenge the NRC's compliance with NEPA, applicant is free to support positions set forth in the EIS that are under challenge; LBP-14-7, 79 NRC 451 (2014)

although license requirements and other environmental quality standards are to be considered in assessing environmental impacts, they do not negate NRC Staff's responsibility to consider all environmental effects; LBP-15-3, 81 NRC 65 (2015)

although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action; LBP-11-7, 73 NRC 254 (2011)

although NEPA does not mention mitigation, by administrative practice and regulation, mitigation plays an important role in the discharge by federal agencies of their procedural duty under NEPA to prepare an EIS; LBP-12-18, 76 NRC 127 (2012)

although NEPA does not require an agency preparing an EIS to respond to Environmental Protection Agency concerns, an agency's failure even to address them in the EIS at the very least brings into question the sufficiency of the agency's analysis; LBP-14-9, 80 NRC 15 (2014)

although NEPA establishes a national policy in favor of protecting the human environment, NEPA does not require the agency to select the most environmentally benign alternative, but rather merely prohibits uninformed rather than unwise agency action; LBP-13-4, 77 NRC 107 (2013)

although NEPA mandates that an agency prepare an EIS and take a hard look at the environmental impacts of a proposed agency action, NEPA itself does not mandate particular results, but simply prescribes the necessary process; LBP-13-4, 77 NRC 107 (2013)

although NRC does not license construction or operation of a transmission corridor, it has the authority to deny the license for a proposed nuclear plant if, for example, the total environmental costs of the new reactor and connected actions exceed the benefits; LBP-12-12, 75 NRC 742 (2012)

although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final EIS stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 742 (2012)

although NRC regulations do not require NRC Staff to analyze the environmental impacts of NRC licensing actions on the environment of foreign nations, Staff extended its outreach to international organizations to inform its analysis; CLI-15-13, 81 NRC 555 (2015)

although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-12-5, 75 NRC 227 (2012)

any adverse environmental effects that cannot be avoided should the proposal be implemented and a reasonably complete discussion of possible mitigation measures must be included; LBP-12-23, 76 NRC 445 (2012)

appeal board's ruling that the EIS was deemed modified by the parties' stipulations at hearing did not violate the letter or spirit of NEPA; CLI-15-6, 81 NRC 340 (2015)

applicant and Staff treatment of need for the construction and operation of uranium enrichment facilities should explain why the proposed action is needed, describe the underlying need for the proposed action, but should not be written merely as a justification of the proposed action or to alter the choice of alternatives; LBP-11-26, 74 NRC 499 (2011)

applicant's environmental report must contain a sufficient analysis of potential environmental consequences and alternatives to enable the NRC Staff to prepare an EIS that fulfills the agency's obligations under NEPA; LBP-11-14, 73 NRC 591 (2011); LBP-11-21, 74 NRC 115 (2011)

as a practical matter, Staff relies heavily upon applicant's environmental report in preparing its EIS; LBP-11-38, 74 NRC 817 (2011); LBP-14-7, 79 NRC 451 (2014)

as a tool for assessing the significance of potential impacts, NRC regulations establish a standard scheme; LBP-11-26, 74 NRC 499 (2011)

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as long as the adverse effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-13-4, 77 NRC 107 (2013)

as part of its NEPA analysis, NRC must provide information that addresses the purpose and need for the proposed action; LBP-11-26, 74 NRC 499 (2011)

as part of NRC's NEPA analysis for licensing a nuclear power plant, the agency must balance the costs and benefits resulting from issuance of a license, but the EIS need not always contain a formal or mathematical cost-benefit analysis; LBP-11-7, 73 NRC 254 (2011)

as to whether the connected action aspect of 40 C.F.R. 1508.25(a)(1) supports an improper-segmentation contention's admissibility, petitioners have not provided sufficient supporting information to show that a genuine dispute exists on the material issue; LBP-13-10, 78 NRC 117 (2013)

because a need-for-power assessment necessarily entails forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, need-for-power assessments are properly conservative; LBP-12-5, 75 NRC 227 (2012)

because federal agencies typically describe their consideration of the energy requirements of a proposed action, in the context of that analysis agencies should evaluate greenhouse gas emissions; LBP-11-26, 74 NRC 499 (2011)

because NRC Staff relies heavily on applicant's environmental report in preparing the EIS, should the applicant become a proponent of a particular challenged position set forth in the EIS, the applicant, as such a proponent, also has the burden on that matter; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

before implementing any major federal action significantly affecting the quality of the human environment, NRC must prepare an EIS that describes the action, its effects, and alternatives to the proposed action; LBP-12-10, 75 NRC 633 (2012)

board may construe an admitted contention contesting applicant's environmental report as a challenge to a subsequently issued draft or final EIS without the necessity for intervenors to file a new or amended contention; LBP-15-11, 81 NRC 401 (2015)

board may incorporate material from another agency's EIS, which was submitted in the hearing record, as part of the record of decision; CLI-15-6, 81 NRC 340 (2015)

boards do not sit to "flyspeck" environmental documents or to add details or nuances, but the environmental report or EIS must come to grips with all important considerations; LBP-15-5, 81 NRC 249 (2015)

boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final EIS without the need for intervenors to file a new or amended contention; LBP-12-23, 76 NRC 445 (2012)

burden is on the proponent of a contention to show that the Staff's analysis or methodology is unreasonable or insufficient; CLI-12-6, 75 NRC 352 (2012)

categorical exclusion from the NEPA requirement to prepare an environmental assessment or EIS for issuance of import licenses involving low-level radioactive waste is provided; CLI-11-3, 73 NRC 613 (2011)

CEQ regulations require that agencies discuss possible mitigation measures in defining the scope of the EIS, in discussing alternatives to the proposed action and consequences of that action, and in explaining its ultimate decision; LBP-12-18, 76 NRC 127 (2012)

challenging the environmental report preserves petitioner's right to challenge the EIS at a later stage of the proceedings; LBP-12-8, 75 NRC 539 (2012)

common practice in an EIS is to use bounding evaluations when more exact calculations cannot be performed or are not necessary; LBP-12-18, 76 NRC 127 (2012)

compliance with the National Historic Preservation Act does not relieve a federal agency of the duty of complying with the EIS requirement to the fullest extent possible; LBP-15-16, 81 NRC 618 (2015)

conclusory statement in an EIS unsupported by explanatory information of any kind not only fails to crystallize issues, but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives; LBP-14-9, 80 NRC 15 (2014)

connected actions are closely related and therefore should be discussed in the same EIS; LBP-15-16, 81 NRC 618 (2015)

consideration of alternatives is the heart of the EIS; LBP-11-35, 74 NRC 701 (2011)

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consideration of alternatives under NEPA that are technologically unproven is unnecessary; LBP-15-3, 81 NRC 65 (2015)

consideration of impacts with either a low probability of occurrence, or where the link between the agency action and the claimed impact is too attenuated to find the proposed federal action to be the proximate cause of that impact are excluded under NEPA; LBP-13-4, 77 NRC 107 (2013)

consideration of remote and speculative impacts is not required; LBP-12-5, 75 NRC 227 (2012)

considering the reasonable alternatives analysis, it is only in the depth of the consideration and in the level of detail provided in the corresponding environmental documents that an environmental assessment and an EIS will differ; LBP-15-11, 81 NRC 401 (2015)

construction of a road to facilitate logging and the sale of timber from the logging are “connected actions” that have to be addressed in a single EIS; LBP-14-9, 80 NRC 15 (2014)

contention that environmental review documents fail to identify source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene in groundwater is inadmissible as untimely; LBP-15-19, 81 NRC 815 (2015)

contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 239 (2013)

contention that relies on testimony marking the first time NRC Staff has addressed an impact at the site is timely; LBP-15-24, 82 NRC 68 (2015)

contention that was originally admitted as a challenge to the environmental report may be treated as a challenge to the similar section of the DEIS; LBP-11-1, 73 NRC 19 (2011)

contentions challenging an environmental report may be viewed as a challenge to the NRC Staff’s subsequent draft or final environmental impact statement; CLI-12-1, 75 NRC 39 (2012)

contentions may challenge the adequacy of the review contained in the Staff’s NEPA documents; LBP-11-22, 74 NRC 259 (2011)

continued construction was barred pending the filing of an adequate environmental impact statement, notwithstanding the fact that the project was initially approved and construction commenced prior to the effective date of NEPA; LBP-12-1, 75 NRC 1 (2012)

Council on Environmental Quality regulation requiring an environmental impact statement to consider reasonably foreseeable impacts rather than a worst-case analysis is entitled to substantial deference and NEPA does not require a worst-case analysis in an EIS; LBP-13-4, 77 NRC 107 (2013)

courts decide whether a mitigation plan was adequately or inadequately discussed, but the line between these two options is not well defined; LBP-15-16, 81 NRC 618 (2015)

cumulative actions are those that, when viewed with other proposed actions, have cumulatively significant impacts so that they should be discussed in the same EIS; LBP-13-10, 78 NRC 117 (2013)

cumulative impact of the proposed action must be addressed; LBP-13-4, 77 NRC 107 (2013)

“deemed incorporated” function of 10 C.F.R. 51.23(b) provides administrative efficiency by adding the environmental impacts of continued storage to site-specific EISs without additional work by the Staff; CLI-15-10, 81 NRC 535 (2015)

deficiency in a final EIS is not automatic ground for reversal of an order granting a permit although the issue has been opened for full consideration in an agency hearing; CLI-15-6, 81 NRC 340 (2015)

definition of the scope of the EIS is the responsibility of the NRC Staff; LBP-14-9, 80 NRC 15 (2014)

despite the ability of both NRC Staff and applicant to present evidence and witnesses on environmental issues, the ultimate issue in determining NEPA compliance is the adequacy of NRC Staff’s environmental review, not the applicant’s environmental report; LBP-13-13, 78 NRC 246 (2013)

detailed statement by the responsible agency official on, among other things, the environmental impact of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action must be included; LBP-11-10, 73 NRC 424 (2011)

detailed statement by the responsible official on alternatives to the proposed action is required; LBP-12-17, 76 NRC 71 (2012)

determination of minimal environmental impact would make little sense when an agency lacks essential information and has not sought to compile it through independent research; LBP-14-9, 80 NRC 15 (2014)

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direct impacts are those caused by the action that is the subject of the EIS, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-11-26, 74 NRC 499 (2011)

discovery cannot be completed nor can the evidentiary hearing be held until the safety evaluation report and all necessary environmental impact statements are completed; CLI-13-8, 78 NRC 219 (2013)

discussion of alternatives that present severe engineering requirements or are imprudent for reasons including their high cost, safety hazards, and operational difficulties is excluded under NEPA; LBP-15-3, 81 NRC 65 (2015)

discussion of mitigation measures an important part of an agency's hard look at the environmental consequences of proposed federal action; LBP-13-4, 77 NRC 107 (2013); LBP-14-7, 79 NRC 451 (2014)

discussion of the no-action alternative need only include feasible, nonspeculative alternatives; LBP-12-8, 75 NRC 539 (2012)

duty to prepare an EIS and to identify and consider every significant environmental impact is tempered by the rule of reason; LBP-13-4, 77 NRC 107 (2013)

EIS cannot fulfill its role of providing a springboard for public comment if it defers indefinitely and delegates to other agencies the duty to inform the public of the environmental impacts of the proposed action and potential measures to mitigate those impacts; LBP-14-9, 80 NRC 15 (2014)

EIS is required for renewal of an operating license for a nuclear power reactor; LBP-12-1, 75 NRC 1 (2012)

EIS is required when the proposed project is a major federal action significantly affecting the quality of the human environment; LBP-15-15, 81 NRC 598 (2015)

EIS must describe the potential environmental impact of the proposed action and discuss any reasonable alternatives; LBP-11-7, 73 NRC 254 (2011)

EIS that contains an incomplete or misleading comparison of alternatives is deficient; LBP-11-21, 74 NRC 115 (2011)

EIS's hard look must examine reasonably foreseeable environmental impacts emanating from the proposed action; LBP-11-39, 74 NRC 862 (2011)

EISs are not intended to be research documents, reflecting the frontiers of scientific methodology, studies, and data; CLI-12-5, 75 NRC 301 (2012); LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-13-4, 77 NRC 107 (2013); LBP-13-13, 78 NRC 246 (2013); LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

EISs are subject to a rule of reason that grants the agency a degree of deference exempting it from examining impacts that it in good faith deems to be remote and speculative or inconsequential small; LBP-11-39, 74 NRC 862 (2011)

EISs cannot fulfill their role of providing a springboard for public comment if they fail to evaluate significant issues such as measures that the agency's experts recommend to mitigate the consequences of a severe accident; LBP-12-18, 76 NRC 127 (2012)

EISs may be deemed modified by the hearing record because hearing procedures allow for additional and more rigorous public scrutiny of the FSEIS than does the usual circulation for comment; CLI-15-6, 81 NRC 340 (2015)

EISs must discuss any adverse environmental effects that cannot be avoided should the proposal be implemented and must provide a reasonably complete discussion of possible mitigation measures; LBP-15-11, 81 NRC 401 (2015)

EISs serve as an environmental full disclosure law providing agency decisionmakers, as well as the President, the Congress, the Council on Environmental Quality, and the public the environmental cost-benefit information that Congress thought they should have about each qualifying federal action; LBP-13-13, 78 NRC 246 (2013)

EISs should be issued to include other related actions only when those related actions have been formally proposed and are pending before the relevant agency; LBP-13-10, 78 NRC 117 (2013)

environmental assessment can be the basis of a finding under section 51.32 that the proposed agency action will not have a significant effect upon the environment such that a full-blown EIS (or supplemental EIS) is not required; LBP-13-6, 77 NRC 253 (2013)

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environmental considerations that the environmental report must discuss are equivalent to, and in most instances verbatim restatements of, environmental considerations that NEPA requires the agency to describe in detail in the EIS; LBP-15-5, 81 NRC 249 (2015)

environmental contentions ultimately challenge NRC's compliance with NEPA, but applicant is free to support positions set forth in the environmental impact statement that are under challenge; LBP-12-17, 76 NRC 71 (2012)

environmental documents must include a detailed statement by the responsible official on any adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-15-16, 81 NRC 618 (2015)

environmental impact statement must consider the direct, indirect, and cumulative impacts of an action; LBP-11-7, 73 NRC 254 (2011)

environmental impacts of at-reactor and away-from-reactor storage of spent fuel are considered for 60 years after the end of a reactor's licensed life for operation, an additional 100 years of storage, and the indefinite storage of spent nuclear fuel and incorporated into site-specific EISs; CLI-15-10, 81 NRC 535 (2015)

environmental impacts of continued storage have been incorporated into the EISs at issue in the proceedings by operation of law; CLI-15-10, 81 NRC 535 (2015)

environmental mitigation options must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-14-9, 80 NRC 15 (2014)

Environmental Protection Agency determination that an EIS is unsatisfactory gives rise to a heightened obligation on the lead agency's part to explain clearly and in detail its reasons for proceeding; LBP-14-9, 80 NRC 15 (2014)

environmental report for limited work authorization application for a site where a construction permit was issued but construction of the plant was never completed may incorporate the earlier EIS; LBP-12-24, 76 NRC 503 (2012)

environmental report's adequacy is examined under NEPA as well as under Part 51 because the ER is the basis upon which NRC's EIS will be prepared; LBP-11-13, 73 NRC 534 (2011); LBP-11-14, 73 NRC 591 (2011)

every combined license application must be accompanied by an environmental report to aid the Commission in its preparation of an EIS; LBP-11-6, 73 NRC 149 (2011); LBP-12-9, 75 NRC 615 (2012)

examples of need for the proposed facility include a benefit provided if the proposed action is granted or descriptions of the detriment that will be experienced without approval of the proposed action; LBP-11-26, 74 NRC 499 (2011)

excluding the transmission corridor from the scope of the proposed action also removes it from the limitation on actions; LBP-14-9, 80 NRC 15 (2014)

existence of a reasonable but unexamined alternative renders an EIS inadequate; LBP-12-17, 76 NRC 71 (2012); LBP-14-9, 80 NRC 15 (2014)

extent of the no-action discussion is governed by a rule of reason; LBP-12-8, 75 NRC 539 (2012)

failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-9, 80 NRC 15 (2014)

federal agencies are required, to the fullest extent possible, to include in every recommendation or report on proposals for major federal actions significantly affecting the quality of the human environment a detailed statement on the environmental impact of the proposed action; LBP-13-13, 78 NRC 246 (2013)

federal agencies may plan a number of related actions but may decide to prepare impact statements on each action individually rather than prepare an impact statement on the entire group, creating a segmentation or piecemealing problem; LBP-14-6, 79 NRC 404 (2014)

federal agencies must consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-17, 76 NRC 71 (2012)

federal agencies must prepare an EIS for those proposed actions that have the potential to significantly affect the quality of the human environment; LBP-11-7, 73 NRC 254 (2011); LBP-15-16, 81 NRC 618 (2015)

federal courts of appeal have approved of the process by which an EIS is effectively amended through the adjudicatory process; LBP-14-9, 80 NRC 15 (2014)

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- filing of new contentions based on the SER and Staff NEPA documents is expressly contemplated by the Model Milestones; LBP-11-22, 74 NRC 259 (2011)
- First Nations in Canada must receive invitations to participate in the EIS scoping process when there are transboundary environmental impacts from a project; LBP-12-12, 75 NRC 742 (2012)
- for agency decisions such as a combined license that are based on an EIS, a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation; LBP-12-23, 76 NRC 445 (2012)
- for an action such as a transmission corridor that will not be constructed by or expressly permitted by the federal agency preparing an EIS, there must be sufficient federal control and responsibility that the action qualifies as a federal action; LBP-14-9, 80 NRC 15 (2014)
- for operating license renewal, if NRC Staff has not previously considered severe accident mitigation alternatives for applicant's plant in an EIS or related supplement or in an environmental assessment, applicant's environmental report must contain a consideration of alternatives to mitigate severe accidents; LBP-11-18, 74 NRC 29 (2011); LBP-11-21, 74 NRC 115 (2011)
- for siting alternatives, an agency's duty under NEPA is to study all alternatives that appear reasonable and appropriate for study at the time of drafting the EIS; CLI-12-5, 75 NRC 301 (2012)
- for the no-action alternative, there need not be much discussion in the environmental documents because it is most simply viewed as maintaining the status quo; LBP-12-8, 75 NRC 539 (2012)
- general statements by an agency about possible effects and some risk do not constitute the hard look required by NEPA absent a justification of why more definitive information could not be provided; LBP-12-5, 75 NRC 227 (2012)
- given the legal responsibility imposed upon a public utility to provide at all times adequate, reliable service, and the severe consequences that may attend upon a failure to discharge that responsibility, the most that can be required is that need-for-power forecasts be reasonable in the light of what is ascertainable at the time made; LBP-12-5, 75 NRC 227 (2012)
- goals of NEPA are to ensure that agency decisionmakers will have detailed information concerning significant environmental impacts of proposed projects when they make their decisions and to guarantee that such information will be available to the larger audience that may also play a role in the decisionmaking process; LBP-12-17, 76 NRC 71 (2012)
- hard look under NEPA is intended to foster both informed agency decisionmaking and informed public participation so as to ensure that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct; LBP-15-3, 81 NRC 65 (2015)
- if demand for power turns out to be less than predicted, it cannot be argued that the cost of the unneeded generating capacity may turn up in customers' electric bills because the surplus can be profitably marketed to other systems or the new capacity can replace older, less efficient units; LBP-12-5, 75 NRC 227 (2012)
- if impacts are remote or speculative, the EIS need not discuss them, including greenhouse gas emissions; LBP-11-7, 73 NRC 254 (2011)
- if new and significant information on Fukushima events comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, NRC will assess the significance of that information as appropriate; CLI-12-7, 75 NRC 379 (2012)
- if NRC Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by Staff for its significance, consistent with NEPA requirements; CLI-12-19, 76 NRC 377 (2012)
- if the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental cost; LBP-13-4, 77 NRC 107 (2013)
- if the adverse environmental impacts of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-12-18, 76 NRC 127 (2012)
- if the cost of obtaining information is exorbitant, NRC must still include in the EIS a statement that the information is unavailable, the relevance of the unavailable information, a summary of existing credible scientific evidence, and the agency's evaluation of the impacts that might be caused; LBP-14-9, 80 NRC 15 (2014)

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- if the EIS addresses the concerns alleged in the contention, the original contention becomes moot and the intervenor must raise a new contention if it claims the EIS discussion is still inaccurate or incomplete; LBP-14-6, 79 NRC 404 (2014)
- impact determinations in the continued storage generic EIS shall be deemed incorporated into the EISs associated with combined license or license renewal application; CLI-15-10, 81 NRC 535 (2015)
- impacts that are remote and speculative may be excluded from consideration; LBP-12-1, 75 NRC 1 (2012)
- implicit in NEPA's demand that an agency prepare a detailed environmental impact statement is an understanding that the EIS will discuss the extent to which adverse effects can be avoided; LBP-12-18, 76 NRC 127 (2012)
- important consequence of decision whether to include new construction within the scope of the proposed action is that, if it is included, it will be subject to the limitation on actions in 10 C.F.R. 51.101(a); LBP-14-9, 80 NRC 15 (2014)
- important qualitative considerations or factors that cannot be quantified in the EIS will be discussed in qualitative terms; LBP-15-3, 81 NRC 65 (2015)
- in an NRC adjudicatory proceeding, even if a board finds an EIS prepared by NRC Staff inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the final EIS; LBP-15-16, 81 NRC 618 (2015)
- in defining the scope of the EIS, all connected actions must be analyzed in one statement; LBP-11-10, 73 NRC 424 (2011)
- in determining whether a federal action would significantly affect the environment, the agency should consider the degree to which the proposed action affects public health and safety; LBP-12-18, 76 NRC 127 (2012)
- in the area of impacts of combined licenses and limited work authorizations, NRC Staff, in its review of new and significant information, identified a change in impacts associated with terrestrial ecology; CLI-12-2, 75 NRC 63 (2012)
- intervenor may propose new or amended contentions based on data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's environmental documents; LBP-11-7, 73 NRC 254 (2011)
- issuance of a combined license is a major federal action significantly affecting the quality of the human environment, and requiring an EIS; LBP-13-4, 77 NRC 107 (2013)
- issuance of a renewed operating license for a nuclear power reactor is a major federal action under NEPA; LBP-12-8, 75 NRC 539 (2012)
- issuance of an early site permit and the subsequent authorization of construction and operation of a new nuclear power plant qualify as connected actions under 40 C.F.R. 1508.25 and should be evaluated in one EIS; LBP-11-10, 73 NRC 424 (2011)
- it is not necessary that every alternative device and thought conceivable by the mind of man be considered, but a hard look must be taken at the environmental consequences; LBP-12-1, 75 NRC 1 (2012)
- it would be inconsistent with NEPA's reliance on procedural mechanisms, as opposed to substantive, result-based standards, to demand the presence in an EIS of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-13-4, 77 NRC 107 (2013)
- level of analysis required by NEPA in an environmental impact statement is more rigorous than is required when the agency has determined on the basis of its environmental assessment that the project as proposed will not result in significant environmental impact; LBP-14-7, 79 NRC 451 (2014)
- license applicants were permitted to omit any discussion of any environmental impact of spent fuel storage in independent spent fuel storage installations for the period following the term of the initial ISFSI license in any environmental report, environmental impact statement, environmental assessment, or other analysis; LBP-12-24, 76 NRC 503 (2012)
- license renewal applicant need not provide an analysis of severe accident mitigation alternatives in its environmental report if NRC Staff has already considered SAMAs for applicant's plant in an EIS or related supplement or in an environmental assessment; LBP-12-8, 75 NRC 539 (2012)
- license renewal applications must include an environmental report to assist NRC Staff in preparing its EIS; LBP-12-8, 75 NRC 539 (2012)

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licensing hearing does not embrace anything new revealed in the safety evaluation report or the NEPA documents; CLI-12-14, 75 NRC 692 (2012)

merely listing possible mitigation options does not satisfy NEPA; LBP-15-16, 81 NRC 618 (2015)

merely offering general statements about possible effects and some risk does not constitute a hard look at environmental impacts absent a justification regarding why more definitive information could not be provided; LBP-11-38, 74 NRC 817 (2011)

merely pointing to a government compliance program is insufficient to demonstrate compliance with NEPA's requirement that agencies take a hard look at the environmental consequences of their proposed actions; LBP-12-23, 76 NRC 445 (2012)

merely referencing an actual or anticipated certification by another agency fails to satisfy NEPA requirements; LBP-14-9, 80 NRC 15 (2014)

migration tenet applies where the information in the DEIS is sufficiently similar to the information in the environmental report; LBP-11-1, 73 NRC 19 (2011)

mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-13-4, 77 NRC 107 (2013)

Model Milestones permit the filing of proposed late-filed contentions on the Safety Evaluation Report and necessary National Environmental Policy Act documents within 30 days of issuance of those documents; LBP-11-22, 74 NRC 259 (2011)

National Marine Fisheries Service has the authority to consult with other agencies if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on essential fish habitat and that agency does not act as the lead agency; LBP-12-10, 75 NRC 633 (2012)

need-for-power assessments must be only at a level of detail sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-12-5, 75 NRC 227 (2012)

need-for-power forecasts need not precisely identify future market conditions and energy demand, or develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power; LBP-12-5, 75 NRC 227 (2012)

neither NRC nor applicant need consider any alternative that does not bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

NEPA allows agencies to select their own methodology as long as that methodology is reasonable; CLI-12-6, 75 NRC 352 (2012)

NEPA analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment; LBP-13-9, 78 NRC 37 (2013)

NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-12-9, 75 NRC 615 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-15-16, 81 NRC 618 (2015)

NEPA does not call for examination of every conceivable aspect of federally licensed projects, but requires only a discussion of reasonably foreseeable impacts; LBP-13-4, 77 NRC 107 (2013)

NEPA does not demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-15-16, 81 NRC 618 (2015)

NEPA does not mandate particular results, but simply prescribes the necessary process that agencies must follow in evaluating environmental impacts; LBP-12-17, 76 NRC 71 (2012); LBP-15-19, 81 NRC 815 (2015)

NEPA does not mandate substantive results but rather imposes procedural restraints on agencies, requiring them to take a hard look at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

NEPA does not require a fully developed plan that will mitigate all environmental harm before an agency can act, only that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated; LBP-12-18, 76 NRC 127 (2012); LBP-12-23, 76 NRC 445 (2012)

NEPA does not require a worst-case analysis; LBP-12-5, 75 NRC 227 (2012); LBP-13-13, 78 NRC 246 (2013)

NEPA does not require agencies to analyze impacts of alternatives that are speculative, remote, impractical, or unviable; CLI-12-5, 75 NRC 301 (2012)

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- NEPA does not require agencies to elevate environmental concerns over other appropriate considerations; LBP-12-18, 76 NRC 127 (2012)
- NEPA does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions; LBP-13-10, 78 NRC 117 (2013)
- NEPA does not require NRC Staff to examine every conceivable aspect of federally licensed projects in preparing its EIS; LBP-15-3, 81 NRC 65 (2015)
- NEPA does not require NRC to use the absolutely best scientific methodology available; LBP-13-4, 77 NRC 107 (2013)
- NEPA does not require that a complete mitigation plan be actually formulated and adopted before the agency makes its decision; LBP-13-4, 77 NRC 107 (2013)
- NEPA does not require that the agency wait until inchoate information matures into something that later might affect its review; CLI-12-7, 75 NRC 379 (2012)
- NEPA does not require the adoption of best practices, particularly in the face of a potentially significant resource commitment; LBP-15-3, 81 NRC 65 (2015)
- NEPA generally does not mandate that identified mitigation measures be implemented; LBP-13-4, 77 NRC 107 (2013)
- NEPA imposes a procedural requirement on an agency's decisionmaking process by mandating that an agency consider the environmental impacts of a proposed action and inform the public that it has taken those impacts into account in making its decision; LBP-11-17, 74 NRC 11 (2011)
- NEPA is intended to ensure that environmental impacts will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast; LBP-13-4, 77 NRC 107 (2013)
- NEPA only requires reasonable forecasting of need for power; LBP-12-5, 75 NRC 227 (2012)
- NEPA only requires that the EIS address those environmental impacts that are reasonably foreseeable; LBP-13-4, 77 NRC 107 (2013)
- NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action and ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process; LBP-11-7, 73 NRC 254 (2011)
- NEPA precludes an agency from avoiding NEPA's requirements by simply relying on another agency's conclusions about a federal action's impact on the environment; LBP-13-4, 77 NRC 107 (2013)
- NEPA regulations require consideration of severe accident mitigation alternatives in its EISs and supplements thereto at the operating license stage; LBP-12-15, 76 NRC 14 (2012)
- NEPA requirement to prepare an EIS places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action; LBP-13-4, 77 NRC 107 (2013)
- NEPA requirements are subject to a rule of reason, and an EIS need not address remote and highly speculative consequences; LBP-14-9, 80 NRC 15 (2014)
- NEPA requires an agency to take a hard look at the environmental consequences before taking a major action and to report the result of that hard look in an EIS; LBP-11-6, 73 NRC 149 (2011)
- NEPA requires each agency to undertake research needed to adequately expose environmental harms; LBP-14-9, 80 NRC 15 (2014)
- NEPA requires each EIS to include a detailed discussion of measures that might mitigate the adverse environmental consequences of the proposed action; LBP-13-4, 77 NRC 107 (2013)
- NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-18, 76 NRC 127 (2012)
- NEPA requires federal agencies to take a hard look at the environmental impacts of a proposed action, as well as reasonable alternatives to that action; LBP-12-10, 75 NRC 633 (2012); LBP-13-4, 77 NRC 107 (2013); LBP-15-3, 81 NRC 65 (2015)
- NEPA requires NRC to reevaluate any prior analysis if it is presented with any new and significant information that would cast doubt on a previous environmental analysis; LBP-12-8, 75 NRC 539 (2012)
- NEPA requires that NRC consider reasonably foreseeable environmental impacts of the proposed licensing action, but need not consider remote and speculative impacts, particularly if the impact cannot easily be estimated at the current time, and an appropriate future opportunity will exist for the agency to analyze the impact; LBP-12-3, 75 NRC 164 (2012)

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- NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-11-38, 74 NRC 817 (2011); LBP-13-4, 77 NRC 107 (2013)
- NEPA-related contentions initially are based on applicant's environmental report which will inform NRC Staff's NEPA review; LBP-13-10, 78 NRC 117 (2013)
- NEPA's "hard look" requirement is subject to a rule of reason in that consideration of environmental impacts need not address all theoretical possibilities, but rather only those that have some reasonable possibility of occurring; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-15-3, 81 NRC 65 (2015)
- NEPA's hard-look requirement does not allow sweeping generalities about possible effects and risk without a justification as to why more definitive information was not provided; LBP-13-13, 78 NRC 246 (2013)
- NEPA's procedural obligation is carried out through an agency's issuance of an EIS documenting the agency's hard look at potential environmental impacts of the proposed action and reasonable alternatives thereto; LBP-11-39, 74 NRC 862 (2011)
- NEPA's requirement that federal agencies prepare an EIS when considering a major action serves the statute's action-forcing purpose in two ways; LBP-11-7, 73 NRC 254 (2011)
- NEPA's requirements, like publication of the EIS, implement NEPA's sweeping policy goals by ensuring that agencies will take a hard look at environmental consequences; LBP-13-13, 78 NRC 246 (2013)
- NEPA's rule of reason excludes consideration of remote and speculative impacts or worst-case scenarios; LBP-13-4, 77 NRC 107 (2013)
- no language is included in 10 C.F.R. 51.45(c) to the effect that a proposed action that is the subject of an agency environmental impact statement must include all connected actions as defined in 40 C.F.R. 1508.25; LBP-14-9, 80 NRC 15 (2014)
- NRC adjudicatory hearings are not EIS editing sessions wherein the board sits to parse and fine-tune EISs; LBP-11-2, 73 NRC 28 (2011); LBP-13-13, 78 NRC 246 (2013)
- NRC argument that leaks from spent fuel pools will not occur because the NRC is on duty was rejected; LBP-13-4, 77 NRC 107 (2013)
- NRC gives substantial weight to the preferences of the applicant and/or sponsor; CLI-12-5, 75 NRC 301 (2012)
- NRC has established small, moderate, and large levels of impacts; LBP-11-26, 74 NRC 499 (2011)
- NRC has the right to prepare an independent EIS whenever NRC has regulatory authority over an activity; LBP-13-9, 78 NRC 37 (2013)
- NRC is directed to adopt the Department of Energy EIS for the high-level waste repository to the extent practicable; CLI-13-8, 78 NRC 219 (2013)
- NRC is directed to use the Council on Environmental Quality regulation 40 C.F.R. 1502.4 in defining the scope of its EIS; LBP-12-12, 75 NRC 742 (2012); LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)
- NRC is required to assess the relationship between local short-term uses of the environment and the long-term productivity of the environment; CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012)
- NRC is required to describe the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-12-9, 75 NRC 421 (2012)
- NRC is required to describe unavoidable adverse environmental impacts; CLI-12-9, 75 NRC 421 (2012)
- NRC is required to prepare a detailed statement discussing the environmental impacts, alternatives, and mitigation measures for any major federal action significantly affecting the quality of the human environment; CLI-13-7, 78 NRC 199 (2013)
- NRC is required under NEPA to consider new and significant information in its environmental analyses; CLI-13-7, 78 NRC 199 (2013)
- NRC may not abdicate its duty under NEPA to other agencies to consider environmental impacts, even if those agencies have special expertise relating to environmental impacts; LBP-13-4, 77 NRC 107 (2013)
- NRC must adequately consider impacts to visual and aesthetic resources in its NEPA review; LBP-12-3, 75 NRC 164 (2012)
- NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 71 (2014)

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- NRC must prepare an EIS that adequately evaluates the environmental impacts of relicensing, including impacts to tribal hunting and fishing rights and subsistence consumption; LBP-15-5, 81 NRC 249 (2015)
- NRC must rigorously explore and objectively analyze environmental impacts, so that merely offering general statements about possible effects and some risk does not constitute a hard look absent a justification regarding why more definitive information could not be provided; LBP-11-26, 74 NRC 499 (2011)
- NRC need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequentially small; LBP-13-13, 78 NRC 246 (2013)
- NRC policy statement is not a sufficient vehicle to preclude consideration of severe accident mitigation design alternatives, and NRC must take the requisite hard look at them, giving them the careful consideration and disclosure required by the National Environmental Policy Act; CLI-12-19, 76 NRC 377 (2012)
- NRC regulations incorporate Council on Environmental Quality regulations that define the scope of an environmental impact statement to include cumulative impacts; LBP-12-3, 75 NRC 164 (2012)
- NRC Staff assesses air quality impacts as a matter of course, categorizing them as small, medium, or large; LBP-11-26, 74 NRC 499 (2011)
- NRC Staff is required to do more than simply state that necessary information is unavailable; LBP-14-9, 80 NRC 15 (2014)
- NRC Staff is required to furnish only such information as appears reasonably necessary under the circumstances for evaluation of the project, rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff is required to prepare EISs for reactor licensing proceedings; CLI-14-7, 80 NRC 1 (2014)
- NRC Staff may accord substantial weight to the stated purpose of the project, i.e., to provide additional baseload electrical generation capacity for use in the owner's current markets and/or for potential sale on the wholesale market; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff must address all reasonably foreseeable environmental impacts even if the probability of such an occurrence is low; LBP-14-9, 80 NRC 15 (2014)
- NRC Staff must consider the alternative of no action; LBP-12-8, 75 NRC 539 (2012)
- NRC Staff must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-11-26, 74 NRC 499 (2011)
- NRC Staff must describe the potential environmental impact of a proposed action and discuss any reasonable alternatives; LBP-15-11, 81 NRC 401 (2015)
- NRC Staff must include a detailed statement of reasonable alternatives to the proposed action; LBP-14-9, 80 NRC 15 (2014)
- NRC Staff must include in an EIS an analysis of significant problems and objections raised by any affected Indian tribes and other interested persons; LBP-15-16, 81 NRC 618 (2015)
- NRC Staff must prepare an EIS in connection with a license to possess and use source and AEA §11e(2) byproduct material for the purpose of in situ uranium recovery; LBP-15-3, 81 NRC 65 (2015)
- NRC Staff must provide a detailed statement concerning environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, and any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented; LBP-14-9, 80 NRC 15 (2014)
- NRC Staff need consider only those environmental impacts that are reasonably foreseeable, not those that are remote and speculative possibilities; LBP-12-9, 75 NRC 615 (2012)
- NRC Staff need not perform a wholly independent analysis from scratch, but may rely on the scientific data and inferences drawn by another federal agency; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff need only discuss those alternatives that will bring about the ends of the proposed action; LBP-12-15, 76 NRC 14 (2012)
- NRC Staff relies heavily on applicant's environmental report in preparing its EIS; LBP-12-5, 75 NRC 227 (2012)
- NRC Staff review must address interdependent projects when the dependency is such that it would be irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken; LBP-14-9, 80 NRC 15 (2014)

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NRC Staff, pursuant to its obligation to prepare an adequate EIS, is empowered to issue requests for additional information relevant to an applicant's environmental report; LBP-11-33, 74 NRC 675 (2011)

NRC Staff's EIS need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

NRC Staff's NEPA responsibilities for preparing an EIS are described; LBP-11-6, 73 NRC 149 (2011)

NRC Staff's reference to, and reliance in its DEIS on, state issuance of a site certification order and associated certificate of compliance on groundwater use does not dispense with NRC's duty under NEPA to conduct an independent hard look at environmental impacts related to active dewatering during operations at a nuclear plant; LBP-11-1, 73 NRC 19 (2011)

NRC Staff's reliance in an environmental impact statement on predicted future monitoring and regulatory compliance program to prevent environmental impacts is not permitted; LBP-14-9, 80 NRC 15 (2014)

NRC uses environmental impact information to determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; LBP-14-9, 80 NRC 15 (2014)

NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-11-16, 73 NRC 645 (2011)

NRC's obligation to evaluate new recommendations for enhanced accident mitigation does not depend upon whether intervenors have identified unique characteristics of the site or the proposed new reactor; LBP-12-18, 76 NRC 127 (2012)

NRC's record of decision for the license must state whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted; LBP-12-18, 76 NRC 127 (2012)

NRC's review of a COL application is the type of proposed action obliging Staff to prepare an EIS or a supplement thereto; LBP-11-39, 74 NRC 862 (2011)

numerous Council on Environmental Quality regulations require an agency to discuss possible mitigation measures, including 40 C.F.R. §§ 1508.25(b), 1502.14(f), 1502.16(h), and 1508.20; LBP-13-4, 77 NRC 107 (2013)

once NRC has properly defined the scope of the proposed action, including any connected actions, the agency's EIS must evaluate the environmental effects of the proposed action; LBP-14-9, 80 NRC 15 (2014)

one important component of an EIS is the discussion of possible actions that might mitigate adverse environmental consequences; LBP-11-7, 73 NRC 254 (2011)

only role for a court is to ensure that the agency has taken a hard look at environmental consequences; LBP-11-17, 74 NRC 11 (2011)

only those activities that have sufficient federal involvement to qualify as federal actions need be included in the scope of the proposed action evaluated in an EIS; LBP-14-9, 80 NRC 15 (2014)

parties may seek leave of the board to file new contentions that challenge the sufficiency of Staff's NEPA documents where information on which new contentions are based was not previously available and is materially different than information previously available and has been submitted in a timely fashion based on the availability of the subsequent information; LBP-11-39, 74 NRC 862 (2011)

permissive "may" language of 40 C.F.R. 1508.25(a)(3) affords an agency more discretion in making a choice about whether a single EIS is the best way to assess similar actions; LBP-13-10, 78 NRC 117 (2013)

post-environmental report, intervenor would need to file a motion to amend an already-admitted contention or to admit a new contention if information in NRC Staff's NEPA statement is sufficiently different from information in the ER that supported the original contention's admission; LBP-13-10, 78 NRC 117 (2013)

preparation of an EIS on a proposal should be timed so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal; LBP-14-9, 80 NRC 15 (2014)

preparation of an environmental impact statement for the proposed action is unnecessary if NRC Staff determines that the proposed action will not have a significant effect on the quality of the human environment; CLI-15-25, 82 NRC 389 (2015)

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preparation of the biological assessment may be consolidated with interagency cooperation procedures required by other statutes, such as NEPA; LBP-12-11, 75 NRC 731 (2012)

presiding officer in the adjudication will determine the extent to which adoption by the NRC of DOE's repository EIS and its supplements is practicable, which in turn will satisfy NRC's NEPA obligations; CLI-13-8, 78 NRC 219 (2013)

principal goals of a final EIS are to force agencies to take a hard look at the environmental consequences of a proposed project and to permit the public a role in the agency's decisionmaking process; LBP-11-14, 73 NRC 591 (2011); LBP-15-16, 81 NRC 618 (2015)

prior to preparing an EIS, the responsible federal official shall consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-12-10, 75 NRC 633 (2012)

proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single EIS; LBP-11-10, 73 NRC 424 (2011); LBP-12-12, 75 NRC 742 (2012); LBP-13-10, 78 NRC 117 (2013); LBP-14-6, 79 NRC 404 (2014); LBP-14-9, 80 NRC 15 (2014)

proposed action that is the subject of an agency environmental impact statement must include all connected actions as defined in 40 C.F.R. 1508.25; LBP-14-9, 80 NRC 15 (2014)

public comment periods are beneficial only to the extent the public has meaningful information on which to comment; LBP-12-17, 76 NRC 71 (2012)

purpose of applicant's environmental report is to assist NRC in preparing the agency's own environmental analysis; LBP-11-28, 74 NRC 604 (2011)

purpose of NEPA requirement that EIS be prepared is to obviate the need for speculation by ensuring that available data are gathered and analyzed prior to implementation of the proposed action; LBP-15-23, 82 NRC 55 (2015)

quibbling over details of an economic analysis would effectively stand NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-12-5, 75 NRC 227 (2012)

reasonable alternatives under NEPA are limited to those alternatives that will bring about the ends of the proposed action; LBP-11-21, 74 NRC 115 (2011)

reasonable alternatives under NEPA do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-15-3, 81 NRC 65 (2015)

reasonably complete discussion of possible mitigation measures must be included in a NEPA document, to allow the agency and the public a chance to properly evaluate the severity of the adverse effects; LBP-12-18, 76 NRC 127 (2012); LBP-15-16, 81 NRC 618 (2015)

reasonably foreseeable environmental impacts that have catastrophic consequences, even if their probability of occurrence is low, must be considered in the EIS; LBP-11-23, 74 NRC 287 (2011)

regardless of their classification as direct, indirect, or cumulative, impacts that are reasonably foreseeable are to be assessed in an EIS; LBP-11-26, 74 NRC 499 (2011)

reliance on mitigation to support findings with regard to environmental impacts of an activity is justified; LBP-14-7, 79 NRC 451 (2014)

requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of NEPA and, more expressly, from the Council on Environmental Quality's implementing regulations; LBP-13-4, 77 NRC 107 (2013)

requirement to prepare an EIS applies to major federal actions, not to private or state actions; LBP-14-9, 80 NRC 15 (2014)

requirement to prepare an EIS is a procedural mechanism designed to ensure that agencies give proper consideration to the environmental consequences of their actions; LBP-12-18, 76 NRC 127 (2012)

rule of reason under NEPA means that an agency must only consider reasonably foreseeable impacts in its EIS, and need not address those that are remote and speculative or inconsequentially small; LBP-12-17, 76 NRC 71 (2012)

scope of an EIS is defined as the range of actions, alternatives, and impacts to be considered in the EIS; LBP-12-12, 75 NRC 742 (2012); LBP-14-9, 80 NRC 15 (2014)

scope of environmental concerns that must be considered in the EIS are discussed; LBP-11-6, 73 NRC 149 (2011)

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section 51.102(c) replaced a previous version that expressly permitted licensing boards to modify the content of an EIS; CLI-15-6, 81 NRC 340 (2015)

segmentation is to be avoided in order to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions; LBP-12-12, 75 NRC 742 (2012); LBP-14-9, 80 NRC 15 (2014)

segmentation occurs when an action is divided into component parts, each involving action with less significant environmental effects; LBP-12-12, 75 NRC 742 (2012)

separate actions are connected if, among other things, they cannot or will not proceed unless other actions are taken previously or simultaneously, or they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-11-10, 73 NRC 424 (2011); LBP-12-12, 75 NRC 742 (2012)

severe accident mitigation alternatives review identifies and assesses possible plant changes such as improvements in hardware, training, or procedures that could cost-effectively mitigate the environmental impacts that would otherwise flow from a potential severe accident; LBP-11-17, 74 NRC 11 (2011)

significant health, socioeconomic, and cumulative consequences of the environmental impact of a proposed action must be disclosed; LBP-12-9, 75 NRC 615 (2012)

similar actions are those that, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental impacts together, such as common timing or geography, so that the agency may wish to analyze them together; LBP-13-10, 78 NRC 117 (2013)

Staff guidance documents set forth information that should be provided in the environmental report and the EIS regarding a radiological monitoring program and monitoring program acceptance criteria; LBP-11-26, 74 NRC 499 (2011)

state public service commission's determination of need for power may be relied on by the NRC in its own analysis, as long as that determination is neither shown nor appears on its face to be seriously defective; LBP-11-6, 73 NRC 149 (2011)

statutory requirement to prepare an EIS ensures that decisionmakers will have available, and will carefully consider, detailed information concerning significant environmental impacts; CLI-15-10, 81 NRC 535 (2015)

statutory requirement to prepare an EIS guarantees that the relevant information will be made available to the larger audience, such as petitioners and state and local governments; CLI-15-10, 81 NRC 535 (2015)

taking a hard look at environmental impacts fosters both informed decisionmaking and informed public participation, and thus ensures that NRC does not act on incomplete information, only to regret its decision after it is too late to correct it; LBP-11-26, 74 NRC 499 (2011); LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

there can be no "hard look" at the costs and benefits of a proposed action unless all costs are disclosed; LBP-12-18, 76 NRC 127 (2012)

there is no NEPA requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-15-3, 81 NRC 65 (2015)

there must be some assurance that mitigation measures constitute an adequate buffer against the negative impacts that result from the authorized activity to render such impacts so minor as to not warrant an EIS; LBP-14-7, 79 NRC 451 (2014)

though mitigation measures must be discussed in an EIS, NEPA does not guarantee that federally approved projects will have no adverse impacts; LBP-15-16, 81 NRC 618 (2015)

three types of actions (connected, cumulative, and similar) are to be considered in looking to the scope of an EIS; LBP-13-10, 78 NRC 117 (2013)

timely new contentions challenging the sufficiency of Staff's NEPA documents may be filed where data or conclusions in those documents differ significantly from data or conclusions in previous versions of those documents or in applicant's environmental report; LBP-11-39, 74 NRC 862 (2011)

to be successful, intervenors must demonstrate with adequate support that NRC Staff failed to take a hard look at important environmental questions or failed to provide a reasonable analysis; LBP-13-13, 78 NRC 246 (2013)

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- to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-13-10, 78 NRC 117 (2013)
- to determine whether actions are connected such that they should be discussed in the same EIS, an agency is to consider whether the actions automatically trigger other actions that may require an EIS, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification; LBP-13-10, 78 NRC 117 (2013)
- to determine whether interdependence exists among the various actions at issue, courts generally have looked to see whether the first action has independent utility; LBP-13-10, 78 NRC 117 (2013)
- to issue an early site permit, NRC must comply with the National Environmental Policy Act by including in an environmental impact statement a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action; LBP-11-10, 73 NRC 424 (2011)
- to make an EIS something more than an exercise in frivolous boilerplate, the concept of alternatives must be bounded by some notion of feasibility; LBP-13-4, 77 NRC 107 (2013)
- to require detailed analysis in the final EIS, a transmission corridor must be a proposed action rather than one that is merely contemplated; LBP-12-12, 75 NRC 742 (2012)
- to the fullest extent possible, all federal agencies shall include in every major federal action significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-13-4, 77 NRC 107 (2013)
- under NEPA, an agency need not discuss alternatives that are infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area; LBP-13-9, 78 NRC 37 (2013)
- under NEPA, NRC must assess the environmental impacts of a proposed facility, including those impacts associated with greenhouse gas emissions by the proposed facility; LBP-11-26, 74 NRC 499 (2011)
- under NEPA, NRC Staff must consider the cumulative impact of greenhouse gas emissions from a proposed facility; LBP-11-7, 73 NRC 254 (2011)
- until the safety evaluation report and Staff NEPA documents have been issued, a licensing board is generally prohibited from holding the hearing on the license application; LBP-11-22, 74 NRC 259 (2011)
- when a decision to which NEPA obligations attach is made without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent has been suffered; LBP-14-9, 80 NRC 15 (2014)
- when adequacy of an EIS mitigation strategy is challenged, the determining issue is whether the agency took a sufficiently hard look at environmental consequences, and ensured that its decision was supported by a completely informed record; LBP-15-16, 81 NRC 618 (2015)
- when agencies propose major federal actions significantly affecting the quality of the human environment, preparation of an EIS is required; LBP-12-18, 76 NRC 127 (2012); LBP-14-9, 80 NRC 15 (2014)
- when an EIS is prepared at the early site permit stage, NRC Staff must prepare a supplemental EIS for the combined license focusing on issues related to the impacts of construction and operation for which new and significant information has been identified; CLI-12-2, 75 NRC 63 (2012)
- when considering alternatives, agencies are to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; LBP-14-9, 80 NRC 15 (2014)
- when drafting an EIS, agency's scope of review must include analysis of any connected or cumulative actions to the central proposed action; LBP-15-16, 81 NRC 618 (2015)
- when information relevant to a reasonably foreseeable environmental effect is incomplete or unavailable, an agency is required to obtain the unavailable information and include it in the EIS as long as the costs are not exorbitant; LBP-14-9, 80 NRC 15 (2014)
- when NRC Staff issues the environmental impact statement, intervenors have an opportunity to either amend admitted contentions or proffer new contentions based on data or conclusions in the NRC draft or final EIS or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents; LBP-11-6, 73 NRC 149 (2011)
- when omissions are cured by the subsequent issuance of licensing-related documents, a contention of omission must be disposed of or modified; LBP-12-5, 75 NRC 227 (2012)

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when reviewing a discrete license application filed by a private applicant, a federal agency may appropriately accord substantial weight to the preferences of the applicant in siting and design of the project, taking into account the economic goals of the project's sponsor; CLI-12-5, 75 NRC 301 (2012)

when several proposals for actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together; LBP-13-10, 78 NRC 117 (2013)

when taking the requisite hard look at environmental consequences of the alternatives to the proposed licensing action, the EIS must discuss the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

where an environmental assessment resulted in a finding of no significant impact, a full EIS is unnecessary; CLI-15-17, 82 NRC 33 (2015)

where an environmental impact statement is involved, hearings on environmental issues addressed in the EIS may not commence before issuance of the final EIS; CLI-15-17, 82 NRC 33 (2015)

where the agency has found mitigation strategies necessary to alleviate a potential impact, the associated discussion should be reasonably complete to properly evaluate the severity of the adverse effects; LBP-15-11, 81 NRC 401 (2015)

with regard to reasonably foreseeable impacts, NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-15-3, 81 NRC 65 (2015)

within the rule of reason, an EIS must address both the direct and indirect effects or impacts; LBP-13-4, 77 NRC 107 (2013)

without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded; LBP-11-23, 74 NRC 287 (2011)

See also Draft Environmental Impact Statement; Final Environmental Impact Statement; Generic Environmental Impact Statement; Supplemental Environmental Impact Statement

ENVIRONMENTAL ISSUES

admitted contentions challenging applicant's environmental report may, in appropriate circumstances, function as challenges to similar portions of NRC Staff's environmental impact statement; LBP-13-9, 78 NRC 37 (2013); LBP-15-11, 81 NRC 401 (2015)

all environmental issues concerning severe accident mitigation design alternatives associated with the information in NRC's final environmental assessment for certified reactor design are deemed resolved for plants whose site parameters are within those specified in the technical support document; LBP-11-7, 73 NRC 254 (2011)

although all environmental contentions may, in a general sense, ultimately challenge NRC's compliance with NEPA, NRC regulations expressly permit the lodging of contentions against applicant's environmental report well before release of NRC's NEPA documents; LBP-11-38, 74 NRC 817 (2011)

although applicant carries the burden of proof on safety issues, NRC Staff has the overall burden of complying with NEPA; LBP-13-13, 78 NRC 246 (2013)

although environmental contentions are, in essence, challenges to NRC Staff's compliance with NEPA, those contentions must be raised, if possible, in response to applicant's environmental report; CLI-15-1, 81 NRC 1 (2015)

although environmental contentions ultimately challenge NRC's compliance with the National Environmental Policy Act, applicant may advocate for a particular challenged position set forth in the environmental impact statement; LBP-12-5, 75 NRC 227 (2012); LBP-14-7, 79 NRC 451 (2014)

although safety issues are reviewed under the adequacy and sufficiency standard, licensing boards conducting mandatory hearings must independently consider the final balance among the conflicting costs and benefits when reviewing NEPA issues; LBP-12-21, 76 NRC 218 (2012)

at the outset of proceedings, NEPA contentions are to be based on the applicant's environmental report; LBP-11-32, 74 NRC 654 (2011)

because two of the previously admitted contentions allege NEPA violations, new NEPA contentions put forward by the intervenors would not unreasonably broaden the issues; LBP-12-12, 75 NRC 742 (2012)

boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-13-9, 78 NRC 37 (2013)

board's ultimate NEPA judgments are made on the basis of the entire adjudicatory record in addition to NRC Staff's final supplemental environmental impact statement; LBP-15-16, 81 NRC 618 (2015)

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Category 1 issues are environmental issues that NRC has resolved generically and therefore does not consider in specific license renewal proceedings; CLI-15-18, 82 NRC 135 (2015)

Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. 2.335, because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-13, 73 NRC 534 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015)

Category 2 issues require plant-specific review as part of license renewal; LBP-12-8, 75 NRC 539 (2012)

Commission has codified generic determinations for certain environmental issues, identified as Category 1 issues, for license renewal proceedings; LBP-11-13, 73 NRC 534 (2011)

completion of NRC Staff's final environmental review document always must precede the conduct of hearings on environmental issues; LBP-11-30, 74 NRC 627 (2011)

contention migrates when a board construes a contention challenging the environmental section of an application as a challenge to a subsequently issued Staff NEPA document without petitioner amending the contention; CLI-15-17, 82 NRC 33 (2015)

contention of omission on a matter related to the National Environmental Policy Act must describe the information that should have been included in applicant's environmental report and provide the legal basis that requires the omitted information to be included; LBP-15-5, 81 NRC 249 (2015)

contentions arising under NEPA must be filed based on applicant's environmental report; LBP-15-19, 81 NRC 815 (2015)

cumulative effects and improper segmentation issues raise separate but similar questions; LBP-14-6, 79 NRC 404 (2014)

despite the ability of both NRC Staff and applicant to present evidence and witnesses on environmental issues, the ultimate issue in determining NEPA compliance is the adequacy of NRC Staff's environmental review, not applicant's environmental report; LBP-13-13, 78 NRC 246 (2013)

environmental contentions are expected in response to applicant's or NRC Staff's environmental reviews, and contentions regarding their adequacy cannot be expected to be proffered at an earlier stage of the proceeding before the documents are available; LBP-15-11, 81 NRC 401 (2015)

environmental implications of new and significant information must be considered under NEPA before NRC may grant renewed operating licenses; LBP-11-32, 74 NRC 654 (2011)

environmental waste confidence contentions are dismissed; CLI-15-6, 81 NRC 340 (2015)

failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-6, 79 NRC 404 (2014)

flyspecking of environmental documents is inappropriate for environmental contentions; CLI-14-2, 79 NRC 11 (2014)

for NEPA contentions, the burden of proof shifts to NRC Staff, because NRC, not applicant, bears the ultimate burden of complying with NEPA; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

health, safety, and environmental concerns do not constitute liberty or property subject to due process protection; LBP-11-4, 73 NRC 91 (2011)

hearings on environmental issues addressed in the environmental impact statement may not commence before issuance of the final EIS; LBP-13-13, 78 NRC 246 (2013)

if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 184 (2012)

if new information becomes available that, e.g., an endangered species has been living on the site or that the facility has been leaking tritium into the groundwater, then a new contention alleging that the environmental report as originally filed did not comply with Part 51 may be filed; LBP-11-32, 74 NRC 654 (2011)

if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from data or conclusions in applicant's documents, late-filing standards are no bar to the admission of properly supported contentions; LBP-15-11, 81 NRC 401 (2015)

in certain instances, contentions challenging an environmental report are deemed to migrate from challenging applicant's ER to challenging NRC Staff's environmental assessment; LBP-14-6, 79 NRC 404 (2014)

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intervenor are expected to file contentions on the basis of applicant's environmental report and not delay their contentions until after NRC Staff issues its environmental analysis; CLI-12-13, 75 NRC 681 (2012); LBP-12-12, 75 NRC 742 (2012)

issue is "significant" for the purposes of reopening a record if it will paint a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-1, 75 NRC 1 (2012); LBP-12-10, 75 NRC 633 (2012)

issue raised in untimely motion to reopen could be exceptionally grave depending on the circumstances of the case and the facts presented but the motion will be granted rarely and only in truly extraordinary circumstances; CLI-12-21, 76 NRC 491 (2012)

issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 555 (2015)

license applications, not Staff's review, are to be the focus of a licensing adjudication; LBP-13-6, 77 NRC 253 (2013)

license renewal provisions cover environmental issues relating to onsite spent fuel storage generically, and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

migration tenet for admitted contentions applies when information in the draft environmental impact statement is sufficiently similar to the information in the environmental report; LBP-13-9, 78 NRC 37 (2013); LBP-14-6, 79 NRC 404 (2014)

migration tenet helps to expedite hearings by obviating the need to file and litigate the same contention up to three times and applies when the information contained in a subsequently released document is sufficiently similar to the information contained in the original document upon which the original contention was filed; LBP-12-23, 76 NRC 445 (2012)

NEPA-related contentions initially are based on applicant's environmental report which will inform NRC Staff's NEPA review; LBP-13-10, 78 NRC 117 (2013)

new contentions on the safety and environmental implications of the NRC Task Force Report on the Fukushima Dai-ichi accident are premature and must be denied on that basis without regard to any other considerations; LBP-11-27, 74 NRC 591 (2011)

NRC has not expressly adopted Council on Environmental Quality regulations, but they are entitled to considerable deference; LBP-15-3, 81 NRC 65 (2015)

NRC hearings on NEPA issues focus entirely on the adequacy of NRC Staff's work; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

NRC Staff's first attempt to analyze a NEPA issue gives rise to an intervenor's first opportunity to raise contentions on the adequacy of this assessment; LBP-15-11, 81 NRC 401 (2015)

NRC Staff's safety analysis and environmental analysis occur separately, and intervenors are expected to raise safety challenges in response to the safety reports and environmental challenges in response to the environmental statements; LBP-15-11, 81 NRC 401 (2015)

NRC's longstanding practice of considering environmental issues through general rulemaking in appropriate circumstances has been endorsed by higher courts; LBP-12-18, 76 NRC 127 (2012)

petitioner may amend its contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or any supplements thereto, that differ significantly from the data or conclusions in applicant's documents; LBP-11-32, 74 NRC 654 (2011); LBP-11-33, 74 NRC 675 (2011); LBP-15-11, 81 NRC 401 (2015)

petitioner must base its environmental contentions on information available at the time its intervention petition is to be filed, including applicant's environmental report; CLI-14-2, 79 NRC 11 (2014)

proposed transmission-line corridor is discussed; CLI-15-13, 81 NRC 555 (2015)

rather than being determinative, interdependence of proposed actions with potential future actions should be considered alongside other pertinent facts and circumstances to determine whether there is a sufficient likelihood that an action will occur to render that action foreseeable; LBP-14-6, 79 NRC 404 (2014)

regardless of the issuance of the license, the burden at hearing remains on applicant and, with respect to NEPA compliance, on NRC Staff; CLI-15-17, 82 NRC 33 (2015)

segmentation is to be avoided in order to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions; LBP-14-6, 79 NRC 404 (2014)

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segmentation or piecemealing occurs when an action is divided into component parts, each involving action with less significant environmental effects; LBP-14-6, 79 NRC 404 (2014)

severe accident mitigation alternatives analysis is a Category 2 issue; CLI-12-19, 76 NRC 377 (2012)

severe accident mitigation alternatives analysis is conducted pursuant to the National Environmental Policy Act, and thus is an environmental issue, not a safety issue; LBP-15-1, 81 NRC 15 (2015)

significant change in the nature of the purported NEPA imperfection, from one focusing on comprehensive information omission to one centered on a deficient analysis of subsequently supplied information, warrants issue modification by the complaining party because otherwise, absent any new pleading, the other parties would be left to speculate whether the concerns first expressed had been satisfied by the new information; LBP-12-5, 75 NRC 227 (2012)

site-specific environmental issues are Category 2 issues and thus admissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

to assess whether a contention is within the scope of, and material to, the proceeding, boards need to know the legal basis (safety or environmental) of the contention; LBP-13-8, 78 NRC 1 (2013)

to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-14-6, 79 NRC 404 (2014)

unless petitioner sets forth a supported contention pointing to an apparent error or deficiency that may have significantly skewed the environmental conclusions, there is no genuine material dispute for hearing; LBP-15-5, 81 NRC 249 (2015)

when NEPA contentions are involved, the burden of proof shifts to NRC Staff; LBP-15-16, 81 NRC 618 (2015)

where the rules in question, as well as the contention itself, address compliance with NEPA and not safety issues under the Atomic Energy Act, the rule waiver is needed to address a significant environmental issue instead of a significant safety issue; LBP-14-16, 80 NRC 183 (2014)

See also National Environmental Policy Act

ENVIRONMENTAL JUSTICE

Exec. Order No. 12898 did not, in itself, create new substantive authority for federal agencies and thus NRC determined that it would endeavor to carry out the EJ principles as part of the agency's responsibilities under NEPA; CLI-15-6, 81 NRC 340 (2015)

federal agencies shall identify and consider whether their actions will cause disproportionate environmental impacts on minority, low-income, or other sensitive populations; LBP-12-24, 76 NRC 503 (2012)

impacts to subsistence consumption must be evaluated as part of the site-specific EJ analysis; LBP-15-5, 81 NRC 249 (2015)

license renewal review must consider EJ, which is a Category 2 issue; CLI-15-6, 81 NRC 340 (2015); LBP-15-5, 81 NRC 249 (2015)

NRC must prepare an environmental impact statement that adequately evaluates the environmental impacts of relicensing, including impacts to tribal hunting and fishing rights and subsistence consumption; LBP-15-5, 81 NRC 249 (2015)

NRC Staff examined special pathways of exposure that could lead to a higher level of radiation exposure in minority and low-income populations in the area, including subsistence consumption of fish, native vegetation, surface waters, sediments, and local produce; CLI-15-6, 81 NRC 340 (2015)

NRC will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities; LBP-13-13, 78 NRC 246 (2013)

NRC's goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities; LBP-13-13, 78 NRC 246 (2013)

original contention did not point to any specific grievance with the environmental justice discussion provided in applicant's environmental report and so the board should have applied the standards in 10 C.F.R. 2.309(c) to determine whether petitioner had demonstrated good cause for its late filing; CLI-15-18, 82 NRC 135 (2015)

petitioner's attempt to tie NEPA environmental justice claim to Fukushima Task Force report is an improper effort to interpose concerns that could have been raised at the outset of the proceeding; LBP-11-37, 74 NRC 774 (2011)

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significant, high, and adverse disparate impacts are necessary to form a valid environmental justice contention; LBP-12-24, 76 NRC 503 (2012)

subsistence consumption is a subset of EJ; LBP-15-5, 81 NRC 249 (2015)

ENVIRONMENTAL PROTECTION AGENCY

AERMOD model for demonstrating compliance with EPA regulations and for state air quality protection planning is discussed; LBP-11-26, 74 NRC 499 (2011)

agency is recognized as an expert in environmental protection, and its final policy determinations deserve consideration; LBP-15-15, 81 NRC 598 (2015)

EPA also has granted authority to some states to implement, maintain, and enforce their own EPA-compliant air quality programs through State Ambient Air Quality Standards; LBP-11-26, 74 NRC 499 (2011)

in parallel with NRC Staff's role under NEPA to assess environmental impacts, EPA possesses authority under the Clean Air Act to set numerical standards for air pollutants from emission sources; LBP-11-26, 74 NRC 499 (2011)

radon emissions are regulated by EPA; LBP-15-16, 81 NRC 618 (2015)

surface roughness, albedo, and Bowen ratio inputs to the AERMOD model are discussed; LBP-11-26, 74 NRC 499 (2011)

ENVIRONMENTAL QUALIFICATION OF ELECTRICAL EQUIPMENT

cables important to safety must be designed to meet their intended function for the environment that they are subjected to and if cables have been exposed to conditions for which they are not designed,

licensees must demonstrate, through testing or monitoring, reasonable assurance that the cables can perform their intended design function for the licensed operating term; DD-13-2, 78 NRC 185 (2013)

cables subject to the environmental qualification standards of 10 C.F.R. 50.49 are important to the safety of a nuclear power plant and are required to function during an accident when exposed to harsh environmental conditions; LBP-13-13, 78 NRC 246 (2013)

electrical equipment important to safety but located in a mild environment does not fall within the scope of 10 C.F.R. 50.49(c); CLI-12-10, 75 NRC 479 (2012)

environmental qualification program must include and be based on temperature and pressure, humidity, submergence (if the equipment could be subject to submergence) that could result from a design-basis accident, chemical effects, aging, synergistic effects, and margins; DD-15-11, 82 NRC 361 (2015)

equipment important to safety located in an environment that would at no time be significantly more severe than the environment that would occur during normal plant operation are not included within the scope of 10 C.F.R. 50.49(c); LBP-11-20, 74 NRC 65 (2011)

lack of clarity about which electrical cables might be subject to any saltwater environment, however high or low the concentration, and about the effects of and efforts to address this, is a level of concern sufficient to warrant further inquiry and exploration; LBP-11-20, 74 NRC 65 (2011)

licensees are required to establish a program for qualifying certain defined electric equipment; LBP-11-20, 74 NRC 65 (2011)

licensees have identified, and NRC has accepted, lists of equipment important to safety subject to environmental qualification; DD-15-11, 82 NRC 361 (2015)

licensees must ensure that electrical cables are designed to function in environmental conditions during normal operation and during accidents; DD-13-2, 78 NRC 185 (2013)

licensees must establish an environmental qualification program for electrical equipment important to safety that would be exposed to harsh environmental conditions expected to develop as a result of design-basis accidents; DD-15-11, 82 NRC 361 (2015)

mild environment would at no time be significantly more severe than the environment that would occur during normal plant operation, including anticipated operational occurrences; CLI-12-10, 75 NRC 479 (2012)

particular requirements for the environmental qualification of electric components important to safety for nuclear power plants are set forth in 10 C.F.R. 50.49; CLI-12-10, 75 NRC 479 (2012)

request for enforcement action to address concerns about operability of the submerged and/or wetted non-environmentally qualified inaccessible cables is denied; DD-13-2, 78 NRC 185 (2013)

requirements to establish an environmental qualification program do not apply to equipment in a mild environment; DD-15-11, 82 NRC 361 (2015)

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- safety-related electrical equipment that must be environmentally qualified is described; LBP-11-20, 74 NRC 65 (2011)
- ENVIRONMENTAL REPORT
- absence of any reference to “cumulative impacts” in a document incorporated by reference negates any intention to incorporate any discussion of cumulative impacts from these prior documents into an ER, consistent with the maxim of *expressio unius est exclusio alterius*, i.e., the expression of one thing is the exclusion of another; LBP-12-24, 76 NRC 503 (2012)
- absent voluntary action by applicant to amend its ER, intervenor wishing to raise new or revised post-ER environmental concerns must await issuance of Staff’s draft environmental impact statement; LBP-11-37, 74 NRC 774 (2011)
- admissibility of contention that ER lacks site-specific safety and environmental findings regarding storage and disposal of spent fuel is decided; LBP-15-5, 81 NRC 249 (2015)
- admitted contentions challenging applicant’s ER may, in appropriate circumstances, function as challenges to similar portions of NRC Staff’s environmental impact statement; LBP-14-5, 79 NRC 377 (2014)
- alleged defects in applicant’s ER may be mooted by the content of NRC’s environmental impact statement or supplemental environmental impact statement; LBP-11-28, 74 NRC 604 (2011)
- alternative that fails to meet the purpose of the project does not need to be further examined in the ER; LBP-11-6, 73 NRC 149 (2011)
- although a contention contesting applicant’s ER generally may be viewed as a challenge to NRC Staff’s subsequent draft environmental impact statement, new claims must be raised in a new or amended contention; LBP-14-5, 79 NRC 377 (2014)
- although a draft supplemental environmental impact statement may rely in part on applicant’s ER, NRC Staff must independently evaluate and be responsible for the reliability of all information used in the DSEIS; LBP-15-3, 81 NRC 65 (2015)
- although all environmental contentions may, in a general sense, ultimately challenge the NRC’s compliance with NEPA, NRC regulations expressly permit the lodging of contentions against applicant’s ER well before release of NRC’s NEPA documents; LBP-11-38, 74 NRC 817 (2011)
- although environmental contentions are, in essence, challenges to NRC Staff’s compliance with NEPA, those contentions must be raised, if possible, in response to applicant’s ER; CLI-15-1, 81 NRC 1 (2015)
- although there are many possible combinations of wind and solar power, storage, and natural gas, it is not necessary to examine every possible combination; LBP-11-4, 73 NRC 91 (2011)
- applicant and Staff treatment of need for the construction and operation of uranium enrichment facilities should explain why the proposed action is needed, describe the underlying need for the proposed action, but should not be written merely as a justification of the proposed action or to alter the choice of alternatives; LBP-11-26, 74 NRC 499 (2011)
- applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an ER with its application; LBP-15-3, 81 NRC 65 (2015)
- applicant for license renewal must address environmental impacts of the proposed action and compare those impacts to the impacts of alternative actions, but need only consider those alternatives that are reasonable; LBP-12-15, 76 NRC 14 (2012)
- applicant had no legal duty to update its environmental report to encompass matters that occurred after that report was filed with the agency; LBP-12-15, 76 NRC 14 (2012)
- applicant is exempt from including in its environmental report a site-specific severe accident mitigation alternatives analysis because NRC Staff previously considered severe accident mitigation design alternatives in its final environmental impact statement; CLI-13-7, 78 NRC 199 (2013)
- applicant is not barred from voluntarily supplementing its ER; LBP-11-32, 74 NRC 654 (2011)
- applicant is not required to assess cumulative impacts in its ER, but NUREG-1748 requests that applicant discuss any past, present, or reasonably foreseeable future actions that could result in cumulative impacts when combined with the proposed action; LBP-12-24, 76 NRC 503 (2012)
- applicant is not required to discuss the federal government’s trust responsibility to Indian tribes in its ER; LBP-12-24, 76 NRC 503 (2012)
- applicant is not required to explain every aspect of the process it must pursue in the course of obtaining a federal permit, license, or approval; LBP-12-15, 76 NRC 14 (2012)

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applicant is not required to update or otherwise supplement an ER subsequent to the time that the Staff finds that report acceptable for review as part of a license application; LBP-11-37, 74 NRC 774 (2011)

applicant is to provide an analysis of alternatives to the proposed action that is sufficiently complete to aid NRC Staff in developing and exploring its own set of alternatives; LBP-12-8, 75 NRC 539 (2012)

applicant is to provide an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-12-8, 75 NRC 539 (2012)

applicant may bear the burden of proof on contentions asserting deficiencies in its ER and where the applicant becomes a proponent of a particular challenged position set forth in the environmental impact statement; LBP-11-38, 74 NRC 817 (2011)

applicant may update an ER if relevant new and significant information becomes available but is under no regulatory or statutory obligation to do so; LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

applicant must address both the impacts of the proposed renewal and alternatives to those impacts; LBP-12-8, 75 NRC 539 (2012)

applicant must analyze environmental impacts of a license renewal on matters identified as Category 2 issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 249 (2015)

applicant must describe and discuss reasonably foreseeable environmental impacts in proportion to their significance and adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-11-6, 73 NRC 149 (2011); LBP-11-16, 73 NRC 645 (2011)

applicant must describe the proposed action, state its purposes, and describe the environment affected; LBP-15-3, 81 NRC 65 (2015)

applicant must discuss appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-11-6, 73 NRC 149 (2011)

applicant must discuss in its ER the impact of the proposed action on the environment; LBP-12-24, 76 NRC 503 (2012)

applicant must discuss the five elements of 10 C.F.R. 51.45(b)(1)-(5); LBP-15-3, 81 NRC 65 (2015)

applicant must discuss the status of its compliance with environmental quality standards and requirements that have been imposed by federal, state, regional, and local agencies having responsibility for environmental protection; LBP-12-12, 75 NRC 742 (2012)

applicant must identify and discuss the status of all permits, licenses, and other approvals that are required from federal, state, and local agencies; LBP-11-16, 73 NRC 645 (2011)

applicant must include a discussion of severe accident mitigation alternatives if NRC has not considered them previously for the applicant's plant; CLI-13-7, 78 NRC 199 (2013)

applicant must include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-11-6, 73 NRC 149 (2011)

applicant must provide a discussion of the no-action alternative in its ER; LBP-12-8, 75 NRC 539 (2012)

applicant must provide an analysis of the cumulative impacts of the activities to be authorized by a combined license; LBP-11-6, 73 NRC 149 (2011)

applicant must update its license renewal application annually to reflect changes in its current licensing basis, but such updating does not explicitly extend to the ER; LBP-11-32, 74 NRC 654 (2011)

applicant need consider only those environmental impacts that are reasonably foreseeable, not those that are remote and speculative possibilities; LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012)

applicant need not submit an ER until the final stage of decommissioning as part of its license termination plan; LBP-15-24, 82 NRC 68 (2015)

applicant need only consider the range of alternatives that are capable of achieving the goals of the proposed action; LBP-11-13, 73 NRC 534 (2011)

applicant need only discuss reasonably foreseeable environmental impacts of a proposed action; LBP-11-6, 73 NRC 149 (2011)

applicant owes no duty to address the federal government's trust responsibility in its ER; LBP-14-6, 79 NRC 404 (2014)

applicant's environmental report is to discuss any irreversible and irretrievable commitments of resources that would be involved in the proposed action; LBP-12-3, 75 NRC 164 (2012)

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applicant's alternatives analysis must be sufficiently complete to aid the Commission in developing and exploring appropriate alternatives to the proposed action; LBP-11-13, 73 NRC 534 (2011)

applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 534 (2011)

applicant's ER is not the vehicle for the NRC Staff's safety review; LBP-11-6, 73 NRC 149 (2011)

applicant's ER must contain a sufficient analysis of potential environmental consequences and alternatives to enable the NRC Staff to prepare an environmental impact statement that fulfills the agency's obligations under NEPA; LBP-11-14, 73 NRC 591 (2011)

applicant's ER must contain analyses of the environmental impacts of the proposed action for those matters identified as Category 2 license renewal issues in Appendix B; LBP-11-21, 74 NRC 115 (2011)

applicant's ER must include new information when a prior license has been issued for the facility, and the ER in question is associated with a subsequent license for the same facility; LBP-11-32, 74 NRC 654 (2011)

applicant's ER must provide sufficient information about alternatives to enable NRC Staff to prepare an environmental impact statement in compliance with NEPA; LBP-11-21, 74 NRC 115 (2011)

applicant's ER need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

applicant's ER should contain sufficient data to aid the Commission in its development of an independent analysis; LBP-11-6, 73 NRC 149 (2011)

applicant's obligation is to consider alternatives as they exist and are likely to exist; LBP-11-2, 73 NRC 28 (2011)

applicants may submit a supplement to an environmental report at any time; CLI-12-13, 75 NRC 681 (2012); LBP-12-13, 75 NRC 784 (2012)

applicants must discuss new severe accident mitigation alternatives addressed in more recent reports for other nuclear power plants of the same or similar boiling water reactor Mark II design; LBP-14-15, 80 NRC 151 (2014)

applicants still face a continuing possibility of contentions in adjudicatory proceedings based upon omissions or deficiencies in their environmental report because NRC rules require the filing of contentions as early as possible; CLI-12-13, 75 NRC 681 (2012)

application for land disposal of radioactive waste may incorporate by reference information contained in the application or in any previous application, statement, or report filed with the Commission provided that such references are clear and specific; LBP-12-24, 76 NRC 503 (2012)

as a practical matter, Staff relies heavily upon applicant's environmental report in preparing its environmental impact statement; LBP-11-38, 74 NRC 817 (2011); LBP-14-7, 79 NRC 451 (2014)

at the outset of proceedings, NEPA contentions are to be based on applicant's ER; LBP-11-32, 74 NRC 654 (2011)

because Category 1 issues in 10 C.F.R. Part 51, Subpart A, Appendix B already have been reviewed on a generic basis, applicant's ER need not provide a site-specific analysis of these issues; CLI-11-11, 74 NRC 427 (2011); LBP-11-21, 74 NRC 115 (2011)

because it is a Category 1 issue, license renewal applicants need not address bird collisions in their environmental reports unless they are aware of relevant new and significant information; CLI-13-7, 78 NRC 199 (2013)

because NRC Staff relies heavily on the applicant's ER in preparing the environmental impact statement, should the applicant become a proponent of a particular challenged position set forth in the EIS, the applicant, as such a proponent, also has the burden on that matter; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the ER as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, this argument is untimely; LBP-12-7, 75 NRC 503 (2012)

board may construe an admitted contention contesting applicant's ER as a challenge to a subsequently issued draft or final environmental impact statement without the necessity for intervenors to file a new or amended contention; LBP-15-11, 81 NRC 401 (2015)

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boards do not sit to “flyspeck” environmental documents or to add details or nuances, but the ER or environmental impact statement must come to grips with all important considerations; LBP-11-16, 73 NRC 645 (2011); LBP-15-5, 81 NRC 249 (2015)

boards may construe an admitted contention contesting the ER as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-23, 76 NRC 445 (2012)

Category 1 issues are those resolved generically by the generic environmental impact statement and need not be addressed as part of license renewal; LBP-12-8, 75 NRC 539 (2012)

Category 2 issues are reviewed on a site-specific basis because they have not been determined to be essentially similar for all plants; LBP-15-5, 81 NRC 249 (2015)

challenge that applicant’s environmental report omits material that petitioner alleges is required to be there is within the scope of the proceeding; LBP-12-8, 75 NRC 539 (2012)

challenging the ER preserves petitioner’s right to challenge the environmental impact statement at a later stage of the proceedings; LBP-12-8, 75 NRC 539 (2012)

climate change is considered an environmental impact that must be addressed; LBP-11-16, 73 NRC 645 (2011)

Commission decision to decline review of a referred question does not constitute an endorsement of the board’s views on the question of an applicant’s duty to supplement its environmental report; CLI-12-13, 75 NRC 681 (2012)

commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for demonstrating that the effects of aging will be adequately managed; LBP-11-2, 73 NRC 28 (2011)

contention asserting that a license renewal ER must include a discussion of need for power is inadmissible; LBP-11-13, 73 NRC 534 (2011)

contention based solely on omissions from the ER is rendered moot when the missing information is supplied; LBP-11-14, 73 NRC 591 (2011)

contention claiming that the ER’s discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with NRC requirements is admissible; LBP-11-16, 73 NRC 645 (2011)

contention is within the scope of license renewal proceeding because NRC regulations require that the ER include a severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 249 (2015)

contention of omission on a matter related to the National Environmental Policy Act must describe the information that should have been included in applicant’s ER and provide the legal basis that requires the omitted information to be included; LBP-15-5, 81 NRC 249 (2015)

contention that alleges an omission, not an inadequacy, of an ER’s analysis of socioeconomic impacts raises an issue that is not material to any finding NRC must make in an early site permit proceeding; LBP-11-16, 73 NRC 645 (2011)

contention that applicant fails to include need-for-power analyses in its ERs for operating license renewal is inadmissible; LBP-13-12, 78 NRC 239 (2013)

contention that applicant must include a discussion of environmental impacts of spent fuel pool leakage, fires, and lack of a spent fuel repository is dismissed; LBP-14-12, 80 NRC 138 (2014)

contention that challenges lack of severe accident mitigation alternatives analysis in applicant’s environmental report is inadmissible; CLI-13-7, 78 NRC 199 (2013)

contention that ER does not satisfy NEPA because it does not consider a range of mitigation measures to mitigate the risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 249 (2015)

contention that ER fails to accurately and thoroughly conduct severe accident mitigation alternatives analysis to design vulnerability of GE Mark I boiling water reactor pressure suppression containment system and environmental consequences of a to-be-anticipated severe accident post-Fukushima Daiichi fails to present a genuine material dispute; LBP-15-5, 81 NRC 249 (2015)

contention that ER is inadequate insofar as it does not consider the risk of spent fuel pool fires is inadmissible; LBP-15-5, 81 NRC 249 (2015)

contention that raises a genuine dispute with the sufficiency of the cumulative impacts analysis, or the lack thereof, in the ER is admissible; LBP-12-3, 75 NRC 164 (2012)

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- contention that the ER fails to satisfy 10 C.F.R. 51.53(c)(2) because it does not include information about plans to modify the facility in response to post-Fukushima enforcement order is inadmissible; LBP-12-15, 76 NRC 14 (2012)
- contention that the ER is deficient in concluding that environmental impacts from proposed deep injection wells will be small because the ER fails to identify the source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene is inadmissible; LBP-12-9, 75 NRC 615 (2012)
- contention that was originally admitted as a challenge to the ER may be treated as a challenge to the similar section of the draft environmental impact statement; LBP-11-1, 73 NRC 19 (2011)
- contentions arising under NEPA must be filed based on applicant's ER; LBP-15-19, 81 NRC 815 (2015)
- contentions challenging an ER may be viewed as a challenge to the NRC Staff's subsequent draft or final environmental impact statement; CLI-12-1, 75 NRC 39 (2012)
- contentions must directly controvert relevant sections of the ER; LBP-11-16, 73 NRC 645 (2011)
- current licensing basis of an operating license shall continue during the license renewal period, but these conditions may be supplemented or amended as necessary to protect the environment during the term of the renewed license and will be derived from information contained in the supplement to the environmental report, as analyzed and evaluated in the NRC record of decision; LBP-11-17, 74 NRC 11 (2011)
- despite the ability of both NRC Staff and applicant to present evidence and witnesses on environmental issues, the ultimate issue in determining NEPA compliance is the adequacy of NRC Staff's environmental review, not applicant's ER; LBP-13-13, 78 NRC 246 (2013)
- discussion of need for power is required in an ER, but applicant need not precisely identify future market conditions and energy demand or develop other detailed analyses in order to establish with certainty that construction and operation of a nuclear power plant is the most economical alternative; LBP-11-6, 73 NRC 149 (2011)
- discussion of the no-action alternative need only include feasible, nonspeculative alternatives; LBP-12-8, 75 NRC 539 (2012)
- draft environmental impact statement might cure alleged omissions or deficiencies in the ER by including additional analyses that address such omissions or deficiencies; LBP-11-7, 73 NRC 254 (2011)
- environmental considerations that the ER must discuss are equivalent to, and in most instances verbatim restatements of, environmental considerations that NEPA requires the agency to describe in detail in the environmental impact statement; LBP-15-5, 81 NRC 249 (2015)
- environmental impacts must be discussed in proportion to their significance; LBP-12-9, 75 NRC 615 (2012)
- ER for the license renewal stage need not contain environmental analysis of Category 1 issues identified in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 249 (2015)
- ER is required for a combined license application; CLI-11-5, 74 NRC 141 (2011)
- ER must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 249 (2015)
- ER's adequacy is examined under NEPA as well as under Part 51 because the ER is the basis upon which the NRC's environmental impact statement will be prepared; LBP-11-13, 73 NRC 534 (2011); LBP-11-14, 73 NRC 591 (2011)
- ERs prepared under 10 C.F.R. 51.53(a) may incorporate by reference any information contained in a prior ER or supplement thereto that relates to the production or utilization facility or site, or any information contained in a related final environmental document previously prepared by NRC Staff; LBP-12-24, 76 NRC 503 (2012)
- even if a contention provided information not discussed in the ER, it is still not admissible if it fails to provide a reasoned basis or explanation for why the ER is wrong; LBP-15-5, 81 NRC 249 (2015)
- every combined license application must be accompanied by an ER, the purpose of which is to aid NRC Staff in its preparation of an environmental impact statement; LBP-11-6, 73 NRC 149 (2011); LBP-12-9, 75 NRC 615 (2012)
- every ER prepared for the construction permit stage, the early site permit stage, or the combined license stage of a light-water-cooled nuclear power reactor must contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor; LBP-12-12, 75 NRC 742 (2012)

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examples of need for the proposed facility include a benefit provided if the proposed action is granted or descriptions of the detriment that will be experienced without approval of the proposed action; LBP-11-26, 74 NRC 499 (2011)

exception in section 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 designation for Limerick and similarly situated plants for which SAMAs were already considered in an environmental impact statement or environmental assessment; CLI-13-7, 78 NRC 199 (2013)

extent of the no-action discussion is governed by a rule of reason; LBP-12-8, 75 NRC 539 (2012)

failure to provide a direct critique of the analysis in the ER discussing the potential for offshore power and interconnected wind farms is a failure to identify a genuine dispute with applicant; LBP-15-5, 81 NRC 249 (2015)

for Category 2 environmental issues, applicants must include a site-specific environmental analysis in their license renewal applications; CLI-12-19, 76 NRC 377 (2012)

for materials license amendment or renewal application or other form of permission for which applicant has previously submitted an ER, the supplement to applicant's ER may be limited to incorporating by reference, updating, or supplementing the information previously submitted to reflect any significant environmental change, including any resulting from operational experience or a change in operations or proposed decommissioning activities; LBP-12-24, 76 NRC 503 (2012)

for operating license renewal, if NRC Staff has not previously considered severe accident mitigation alternatives for applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, applicant's ER must contain a consideration of SAMAs; LBP-11-17, 74 NRC 11 (2011); LBP-11-18, 74 NRC 29 (2011); LBP-11-21, 74 NRC 115 (2011)

for the no-action alternative, there need not be much discussion in the environmental documents because it is most simply viewed as maintaining the status quo; LBP-12-8, 75 NRC 539 (2012)

full discussion of mitigation plans must be included; LBP-11-6, 73 NRC 149 (2011)

general and unparticularized references to health and safety significance and material deficiencies in the ER would not satisfy the rule that contentions be pled with specificity; CLI-15-18, 82 NRC 135 (2015)

if an ER is compliant as of its date of issuance, then subsequent events and information are not material to the compliance status of the ER; LBP-12-13, 75 NRC 784 (2012)

if applicant was required to update its ER every time NRC issued a request for additional information, there would need to be dozens, if not hundreds, of such updates; LBP-12-13, 75 NRC 784 (2012)

if new information becomes available that, e.g., an endangered species has been living on the site or that the facility has been leaking tritium into the groundwater, then a new contention alleging that the environmental report as originally filed did not comply with Part 51 may be filed; LBP-11-32, 74 NRC 654 (2011)

impacts of the possible routes that applicant will use for its transmission lines must be analyzed for applicant to give the NRC the requisite information to make an informed decision on its license application; LBP-11-6, 73 NRC 149 (2011)

in light of the vacatur of the Waste Confidence Decision and Temporary Storage Rule, ERs must consider the reasonably foreseeable impacts of permanent storage of spent fuel, and contentions concerning the failure of the ER to do so must be held in abeyance; LBP-12-24, 76 NRC 503 (2012)

inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 249 (2015)

information provided to NRC by an applicant must be complete and accurate in all material respects; LBP-11-32, 74 NRC 654 (2011)

information request from NRC Staff is not an approval that needs to be listed in applicant's ER under 10 C.F.R. 51.45(d); LBP-15-27, 82 NRC 184 (2015)

intervenor may file a new or amended contention challenging relevant new portions of the draft environmental impact statement that differ from applicant's ER; LBP-11-1, 73 NRC 19 (2011)

intervenor's challenges to the adequacy of applicant's ER with respect to environmental impacts of dewatering associated with the proposed nuclear plant continue to serve as viable challenges to similar sections of Staff's draft environmental impact statement and thus are not moot; LBP-11-1, 73 NRC 19 (2011)

intervenor must file their NEPA contentions based on the ER; LBP-12-12, 75 NRC 742 (2012)

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issues that a license renewal applicant must address in its ER, as well as those that it need not address, are listed in 10 C.F.R. 51.53(c)(3); LBP-12-8, 75 NRC 539 (2012)

it is applicant's responsibility to include information in the ER that NRC Staff needs to prepare the draft environmental impact statement, including information on alternatives available for reducing or avoiding adverse environmental effects; LBP-12-12, 75 NRC 742 (2012)

license amendment applicants must include in their environmental report any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-11-29, 74 NRC 612 (2011)

license applicants were permitted to omit any discussion of any environmental impact of spent fuel storage in independent spent fuel storage installations for the period following the term of the initial ISFSI license in any ER, environmental impact statement, environmental assessment, or other analysis; LBP-12-24, 76 NRC 503 (2012)

license renewal applicant is required to consider any new and significant information that might alter previous environmental conclusions; LBP-12-8, 75 NRC 539 (2012)

license renewal applicant may adopt generic findings of the generic environmental impact statement, but must also include site-specific analyses of Category 2 issues; CLI-15-6, 81 NRC 340 (2015)

license renewal applicant must consider alternatives to mitigate severe accidents for all plants that have not considered such alternatives; LBP-15-5, 81 NRC 249 (2015)

license renewal applicant must file an ER that includes an alternatives analysis that considers and balances the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-11-13, 73 NRC 534 (2011)

license renewal applicant must include a consideration of alternatives to mitigate severe accidents if NRC Staff has not previously considered them for applicant's plant in an environmental impact statement or related supplement or in an environmental assessment; CLI-12-19, 76 NRC 377 (2012)

license renewal applicant need not include analyses of the environmental impacts of Category 1 issues in its ER because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 377 (2012)

license renewal applicant need not provide an analysis of severe accident mitigation alternatives in its ER if NRC Staff has already considered SAMAs for applicant's plant in an environmental impact statement or related supplement or in an environmental assessment; LBP-12-8, 75 NRC 539 (2012)

license renewal applicant's ER must address environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

license renewal applicants must assess the impact of the proposed action on threatened or endangered species in accordance with the Endangered Species Act as part of their ER; LBP-12-10, 75 NRC 633 (2012)

license renewal applicants must identify in their environmental reports any new and significant information of which the applicant is aware to assist in the preparation of NRC's new-and-significant-information analysis; CLI-13-7, 78 NRC 199 (2013)

license renewal applicants must include in their ER any new and significant information of which they are aware; CLI-12-19, 76 NRC 377 (2012)

license renewal applicants must provide a plant-specific analysis of issues designated as Category 2; CLI-11-11, 74 NRC 427 (2011)

license renewal applicants must provide a severe accident mitigation alternatives analysis in their license renewal application if NRC Staff has not previously considered SAMAs for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment; CLI-15-18, 82 NRC 135 (2015)

license renewal applicants must submit an ER to aid the Staff in its preparation of a supplemental environmental impact statement; CLI-12-13, 75 NRC 681 (2012); LBP-12-8, 75 NRC 539 (2012)

license renewal applicants need not include a need-for-power discussion in their ER; CLI-14-6, 79 NRC 445 (2014)

license renewal applicants need not provide a site-specific analysis of the environmental impacts of spent fuel storage in their environmental report; CLI-11-11, 74 NRC 427 (2011)

license renewal applicants need not submit an analysis of Category 1 issues in their site-specific ER; LBP-11-2, 73 NRC 28 (2011)

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- license renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues; CLI-13-7, 78 NRC 199 (2013)
- license renewal applications must contain any significant new information relevant to environmental impacts of license renewal of which applicant is aware, and new information generally may be challenged in individual adjudications; CLI-12-19, 76 NRC 377 (2012)
- license renewal ER is not required to include discussion of need for power; LBP-11-21, 74 NRC 115 (2011)
- licensee is not required to list an enforcement order and its compliance with the order's terms in the environmental report supporting its operating license renewal application; LBP-12-15, 76 NRC 14 (2012)
- licensing board refers ruling that applicant has no legal duty to supplement an originally compliant environmental report to incorporate new and significant information that arises after the ER was duly submitted; LBP-11-32, 74 NRC 654 (2011)
- limited work authorization application for a site where a construction permit was issued but construction of the plant was never completed may incorporate the earlier environmental impact statement; LBP-12-24, 76 NRC 503 (2012)
- mere promise by applicant to follow applicable regulations in capping and abandoning active and inactive oil and gas wells in the footprint of the cooling basin and plant is insufficient to satisfy NRC's regulations; LBP-11-16, 73 NRC 645 (2011)
- migration tenet applies only as long as the DEIS analysis or discussion at issue is essentially *in para materia* with the ER analysis or discussion that is the focus of the contention; LBP-12-12, 75 NRC 742 (2012)
- migration tenet applies when information in the draft environmental impact statement is sufficiently similar to information in applicant's ER, and allows previously admitted contentions challenging the ER to apply to relevant portions of the DSEIS; LBP-11-1, 73 NRC 19 (2011); LBP-15-16, 81 NRC 618 (2015)
- neither NEPA nor 10 C.F.R. Part 51 requires an applicant to update an originally compliant ER to reflect new information derived from subsequent events; LBP-12-13, 75 NRC 784 (2012)
- neither NRC nor applicant need consider any alternative that does not bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)
- NEPA-related contentions initially are based on applicant's environmental report which will inform NRC Staff's NEPA review; LBP-13-10, 78 NRC 117 (2013)
- "new" in 10 C.F.R. 51.53(c)(3)(iv) requires that the ER include environmental information that is new as compared to the original ER for the same facility and new as of the time of submission of the required ER, but does not impose a continuing duty to supplement an ER which was compliant when submitted; LBP-11-32, 74 NRC 654 (2011)
- nonspeculative irreversible and irretrievable commitment of resources requires that an ER provide an impacts analysis of such an occurrence; LBP-13-10, 78 NRC 117 (2013)
- nothing in NEPA, which applies to agencies of the federal government, can be read to require an applicant to update its environmental report; LBP-11-34, 74 NRC 685 (2011)
- NRC does not mandate a specific approach to SAMA analyses, but instead, reviews each severe accident mitigation consideration provided by a license renewal applicant on its merits and determines whether it constitutes a reasonable consideration of SAMAs; CLI-13-7, 78 NRC 199 (2013)
- NRC is required to independently assess the validity of the information that applicant submits in its ER; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff cannot release NEPA documents that blindly parallel the applicant's information and omissions and then be allowed to argue that applicant's omissions prevent filing of new contentions concerning the newly released NEPA document; LBP-13-9, 78 NRC 37 (2013)
- NRC Staff is empowered to issue requests for additional information relevant to an applicant's environmental report; LBP-11-34, 74 NRC 685 (2011)
- NRC Staff is not barred from filing a request for additional information asking the applicant to supplement its ER; LBP-11-32, 74 NRC 654 (2011)
- NRC Staff relies heavily on applicant's ER in preparing its environmental impact statement; LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)

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NRC Staff uses applicant's ER as a starting point for its own environmental review of a license renewal application, the results of which are published as a supplement to the generic environmental impact statement; CLI-15-6, 81 NRC 340 (2015)

NRC Staff was asked to review generically an applicant's duty to supplement or correct its ER; CLI-12-19, 76 NRC 377 (2012)

NRC Staff, pursuant to its obligation to prepare an adequate EIS, is empowered to issue requests for additional information relevant to an applicant's ER; LBP-11-33, 74 NRC 675 (2011)

NRC Staff's issuance of an environmental assessment under NEPA does not necessarily moot contentions challenging applicant's ER; LBP-14-6, 79 NRC 404 (2014)

on issues arising under NEPA, intervenor must file contentions based on the applicant's ER, but may amend those contentions or file new contentions; LBP-11-7, 73 NRC 254 (2011)

on issues arising under the National Environmental Policy Act, participants shall file contentions based on applicant's ER; CLI-13-7, 78 NRC 199 (2013)

once challenged, there is no presumption that an ER is correct or accurate, with applicant, as the proponent of the license, bearing the burden of proof; LBP-15-2, 81 NRC 48 (2015)

operating license renewal applications must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-13-1, 77 NRC 57 (2013)

Part 51, not NEPA, is the source of the legal requirements applicable to applicant's ER; LBP-11-32, 74 NRC 654 (2011)

petitioner may claim deficiencies in the application's cultural resources discussion even though it is generally not expected that applicant's cultural resources discussion will be comprehensive; CLI-14-2, 79 NRC 11 (2014)

petitioner must challenge the ER, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-12-8, 75 NRC 539 (2012)

petitioner must file NEPA-related contentions based on applicant's environmental report, but the filing of new or amended contentions is explicitly permitted if there are data or conclusions in the NRC draft or final environmental impact statement that differ significantly from data or conclusions in applicant's documents; LBP-12-13, 75 NRC 784 (2012)

petitioner's assertion that applicant's ER must be supplemented to take account of allegedly new and significant information is, as a procedural matter, unfounded and must be rejected; LBP-11-33, 74 NRC 675 (2011)

petitioner's challenge to applicant's use of Three Mile Island data constitutes a genuine dispute on a material issue and is within the scope of the license renewal proceeding because it challenges the adequacy of the environmental report; LBP-12-8, 75 NRC 539 (2012)

petitioners fail to link any of their past criticisms to specific provisions of the environmental report, and the board declines to pore through the attachments to their intervention submission to assemble the basis for such a contention; LBP-12-3, 75 NRC 164 (2012)

petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the ER; LBP-15-5, 81 NRC 249 (2015)

post-operating license stage supplement to applicant's ER may incorporate by reference any information contained in applicant's construction permit stage ER; LBP-12-24, 76 NRC 503 (2012)

publication of NRC Staff's draft environmental impact statement may moot a contention challenging the environmental analysis in the applicant's ER if the DEIS dispenses with the issues raised in the original contention challenging the ER; LBP-11-1, 73 NRC 19 (2011)

purpose of applicant's ER is to assist NRC in preparing the agency's own environmental analysis; LBP-11-28, 74 NRC 604 (2011)

referencing an aging management program described in the GALL Report does not insulate a program from an adequately supported challenge at a hearing; LBP-11-2, 73 NRC 28 (2011)

reliance on mitigation to support findings with regard to environmental impacts of an activity is justified; LBP-14-7, 79 NRC 451 (2014)

remote and speculative alternatives need not be addressed in applicant's ER; CLI-12-5, 75 NRC 301 (2012); LBP-11-2, 73 NRC 28 (2011)

requirement for license renewal applicants to consider severe accident mitigation alternatives stems from 10 C.F.R. 51.53(c)(3)(ii)(L); CLI-12-10, 75 NRC 479 (2012)

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requirements for ERs are listed in 10 C.F.R. 51.45(b)(1), (2), (5); LBP-14-9, 80 NRC 15 (2014)

severe accident mitigation alternatives analyses identify and assess possible plant changes, such as hardware modifications and improved training or procedures, that could cost-effectively reduce the radiological risk from a severe accident; LBP-11-13, 73 NRC 534 (2011); LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)

severe accident mitigation alternatives analysis must be considered as part of the ER and, ultimately, as part of NRC Staff's supplemental environmental impact statement for a power reactor license renewal; LBP-15-5, 81 NRC 249 (2015)

Staff guidance documents set forth information that should be provided in the ER and the environmental impact statement regarding a radiological monitoring program and monitoring program acceptance criteria; LBP-11-26, 74 NRC 499 (2011)

Staff's ability to satisfy its NEPA obligations will be undermined if applicant either fails to include seismic information in its SAMA analysis, or, in omitting the information, fails to explain its absence and justify that the overall costs of obtaining it are exorbitant; CLI-11-11, 74 NRC 427 (2011)

sufficient data should be provided to aid the Commission in its development of an independent analysis; CLI-12-13, 75 NRC 681 (2012); LBP-12-9, 75 NRC 615 (2012)

time for challenging the ER passes when NRC Staff releases its draft supplemental environmental impact statement, but contentions challenging the ER can be filed with the initial petition and prior to the time Staff's environmental review documents are completed; LBP-12-11, 75 NRC 731 (2012)

to assist NRC in preparation of a supplemental environmental impact statement, license renewal applicants are required to prepare an ER; CLI-13-7, 78 NRC 199 (2013)

to litigate a SAMA-related contention in adjudicatory proceedings where the SAMA-analysis exception applies, petitioner must obtain a rule waiver as well as satisfy the contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)

to the extent there are important NEPA qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms; LBP-15-5, 81 NRC 249 (2015)

types of information that an ER must contain are described in 10 C.F.R. 51.53(c)(3)(ii); CLI-13-7, 78 NRC 199 (2013)

under the migration tenet, boards may construe an admitted contention contesting the ER as a challenge to the subsequently issued draft or final environmental impact statement without the necessity for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 742 (2012)

uranium enrichment facility applicant is required to prepare an ER; LBP-12-21, 76 NRC 218 (2012)

whether a severe accident mitigation alternative is worthy of more detailed analysis in an ER or supplemental environmental impact statement hinges on whether it may be cost-beneficial to implement; CLI-12-3, 75 NRC 132 (2012)

ENVIRONMENTAL REVIEW

absent a rule waiver, NRC Staff is not expected to revisit the impact determinations made in the Continued Storage GEIS as part of its site-specific NEPA reviews; CLI-15-10, 81 NRC 535 (2015)

absent a valid regulation limiting NRC's NEPA obligations, the consideration of alternative severe accident mitigation measures may not be excluded from the agency's NEPA reviews; LBP-12-18, 76 NRC 127 (2012)

adequacy of NRC Staff's review of transmission-corridor impacts might be appropriate for the board's consideration sua sponte; CLI-15-1, 81 NRC 1 (2015)

after a licensing board in an uncontested proceeding determines that Staff's NEPA review is adequate, it must then independently consider the final balance among conflicting factors that is struck in the Staff's recommendation; LBP-12-21, 76 NRC 218 (2012)

agencies are encouraged to incorporate consultation procedures on endangered/threatened species and essential fish habitat into their NEPA review; LBP-12-10, 75 NRC 633 (2012)

agencies are given broad discretion to keep their NEPA inquiries within appropriate and manageable boundaries; LBP-15-3, 81 NRC 65 (2015)

agencies are not permitted to define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives; LBP-12-17, 76 NRC 71 (2012)

agencies must use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in decisionmaking that may impact the environment; CLI-15-13, 81 NRC 555 (2015)

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- agency cannot relinquish its NEPA responsibility to evaluate environmental impacts by relying on expected compliance with the environmental standards of another agency; LBP-15-23, 82 NRC 55 (2015)
- agency conducting a NEPA review shall independently evaluate the information submitted and shall be responsible for its accuracy; LBP-15-11, 81 NRC 401 (2015)
- agency failed to take a hard look at cumulative impacts on cultural resources under NEPA even though the agency had satisfied its obligations under NHPA to consult with the tribe; LBP-15-16, 81 NRC 618 (2015)
- agency that has prepared an EIS cannot simply rest on the original document but must be alert to new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned action, even after a proposal has received initial approval; LBP-12-18, 76 NRC 127 (2012)
- agency's reliance on mitigation in making a finding of no significant impact must be justified; LBP-12-23, 76 NRC 445 (2012)
- agency's reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 445 (2012)
- aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 11 (2011)
- although a SAMA analysis considers safety issues, it is actually an environmental review that must be judged under NEPA's rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 246 (2015)
- although an agency may coordinate and, where practicable, integrate its National Environmental Policy Act and National Historic Preservation Act review efforts, the two statutes impose separate and distinct obligations; LBP-15-16, 81 NRC 618 (2015)
- although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 559 (2012)
- although NRC may regard preconstruction activities as outside the scope of a combined license application, these activities are within the scope of the NEPA review because they are all connected actions; LBP-14-9, 80 NRC 15 (2014)
- although NRC must take a hard look under NEPA, NEPA itself does not mandate particular results; LBP-13-13, 78 NRC 246 (2013)
- although NRC takes the position that it lacks authority to impose environmental restrictions on transmission corridors, those impacts should have been analyzed as a direct effect of the NRC action even under NRC's new interpretation; LBP-14-9, 80 NRC 15 (2014)
- although sufficiency of the application and NRC Staff's environmental review of that application are proper targets of contentions, sufficiency of NRC Staff's safety review of the application is not a proper target of contentions; LBP-11-29, 74 NRC 612 (2011)
- although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-13-4, 77 NRC 107 (2013)
- any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 253 (2013)
- application-specific NEPA review represents a snapshot in time, and although NEPA requires that NRC conduct its environmental review with the best information available at that time, it does not require that NRC wait until inchoate information matures into something that later might affect its review; LBP-12-10, 75 NRC 633 (2012)
- because 10 C.F.R. 51.23(b) prescribes a specific procedure for incorporating the environmental impacts of continued storage into a site-specific analysis, this procedure, rather than a procedure set forth in the general provisions of Part 51, governs NRC environmental review; CLI-15-10, 81 NRC 535 (2015)
- before a final decision approving or disapproving a construction authorization application may be reached, not only must NRC Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 219 (2013)

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- blanket reliance by NRC Staff on Clean Water Act permits is not permitted; LBP-14-9, 80 NRC 15 (2014)
- boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)
- categories of actions are exempt from NEPA review where NRC has made a generic finding that the actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 163 (2015)
- certification by agencies without overall responsibility for the particular federal action in question that its own environmental standards are satisfied attend only to one aspect of the problem without considering the broad range of environmental concerns and considerations mandated by NEPA; LBP-15-23, 82 NRC 55 (2015)
- completion of NRC Staff's final environmental review document always must precede the conduct of hearings on environmental issues; LBP-11-30, 74 NRC 627 (2011)
- compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality; LBP-15-11, 81 NRC 401 (2015)
- contention asserting that the NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)
- contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of the Staff's draft environmental review document; CLI-14-2, 79 NRC 11 (2014)
- duty to exercise independent judgment does not mean that NRC must reinvent every wheel or duplicate competent and professional environmental data and studies that have already been done on a proposed site; LBP-13-4, 77 NRC 107 (2013)
- ensuring continued availability of diverse, reliable sources of domestic enrichment services to provide low-enriched uranium for domestic power reactors supports a finding of need for the facility; LBP-11-26, 74 NRC 499 (2011)
- "environmental document" includes environmental assessment, environmental impact statement, finding of no significant impact, and notice of intent; LBP-15-16, 81 NRC 618 (2015)
- environmental impact statements must address all reasonably foreseeable environmental impacts even if the probability of such an occurrence is low; LBP-14-9, 80 NRC 15 (2014)
- environmental impacts of license renewal are classified as either Category 1, which are generically addressed by the NRC's generic environmental impact statement for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 11 (2011)
- environmental justice must be addressed in individual license renewal reviews; LBP-13-13, 78 NRC 246 (2013)
- establishment of baseline conditions of the affected environment is a fundamental requirement of the National Environmental Policy Act process; LBP-13-9, 78 NRC 37 (2013)
- evidence of significant actual utility commitments provides a compelling showing in support of the need for uranium enrichment facility; LBP-11-26, 74 NRC 499 (2011)
- evidentiary hearing should begin 175 days after release of NRC Staff's environmental review document; CLI-15-17, 82 NRC 33 (2015)
- exemptions from decommissioning fund expenditure notification requirements are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-28, 82 NRC 233 (2015)
- exemptions from decommissioning fund withdrawals are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-24, 82 NRC 68 (2015)
- extreme delay in the completion of Staff's environmental review, and thus the equal delay in hearing intervenors' claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act; LBP-11-30, 74 NRC 627 (2011)

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fact that a competent and responsible state authority has approved the environmental acceptability of a site or a project after extensive and thorough environmentally sensitive hearings is properly entitled to substantial weight in the conduct of NRC's own NEPA analysis; LBP-15-11, 81 NRC 401 (2015)

federal agency must assess the effects of the undertaking on any eligible historic properties found; LBP-15-16, 81 NRC 618 (2015)

for the mandatory uncontested proceeding on a uranium enrichment facility license, a licensing board is to conduct a simple sufficiency review rather than a de novo review on both safety and environmental issues; LBP-11-26, 74 NRC 499 (2011)

in analyzing predictions of water availability in a report, NRC Staff consulted with the other government agencies to determine whether data from either of those agencies could be obtained to prepare a new water availability prediction; LBP-13-4, 77 NRC 107 (2013)

in its need-for-power analysis, NRC Staff may rely on studies and forecasts prepared by expert, independent agencies charged with the duty of ensuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands; LBP-11-7, 73 NRC 254 (2011)

in the context of license renewal, NRC's Atomic Energy Act safety review under Part 54 does not compromise or limit the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013); LBP-13-13, 78 NRC 246 (2013)

in uncontested hearings, it is NRC's duty to ensure, among other things, that it has adhered to its obligations under the National Environmental Policy Act; CLI-15-1, 81 NRC 1 (2015)

Indian tribe's contention that NRC Staff had not fulfilled its National Historic Preservation Act consultation duty regarding cultural resources and tribal artifacts was premature because Staff had not completed its NEPA review; LBP-12-23, 76 NRC 445 (2012)

it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)

license amendment request is not categorically exempt from environmental review if it involves a significant hazards consideration that excludes it from categorical exemption pursuant to the criteria in section 51.22(c)(9)(i); LBP-15-26, 82 NRC 163 (2015)

license renewal applications are subject to an environmental review; CLI-12-5, 75 NRC 301 (2012)

NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-13-4, 77 NRC 107 (2013)

NEPA does not require that the agency wait until inchoate information matures into something that later might affect its review; CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012)

NEPA encourages state participation when appropriate and authorized, but coordination between a federal agency and a state requires active involvement between the two in order for the federal agency to meet its independent review burden; LBP-15-11, 81 NRC 401 (2015)

NEPA ensures that an agency will not act on incomplete information, only to regret its decision after it is too late to correct; LBP-12-17, 76 NRC 71 (2012)

NEPA hard look must emerge from an engagement in informed and reasoned decisionmaking, as the agency obtains opinions from its own experts and experts outside the agency and gives careful scientific scrutiny and responds to all legitimate concerns that are raised; LBP-15-16, 81 NRC 618 (2015)

NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 389 (2015)

NEPA imposes procedural restraints on agencies, which require them to take a hard look at the environmental impacts of a proposed action and the reasonable alternatives to that action; LBP-12-17, 76 NRC 71 (2012)

NEPA mandates a case-by-case balancing judgment on the part of federal agencies, not the private parties seeking federal action; LBP-14-9, 80 NRC 15 (2014); LBP-15-23, 82 NRC 55 (2015)

NEPA obligates NRC Staff to undertake a full and independent evaluation of the environmental impacts of applicant's proposed action; LBP-12-9, 75 NRC 615 (2012)

NEPA obligations supplement existing statutory authority and must be complied with to the fullest extent, unless there is a clear conflict of statutory authority; LBP-14-9, 80 NRC 15 (2014)

NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-14-9, 80 NRC 15 (2014)

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- NEPA requires that agencies take a hard look at the environmental effects of actions even after a proposal has received initial approval; LBP-15-16, 81 NRC 618 (2015)
- NEPA requires that an environmental review provide a sufficient discussion of alternatives to enable the decisionmaker to take a hard look at environmental factors, and to make a reasoned decision; LBP-11-13, 73 NRC 534 (2011)
- NEPA requires that NRC conduct its environmental review with the best information available at that time; CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012); CLI-12-15, 75 NRC 704 (2012); LBP-12-8, 75 NRC 539 (2012)
- NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)
- NEPA's hard-look requirement is tempered by a rule of reason that requires agencies to address only impacts that are reasonably foreseeable, not those that are remote and speculative; LBP-12-17, 76 NRC 71 (2012); LBP-14-7, 79 NRC 451 (2014)
- no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance with NEPA; LBP-14-9, 80 NRC 15 (2014)
- NRC is not required to wait until inchoate information matures into something that might affect its review; CLI-12-15, 75 NRC 704 (2012)
- NRC is required to analyze potential terrorist attacks as part of its NEPA review with regard to facilities located in the Ninth Circuit; LBP-12-21, 76 NRC 218 (2012)
- NRC is required to independently assess the validity of the information that applicant submits in its environmental report; LBP-13-4, 77 NRC 107 (2013)
- NRC must address any purported need for additional power during its environmental review of a combined license application; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff examined special pathways of exposure that could lead to a higher level of radiation exposure in minority and low-income populations in the area, including subsistence consumption of fish, native vegetation, surface waters, sediments, and local produce; CLI-15-6, 81 NRC 340 (2015)
- NRC Staff is required to prepare environmental impact statements for reactor licensing proceedings; CLI-14-7, 80 NRC 1 (2014)
- NRC Staff may rely on the scientific data and inferences drawn by another government agency but need not slavishly defer to that agency's findings or its conclusions about water quality; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff must assess the relationship between local short-term uses and long-term productivity of the environment, consider alternatives, and describe the unavoidable adverse environmental impacts and the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-15-13, 81 NRC 555 (2015)
- NRC Staff must correctly evaluate basic issues whether or not they were raised by intervenors; LBP-14-9, 80 NRC 15 (2014)
- NRC Staff must have some discretion to draw the line and move forward with decisionmaking; LBP-15-16, 81 NRC 618 (2015)
- NRC Staff must make a recommendation on the environmental acceptability of the license renewal action, and the Commission shall determine whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; CLI-12-8, 75 NRC 393 (2012)
- NRC Staff must prepare a Record of Decision to accompany any Commission decision on any action for which a final EIS has been prepared; LBP-13-13, 78 NRC 246 (2013)
- NRC Staff must prepare a summary of determinations and conclusions and provide it to scoping participants; LBP-13-9, 78 NRC 37 (2013)
- NRC Staff must prepare supplemental environmental review documents when there are substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-12-18, 76 NRC 127 (2012)
- NRC Staff must provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of a proposed action; LBP-15-16, 81 NRC 618 (2015)
- NRC Staff must weigh unavoidable adverse environmental impacts and resource commitments (costs) against the project's benefits; CLI-15-13, 81 NRC 555 (2015)

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NRC Staff uses applicant's ER as a starting point for its own environmental review of a license renewal application, the results of which are published as a supplement to the generic environmental impact statement; CLI-15-6, 81 NRC 340 (2015)

NRC Staff's environmental review was conducted in cooperation with the U.S. Army Corps of Engineers, with NRC acting as lead agency and ACE as cooperating agency under a memorandum of understanding because applicants also needed permits from ACE to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

NRC Staff's need-for-power analysis may accord an expert, independent agency's forecasts and studies great weight and may give heavy reliance to those forecasts and studies absent a showing they contain a fundamental error; LBP-11-7, 73 NRC 254 (2011)

NRC uses environmental impact information to determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; LBP-14-9, 80 NRC 15 (2014)

once NRC completes its environmental review, its record of decision must state whether NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted, and summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-11-17, 74 NRC 11 (2011)

Part 40, Appendix A, Criteria 4(e) and 5G(2) are safety criteria that apply to applicants and licensees and are not relevant to the NEPA review; LBP-13-9, 78 NRC 37 (2013)

Part 51 process for environmental review associated with license renewal, focusing upon the potential impacts of an additional 20 years of plant operation, is described; CLI-12-5, 75 NRC 301 (2012)

presiding officer must take into consideration NRC Staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact Staff's ability to complete its reviews in a timely manner; LBP-13-13, 78 NRC 246 (2013)

proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-12-23, 76 NRC 445 (2012)

proximity of the nuclear power plant site to the Canadian border is considered in the contexts of environmental and safety reviews; CLI-15-13, 81 NRC 555 (2015)

recordkeeping or administrative procedures are categorically excluded from environmental review; LBP-15-24, 82 NRC 68 (2015)

reissuance of a reactor license is a major federal action requiring an environmental review; LBP-13-13, 78 NRC 246 (2013)

release of NRC Staff's environmental review document may be the first opportunity for petitioner to question the accuracy of Staff's environmental analysis; CLI-15-17, 82 NRC 33 (2015)

review method chosen by NRC in creating its models with the best information available when it began its analysis and then checking the assumptions of those models as new information becomes available is a reasonable means of balancing competing considerations, particularly given the many months required to conduct full modeling with new data; CLI-12-7, 75 NRC 379 (2012)

rule that excluded certain environmental impacts from NEPA consideration and deferred totally to environmental quality standards devised and administered by other agencies violated NEPA; LBP-15-23, 82 NRC 55 (2015)

rulmaking petitioners assert that NRC Staff's review of the expedited-transfer issue generated new and significant information regarding the environmental impacts of spent fuel storage; CLI-14-7, 80 NRC 1 (2014)

severe accident mitigation alternatives analyses are conducted for the purposes of the NRC's environmental review under NEPA and are not safety analyses; CLI-15-18, 82 NRC 135 (2015)

severe accident mitigation alternatives analysis is not part of the agency's safety review for license renewal under the Atomic Energy Act, but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)

test for determining when a nonfederal project should be analyzed under NEPA as a major federal action is discussed; LBP-14-9, 80 NRC 15 (2014)

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- to be analyzed under NEPA as a major federal action, a nonfederal project must restrict or limit the statutorily prescribed federal decisionmakers' choice of reasonable alternatives; LBP-14-9, 80 NRC 15 (2014)
- to evaluate an operating license renewal application, NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011)
- to meet its environmental review burden in license renewal cases, NRC Staff developed the generic environmental impact statement, which contains findings that apply to all nuclear power plants and are codified in Appendix B of Subpart A of 10 C.F.R. Part 51; LBP-13-13, 78 NRC 246 (2013)
- to satisfy the hard-look requirement, NRC must provide detailed analysis of new information and a reasonable explanation of the agency's decision concerning supplementation, not merely a conclusory assertion that the agency has reviewed the new information and concluded that no supplement is required; LBP-12-18, 76 NRC 127 (2012)
- under NEPA, NRC is required to take a hard look at the environmental impacts of a proposed action; LBP-14-7, 79 NRC 451 (2014)
- under the NEPA rule of reason, NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-13-13, 78 NRC 246 (2013)
- waiver of a rule pertaining to the agency's environmental responsibilities is possible; CLI-13-7, 78 NRC 199 (2013)
- when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-12-23, 76 NRC 445 (2012); LBP-14-7, 79 NRC 451 (2014)
- when drafting an environmental impact statement, agency's scope of review must include analysis of any connected or cumulative actions to the central proposed action; LBP-15-16, 81 NRC 618 (2015)
- when preparation of the essential fish habitat assessment is consolidated with other environmental review procedures, the National Marine Fisheries Service is to have timely notification of actions that may adversely affect EFH, and whenever possible, at least 60 days' notice prior to a final decision on an action; LBP-12-10, 75 NRC 633 (2012)
- when reviewing an application for a 404 permit under the Clean Water Act, the Corps of Engineers evaluates whether issuance of the permit is in the public interest, weighing all relevant factors, including economic, environmental, and aesthetic concerns; LBP-14-9, 80 NRC 15 (2014)
- where increased air pollution in California resulting from two export turbines at a Mexican plant was a direct effect of the new transmission lines, DOE was required to evaluate the air pollution impacts under NEPA; LBP-14-9, 80 NRC 15 (2014)
- while reviewing any adverse effects, federal agencies must take a hard look at the environmental impacts of a proposed action; LBP-15-16, 81 NRC 618 (2015)
- with respect to the environmental impacts of a combined license, the Commission determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and 10 C.F.R. 51.107(a)(1)-(4) have been met; CLI-12-9, 75 NRC 421 (2012)
- EQUAL ACCESS TO JUSTICE ACT**
- act applies to any adjudication required by statute to be determined on the record in which the government is represented by counsel; LBP-11-8, 73 NRC 349 (2011)
- act does not apply when an agency merely voluntarily chooses to abide by formal Administrative Procedure Act § 554 procedures, despite lacking a statutory mandate to do so; LBP-11-8, 73 NRC 349 (2011)
- act renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity and any such waiver must be strictly construed in favor of the United States; LBP-11-8, 73 NRC 349 (2011)
- "adversary adjudication" is defined as an adjudication under section 554 of the Administrative Procedure Act in which the position of the United States is represented by counsel or otherwise; LBP-11-8, 73 NRC 349 (2011)

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although a court's merits reasoning may be quite relevant to the resolution of the substantial justification question, the inquiry into the reasonableness of the government's position may not be collapsed into an antecedent evaluation of the merits; LBP-11-8, 73 NRC 349 (2011)

award of attorneys' fees can include fees paid by a third-party liability insurer; LBP-11-8, 73 NRC 349 (2011)

awards in insurance contexts would undermine the dual purposes of EAJA by both maintaining financial deterrents for those who would want to challenge unjust government action and not deterring unreasonable government actions; LBP-11-8, 73 NRC 349 (2011)

because the act operates as a waiver of sovereign immunity it must be narrowly construed to avoid creating a waiver that Congress did not intend; LBP-11-8, 73 NRC 349 (2011)

both a union employee and the insured can be viewed as having incurred legal fees insofar as they have paid for legal services in advance as a component of the union dues or insurance premiums; LBP-11-8, 73 NRC 349 (2011)

claimant with a legally enforceable right to full indemnification of attorney fees from a solvent third party cannot be deemed to have incurred that expense for purposes of the Act, and hence is not eligible for an award of fees under the Act; LBP-11-8, 73 NRC 349 (2011)

Congress did not want the "substantially justified" standard to be read to raise a presumption that the government position was not substantially justified simply because it lost the case; LBP-11-8, 73 NRC 349 (2011)

fact that one other court agreed or disagreed with the government does not establish whether its position was substantially justified; LBP-11-8, 73 NRC 349 (2011)

fee-deterrent-removal purpose of the Act would not be served by an award of fees to an individual whose fees are fully paid by an ineligible organization; LBP-11-8, 73 NRC 349 (2011)

for a prevailing party to recover attorneys' fees and expenses, the party must have incurred those fees and expenses in connection with the adversary adjudication in question; LBP-11-8, 73 NRC 349 (2011)

government bears the burden of establishing that its position was substantially justified; LBP-11-8, 73 NRC 349 (2011)

government must demonstrate the reasonableness not only of its litigation position, but also of the agency's actions; LBP-11-8, 73 NRC 349 (2011)

government's position should be considered substantially justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact; LBP-11-8, 73 NRC 349 (2011)

in an actuarial sense, the cost of the defense, to the extent borne by the insurance company, is a cost that the insured paid for, just as he would have paid a lawyer for his defense had he had no insurance; LBP-11-8, 73 NRC 349 (2011)

in determining whether the government's position was substantially justified, the board does not make separate determinations regarding each stage but arrives at one conclusion that simultaneously encompasses and accommodates the entire civil action; LBP-11-8, 73 NRC 349 (2011)

"incur" means that an individual who is a prevailing party meeting the financial qualification of the EAJA is ineligible to receive an EAJA award when that individual was not responsible for the costs of the attorney's fees; LBP-11-8, 73 NRC 349 (2011)

materials license suspension proceeding is not an adversary adjudication for purposes of the Act because the Atomic Energy Act of 1954, as amended, does not require such a hearing to be on the record pursuant to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 349 (2011)

nothing in the Act suggests a purpose to prevent a contractual agreement, or more broadly, to discourage the purchase of liability insurance; LBP-11-8, 73 NRC 349 (2011)

parties who prevail against the government in certain types of agency proceedings are allowed to recover attorneys' fees and other expenses incurred in connection with the proceeding unless the government's position was substantially justified, or other special circumstances render an award unjust; LBP-11-8, 73 NRC 349 (2011)

presence of an attorney-client relationship suffices to entitle prevailing litigants to receive fee awards; LBP-11-8, 73 NRC 349 (2011)

prevailing party is not entitled to an award for attorneys' fees and expenses if the position of the Commission over which the applicant has prevailed was substantially justified; LBP-11-8, 73 NRC 349 (2011)

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reasonableness, the legal standard governing the determination of substantial justification, is separate and distinct from the legal standard used in assessing the merits phase of a proceeding; LBP-11-8, 73 NRC 349 (2011)

there is nothing in the legislative history of the Equal Access to Justice Act or the pertinent case law to suggest a congressional intent to extend the EAJA to cases in which due process, rather than a statute, requires an Administrative Procedure Act § 554 hearing; LBP-11-8, 73 NRC 349 (2011)

underlying purpose of the Act is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter the unreasonable exercise of government authority; LBP-11-8, 73 NRC 349 (2011)

when a third party who has no direct interest in the litigation pays fees on behalf of a taxpayer, the taxpayer incurs the fees so long as he assumes an absolute obligation to repay the fees or a contingent obligation to pay the fees in the event that he is able to recover them; LBP-11-8, 73 NRC 349 (2011)

where a pro bono attorney forgives a fee to a client unable to afford legal expenses, that client is eligible for an award on the basis of that arrangement with the attorney; LBP-11-8, 73 NRC 349 (2011)

EQUAL PROTECTION

equal protection principles require that all persons similarly situated shall be treated alike; LBP-11-15, 73 NRC 629 (2011)

equal protection component of the Fifth Amendment's Due Process Clause applies to federal action, and the Equal Protection Clause of the Fourteenth Amendment applies to state action; LBP-11-15, 73 NRC 629 (2011)

EQUIPMENT

protection of regulatory treatment of nonsafety systems equipment from external hazards at the site is discussed; CLI-15-13, 81 NRC 555 (2015)

request that NRC order licensees to ensure that emergency planning equipment and facilities are sufficient for dealing with multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide reasonable protection for equipment from the effects of design-basis external events and to add equipment as needed to address multiunit events while other requirements are being revised and implemented is addressed; DD-14-2, 79 NRC 489 (2014)

EQUIPMENT, SAFETY-RELATED

changes with respect to components (e.g., steam generators) are permitted without a license amendment under prescribed conditions that assure that the replacement components are sufficiently similar to the original so that safety requirements are maintained or improved; LBP-13-7, 77 NRC 307 (2013)

request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to reevaluate seismic and flooding hazards at their sites against current NRC requirements and guidance, and if necessary, update the design basis and structures, systems, and components important to safety to protect against the updated hazards is addressed; DD-14-2, 79 NRC 489 (2014)

EQUITY

when considering stays or other forms of temporary injunctive relief, the Commission has applied the stay factors outlined in 10 C.F.R. 2.342(e), which restate commonplace principles of equity; CLI-14-6, 79 NRC 445 (2014)

ERROR

board decisions that have inferred additional bases for contentions beyond those supplied by the petitioner have been overturned; CLI-14-2, 79 NRC 11 (2014)

board decisions that have revised inadmissible contentions to render them admissible have been overturned; CLI-14-2, 79 NRC 11 (2014)

board did not err in factual finding that applicant was not under foreign ownership, control, or domination; CLI-15-7, 81 NRC 481 (2015)

board erred in admitting a contention pertaining to a plant's safety culture; CLI-11-11, 74 NRC 427 (2011)

board erred in allowing a collateral attack on the GEIS Category 1 finding associated with severe accident consequences; CLI-15-6, 81 NRC 340 (2015)

SUBJECT INDEX

board erred in allowing collateral attacks on emergency plans; CLI-15-6, 81 NRC 340 (2015)

board erred in concluding that it is impossible to waive the exception in 10 C.F.R. 51.53(c)(3)(ii)(L); CLI-13-7, 78 NRC 199 (2013)

board erred in concluding that transformers are passive components under the license renewal rule; CLI-15-6, 81 NRC 340 (2015)

board erred in finding that NRC Staff analyzed the wrong variables in its environmental justice review; CLI-15-6, 81 NRC 340 (2015)

board erred in reformulating contentions with arguments not originally raised by petitioners; CLI-15-18, 82 NRC 135 (2015)

board failed to provide sufficient justification for rejecting a challenge to applicant's meteorological model where petitioners pointed to site-specific meteorological patterns to argue that the model and inputs were inaccurate and insufficiently conservative; LBP-15-20, 81 NRC 829 (2015)

board improperly allowed petitioner to challenge the generic environmental impact statement's generic finding regarding severe accident consequences; CLI-15-6, 81 NRC 340 (2015)

board is wrong to strain to discern the outlines of any contention in an amorphous petition; CLI-15-18, 82 NRC 135 (2015)

board was not justified in rendering a final judgment in the face of unfolding developments having a decided bearing and conceivably crucial effect on the issue that shaped that judgment; LBP-12-19, 76 NRC 184 (2012)

Commission defers to board's factual findings unless they are clearly erroneous and generally steps in only to correct factual findings not even plausible in light of the record reviewed in its entirety, e.g., where it appears that the board has overlooked or misunderstood important evidence; CLI-15-6, 81 NRC 340 (2015)

deferential clear error standard is applied in analyzing a board's findings of fact; CLI-13-1, 77 NRC 1 (2013)

deficiencies in NRC Staff's analysis of a combination alternative is not harmless error; LBP-12-17, 76 NRC 71 (2012)

for a hearing petitioner to take an appeal pursuant to section 2.311(c), petitioner must claim that, after considering all pending contentions, the board has erroneously denied a hearing; CLI-14-3, 79 NRC 31 (2014)

if leave to file a motion for reconsideration is granted, the motion must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, which renders the decision invalid; CLI-12-17, 76 NRC 207 (2012)

in proving prejudicial error by a federal agency, it is sufficient that the agency's error may have affected the outcome; LBP-14-2, 79 NRC 131 (2014)

incorrect legal ruling typically does not warrant interlocutory review because such rulings can be reviewed on appeal from partial initial decisions or a final decision; CLI-15-17, 82 NRC 33 (2015)

motions for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-14-1, 79 NRC 1 (2014)

on appeal intervenors must show that the board's resolution of the contested issue in favor of applicant is clearly erroneous; CLI-14-10, 80 NRC 157 (2014)

original contention did not point to any specific grievance with the environmental justice discussion provided in applicant's environmental report and so the board should have applied the standards in 10 C.F.R. 2.309(c) to determine whether petitioner had demonstrated good cause for its late filing; CLI-15-18, 82 NRC 135 (2015)

possibility that a board may have made an incorrect legal ruling can be reviewed, if necessary, on appeal from a partial initial decision or other final appealable order; CLI-15-24, 82 NRC 331 (2015)

silence is not a confession of error, nor can there be an implied confession of error; LBP-14-2, 79 NRC 131 (2014)

to show clear error, petitioner must show that the board's determination is not even plausible in light of the record as a whole; CLI-15-7, 81 NRC 481 (2015); CLI-15-9, 81 NRC 512 (2015)

to the extent a contention is premised on error, it is inadmissible for failing to raise a genuine dispute of fact; LBP-11-6, 73 NRC 149 (2011)

SUBJECT INDEX

to the extent that the board relied on a precedent that allowed notice pleading under 10 C.F.R. 2.714(b) in making its contention admissibility determination, it erred; CLI-15-23, 82 NRC 321 (2015)
whether the board erred in its treatment of evidence is a matter that can be addressed following an initial decision; CLI-15-24, 82 NRC 331 (2015)

See also Harmless Error

ETHICAL ISSUES

counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 125 (2014)
pro se representatives in licensing board proceedings, like all other representatives and/or lawyers, are required to be accurate and truthful and are subject to reprimand, censure, or suspension for failing in these duties; LBP-13-8, 78 NRC 1 (2013)

EVACUATION

contention that, in the event of a core-melt accident, applicant's emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks NRC's emergency planning regulation; LBP-11-15, 73 NRC 629 (2011)

EVACUATION PLANS

if petitioner is concerned about the sufficiency of the ongoing oversight of a nuclear power plant and its current evacuation plan, it has the option of requesting a modification, suspension, or revocation of its operating license; LBP-11-29, 74 NRC 612 (2011)

EVACUATION TIME ESTIMATES

challenges to the \$2000/person-rem conversion factor, to use of a single dose-rate reduction effectiveness factor, and to evacuation times and assumptions are not admissible because petitioners presented no facts or expert opinion of error; LBP-11-2, 73 NRC 28 (2011)
failure to offer factual support for the proposition that applicant's inputs for evacuation times are flawed or unreasonable or that its sensitivity analysis of these inputs was incorrect renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

EVIDENCE

absent documentary support, NRC has declined to assume that licensees will contravene its regulations; LBP-15-3, 81 NRC 65 (2015); LBP-15-24, 82 NRC 68 (2015)
affidavits supporting a motion to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-12-6, 75 NRC 352 (2012)
affidavits supporting a motion to reopen must meet the admissibility standards of 10 C.F.R. 2.337; CLI-12-6, 75 NRC 352 (2012)
although 10 C.F.R. 2.337(f), by its terms, applies to evidence at hearings, the bounds this rule places on official notice is also appropriate for the contention admissibility stage of a proceeding; LBP-11-7, 73 NRC 254 (2011)
although the quality of evidence presented for reopening must be at least of a level sufficient to withstand a motion for summary disposition, more is required; CLI-12-10, 75 NRC 479 (2012)
any consolidation of multiple parties' presentations of evidence that would prejudice the rights of any party may not be ordered; LBP-11-4, 73 NRC 91 (2011)
at the contention admission stage, petitioners need not marshal their evidence as though preparing for an evidentiary hearing; LBP-15-20, 81 NRC 829 (2015)
at the contention admission stage, the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion; LBP-15-1, 81 NRC 15 (2015)
best evidence rule provides that an original or duplicate writing, recording, or photograph is required in order to prove its content unless an evidentiary rule or federal statute provides otherwise; CLI-13-5, 77 NRC 223 (2013)
board considered a letter written after the original petition was filed and submitted with petitioner's reply; LBP-15-5, 81 NRC 249 (2015)
board considered evidence submitted with petitioner's reply to which opposing parties didn't object; LBP-15-5, 81 NRC 249 (2015)

SUBJECT INDEX

board has ample authority to ensure that evidence offered concerning microcracking is limited to that specific material issue and does not stray into issues outside the scope of the license amendment proceeding; LBP-15-20, 81 NRC 829 (2015)

contention admission stage is not the appropriate point at which to evaluate witness credibility or to weigh competing evidence, but an expert must provide a reasoned basis or explanation for opinions in support of a contention; LBP-15-17, 81 NRC 753 (2015)

courts may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence; LBP-12-21, 76 NRC 218 (2012)

document's unavailability does not render NRC Staff's or applicant's reliance on the NUREG-1150 decontamination cost values altogether unreasonable under NEPA; LBP-13-13, 78 NRC 246 (2013)

evidence is relevant if it has some tendency to make deliberative process privilege opponent's allegations more or less likely; LBP-13-5, 77 NRC 233 (2013)

factual support is not necessary at the contention filing stage to show that a genuine dispute exists and need not be in affidavit or formal evidentiary form or of the quality necessary to withstand a summary disposition motion; LBP-15-11, 81 NRC 401 (2015)

Federal Rules of Evidence are not directly applicable to NRC proceedings, but NRC adjudicatory boards often look to those rules for guidance; LBP-12-21, 76 NRC 218 (2012)

if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 91 (2011)

if licensing boards deem prefiled evidence to be of little or no value, they simply need not ask about it at the evidentiary hearing, and are free to accord such evidence little or no weight; LBP-12-21, 76 NRC 218 (2012)

in camera hearing sessions may be held when information sought to be withheld from public disclosure is offered into evidence; CLI-15-24, 82 NRC 331 (2015)

in establishing the evidentiary standard of "relevant, material, and reliable evidence" being admissible in a hearing, 10 C.F.R. 2.337 thereby establishes the right of all parties to present such admissible evidence; LBP-11-4, 73 NRC 91 (2011)

information offered in evidence, even if not specifically stated in the original contention and bases, may be relevant if it falls within the envelope, reach, or focus of the contention when read with the original bases offered for it; LBP-12-17, 76 NRC 71 (2012)

irreparable harm element of the test for issuance of injunctive relief was met where the tribe's evidence showed that a phase of the project would involve damage to at least one known site, and virtually ensure some loss or damage; LBP-15-2, 81 NRC 48 (2015)

it is not the Commission's role to monitor rulings that deal with reception of evidence and procedural framework under which it will be admitted on a day-to-day basis; CLI-15-24, 82 NRC 331 (2015)

licensing boards may not stretch the scope of admitted contentions beyond their reasonably inferred bounds, but may consider issues that, although not expressly stated, can reasonably be inferred from the arguments presented; LBP-12-17, 76 NRC 71 (2012)

limited appearance statements do not constitute evidence but may assist the board and/or parties in defining the issues being considered; LBP-13-13, 78 NRC 246 (2013); LBP-15-27, 82 NRC 184 (2015)

mere presence of evidence supporting both sides does not call for Commission review where it appears that the board considered all the evidence and arguments before it; CLI-15-7, 81 NRC 481 (2015)

nonstatic nature of a website, in the absence of a stand-alone compact disc/digital video disc that would allow the board or parties to run a locked-down version of the website application, prevents consideration as evidence; LBP-15-3, 81 NRC 65 (2015)

only alleged facts, not evidence or expert opinion, are required to support contention admissibility; LBP-13-8, 78 NRC 1 (2013)

only relevant, material, and reliable evidence that is not unduly repetitious will be admitted; LBP-12-21, 76 NRC 218 (2012)

petitioner is not required to set forth all its evidence or to prove its contentions at the admissibility stage; LBP-12-17, 76 NRC 71 (2012)

requiring petitioners to proffer conclusive support for the effect of their proposed contention would improperly require boards to adjudicate the merits of contentions before admitting them; LBP-15-20, 81 NRC 829 (2015)

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strict rules of evidence do not apply to written submissions; LBP-12-21, 76 NRC 218 (2012)

support for a motion to reopen must be relevant, material, and reliable; LBP-11-23, 74 NRC 287 (2011)

support for a motion to reopen must be sufficiently compelling to suggest a likelihood of materially affecting the ultimate results in the proceeding; CLI-12-10, 75 NRC 479 (2012)

to avoid summary disposition, intervenors must present contrary evidence so significantly probative that it creates a material factual issue; LBP-12-19, 76 NRC 184 (2012)

to meet the reasonable assurance standard, applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-13-13, 78 NRC 246 (2013); LBP-14-1, 79 NRC 39 (2014)

whether the board erred in its treatment of evidence is a matter that can be addressed following an initial decision; CLI-15-24, 82 NRC 331 (2015)

written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in most common types of hearings, licensing boards themselves, not the parties, orally examine the witnesses; LBP-12-21, 76 NRC 218 (2012)

See also Federal Rules of Evidence

EVIDENCE, HEARSAY

boards are not precluded from considering documents despite their hearsay nature; LBP-11-14, 73 NRC 591 (2011)

even if a witness's testimony was entirely hearsay, evidence of that character is generally admissible in administrative proceedings; LBP-11-14, 73 NRC 591 (2011)

in absence of objection, hearsay evidence is treated as being properly admitted and may be given such probative effect and value to which it is entitled; LBP-15-20, 81 NRC 829 (2015)

in proceedings under Part 2, strict rules of evidence do not apply to written submissions; LBP-11-14, 73 NRC 591 (2011)

in upholding summary disposition in a proceeding to enforce a suspension order, the Commission ruled that the hearsay nature of a witness's statement did not preclude the licensing board from considering it, at least in the absence of evidence questioning its reliability; LBP-11-14, 73 NRC 591 (2011)

out-of-court statements offered to prove the truth of a matter asserted are hearsay; LBP-11-14, 73 NRC 591 (2011)

EVIDENTIARY HEARINGS

adjudicatory hearings are not environmental impact statement editing sessions; CLI-12-1, 75 NRC 39 (2012)

board's determination of whether the government's position was substantially justified is made on the basis of the written record and oral argument; LBP-11-8, 73 NRC 349 (2011)

boards have considerable discretion in their evidentiary rulings; CLI-15-6, 81 NRC 340 (2015)

discovery cannot be completed nor can the evidentiary hearing be held until the safety evaluation report and all necessary environmental impact statements are completed; CLI-13-8, 78 NRC 219 (2013)

fact-finding administrative body, such as a licensing board, with authority to develop an evidentiary record, is distinguished from reviewing adjudicatory and judicial bodies, generally with a more limited record-creating authority; LBP-15-3, 81 NRC 65 (2015)

facts and issues raised in a contention are not in controversy and subject to a full evidentiary hearing unless the proposed contention is admitted; LBP-15-24, 82 NRC 68 (2015)

hearing should begin 175 days after release of NRC Staff's environmental review document; CLI-15-17, 82 NRC 33 (2015)

hearings can provide the public venting that the circulation of an amended environmental impact statement would otherwise provide; LBP-13-13, 78 NRC 246 (2013)

hearings on environmental issues addressed in the environmental impact statement may not commence before issuance of the final EIS; LBP-13-13, 78 NRC 246 (2013)

hearings on safety issues may commence before publication of NRC Staff's safety evaluation if commencing the hearings at that time would expedite the proceeding; LBP-13-13, 78 NRC 246 (2013)

if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 184 (2012)

if licensing boards deem prefiled evidence to be of little or no value, they simply need not ask about it at the evidentiary hearing, and are free to accord such evidence little or no weight; LBP-12-21, 76 NRC 218 (2012)

SUBJECT INDEX

in assessing whether applicant satisfies the burden of establishing that NRC Staff's determination of applicant's performance was inappropriate, unjustified, arbitrary, or an abuse of discretion, the board should consult NUREG-1021; LBP-14-2, 79 NRC 131 (2014)

issued licenses can be revoked, conditioned, modified, or affirmed based on the evidence reviewed at the evidentiary hearing; LBP-15-16, 81 NRC 618 (2015)

licenses may be altered as a result of the evidentiary hearing; CLI-15-17, 82 NRC 33 (2015)

licensing boards are not the appropriate vehicles for reviewing 2.206 petitions; CLI-12-20, 76 NRC 437 (2012)

NRC administrative proceedings have applied a "preponderance of the evidence" standard in reaching the ultimate conclusions after hearing in resolving a proceeding; LBP-14-2, 79 NRC 131 (2014)

NRC Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 131 (2014)

NRC Staff will disposition violations as part of its ongoing reactor oversight process, and evidentiary hearings before NRC at the request of third parties are not a part of this process; DD-12-3, 76 NRC 416 (2012)

parties filed proposed questions for the board to ask at the evidentiary hearing; LBP-13-13, 78 NRC 246 (2013)

presiding officer must take into consideration NRC Staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact Staff's ability to complete its reviews in a timely manner; LBP-13-13, 78 NRC 246 (2013)

process similar to jury trial in NRC proceedings would require creating one licensing board to review the evidence for purposes of admissibility and a second board to weigh the admitted evidence for the purpose of ruling on the merits, which is unnecessary in administrative proceedings; LBP-12-21, 76 NRC 218 (2012)

question whether the environmental assessment is sufficient to satisfy NRC Staff's NEPA requirements must await consideration at a full evidentiary hearing; LBP-15-13, 81 NRC 456 (2015)

record of licensing board evidentiary hearing on license transfer application must be certified to the Commission; CLI-15-26, 82 NRC 408 (2015)

state's motion for cross-examination was granted, insofar as it would have a reasonable opportunity to examine witnesses pursuant to NRC regulations; LBP-13-13, 78 NRC 246 (2013)

to trigger a full adjudicatory hearing, petitioners must be able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-12-27, 76 NRC 583 (2012)

when using Subpart L procedures, the board has the primary responsibility for questioning the witnesses at any evidentiary hearing; LBP-11-13, 73 NRC 534 (2011)

written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in most common types of hearings, licensing boards themselves, not the parties, orally examine the witnesses; LBP-12-21, 76 NRC 218 (2012)

EXAMINATION

See Reactor Operator Examinations

EXAMINERS

if an examiner is assigned to a reactor operator examination that might appear to present a conflict of interest, the examiner shall inform his or her immediate supervisor of the potential conflict; LBP-14-2, 79 NRC 131 (2014)

NRC regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicant's operating test retake; LBP-14-2, 79 NRC 131 (2014)

when informed of a potential conflict, the supervisor of a reactor operator test examiner must apply sound judgment to the facts of each case and, if any doubt exists, consult with regional management and/or the NRR operator licensing program office to resolve the issue; LBP-14-2, 79 NRC 131 (2014)

EXCEPTIONS

Commission relied on the exception to the Backfit Rule that applies when regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public; LBP-12-18, 76 NRC 127 (2012)

except Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware for the emergency response data system shall be provided at each unit by the licensee to interface with the NRC receiving system; CLI-15-20, 82 NRC 211 (2015)

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- exception for situations where parties seek to add previously unlitigated material would effectively render the reopening regulation meaningless; CLI-12-10, 75 NRC 479 (2012)
- exception in 10 C.F.R. 50.72 is most reasonably interpreted as exempting from the ERDS program all nuclear reactors that have permanently ceased operations and defueled, i.e., that are permanently shut down; LBP-15-4, 81 NRC 156 (2015)
- exception in 10 C.F.R. 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 designation for Limerick and similarly situated plants for which SAMAs were already considered in an environmental impact statement or environmental assessment; CLI-13-7, 78 NRC 199 (2013)
- exception to the backfit rule is provided if the Commission determines that regulatory action is necessary to ensure that the facility provides adequate protection of the health and safety of the public and is in accord with the common defense and security; CLI-12-9, 75 NRC 421 (2012)
- exception to the mootness doctrine occurs if the challenged action is too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again; CLI-13-9, 78 NRC 551 (2013)
- future cases are appropriately decided in the context of a concrete dispute, with self-interested parties vigorously advocating opposing positions; CLI-13-9, 78 NRC 551 (2013)
- limited exception to NRC's general prohibition against challenges to its rules or regulations in adjudicatory proceedings is provided in 10 C.F.R. 2.335(b); CLI-13-7, 78 NRC 199 (2013)
- mootness doctrine does not apply when the same litigants are likely to be subject to similar future action; CLI-13-10, 78 NRC 563 (2013)
- scope of the ERDS exception is informed by the regulatory history, which states that ERDS is to be used by licensees of operating reactors; LBP-15-4, 81 NRC 156 (2015)
- sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted; LBP-13-1, 77 NRC 57 (2013); LBP-14-16, 80 NRC 183 (2014)
- EXECUTIVE ORDER 12898
- order did not, in itself, create new substantive authority for federal agencies and thus NRC determined that it would endeavor to carry out the environmental justice principles as part of the agency's responsibilities under NEPA; CLI-15-6, 81 NRC 340 (2015)
- EXEMPTIONS
- agencies must make available certain records to members of the public upon specific request for those records except to the extent that the records (or portions of them) are exempt from public disclosure by one of the nine enumerated exemptions or are excluded from disclosure; CLI-13-5, 77 NRC 223 (2013)
- any alleged ambiguity in the exception provision of 10 C.F.R. Part 50, Appendix E, § VI is eliminated when the regulatory language is examined in light of the regulatory history and framework; LBP-15-4, 81 NRC 156 (2015)
- applicant for an exemption bears the burden of proof on all issues; LBP-12-6, 75 NRC 256 (2012)
- applicant may act as a self-guarantor without satisfying the financial test for self-guarantors if it is in the public interest or otherwise satisfies the requirements of 10 C.F.R. 40.14; LBP-12-6, 75 NRC 256 (2012)
- applicant should clearly describe any exemptions or authorizations of an unusual nature and adequately justify them for the NRC's consideration; LBP-11-11, 73 NRC 455 (2011)
- because current levels of emergency planning are required by regulation, licensee cannot make changes contemplated in its license amendment request without first receiving certain regulatory exemptions; LBP-15-18, 81 NRC 793 (2015)
- because NRC's decision to grant the exemptions is a matter of public record, the board takes notice that the exemptions have now been approved; LBP-15-24, 82 NRC 68 (2015)
- because resolution of a rule exemption request directly affects licensability of the proposed facility, the exemption raises material questions directly connected to an agency licensing action and thus comes within the hearing rights of interested parties; CLI-13-1, 77 NRC 1 (2013)
- board may employ case law interpreting FOIA Exemption 5 when determining whether the deliberative process privilege applies in an NRC proceeding; LBP-13-5, 77 NRC 233 (2013)

SUBJECT INDEX

COL application included a request for a departure from the wet-bulb noncoincident temperature, which is considered Tier 1 information and part of the certified design and thus a regulatory exemption is required; CLI-12-9, 75 NRC 421 (2012)

Commission administratively exempted from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 421 (2012)

Congress intentionally limited the opportunity for a hearing to certain designated agency actions which do not include exemptions; LBP-15-18, 81 NRC 793 (2015); LBP-15-24, 82 NRC 68 (2015)

deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 233 (2013)

demonstration that application of a regulation is not necessary to achieve its underlying purpose is listed as a special circumstance warranting an exemption; CLI-12-9, 75 NRC 421 (2012); LBP-12-6, 75 NRC 256 (2012)

each combined license applicant will have to determine whether it will adopt in toto the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-11-10, 73 NRC 424 (2011)

electronic filing is required unless an exemption is granted permitting an alternative filing method for good cause shown, or unless the filing falls within the scope of the exception identified in this section; CLI-13-9, 78 NRC 551 (2013); CLI-14-3, 79 NRC 31 (2014)

examples of the kinds of facts that must be weighed when determining whether to grant an exemption are given; CLI-13-1, 77 NRC 1 (2013)

exemption cannot remove a matter germane to a licensing proceeding from consideration in a hearing; LBP-15-24, 82 NRC 68 (2015)

exemption from a regulation will be granted if application of the regulation in the particular circumstances conflicts with other NRC rules or requirements, would not serve or is not necessary to achieve the underlying purpose of the rule, would result in undue hardship or other costs, would not benefit public health and safety, would provide only temporary relief, or there is present any other material circumstance not considered when the regulation was adopted; LBP-11-10, 73 NRC 424 (2011)

exemption from a regulation will be granted when the request is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; LBP-11-10, 73 NRC 424 (2011); LBP-11-11, 73 NRC 455 (2011)

exemption from any part of a referenced design certification rule may be granted if NRC determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with 10 C.F.R. 52.63 if there are no applicable exemption provisions in the referenced rule; LBP-11-10, 73 NRC 424 (2011)

exemption from regulations will be issued only if the license is granted; LBP-15-24, 82 NRC 68 (2015)

exemption from the decommissioning financial assurance requirements is considered to be an extraordinary equitable remedy to be used only sparingly; CLI-13-1, 77 NRC 1 (2013)

exemption from the surveillance program is allowed if a reactor's lifetime irradiation levels are below a certain threshold; LBP-15-17, 81 NRC 753 (2015)

exemption request is subject to a hearing where the plant already has a license and is seeking an exemption from the decommissioning financial assurance requirements based on an earlier exemption that it had received during its license renewal; LBP-15-24, 82 NRC 68 (2015)

exemption requests are subjected to the same level of litigation as other issues that could be admissible in a combined license proceeding; LBP-11-10, 73 NRC 424 (2011)

exemption requests ordinarily do not trigger hearing rights when an already-licensed facility is asking for relief from performing a duty imposed by NRC regulations; LBP-15-24, 82 NRC 68 (2015)

exemptions are the sort of directly related and dependent exemption-related issues that are within the scope of a license amendment proceeding; LBP-15-24, 82 NRC 68 (2015)

exemptions do not actually modify the regulations because the ability to request an exemption is part of the regulations themselves; LBP-15-24, 82 NRC 68 (2015)

exemptions from decommissioning fund expenditure notification requirements are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-28, 82 NRC 233 (2015)

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exemptions from decommissioning fund withdrawals are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-24, 82 NRC 68 (2015)

exemptions ordinarily do not trigger hearing rights when an already-licensed facility is asking for relief from performing a duty imposed by NRC regulations; LBP-15-18, 81 NRC 793 (2015)

failure to comply with NRC's e-filing requirements without good cause or without obtaining an exemption from the requirements under 10 C.F.R. 2.302(g) can result in rejection of a pleading; LBP-15-4, 81 NRC 156 (2015)

FOIA exemption for inter- or intra-agency materials incorporates the deliberative process privilege, which protects documents that are prepared to assist an agency, board, or official to arrive at a decision; LBP-13-5, 77 NRC 233 (2013)

FOIA's purpose is to encourage disclosure, and, to that end, its exemptions are to be interpreted narrowly; LBP-13-5, 77 NRC 233 (2013)

for active structures, systems, and components, NRC chose to exempt from license renewal, challenges to a plant's operational activities covered by its current licensing basis; LBP-13-13, 78 NRC 246 (2013)

government has the burden of proving that a requested document falls within one of FOIA's exemptions; LBP-13-5, 77 NRC 233 (2013)

grants of exemptions from referenced design certification rules are conditioned on the Commission's finding that the request complies with section 52.7 and that the special circumstances provided for section 52.7 outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; LBP-11-10, 73 NRC 424 (2011)

hearing on exemption-related matters is necessary insofar as resolution of the exemption request directly affects the licensability of a proposed fuel storage site and the exemption raises material questions directly connected to an agency licensing action; LBP-15-18, 81 NRC 793 (2015)

in a limited number of appropriate circumstances, NRC Staff may exempt an applicant from regulatory requirements; LBP-15-24, 82 NRC 68 (2015)

in denying an exemption request, Staff is required to inform applicant of the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)

in exempting an aquifer from MCLs, EPA has to find that the aquifer cannot and will not serve as a source of drinking water because it is mineral producing and can be demonstrated to contain minerals that, considering their quantity and location, are expected to be commercially producible; LBP-15-3, 81 NRC 65 (2015)

license renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues; CLI-13-7, 78 NRC 199 (2013)

licensee cannot be exempted from license conditions without a license amendment modifying such conditions; LBP-15-28, 82 NRC 233 (2015)

licensee seeks regulatory exemptions to allow it to use decommissioning funds to manage spent fuel and eliminate the 30-day notice requirement that would otherwise apply to spent fuel management; LBP-15-28, 82 NRC 233 (2015)

licensing boards are not free to reexamine fundamental policy judgments that are reflected in NRC regulations by creating exceptions to them in situations that will frequently recur; LBP-12-6, 75 NRC 256 (2012)

licensing boards have authority to adjudicate exemption issues, but NRC Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 256 (2012)

licensing boards will not consider exemption requests that were not first made to NRC Staff; LBP-12-6, 75 NRC 256 (2012)

limited grounds for creation of exemptions are inherent in the administrative process, and agencies may use equitable discretion to afford case-by-case treatment, taking into account circumstances peculiar to individual parties in the application of a general rule or even in appropriate cases to grant dispensation from the rule's operation; CLI-13-1, 77 NRC 1 (2013)

nine categories of documents may be exempted from disclosure under the Freedom of Information Act; LBP-13-5, 77 NRC 233 (2013)

NRC considers whether Exemption 7 would prevent public disclosure of allegation and investigation information from release; CLI-13-5, 77 NRC 223 (2013)

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NRC may grant exemptions from the alternative financial test for self-guarantee of the decommissioning funding obligation that are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest; LBP-12-6, 75 NRC 256 (2012)

NRC may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest; LBP-12-21, 76 NRC 218 (2012)

NRC regulations do not merely establish a standard that applicant is entitled to invoke for its benefit, but that may then be disregarded whenever applicant wants to argue its case on an individual, fact-specific basis; LBP-12-6, 75 NRC 256 (2012)

NRC Staff evaluated and approved exemption from regulatory requirements for organization and numbering of the combined license application; CLI-12-2, 75 NRC 63 (2012)

NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 63 (2012)

NRC Staff granted an exemption from 10 C.F.R. 74.33(c)(5) subject to license conditions that require applicant to submit, for the Staff's prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 218 (2012)

NRC Staff is exempted from the obligations of the protective order, even though Staff might hold many documents that are subject to the mandatory disclosure requirements; LBP-11-5, 73 NRC 131 (2011)

NRC Staff review included evaluation of exemption criteria; CLI-12-2, 75 NRC 63 (2012)

NRC's statutory authority to adopt rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances; CLI-13-1, 77 NRC 1 (2013)

purpose of the exemption from 10 C.F.R. 51.53(c)(3)(ii)(L) is to reflect NRC's view that one severe accident mitigation alternatives analysis, as a general matter, satisfies NRC obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; LBP-14-15, 80 NRC 151 (2014)

request for an exemption that would enable licensee to provide decommissioning funding on a forward-looking, incremental basis, at a rate proportional to the then-current decontamination and decommissioning liability is granted; CLI-11-4, 74 NRC 1 (2011)

request for exemption from a rule, by itself, does not give rise to an opportunity for hearing; CLI-13-1, 77 NRC 1 (2013)

request for exemption from requirements of 10 C.F.R. 40.36 to allow applicant to act as a self-guarantor of the funds necessary for eventually decommissioning facility without satisfying the financial test for self-guarantors is denied; LBP-12-6, 75 NRC 256 (2012)

requirements and exemptions under FOIA reflect a balancing of public disclosure with confidentiality, but this balancing does not affect the NRC's authority to obtain requested information; CLI-13-5, 77 NRC 223 (2013)

rule exemption decisions should take into account the equities of each situation; CLI-13-1, 77 NRC 1 (2013)

rule exemption requests that do not involve special circumstances must be denied as a matter of law; CLI-13-1, 77 NRC 1 (2013)

source materials licensees can seek an exemption from the decommissioning financial assurance requirements; CLI-13-1, 77 NRC 1 (2013)

uranium enrichment facility applicant seeks an exemption from regulations to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 455 (2011)

when licensee requests a rule exemption in a related license amendment application, hearing rights on the amendment application are considered to encompass the exemption request as well; CLI-13-1, 77 NRC 1 (2013); LBP-15-18, 81 NRC 793 (2015); LBP-15-24, 82 NRC 68 (2015)

where license conditions predate issuance of 10 C.F.R. 50.75(h)(5), the plant was grandfathered and allowed to keep its existing license conditions; LBP-15-24, 82 NRC 68 (2015)

where NRC has temporarily exempted the licensee, on the basis of an existing rule, from one of many rules made generally applicable by the license does not amount to a license amendment; CLI-14-11, 80 NRC 167 (2014)

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where there is present any circumstance that was not considered by NRC when it promulgated the pertinent regulation in the first place, exemption may be appropriate; LBP-12-6, 75 NRC 256 (2012)
whether the safe shutdown earthquake exceedance in applicant's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in the proceeding; LBP-11-10, 73 NRC 424 (2011)
See also Waiver of Rule

EXHIBITS

boards accord each exhibit weight to the extent it is relevant, material, and reliable; LBP-11-18, 74 NRC 29 (2011)

EXIGENT CIRCUMSTANCES

determination seems compelled by the fact that violation of the technical specifications limit for the plant, whatever the cause of the temperature increase, requires a dual-unit shutdown; LBP-15-13, 81 NRC 456 (2015)

NRC Staff may determine that exigent circumstances exist such that there is insufficient time for a full 30-day public comment period on a license amendment request; LBP-15-13, 81 NRC 456 (2015)

EXPORT LICENSES

Department of State provides the Commission with Executive Branch views on the merits of import/export applications; CLI-11-3, 73 NRC 613 (2011)

discretionary hearing may be held on export or import licenses if a hearing would be in the public interest and would assist the Commission in making the statutory determinations required by the Atomic Energy Act; CLI-11-3, 73 NRC 613 (2011)

discretionary hearing to discuss the adequacy of information provided by applicant in a public forum would not assist the Commission in making its determinations on the export and import license applications because the applicant provided the information required by the Commission's regulations; CLI-11-3, 73 NRC 613 (2011)

formal adjudicatory procedures are inappropriate in export or import licensing proceedings; CLI-11-3, 73 NRC 613 (2011)

no proximity presumption applies in an import/export licensing case because petitioners have not shown that the import or export involves a significant source of radioactivity producing an obvious potential for offsite consequences; CLI-11-3, 73 NRC 613 (2011)

petitioners' claims of potential injury are so speculative, and separate from the import and export license, that they do not amount to cognizable harm for purposes of standing; CLI-11-3, 73 NRC 613 (2011)
request for waiver of 10 C.F.R. 51.22(c)(15) is denied; CLI-11-3, 73 NRC 613 (2011)

to determine if a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189a, the Commission has long applied contemporaneous judicial concepts of standing; CLI-11-3, 73 NRC 613 (2011)

to waive a Part 110 rule or regulation, petitioner must show special circumstances concerning the subject of the hearing such that application of the rule or regulation would not serve the purposes for which it was adopted; CLI-11-3, 73 NRC 613 (2011)

EXPOSURE

See Radiation Exposure

EXTENSION OF TIME

filing deadlines may be extended or shortened by either the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

filing deadlines will not be modified unless a party, in advance of the deadline, petitions the board for a change and demonstrates that there is good cause for such a change; LBP-14-11, 80 NRC 125 (2014)

health issues or an unexpected weather event are reasons that might constitute good cause for purposes of requesting an extension under section 2.307(a); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

if intervenor cannot meet the requirements for filing a contention under the new section 2.309(c)(1), he or she can still take advantage of an extension request if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline; LBP-15-1, 81 NRC 15 (2015)

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intervenor's request for extension of time is granted because it is unopposed and intervenors have shown good cause for the modest extension; CLI-14-10, 80 NRC 157 (2014)

time for submitting a new/amended contention motion based on information that would be newly available, materially different, and otherwise timely submitted given the information's availability can be extended if the extension request is based on good cause; LBP-13-10, 78 NRC 117 (2013)

FAIRNESS

a state's regulations are not inherently unfair because they may be designed to effectuate a state-desired regulatory outcome; CLI-11-12, 74 NRC 460 (2011)

although there is no right to reciprocal cross-examination, the parties should be accorded equivalent treatment under the applicable regulatory standard; CLI-12-18, 76 NRC 371 (2012)

because applicant has not shown that it could not have addressed issues in its appeal, nor has presented genuinely new information in its reply, neither necessity nor fairness dictates that its reply should be permitted; CLI-14-3, 79 NRC 31 (2014)

Commission justifiably expects that all applicable provisions of the Rules of Practice will be observed in adjudicatory submissions, but it also expects the Staff to turn square corners with those with whom it deals, including applicants for SRO licenses; LBP-13-3, 77 NRC 82 (2013)

current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards, and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings; CLI-14-10, 80 NRC 157 (2014)

each side must be heard; LBP-15-5, 81 NRC 249 (2015)

fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations; LBP-13-2, 77 NRC 71 (2013)

filings not otherwise authorized by NRC rules are allowed only where necessity or fairness dictates; CLI-11-14, 74 NRC 801 (2011)

forcing a pro se intervenor to file monthly disclosures and closely follow a proceeding indefinitely solely to obtain a ruling on the merits of its claim would constitute significant unfairness and hardship; LBP-12-19, 76 NRC 184 (2012)

fundamental fairness requires that applicant and NRC Staff be estopped from asserting that petitioners' contention is untimely; LBP-12-16, 76 NRC 44 (2012)

in assessing whether applicant/licensee adequately carries out a licensing directive, boards are to assume that NRC Staff will be fair and judge the matter of applicant/licensee's compliance on the merits; LBP-15-3, 81 NRC 65 (2015)

it is no less good morals and good law that the government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their government; LBP-13-3, 77 NRC 82 (2013)

NRC Staff improperly discharges its duties with respect to the grading of an operating test if the grading is inappropriate or unjustified or if the grading strays too far afield of the twin goals of equitable and consistent examination administration, thus becoming arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)

NUREG-1021 is intended to ensure equitable and consistent administration of examinations for all applicants; LBP-14-2, 79 NRC 131 (2014)

petitioners would have no opportunity to be heard regarding a sua sponte objection by the board because they would only learn of it when they received the board's ruling and thus would be deprived of the opportunity to file the response expressly provided in procedural rules; LBP-15-5, 81 NRC 249 (2015)

regardless of a party's resources, fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and NRC regulations; CLI-14-10, 80 NRC 157 (2014)

to determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes; CLI-14-7, 80 NRC 1 (2014)

to say to appellants that the joke is on you, you shouldn't have trusted us, is hardly worthy of our great government; LBP-13-3, 77 NRC 82 (2013)

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when establishing a schedule, boards are to consider NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding, along with other factors; LBP-11-22, 74 NRC 259 (2011)

where NRC Staff provided advice regarding timing that misled a petitioner, the Staff had conceded timeliness in light of such advice; LBP-12-16, 76 NRC 44 (2012)

FALSE STATEMENTS

effect of a pattern of quality assurance violations is not necessarily to show that particular safety-related information is false, but to erode confidence that NRC can reasonably have in, and create substantial uncertainty about the quality of, the work that is tainted by the alleged QA violations; LBP-12-23, 76 NRC 445 (2012)

lawyer is prohibited from knowingly making a false statement of law or fact to a tribunal; LBP-11-13, 73 NRC 534 (2011)

FAULTS

applicant's site safety analysis report must provide sufficient data to enable the requisite determination of the potential for surface deformation as a result of growth faults at the site; LBP-11-16, 73 NRC 645 (2011)

even though a cooling pond is not a safety-related structure, knowledge of faulting under the pool and the impact this faulting might have on the pool's operation are required; LBP-11-16, 73 NRC 645 (2011)

request that NRC order immediate shutdown of all nuclear power reactors that are known to be located on or near an earthquake fault line is denied; DD-15-6, 81 NRC 884 (2015)

severe accident mitigation alternatives analysis is required to discuss a recently discovered fault located near the plant; LBP-15-29, 82 NRC 246 (2015)

to evaluate the impact of a fault on current operations, a probabilistic risk assessment rather than a deterministic analysis is the accepted and standard practice in SAMA analyses; CLI-11-11, 74 NRC 427 (2011)

where seismic suitability of a site was evaluated at the early site permit stage, further litigation of a geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 519 (2014)

FEDERAL EMERGENCY MANAGEMENT AGENCY

every 2 years, licensee stages full-participation emergency exercises, which are evaluated by both FEMA and NRC; CLI-12-9, 75 NRC 421 (2012)

in any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation ability of state and local emergency plans; LBP-11-6, 73 NRC 149 (2011); LBP-15-4, 81 NRC 156 (2015)

NRC Staff considers FEMA's findings on emergency plans in making its necessary finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; CLI-12-9, 75 NRC 421 (2012)

radiological emergency response plan was developed by the State and approved by the Federal Emergency Management Agency to ensure that the State is prepared to handle the offsite effects of a radiological emergency; LBP-15-4, 81 NRC 156 (2015)

FEDERAL REGISTER

boards may not rely on a Federal Register notice to put petitioner on constructive notice of a requirement that the board itself cannot discern in the regulations; LBP-13-3, 77 NRC 82 (2013)

even one lacking actual notice may be charged with constructive notice of regulations published in the *Federal Register*; LBP-13-3, 77 NRC 82 (2013)

for proceedings for which a Federal Register notice of agency action is published, the hearing request must be filed not later than the time specified in the notice of proposed action; CLI-14-11, 80 NRC 167 (2014)

NRC's notice of opportunity for hearing on a confirmatory order provides the public a safety valve because conceivably the order might remove a restriction upon a licensee or otherwise have the effect of worsening the safety situation; LBP-14-4, 79 NRC 319 (2014)

publication in the Federal Register is legally sufficient notice to all affected people; LBP-15-5, 81 NRC 249 (2015)

publication of a regulation in the Federal Register constitutes notice to all persons residing in the United States; LBP-13-3, 77 NRC 82 (2013)

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FEDERAL RULES OF CIVIL PROCEDURE

in applying the summary disposition standard, it is appropriate for the board to look not only to NRC regulatory and case law, but also to federal court case law on summary judgment under Rule 56; LBP-11-4, 73 NRC 91 (2011); LBP-11-7, 73 NRC 254 (2011)

NRC applies summary disposition standards analogous to the standards used by the federal courts when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

summary judgment, which is appropriate upon proper showings of the lack of a genuine, triable issue of material fact, is an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action; LBP-11-4, 73 NRC 91 (2011)

FEDERAL RULES OF EVIDENCE

at the request of any party a court must order witnesses excluded so that they cannot hear other witnesses' testimony; LBP-12-21, 76 NRC 218 (2012)

best evidence rule provides that an original or duplicate writing, recording, or photograph is required in order to prove its content unless an evidentiary rule or federal statute provides otherwise; CLI-13-5, 77 NRC 223 (2013)

courts may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence; LBP-12-21, 76 NRC 218 (2012)

federal rules are not directly applicable to NRC proceedings, but NRC adjudicatory boards often look to those rules for guidance; LBP-12-21, 76 NRC 218 (2012); LBP-15-20, 81 NRC 829 (2015)

in proceedings under Part 2, strict rules of evidence do not apply to written submissions; LBP-11-14, 73 NRC 591 (2011)

objection not timely made is considered to be waived; LBP-15-20, 81 NRC 829 (2015)

FEDERAL WATER POLLUTION CONTROL ACT

Clean Water Act section 404 permit process is discussed; LBP-15-23, 82 NRC 61 (2015); LBP-15-23, 82 NRC 55 (2015)

compliance with the environmental quality standards and requirements of the Act is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality; LBP-15-11, 81 NRC 401 (2015)

proposed plant will impact at least 668 acres of wetlands and therefore its construction and operation will require a permit from U.S. Army Corps of Engineers; LBP-13-4, 77 NRC 107 (2013)

FIFTH AMENDMENT

equal protection component of the Fifth Amendment's Due Process Clause applies to federal action, and the Equal Protection Clause of the Fourteenth Amendment applies to state action; LBP-11-15, 73 NRC 629 (2011)

FILINGS

administrative challenges to EPA permits are to be filed 30 days after EPA's final permit decision; LBP-14-4, 79 NRC 319 (2014)

amicus curiae filings are allowed at the Commission's discretion or sua sponte; CLI-15-4, 81 NRC 221 (2015)

contention filing deadlines support the Commission's interest in promoting efficient adjudication; LBP-15-11, 81 NRC 401 (2015)

parties are expected to adhere to page-limit requirements, or timely seek leave for an enlargement of the page limitation; CLI-11-14, 74 NRC 801 (2011)

there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements; LBP-14-4, 79 NRC 319 (2014)

when a filing deadline is approaching, notwithstanding that an attorney is engaged in good-faith settlement discussions, prudence should compel the attorney to take all actions that are necessary to ensure the deadline will be met in the event that settlement discussions are unsuccessful; LBP-15-4, 81 NRC 156 (2015)

See also Briefs; Electronic Filing; Pleadings; Reply Briefs

FILTERS

petitioners question applicant's failure to consider the qualitative benefits of installing engineered filters; LBP-15-5, 81 NRC 249 (2015)

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FINAL ENVIRONMENTAL IMPACT STATEMENT

- additional content is required in a FEIS compared to a draft EIS; LBP-15-3, 81 NRC 65 (2015)
- adequacy of the FEIS regarding site geology and hydrology is discussed; LBP-13-4, 77 NRC 107 (2013)
- adjudicatory record and board decision and any Commission appellate decisions become, in effect, part of the FEIS; CLI-11-6, 74 NRC 203 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012); LBP-13-13, 78 NRC 246 (2013)
- agencies need not supplement an EIS every time new information comes to light after the EIS is finalized; CLI-12-7, 75 NRC 379 (2012)
- agencies shall prepare supplements to either draft or final EISs if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-15-13, 81 NRC 456 (2015)
- agency's procedural obligation to discuss mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated is distinguished from any substantive requirement to actually develop and adopt a detailed mitigation plan; LBP-14-7, 79 NRC 451 (2014)
- all significant environmental impacts, whether direct, indirect, cumulative, onsite, or offsite, that are a reasonably foreseeable consequence of the proposed action must be reviewed and considered; LBP-13-4, 77 NRC 107 (2013)
- although NEPA does not direct any particular substantive result, all environmental consequences of the proposed action, including connected actions, must be fully evaluated in the FEIS; LBP-12-12, 75 NRC 742 (2012)
- analysis and response to state's extensive comments on the draft supplemental environmental impact statement regarding state-specific energy conservation and efficiency as a replacement alternative fulfills NRC Staff's obligation to take a hard look at alternatives; LBP-13-13, 78 NRC 246 (2013)
- analysis for all draft and final EISs, by virtue of section 51.90, will, to the fullest extent practicable, quantify the various factors considered; LBP-15-3, 81 NRC 65 (2015)
- appropriate inquiry under NEPA is not whether there are alternative models that NRC could have used, or whether the analysis could have been refined, or improved by gathering additional data, but whether the NRC's chosen methodology is reasonable; LBP-13-4, 77 NRC 107 (2013)
- as a NEPA analysis, the severe accident mitigation alternatives analysis is not based on either the best-case or the worst-case accident scenarios, but on mean accident consequence values, averaged over the many hypothetical severe accident scenarios; LBP-13-13, 78 NRC 246 (2013)
- as part of its environmental review, NRC Staff must prepare a Record of Decision to accompany any Commission decision on any action for which a final EIS has been prepared; LBP-13-13, 78 NRC 246 (2013)
- assertion that FEIS inadequately addresses, and inappropriately characterizes as small, the plant's dewatering-associated impacts to wetlands, floodplains, special aquatic sites, and other waters is litigated; LBP-13-4, 77 NRC 107 (2013)
- because NEPA imposes no substantive requirement that mitigation measures actually be taken, it should not be read to require agencies to obtain an assurance that third parties will implement particular measures; LBP-14-7, 79 NRC 451 (2014)
- because the FEIS had been issued and the board had ruled that a contention remained procedurally defective, it was an appropriate point for board consideration of whether the contention merited sua sponte review; LBP-14-9, 80 NRC 15 (2014)
- board rules in favor of NRC Staff on contention challenging adequacy of assessment of impacts on the eastern fox snake contained within the FEIS; LBP-14-7, 79 NRC 451 (2014)
- board's findings and the adjudicatory record are, in effect, part of the final supplemental environmental impact statement; LBP-15-16, 81 NRC 618 (2015)
- board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to NRC Staff's FEIS; LBP-15-3, 81 NRC 65 (2015)
- bounding analysis provided in the final supplemental environmental impact statement, as supplemented in the record, provides sufficient information about a reasonable range of hazardous constituent concentration values associated with potential post-operational alternate concentration limits so as to provide an appropriate NEPA assessment of the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits; LBP-15-3, 81 NRC 65 (2015)

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- challenges to only the draft environmental impact statement apply equally to the FEIS under the migration tenet; LBP-12-5, 75 NRC 227 (2012)
- Clean Water Act 404 permit review can be conducted after issuance of the FEIS; LBP-15-23, 82 NRC 55 (2015)
- contention alleging that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner is decided; LBP-15-16, 81 NRC 618 (2015)
- contention alleging that final supplemental environmental impact statement fails to include adequate hydrogeological information to demonstrate ability to contain fluid migration and assess potential impacts to groundwater is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention alleging that final supplemental environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention questioning whether the final supplemental environmental impact statement's impact analyses relevant to greater sage grouse, whooping crane, and black-footed ferret are sufficient is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention that challenges the legal sufficiency of the FEIS for a combined license is within the scope of the proceeding; LBP-12-18, 76 NRC 127 (2012)
- contention that final supplemental environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 65 (2015)
- contention that final supplemental environmental impact statement fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-3, 81 NRC 65 (2015)
- contention that requiring the tribe to formulate contentions before a final EIS is released and failing to follow scoping process violates NEPA is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 377 (2014)
- Council on Environmental Quality has recognized that information may be unavoidably incomplete or unavailable, and that under those circumstances, an FEIS can overcome this deficiency if it states that fact, explains how the missing information is relevant, sets forth the existing information, and evaluates the environmental impacts to the best of the agency's ability; CLI-11-11, 74 NRC 427 (2011)
- decision of the board or Commission becomes the record of decision, which may also incorporate the final supplemental environmental impact statement; CLI-15-6, 81 NRC 340 (2015)
- distribution requirements for an FEIS (and a supplement thereto) are imposed by 10 C.F.R. 51.93; LBP-15-3, 81 NRC 65 (2015)
- duty to supplement the FEIS is mandatory, is not avoidable through findings of compliance with the agency's safety regulations, and is waivable only where the consequences are remote and highly improbable; CLI-12-11, 75 NRC 523 (2012)
- even if contentions are based on NRC Staff's FSEIS, intervenor still bears the responsibility of demonstrating that a new contention merits admission and meets all six admission requirements; LBP-15-16, 81 NRC 618 (2015)
- even if the transmission corridor is a preconstruction activity and outside the NRC's regulatory jurisdiction, the construction and maintenance of the transmission corridor likely qualifies as a connected action under governing NRC and Council on Environmental Quality regulations, and therefore must be analyzed in the FEIS; LBP-12-12, 75 NRC 742 (2012)
- FEIS as amplified by both board and Commission decisions, provides adequate consideration of environmental impacts of near-surface waste disposal; CLI-15-6, 81 NRC 340 (2015)
- FEIS does not comply with NEPA if it fails to meaningfully address EPA concerns in its decision; LBP-14-9, 80 NRC 15 (2014)
- FEIS must comply with sections 102(2)(A), (C), and (E) of NEPA and NRC's Part 51 regulations; LBP-14-9, 80 NRC 15 (2014)

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- FEIS or supplement thereto must be considered in the agency's decisionmaking; LBP-15-3, 81 NRC 65 (2015)
- FEISs must be supplemented to provide complete, accurate, and up-to-date sources of information for members of the public and state and local governments; CLI-15-10, 81 NRC 535 (2015)
- for new information to be sufficiently significant to merit the preparation of a supplemental FEIS, the information must paint a seriously different picture of the environmental landscape; CLI-12-11, 75 NRC 523 (2012)
- FSEIS is a snapshot in time of expected environmental consequences; CLI-15-6, 81 NRC 340 (2015)
- FSEIS must include an analysis of cultural impacts; LBP-15-16, 81 NRC 618 (2015)
- grounds were found for litigation regarding defendants' assertion that treatment of highway interchanges and village development as cumulative impacts in the FEIS was sufficient under NEPA even if these actions should have been treated as connected actions under the statute's implementing regulations; LBP-14-9, 80 NRC 15 (2014)
- hearing on environmental issues must await issuance of FEIS; LBP-15-3, 81 NRC 65 (2015)
- hearings on environmental issues addressed in the EIS may not commence before issuance of the final EIS; LBP-13-13, 78 NRC 246 (2013)
- if a federal or state environmental agency issues a permit to the operator of a nuclear power plant that imposes numerical limits on the amount of pollution that the plant may emit, then NRC's FEIS may reasonably assume that the company's emissions will comply with those numerical limits; LBP-13-4, 77 NRC 107 (2013)
- if an alternative is commercially feasible and capable of bringing about the ends of the proposed project, then Staff may not dismiss it merely because it is inconsistent with the preferences of interested parties, or for other reasons inconsistent with NEPA's rule of reason; LBP-12-17, 76 NRC 71 (2012)
- if attempting to raise a new issue based on new information in the final supplemental environmental impact statement, intervenor must file a new contention if information in the FSEIS is sufficiently different from information in the DSEIS that supported the original contention's admission; LBP-14-5, 79 NRC 377 (2014)
- if intervenors make reference to new material in the final supplemental environmental impact statement but do not address the six elements of 10 C.F.R. 2.309(f)(1), such references to new material do not give rise to either a new or an amended contention; LBP-14-5, 79 NRC 377 (2014)
- if modification of the FEIS by NRC Staff testimony or the board's decision is too substantial, recirculation of the FEIS would be required; LBP-13-13, 78 NRC 246 (2013)
- inaccurate, incomplete, or misleading information in an environmental impact statement concerning the comparison of alternatives is itself sufficient to render the EIS unlawful and to compel its revision; LBP-12-17, 76 NRC 71 (2012)
- intervenors fail to establish the validity of their various challenges to the adequacy of the final supplemental environmental impact statement description of the baseline water quality at the in situ recovery site; LBP-15-3, 81 NRC 65 (2015)
- intervenors need not prove their case on the merits, but need only allege some facts or expert opinion that support their position and demonstrate a genuine dispute with the sufficiency of the FEIS; LBP-12-18, 76 NRC 127 (2012)
- legal adequacy of the FEIS is assessed under the rule of reason; LBP-13-4, 77 NRC 107 (2013)
- legal requirements applicable to a draft EIS, as specified in sections 51.70(b) and 51.71, are imposed on a final EIS; LBP-15-3, 81 NRC 65 (2015)
- licensing board's hearing arguably allows for additional and a more rigorous public scrutiny of the FEIS than does the usual circulation for comment; LBP-14-9, 80 NRC 15 (2014)
- migration tenet applies when the information in the final supplemental environmental impact statement is sufficiently similar to information in the draft SEIS; LBP-14-5, 79 NRC 377 (2014)
- NEPA does not require a fully developed plan that will mitigate all environmental harm before an agency can act, only that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated; LBP-14-7, 79 NRC 451 (2014)
- NEPA does not require that the FEIS be a Ph.D. dissertation on specific topics; LBP-13-4, 77 NRC 107 (2013)
- NRC need not supplement an environmental impact statement with information in an area of research that is still developing; CLI-12-6, 75 NRC 352 (2012)

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NRC rules provide a process to prepare supplemental draft or final EISs when the agency identifies new and significant information; CLI-14-7, 80 NRC 1 (2014)

NRC Staff is not obligated to fully adopt, or agree with, all comments to the draft supplemental EIS regarding the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

NRC Staff is not required to analyze the need for the power for license renewal; LBP-13-13, 78 NRC 246 (2013)

NRC Staff is required to issue an FEIS that thoroughly and objectively evaluates reasonable alternatives to the proposed action; LBP-12-17, 76 NRC 71 (2012)

NRC Staff may supplement an FEIS if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts; CLI-12-6, 75 NRC 352 (2012)

NRC Staff must include in the FSEIS an analysis of significant problems and objections raised by any affected Indian tribes and other interested persons; LBP-15-16, 81 NRC 618 (2015)

NRC Staff must prepare an FEIS in accordance with the requirements of 10 C.F.R. 51.71 for a draft EIS; LBP-12-18, 76 NRC 127 (2012)

NRC Staff must supplement the FEIS if there are substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-32, 74 NRC 654 (2011); LBP-11-33, 74 NRC 675 (2011)

NRC Staff need not discuss remote and speculative alternatives, but must consider only alternatives that bring about the ends of the proposed project; LBP-12-17, 76 NRC 71 (2012)

NRC Staff relies heavily on applicant's environmental report in preparing its FEIS; LBP-12-17, 76 NRC 71 (2012)

NRC Staff will include responses to any comments on the draft EIS; LBP-13-13, 78 NRC 246 (2013)

NRC Staff will incorporate any new SAMA-related information that it finds to be significant in the final supplemental EIS; CLI-13-7, 78 NRC 199 (2013)

NRC Staff's FEIS must be prepared in accordance with the requirements of 10 C.F.R. 51.71 for a draft environmental impact statement; LBP-14-9, 80 NRC 15 (2014)

NRC Staff's FEIS, in conjunction with the adjudicatory record, becomes the relevant record of decision for the environmental portion of the proceeding; LBP-12-17, 76 NRC 71 (2012)

NRC's analysis, in its FEIS, of issues relating to dewatering associated with construction and operation of the proposed plants is adequate and satisfies the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)

NRC's position is that it need not compare the costs of alternatives to a proposed action if its FEIS does not identify an environmentally preferable alternative; LBP-12-18, 76 NRC 127 (2012)

parties agreed that additional analysis in the FEIS would be sufficient to address the only contention remaining in the proceeding; LBP-15-22, 82 NRC 49 (2015)

petitioner may amend its contentions or file new contentions if there are data or conclusions in the NRC DEIS or FEIS or any supplements thereto, that differ significantly from the data or conclusions in applicant's documents; LBP-11-33, 74 NRC 675 (2011)

petitioner will have an opportunity to submit contentions based on the FSEIS if appropriate; LBP-13-9, 78 NRC 37 (2013)

principal goals are to force agencies to take a hard look at the environmental consequences of a proposed project, and, by making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-14-9, 80 NRC 15 (2014)

purpose of the final supplemental environmental impact statement is to inform the decisionmaking agency and the public of a broad range of environmental impacts that will result, with a fair degree of likelihood, from a proposed project, rather than to speculate about worst-case scenarios and how to prevent them; CLI-15-6, 81 NRC 340 (2015)

remote and speculative alternatives need not be addressed, but NEPA requires NRC Staff to consider reasonable alternatives that are likely to be available within the time frame of the proposed action; LBP-12-17, 76 NRC 71 (2012)

role of the FEIS is to expose the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government; LBP-12-18, 76 NRC 127 (2012)

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- severe accident mitigation alternatives analyses, as issues of mitigation, need only be discussed in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-13-13, 78 NRC 246 (2013)
- supplemental environmental impact statement is supplemented by the board's decision as well as by the hearing record; CLI-15-6, 81 NRC 340 (2015)
- that the Clean Water Act section 404 permit review is conducted after issuance of the FEIS does not impact an agency's duty under NEPA, but rather serves to highlight the distinction between NEPA and the CWA; LBP-15-23, 82 NRC 55 (2015)
- to satisfy its obligations under NEPA the final supplemental environmental impact statement need only explain any known shortcomings in available methodology, disclose incomplete or unavailable information and significant uncertainties, and make a reasoned evaluation of whether and to what extent these or other considerations credibly could alter the severe accident mitigation alternatives analysis conclusions; LBP-13-13, 78 NRC 246 (2013)
- to the extent that any environmental findings by the presiding officer or the Commission differ from those in the final environmental impact statement, the FEIS is deemed modified by the decision; LBP-13-13, 78 NRC 246 (2013)
- under the migration tenet, boards may construe an admitted contention contesting the environmental report as a challenge to the subsequently issued draft or final EIS without the necessity for Intervenor to file a new or amended contention; LBP-12-12, 75 NRC 742 (2012)
- until NRC Staff issues its draft or final EIS, it cannot plausibly be argued that the document is inadequate or otherwise fails to satisfy NEPA; LBP-11-33, 74 NRC 675 (2011)
- when considering continued storage in licensing reviews with previously completed final environmental impact statements, NRC Staff is expected to use a consistent and transparent process to ensure that all stakeholders are aware of how the environmental impacts of continued storage are considered in each licensing action affected by this regulation; CLI-15-10, 81 NRC 535 (2015)
- when NRC Staff prepares an FEIS, then, until a record of decision is issued, no action concerning the proposal may be taken by the Commission that would have an adverse environmental impact or limit the choice of reasonable alternatives; LBP-14-9, 80 NRC 15 (2014)
- where environmental impacts are practically quantifiable, NRC has a duty to discuss them in those terms in the final supplemental environmental impact statement; LBP-15-3, 81 NRC 65 (2015)
- FINAL SAFETY ANALYSIS REPORT**
- any changes to the facility as described in the FSAR must be either submitted to the NRC for approval through a license amendment or changed in accordance with the appropriate regulations; DD-11-3, 73 NRC 375 (2011)
- applicant can only make a change in its procedures if screening demonstrates that 10 C.F.R. 50.59 does not apply or if the review under this regulation demonstrates that there are no remaining unreviewed safety questions; LBP-13-13, 78 NRC 246 (2013)
- applicant must identify particular plans pertaining to design, operational organization, and procedures that demonstrate how it intends to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 213 (2012)
- applicant's commitment in the updated FSAR cannot be changed without NRC Staff oversight and, specifically, evaluation of the eight criteria listed in 10 C.F.R. 50.59; LBP-13-13, 78 NRC 246 (2013)
- applicant's negation action plan is part of its FSAR and therefore is part of the licensing basis of the facility; LBP-14-3, 79 NRC 267 (2014)
- circumstances under which licensee may make changes to its facility and procedures as described in its updated FSAR and conduct tests or experiments not otherwise described in the UFSAR without obtaining a license amendment are discussed; CLI-12-20, 76 NRC 437 (2012); CLI-14-11, 80 NRC 167 (2014)
- combined license applicant's FSAR must describe the quality assurance program applied to the design and to be applied to the fabrication, construction, and testing of the structures, systems, and components of the facility; LBP-14-7, 79 NRC 451 (2014)
- combined license applications must contain an FSAR that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components and of the facility as a whole; LBP-14-8, 79 NRC 519 (2014)

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commitments in the updated FSAR and aging management plan are legally binding as part of the current licensing basis throughout the period of extended operation and can only be changed through the section 50.59 process; LBP-13-13, 78 NRC 246 (2013)

contention that FSAR is deficient because it does not include information provided in applicant's seismic evaluation process report is rejected; LBP-15-14, 81 NRC 591 (2015)

critical aspects of an aging management plan such as a commitment for buried pipes can be captured in the updated FSAR supplement; LBP-13-13, 78 NRC 246 (2013)

current licensing basis for an independent spent fuel storage installation includes plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report; LBP-12-24, 76 NRC 503 (2012)

current licensing basis includes applicant's commitments through incorporation of applicant's updated FSAR supplement; LBP-13-13, 78 NRC 246 (2013)

current licensing basis includes plant-specific design-basis information as documented in the most recent FSAR; LBP-11-21, 74 NRC 115 (2011)

establishing safety limits for stored irradiated fuel is not appropriate, but measures to prevent a significant loss of coolant inventory under accident conditions that could challenge the cooling of the stored fuel are documented in the updated FSAR; DD-13-3, 78 NRC 571 (2013)

FSAR updates must reflect changes that licensee has made through a license amendment request and certain changes that do not require a license amendment; LBP-15-27, 82 NRC 184 (2015)

if a procedure is not specifically called out in the updated FSAR, licensee may change it without using the license amendment process described in 10 C.F.R. 50.59(c)(1); LBP-13-13, 78 NRC 246 (2013)

information about the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in Part 20 must be included; LBP-11-6, 73 NRC 149 (2011)

intervenor's speculation that further review of certain issues might change some conclusions in the FSAR does not justify restarting the hearing process; LBP-11-20, 74 NRC 65 (2011)

it is permissible for the FSAR to give applicant several options for controlling and limiting radioactive effluents and radiation exposures, provided that each option is described with a level of information sufficient to enable the Commission to reach a final conclusion; LBP-11-31, 74 NRC 643 (2011)

licensee must periodically submit an updated FSAR to NRC to report information and analyses submitted to NRC by licensee or prepared by licensee pursuant to NRC requirements since the previous update; LBP-15-27, 82 NRC 184 (2015)

licensee must seek a license amendment before implementing a test or experiment that will result in a departure from a method of evaluation described in the updated final safety analysis report used in establishing the design basis or in the safety analysis; LBP-13-7, 77 NRC 307 (2013)

licensees may make changes in the procedures described in updated FSAR and conduct tests or experiments not otherwise described in the UFSAR, without obtaining a license amendment; CLI-14-4, 79 NRC 249 (2014)

licensees must periodically update their final safety analysis reports to reflect changes to the facility, make changes in the procedures as described in the UFSAR, and conduct tests or experiments not described in the UFSAR; LBP-13-7, 77 NRC 307 (2013)

licensees must update the final safety analysis report periodically throughout the licensed period of a plant's operation; DD-15-11, 82 NRC 361 (2015)

licensees must update their FSARs every 2 years; LBP-15-27, 82 NRC 184 (2015)

report must take into account any pertinent information developed since the submittal of the preliminary SAR; LBP-15-14, 81 NRC 591 (2015)

standards are provided for a licensee to request a license amendment before it may make changes in the facility as described in the updated final safety analysis report; LBP-13-7, 77 NRC 307 (2013)

submittal of updated FSAR pages does not constitute a licensing action but is intended only to provide information; LBP-15-27, 82 NRC 184 (2015)

supplemental updated FSAR represents the capturing of the critical aspects of the program into the applicant's current licensing basis; LBP-13-13, 78 NRC 246 (2013)

"tests or experiments not described in the UFSAR" constitute any activity where any structure, system, or component is utilized or controlled in a manner that is either outside the reference bounds of the design

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- bases as described in the UFSAR or inconsistent with the analyses or descriptions in the UFSAR; LBP-13-7, 77 NRC 307 (2013)
- updated FSARs can be modified without a license amendment as long as the modifications do not involve a change to the technical specifications or an unreviewed safety question; LBP-13-7, 77 NRC 307 (2013)
- updating of FSARs is necessary so that NRC is aware of changes that are made that do not require prior NRC approval; CLI-12-2, 75 NRC 63 (2012)
- wear of steam generator tubes is of critical importance to evaluations performed in the final safety analysis report, because the tubes are part of the reactor coolant pressure boundary, and assurance of their integrity is required; LBP-13-7, 77 NRC 307 (2013)
- whether offsite low-level radioactive waste storage and disposal facilities will ultimately be available is not material to summary disposition because applicant's FSAR provides an adequate contingency plan for long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available; LBP-12-4, 75 NRC 213 (2012)
- FINAL SAFETY EVALUATION REPORT**
- NRC Staff's steps in the geographic and demographic review in the FSER to determine whether the COL applicant has proposed an acceptable site, including acceptable site boundaries, with appropriate consideration of nearby populations and natural and manmade features, are described; CLI-12-9, 75 NRC 421 (2012)
- speculation that further review of certain issues might change some conclusions in the FSER does not justify restarting the hearing process; LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011)
- FINALITY**
- after a record has closed, finality attaches to the hearing process, and after that point, only timely, significant issues will be considered; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)
- agency action is final at the consummation of the agency's decisionmaking process, and when rights or obligations have been determined; LBP-15-2, 81 NRC 48 (2015)
- given the need for finality in adjudications, reopening the record is an extraordinary action imposing a deliberately heavy burden on intervenor; LBP-15-14, 81 NRC 591 (2015)
- if combined licenses issue without including license conditions, NRC regulations relevant to the finality of decisions could result in some additional administrative requirements to satisfy in imposing new requirements on licensee; CLI-12-9, 75 NRC 421 (2012)
- importance of finality in adjudicatory proceedings is reflected in 10 C.F.R. 2.326; CLI-15-19, 82 NRC 151 (2015)
- in making the findings required for issuance of a combined license, finality is afforded to those matters resolved in connection with a design certification; LBP-11-7, 73 NRC 254 (2011)
- licensing board's ruling resolving the last pending contention is equivalent to a final decision under 10 C.F.R. 2.341, and a licensing board's jurisdiction ends after it has rendered a final decision; LBP-15-9, 81 NRC 396 (2015)
- NRC generally disfavors the filing of new contentions at the eleventh hour of an adjudication, a policy that is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; CLI-11-2, 73 NRC 333 (2011)
- NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-10, 75 NRC 479 (2012); LBP-11-20, 74 NRC 65 (2011)
- only final NRC action is subject to judicial review; CLI-12-11, 75 NRC 523 (2012)
- partial initial decisions constitute a final decision of the Commission 40 days from the date of issuance or the first agency business day following that date if it is a Saturday, Sunday, or federal holiday unless a petition for review is filed in accordance with section 2.1212; LBP-12-5, 75 NRC 227 (2012)
- rationale for NRC's policy of generally disfavoring the filing of new contentions at the eleventh hour of an adjudication is based on the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; LBP-11-20, 74 NRC 65 (2011)
- request for a protective stay to hold the proceeding in abeyance indefinitely pending potential future events is inconsistent with NRC's longstanding interest in sound case management and regulatory finality and would be unfair to the other parties; CLI-14-6, 79 NRC 445 (2014)

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FINANCIAL ASSURANCE

- acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; CLI-11-4, 74 NRC 1 (2011)
- admissibility of contention that applicant submit a decommissioning plan and related updated financial plans is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental documents lack an adequate description of financial assurances sufficient to pay the costs of restoration and long-term monitoring of up to 30 years is decided; LBP-15-15, 81 NRC 598 (2015)
- applicant is required to submit a report on its decommissioning funding assurance mechanism after combined licenses are issued and no later than 30 days after NRC publishes notice of intended operation in the Federal Register; CLI-12-2, 75 NRC 63 (2012)
- applicant must submit information that demonstrates that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license; CLI-15-8, 81 NRC 500 (2015)
- applicant seeks authorization to provide financial assurance for decommissioning funding on a forward-looking, incremental basis; LBP-11-11, 73 NRC 455 (2011)
- applicant's commitment to provide a letter of credit issued by a financial institution whose operations are regulated and examined by a federal or state agency is sufficient to satisfy decommissioning funding assurance requirements; CLI-11-4, 74 NRC 1 (2011); LBP-11-26, 74 NRC 499 (2011)
- because it has chosen a surety method, licensee must ensure that the letter of credit is payable to a trust established for decommissioning costs; CLI-11-4, 74 NRC 1 (2011)
- bond-issuing licensees may provide a self-guarantee of funds for decommissioning costs based on a financial test set forth in Appendix C of Part 30; CLI-13-1, 77 NRC 1 (2013)
- certification of financial assurance may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material; CLI-11-4, 74 NRC 1 (2011)
- certifications, which are used by applicants seeking to possess smaller quantities of material, are governed by 10 C.F.R. 70.25(b)(2); CLI-11-4, 74 NRC 1 (2011)
- "credit facility" carries various definitions; CLI-13-1, 77 NRC 1 (2013)
- decommissioning funding requirements encompass costs of low-level waste burial; CLI-15-8, 81 NRC 500 (2015)
- deferral of execution of the financial instruments until after the license has issued is not allowed for a uranium enrichment facility; CLI-11-4, 74 NRC 1 (2011)
- depending on the quantity of material, Part 70 license applicants must submit either a decommissioning funding plan or a certification of financial assurance; CLI-11-4, 74 NRC 1 (2011)
- each decommissioning funding plan must include a signed original of the instrument obtained to provide financial assurance for decommissioning at the time the plan is submitted; CLI-11-4, 74 NRC 1 (2011)
- exemption from the decommissioning financial assurance requirements is considered to be an extraordinary equitable remedy to be used only sparingly; CLI-13-1, 77 NRC 1 (2013)
- exemption request is subject to a hearing where the plant already has a license and is seeking an exemption from the decommissioning financial assurance requirements based on an earlier exemption that it had received during its license renewal; LBP-15-24, 82 NRC 68 (2015)
- federal financial regulatory agencies regularly examine banks within their jurisdiction, generally at 12- or 18-month intervals; CLI-11-4, 74 NRC 1 (2011)
- financial qualifications review for decommissioning funding assurance is revisited every year until the license is terminated; DD-11-4, 73 NRC 713 (2011)
- financial test for self-guarantee of the decommissioning funding obligation requires that licensee maintain a bond rating of "A" or better and have a tangible net worth at least 10 times the total current decommissioning cost estimate; LBP-12-6, 75 NRC 256 (2012)
- financial tests for parent company guarantees and self-guarantees require that an independent certified public accountant review the data used in the financial test and require that the licensee inform NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; CLI-11-4, 74 NRC 1 (2011)

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intangible assets may be used to meet specified criteria in the financial tests for self-guarantees; CLI-13-1, 77 NRC 1 (2013)

license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 500 (2015)

license transfer applicant must submit estimates for total annual operating costs for each of the first 5 years of facility operation; CLI-15-8, 81 NRC 500 (2015)

licensee must file an annual report to NRC certifying that financial assurance for decommissioning will be or has been provided in an amount that may be more, but not less, than the amount stated in the regulations, adjusted as appropriate for changes in labor, energy, and waste burial costs; DD-11-3, 73 NRC 375 (2011)

licensee that wishes to be the sole guarantor of its own liabilities must satisfy a stringent test; LBP-12-6, 75 NRC 256 (2012)

licensees cannot make decommissioning fund withdrawals that would reduce the value of the trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise; LBP-15-24, 82 NRC 68 (2015)

licensees may use a site-specific methodology to determine the decommissioning funding needed as long as the amount is greater than the decommissioning cost estimate derived from formulas in 10 C.F.R. 50.75(c); DD-11-7, 74 NRC 787 (2011)

licensees must submit, with each operating license application, certification specifying how financial assurance for decommissioning will be provided; DD-15-8, 82 NRC 107 (2015)

nongovernment licensees must demonstrate financial assurance for decommissioning by prepayment, use of a surety method, insurance, or other guarantee method, or use of an external sinking fund; CLI-13-1, 77 NRC 1 (2013)

NRC requires a contingency factor for decommissioning funds to provide for unforeseen events that may happen during operations or decommissioning that could increase the overall costs of this activity; LBP-15-24, 82 NRC 68 (2015)

NRC Staff authorization permitting applicant to defer execution of any final letters of credit for decommissioning financial assurance until after a license is issued but before receipt of licensed material might be problematic; LBP-11-26, 74 NRC 499 (2011)

operating license applicant must submit information that demonstrates that it possesses, or has reasonable assurance of obtaining, funds necessary to cover estimated operating costs for the period of the license; DD-15-8, 82 NRC 107 (2015)

possession limits associated with a certification of financial assurance are set forth in 10 C.F.R. 70.25(d); CLI-11-4, 74 NRC 1 (2011)

power reactor licensees must report decommissioning funding assurance information to NRC at least once every 2 years; DD-11-7, 74 NRC 787 (2011)

request for hearing on Staff denial of permission to use an alternative method for demonstrating decommissioning funding assurance is granted; LBP-11-19, 74 NRC 61 (2011)

request that NRC investigate licensee's current financial qualifications to determine whether it remains qualified to continue operating another plant is denied; DD-15-8, 82 NRC 107 (2015)

request that NRC issue a demand for information from licensee relating to adequacy of financial assurances for decommissioning is denied; DD-11-4, 73 NRC 713 (2011)

requirements for decommissioning are structured according to the quantity of material that will be authorized for possession and use; CLI-11-4, 74 NRC 1 (2011)

"revolving credit" arrangement is one type of credit facility, and may be used repeatedly up to the limit specified after partial or total repayments have been made; CLI-13-1, 77 NRC 1 (2013)

self-guaranteeing licensees must pass the financial test annually; CLI-13-1, 77 NRC 1 (2013)

source materials licensee must demonstrate that sufficient funds will be available to cover the cost of decommissioning its facility; LBP-12-6, 75 NRC 256 (2012)

source materials licensees can seek an exemption from the decommissioning financial assurance requirements; CLI-13-1, 77 NRC 1 (2013)

source materials licensees have numerous options for meeting their decommissioning funding obligations; LBP-12-6, 75 NRC 256 (2012)

source of funds for operating and maintenance expenses would be unaffected by a transaction for decommissioning funding; CLI-11-4, 74 NRC 1 (2011)

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Staff's deference to the expertise of other federal and state agencies to set and monitor the financial soundness of institutions issuing letters of credit is reasonable; CLI-11-4, 74 NRC 1 (2011)

to qualify for the alternative method of self-funding for decommissioning, licensee must have, among other things, a bond rating of "A" or better, as issued by Standard and Poor's or Moody's; CLI-13-1, 77 NRC 1 (2013)

to use the self-guarantee mechanism to fulfill its decommissioning funding obligation, a licensee that issues bonds must annually satisfy the financial test set forth in 10 C.F.R. Part 30, Appendix C, § II.B.3; LBP-12-6, 75 NRC 256 (2012)

with limited exceptions, source material licensees must demonstrate that they can pay for the decommissioning of their regulated facilities; CLI-13-1, 77 NRC 1 (2013)

FINANCIAL ASSURANCE PLAN

financial surety arrangements must be established by each mill operator before the commencement of operations to ensure that sufficient funds will be available to carry out decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas; LBP-15-15, 81 NRC 598 (2015)

NRC has authority to request that an established or newly formed entity submit additional or more detailed information respecting its financial arrangements and status of funds; DD-15-8, 82 NRC 107 (2015)

FINANCIAL ISSUES

when promulgating Subpart M, the Commission was well aware that most license transfer issues would be financial in nature; CLI-14-5, 79 NRC 254 (2014)

FINANCIAL QUALIFICATIONS

availability of construction funding for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

five years of financial revenue-and-expense estimates must be submitted as part of a license transfer application; CLI-15-26, 82 NRC 408 (2015)

license applications must specifically state information that NRC, by rule or regulation, may determine to be necessary to decide technical and financial qualifications of applicant; DD-15-8, 82 NRC 107 (2015)

license conditions can be an acceptable method for providing reasonable assurance of financial qualifications; LBP-14-3, 79 NRC 267 (2014)

proposed transferee for an operating license must satisfy the same financial qualification requirements that apply to an applicant for an initial operating license; CLI-15-26, 82 NRC 408 (2015)

to be an acceptable method for providing reasonable assurance of financial qualifications, a proposed license condition must be ministerial and by its very nature require and be readily susceptible to post-licensing verification such that NRC Staff is not deferring its safety finding through the use of the license condition; LBP-14-3, 79 NRC 267 (2014)

FINANCIAL QUALIFICATIONS REVIEW

assurance of decommissioning funding is revisited every year until the license is terminated; DD-11-4, 73 NRC 713 (2011)

electric utility applicant for an operating license is exempt from a financial qualifications review; DD-15-8, 82 NRC 107 (2015)

if NRC Staff makes a finding of no reasonable assurance, NRC reserves the right to take steps to ensure a licensee's adequate accumulation of decommissioning funds; DD-11-4, 73 NRC 713 (2011)

FINANCIAL RESOURCES

denial of license transfer applications typically is on grounds of operating costs and inability to pay the annual cost for spent fuel storage; CLI-14-5, 79 NRC 254 (2014)

FINDING OF NO SIGNIFICANT IMPACT

agency's decision to issue a FONSI rather than prepare an environmental impact statement was arbitrary because the agency had obligated itself contractually to issue a FONSI before it conducted an environmental assessment; LBP-14-6, 79 NRC 404 (2014)

agency's reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 445 (2012)

agency's reliance on mitigation in making a FONSI must be justified; LBP-12-23, 76 NRC 445 (2012); LBP-14-7, 79 NRC 451 (2014)

SUBJECT INDEX

alternatively to preparing an environmental impact statement, NRC can conduct an environmental assessment and make a finding of no significant impact; LBP-13-13, 78 NRC 246 (2013)

Biological Opinion and its accompanying Incidental Take Statement issued by U.S. Fish and Wildlife Service were arbitrary and capricious because they were based in part on a conservation plan that was not enforceable under the Endangered Species Act; LBP-12-23, 76 NRC 445 (2012)

environmental assessment, and associated FONSI, must contain sufficient discussion of environmental impacts and the reasons why the proposed action will not have a significant effect on the quality of the human environment; LBP-15-13, 81 NRC 456 (2015)

if an agency determines that a particular action will have no effect on an endangered or threatened species, the U.S. Fish & Wildlife Service consultation requirements are not triggered; LBP-15-11, 81 NRC 401 (2015)

increase in noise levels is a significant impact because the agency's environmental assessment made no firm commitment to any noise mitigation measures; LBP-12-23, 76 NRC 445 (2012)

issuance of an environmental assessment is appropriate where NRC Staff determines that the proposed project will result in no significant impacts; LBP-15-11, 81 NRC 401 (2015)

level of analysis required by NEPA in an environmental impact statement is more rigorous than is required when the agency has determined on the basis of its environmental assessment that the project as proposed will not result in significant environmental impact; LBP-14-7, 79 NRC 451 (2014)

mitigation measures that are a mandatory condition qualify as the type that can be relied upon for a FONSI; LBP-12-23, 76 NRC 445 (2012)

NRC Staff may publish a draft finding of no significant impact for public comment, but it is not required to do so in all cases; CLI-15-17, 82 NRC 33 (2015)

proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-12-23, 76 NRC 445 (2012)

reliance on mitigation is justified if the proposed mitigation underlying the FONSI is more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-14-7, 79 NRC 451 (2014)

there is no assurance of a mitigation measure efficacy where the government conducted no study of its likely effects, proposed no monitoring to determine how effective the proposed mitigation would be, and did not consider alternatives in the event the measure fails; LBP-12-23, 76 NRC 445 (2012)

when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-12-23, 76 NRC 445 (2012)

where an environmental assessment resulted in a finding of no significant impact, a full environmental impact statement is unnecessary; CLI-15-17, 82 NRC 33 (2015)

FINDINGS OF FACT

board did not err in factual finding that applicant was not under foreign ownership, control, or domination; CLI-15-7, 81 NRC 481 (2015)

Commission defers to board's factual findings unless they are clearly erroneous and generally steps in only to correct factual findings not even plausible in light of the record reviewed in its entirety; CLI-15-6, 81 NRC 340 (2015); CLI-15-9, 81 NRC 512 (2015)

Commission gives substantial deference to licensing board findings of fact, and it will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-14-10, 80 NRC 157 (2014)

deference to a board's factual determinations is particularly high when they are based in significant part on its assessment of expert testimony and credibility of the witnesses offering that testimony; CLI-13-1, 77 NRC 1 (2013)

deferential clear error standard is applied in analyzing a board's findings of fact; CLI-13-1, 77 NRC 1 (2013)

fact-finding administrative body, such as a licensing board, with authority to develop an evidentiary record, is distinguished from reviewing adjudicatory and judicial bodies, generally with a more limited record-creating authority; LBP-15-3, 81 NRC 65 (2015)

findings that NRC must make for issuance of a renewed license are set forth in 10 C.F.R. 54.29; CLI-15-21, 82 NRC 295 (2015)

in making its combined license findings, the Commission will treat as resolved those matters resolved in the issuance of a design certification rule; LBP-11-38, 74 NRC 817 (2011)

SUBJECT INDEX

licensing boards are the appropriate finders of fact in most circumstances, and referral of a matter for a fact-specific dispute occurs in the ordinary course of business; CLI-15-14, 81 NRC 729 (2015)
question before the Commission is not whether it would have made different factual findings than those of the board but whether the board's findings of fact are so lacking in record support as to be clearly erroneous; CLI-13-1, 77 NRC 1 (2013)
to determine whether the record facts before it established the position being advocated, the court looked beyond the record by indicating that what everybody knows, the court must know; LBP-14-1, 79 NRC 39 (2014)

FIRE PROTECTION

objectives of licensee's program to extend the concept of defense-in-depth to fire protection are discussed; DD-12-3, 76 NRC 416 (2012)
request that NRC take enforcement action to correct alleged noncompliance with fire protection regulations is granted; DD-12-3, 76 NRC 416 (2012)
use of operator manual actions in lieu of the protection methods specified in 10 C.F.R. Part 50, Appendix R, § III.G.2 is not consistent with the regulations, and plants need regulatory approval for each specific OMA proposed; DD-12-3, 76 NRC 416 (2012)

FIRE PROTECTION SYSTEMS

detection systems shall be automatic and capable of operating with or without offsite power; DD-12-3, 76 NRC 416 (2012)
licensee cited for violations for use of unapproved operator manual actions to mitigate safe shutdown equipment malfunctions caused by a fire-induced single spurious actuation in lieu of protecting the equipment; DD-12-3, 76 NRC 416 (2012)
means to ensure that a redundant train of safe-shutdown cables and equipment is free of fire damage in instances in which redundant trains are located in the same fire area outside of primary containment are described; DD-12-3, 76 NRC 416 (2012)

FIRE SAFETY

plants licensed to operate before January 1, 1979, must meet fire safety regulations; DD-12-3, 76 NRC 416 (2012)
underlying purpose of 10 C.F.R. Part 50, Appendix R, § III.G is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event; DD-12-3, 76 NRC 416 (2012)

FIRES

applying principles of statutory interpretation, the board declined to insert additional requirements into the regulations to specify damage states or the number and magnitude of fires and explosions with Commission intent to the contrary and without a showing that such a requirement is unavoidable or imperatively required; CLI-11-9, 74 NRC 233 (2011)
COL applications must include a description and plans for implementation of the guidance and strategies required by section 50.54(hh)(2) for severe accident mitigation; CLI-11-9, 74 NRC 233 (2011)
contention concerning need under NEPA to include a discussion of the environmental impacts of spent fuel pool leakage, SFP fires, and the lack of a spent fuel repository is held in abeyance; LBP-12-26, 76 NRC 559 (2012)
contention that applicant must include a discussion of environmental impacts of spent fuel pool leakage, fires, and lack of a spent fuel repository is dismissed; LBP-14-12, 80 NRC 138 (2014)
contention that environmental report does not satisfy NEPA because it does not consider a range of measures to mitigate the risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 249 (2015)
in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 221 (2015)
licensee cited for violations for use of unapproved operator manual actions to mitigate safe shutdown equipment malfunctions caused by a fire-induced single spurious actuation in lieu of protecting the equipment; DD-12-3, 76 NRC 416 (2012)
licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities in case of loss of large areas of the plant due to explosions or fire; CLI-11-5, 74 NRC 141 (2011)

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licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities to address loss of large areas from fires or explosions that arise from a beyond-design-basis event; CLI-12-2, 75 NRC 63 (2012)
NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 71 (2014)
underlying purpose of 10 C.F.R. Part 50, Appendix R, § III.G is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event; DD-12-3, 76 NRC 416 (2012)

FIRST AMENDMENT

agencies are required to use alternative means for obtaining information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 223 (2013)
NRC subpoena was upheld notwithstanding assertion of First Amendment freedom of association rights, where the subpoena was narrowly tailored to documents supporting specific allegations; CLI-13-5, 77 NRC 223 (2013)
under appropriate circumstances First Amendment rights give way to the compelling government interest in nuclear safety; CLI-13-5, 77 NRC 223 (2013)

FISH AND WILDLIFE SERVICE

admissibility of contention that environmental assessment failed to conduct the required hard look at impacts of the proposed mine and fails to consult with the FWS is decided; LBP-15-11, 81 NRC 401 (2015)
agencies are required to confer with FWS on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat; LBP-13-9, 78 NRC 37 (2013)
concurrence by FWS discharges NRC's consultation responsibilities; LBP-15-11, 81 NRC 401 (2015)
consultation with FWS is legally mandated for any agency action that may affect listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)
federal agency is required to consult if an action may affect listed species or designated critical habitat, even if the effects are expected to be beneficial; LBP-15-11, 81 NRC 401 (2015)
federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under section 402.12 or as a result of informal consultation with the Service under section 402.13, the federal agency determines, with the written concurrence of the FWS Director, that the proposed action is not likely to adversely affect any listed species or critical habitat; LBP-15-11, 81 NRC 401 (2015)
if an agency determines that a particular action will have no effect on an endangered or threatened species, the FWS consultation requirements are not triggered; LBP-15-11, 81 NRC 401 (2015)
if NRC engages in an informal consultation with FWS and it is determined that the project will not adversely affect listed species or critical habitat, it need not engage in formal consultation; LBP-13-9, 78 NRC 37 (2013)
"informal" consultation is an optional process that includes all discussions, correspondence, etc., between FWS and the federal agency designed to assist the federal agency in determining whether formal consultation or a conference is required with the Service under section 402.13; LBP-15-11, 81 NRC 401 (2015)
only species listed as threatened or endangered under the Endangered Species Act are covered by the act's formal consultation requirements; LBP-15-11, 81 NRC 401 (2015)
portions of a contention relevant to the completion of the Endangered Species Act § 7 consultation process and the adequacy of the NRC Staff's impact analyses relevant to the three named species meet the admissibility standards; LBP-13-9, 78 NRC 37 (2013)
when engaging in informal consultation, an agency must provide its determination as to whether the proposed action will affect threatened and endangered species to FWS and request FWS concurrence; LBP-15-11, 81 NRC 401 (2015)

FLOOD PROTECTION

admissibility of contention that licensee is undertaking modifications for protection against severe flooding in the event of upstream dam failures that will require a license amendment is decided; CLI-15-5, 81 NRC 329 (2015)

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if evidence subsequently indicates that the design basis of an operating nuclear power plant will not withstand a maximum flooding event, members of the public may file a request to institute a proceeding to modify, suspend, or revoke a license; LBP-11-15, 73 NRC 629 (2011)

NRC addressed concerns about flooding at GE Mark I and II boiling water reactors through a request for information; DD-15-1, 81 NRC 193 (2015)

NRC Staff ensures that applicant's design basis for the new units will protect public health and safety by verifying that the design basis will withstand maximum flooding events; LBP-11-6, 73 NRC 149 (2011)

NRC Staff may impose additional requirements to protect against a reevaluated flood hazard; DD-15-5, 81 NRC 877 (2015)

petitioner's request that the NRC take escalated enforcement action against licensee concerning flooding protection is being addressed by the NRC's request for information; DD-15-5, 81 NRC 877 (2015)

request for enforcement action based on support beam deficiencies, flood protection inadequacy, flood risks from upstream dams, and primary reactor containment electrical penetration seals containing Teflon is denied because petitioner's requests have been addressed through other actions; DD-15-4, 81 NRC 869 (2015)

request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 489 (2014)

structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as floods without loss of capability to perform their safety functions; LBP-13-8, 78 NRC 1 (2013)

FLOODS

because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the environmental report as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, this argument is not timely; LBP-12-7, 75 NRC 503 (2012)

contention that license renewal application fails to adequately address the risks of flooding from failure of upstream dams is inadmissible; LBP-13-8, 78 NRC 1 (2013)

flood hazard reevaluations being performed pursuant to a request for information are beyond the current design/licensing basis of operating plants; DD-15-4, 81 NRC 869 (2015)

"floodplain" is an area of normally dry or semi-dry land providing temporary natural storage areas for floodwater; LBP-13-4, 77 NRC 107 (2013)

petitioner fails to demonstrate that the issue of radiation dispersal due to site inundation is material to the findings NRC must make to support approving a combined license application; LBP-12-7, 75 NRC 503 (2012)

FOREIGN OWNERSHIP

absent a transfer, license renewal application will be denied where licensee remains under foreign ownership, control, or domination; CLI-14-5, 79 NRC 254 (2014)

all prospective co-licensees are subject to the limitations on foreign ownership, control, or domination; LBP-11-25, 74 NRC 380 (2011)

although pertinent language of the AEA is written in present tense, a board's inquiry does not end with evaluating foreign ownership, control, or domination concerns posed only by the current corporate structure and financing; LBP-14-3, 79 NRC 267 (2014)

any person except one excluded by section 50.38 may file an application for a combined license for a nuclear power facility; CLI-13-4, 77 NRC 101 (2013); LBP-14-3, 79 NRC 267 (2014)

any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity that NRC knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license; LBP-12-19, 76 NRC 184 (2012)

applicant with foreign ownership can still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of applicant responsible for special nuclear material be U.S. citizens; LBP-14-3, 79 NRC 267 (2014)

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applicants are found ineligible to obtain a combined license because they are owned by a U.S. corporation that is 100% owned by a foreign corporation; LBP-12-19, 76 NRC 184 (2012)

applicants are ineligible to obtain a license because they fail to meet the requirements of the AEA and NRC regulations regarding foreign ownership; LBP-12-22, 76 NRC 443 (2012)

because the application for a uranium enrichment facility is governed by Atomic Energy Act §§ 53 and 63, 42 U.S.C. § 2073, 2093, foreign ownership and control issues would be evaluated under sections 57 and 69; LBP-11-11, 73 NRC 455 (2011)

board did not err in factual finding that applicant was not under foreign ownership, control, or domination; CLI-15-7, 81 NRC 481 (2015)

combined license cannot be issued until the foreign ownership issue is properly corrected and then applicants may move to reopen the record; LBP-12-19, 76 NRC 184 (2012)

combined license will not be issued where applicants are 100% owned by a foreign corporation, which is 85% owned by the French government, and the foreign corporation has the power to exercise ownership, control, or domination over applicants, and the Negation Action Plan submitted by applicants does not negate this situation; LBP-12-19, 76 NRC 184 (2012)

commitments in the revised combined license application restrict foreign ownership share to no more than 10% and require NRC consent for any change in foreign ownership of 5% or more; LBP-14-3, 79 NRC 267 (2014)

Congress thought foreign ownership itself should be sufficient to require denial of a license in some circumstances; LBP-12-19, 76 NRC 184 (2012)

connection of the three prohibitions on foreign ownership with the conjunction “or” rather than “and” shows that a license may not be granted if *any* of the three prohibitions is violated; LBP-12-19, 76 NRC 184 (2012)

contention alleging that statutory and regulatory prohibitions on foreign ownership, control, or domination forbid the licensing of proposed units is decided in applicant’s favor; LBP-14-3, 79 NRC 267 (2014)

enrichment facility security clearance requires a determination that granting the clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made; LBP-11-11, 73 NRC 455 (2011)

entity is under foreign ownership, control, or domination whenever a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant; LBP-11-25, 74 NRC 380 (2011)

even substantial foreign funding or involvement where a foreign entity contributes 50% or more of the costs of constructing a reactor or participates in the project review and is consulted on policy and cost issues does not require a finding of foreign control, where safeguards ensure U.S. national defense and security; LBP-11-25, 74 NRC 380 (2011)

for power reactors, NRC developed a Commission-approved standard review plan to assist in evaluating applications for reactor licenses or applications for the transfer of such licenses; LBP-11-11, 73 NRC 455 (2011)

foreign control must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares; LBP-11-25, 74 NRC 380 (2011)

foreign ownership, control, or domination analysis should be given an orientation toward safeguarding the national defense and security; CLI-15-7, 81 NRC 481 (2015)

if after conducting a threshold review, NRC Staff concludes that applicant may be considered to be foreign owned, controlled, or dominated, or that additional action would be necessary to negate the foreign ownership, control, or domination, applicant shall be promptly advised and requested to submit a negation action plan; LBP-11-11, 73 NRC 455 (2011)

if allegations are accurate that applicant is subject to foreign direction, it would be reasonable to expect that there would be manifestations of this in the corporate organization and management and that there would be recognition of such circumstances by those corporate officers who must furnish the Commission with the sworn information prescribed by 10 C.F.R. 50.33; LBP-14-3, 79 NRC 267 (2014)

if and when applicants file a revision of their application, NRC Staff should renote the application as to its foreign ownership aspect; CLI-13-4, 77 NRC 101 (2013)

SUBJECT INDEX

if applicant's negation action plan can successfully wall off the foreign entity from influencing applicant's decisionmaking regarding nuclear safety, security, and reliability concerns, then the AEA's prohibition on foreign control or domination will not stand in the way of the applicant seeking that license; LBP-14-3, 79 NRC 267 (2014)

in context with the other provisions of the Atomic Energy Act § 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security; LBP-14-3, 79 NRC 267 (2014)

in determining foreign ownership issues, boards may consider aspects of control that do not affect nuclear safety or security; CLI-15-7, 81 NRC 481 (2015)

intent of Congress in the Atomic Energy Act is to prohibit relationships where an alien has the power to direct the actions of the licensee; LBP-14-3, 79 NRC 267 (2014)

it would be impermissible to construe the prohibition of foreign ownership so as to make it redundant or otherwise deprive it of operative effect; LBP-12-19, 76 NRC 184 (2012)

materials license regulations contain no express prohibition on foreign ownership, but require Staff to make a finding that license issuance will not be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)

no bright line is established between control or domination, on the one hand, and their absence, on the other; LBP-14-3, 79 NRC 267 (2014)

no license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; LBP-11-25, 74 NRC 380 (2011)

no license may be issued to any person within the United States if, in the opinion of the Commission, issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public; LBP-14-3, 79 NRC 267 (2014)

NRC has discretion in specifying the level of foreign ownership that would constitute a violation of the Atomic Energy Act; LBP-12-19, 76 NRC 184 (2012)

NRC has substantial discretion in determining the threshold percentage at which foreign ownership becomes too great, but that threshold must at a minimum include 100% foreign ownership or the prohibition in the Act would be rendered superfluous; LBP-12-19, 76 NRC 184 (2012)

NRC is prohibited from issuing a reactor license to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-13-4, 77 NRC 101 (2013); CLI-15-7, 81 NRC 481 (2015); LBP-12-19, 76 NRC 184 (2012)

NRC may deny uranium enrichment facility applicant a license based on foreign ownership, control, or domination concerns to the extent it concludes granting such a license would be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)

NRC Staff is directed to review foreign ownership issues outside the adjudicatory context, to consider stakeholder input, and to recommend whether the Commission should consider modifications to agency guidance or practice; CLI-13-4, 77 NRC 101 (2013)

NRC Staff procedures used to evaluate applications for issuance or transfer of control of a production or utilization facility license in light of the prohibitions in Atomic Energy Act § 103d and 104d and in 10 C.F.R. 50.38 against foreign ownership or control are described; LBP-12-19, 76 NRC 184 (2012)

"owned, controlled or dominated" refers to relationships in which the will of one party is subjugated to the will of another; CLI-15-7, 81 NRC 481 (2015); LBP-14-3, 79 NRC 267 (2014)

proceeding is terminated because applicants have failed to provide information to show that they have changed their ownership situation so as to satisfy foreign ownership, control, and domination requirements; LBP-12-22, 76 NRC 443 (2012)

relative to the issue of foreign ownership or control, NRC imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information; LBP-11-11, 73 NRC 455 (2011)

there is generally no specific ownership percentage above which the NRC Staff would conclusively determine that an applicant is per se controlled by foreign interests, but a 100% foreign ownership has formed the basis for the licensing board's grant of summary disposition in favor of intervenors; LBP-11-25, 74 NRC 380 (2011); LBP-14-3, 79 NRC 267 (2014)

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- there is no blanket prohibition on indirect foreign ownership of an applicant or licensee; LBP-14-3, 79 NRC 267 (2014)
- to be inimical to the common defense and security or to the health and safety of the public, control or domination must be of such a degree that the will of the licensee is subjugated to the will of the foreign entity, and the foreign entity must have the power to direct the actions of the licensee; LBP-14-3, 79 NRC 267 (2014)
- to issue a combined license or entertain an application for a COL, the Commission cannot know or have reason to believe applicant is controlled by an alien, a foreign corporation, or a foreign government; LBP-11-25, 74 NRC 380 (2011)
- where a foreign entity proposed to own 100% of the entire facility, a negation action plan was of no consequence; LBP-14-3, 79 NRC 267 (2014)
- where the record did not show any means for foreign minority owner of applicant to control applicant's decisions, or any attempts by the foreign owner to do so, the board could permissibly conclude that the foreign minority owner did not "control" the applicant; CLI-15-7, 81 NRC 481 (2015)
- whether a foreign entity has the ability to restrict or inhibit compliance with security or other regulations of the Commission is of greatest significance to a foreign ownership, control, or domination review; CLI-15-7, 81 NRC 481 (2015)
- FORUM SHOPPING**
- quick resubmission of specific license amendment request without any change in circumstances would create the appearance of forum shopping; LBP-15-28, 82 NRC 233 (2015)
- FRACTURE TOUGHNESS**
- applicant requests an operating license amendment to implement alternate fracture toughness requirements for protection against pressurized thermal shock events; LBP-15-17, 81 NRC 753 (2015)
- ASTM Standard E 185 anticipates that during the course of a nuclear power plant's life the surveillance capsule withdrawal schedule may need to be revised and allows and provides for such changes; LBP-15-20, 81 NRC 829 (2015)
- equivalent margins analysis must demonstrate that the calculated energy will provide margins of safety against fracture that are equivalent to those required by Appendix G of Section XI of the ASME Code; CLI-15-23, 82 NRC 321 (2015)
- if part of a reactor pressure vessel is expected to fall below the 50 ft-lb standard, licensee must demonstrate that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by the ASME Boiler and Pressure Vessel Code; LBP-15-20, 81 NRC 829 (2015)
- licensees have the option of demonstrating that values of Charpy upper-shelf energy below 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME BPV Code; LBP-15-20, 81 NRC 829 (2015)
- licensees must attach a particular number of surveillance capsules to specified areas within the reactor vessel, typically near the inside vessel wall at the beltline; LBP-15-20, 81 NRC 829 (2015)
- long-term exposure to neutron radiation and elevated temperatures in a reactor vessel decrease the vessel materials' fracture toughness, or resistance to fracture; LBP-15-20, 81 NRC 829 (2015)
- materials in a reactor vessel must maintain a minimum level of 50 ft-lb of Charpy upper-shelf energy, which is a measurement of the amount of energy the material can absorb at high temperatures before it fractures and fails; LBP-15-20, 81 NRC 829 (2015)
- minimum frequency with which surveillance capsules must be tested is set by ASTM Standard E 185 (1982 version), which is incorporated into Appendix H; LBP-15-20, 81 NRC 829 (2015)
- neutron radiation embrittlement of reactor pressure vessel walls, decreasing their fracture toughness, is discussed; LBP-15-17, 81 NRC 753 (2015)
- no reduction in the amount of fracture toughness testing is allowed without NRC approval; CLI-15-23, 82 NRC 321 (2015)
- petitioners are not barred from contending that additional testing is necessary to show margins of safety equivalent to those of the ASME BPV Code, Section XI, Appendix G because the petitioners allege noncompliance with 10 C.F.R. Part 50, Appendix G and not Appendix H; LBP-15-20, 81 NRC 829 (2015)

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- physical specimens must come from near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface; LBP-15-17, 81 NRC 753 (2015)
- plant-specific surveillance data must be integrated into the transition fracture toughness reference temperature estimate; LBP-15-17, 81 NRC 753 (2015)
- results from plant-specific surveillance program must be integrated into the fracture toughness estimate if the plant-specific surveillance data have been deemed credible; LBP-15-17, 81 NRC 753 (2015)
- under normal plant conditions, materials at the beltline of the reactor pressure vessel must maintain Charpy upper-shelf energy of no less than 50 ft-lb (68 joules); CLI-15-23, 82 NRC 321 (2015)
- FREEDOM OF INFORMATION ACT**
- agencies must make available certain records to members of the public upon specific request for those records except to the extent that the records (or portions of them) are exempt from public disclosure by one of the nine enumerated exemptions or are excluded from disclosure; CLI-13-5, 77 NRC 223 (2013)
- agencies must make available for public inspection a broad range of information, including the agency's organization, general methodology, rules of procedure, substantive rules, final opinions, and statements of policy and interpretation that have been adopted by the agency; LBP-13-5, 77 NRC 233 (2013)
- any reasonably segregable portion of the record shall be provided to any person requesting such record after deletion of the portions that are exempt; LBP-11-5, 73 NRC 131 (2011)
- board may employ case law interpreting FOIA Exemption 5 when determining whether the deliberative process privilege applies in an NRC proceeding; LBP-13-5, 77 NRC 233 (2013)
- deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 233 (2013)
- FOIA exemption for inter- or intra-agency materials incorporates the deliberative process privilege, which protects documents that are prepared to assist an agency, board, or official to arrive at a decision; LBP-13-5, 77 NRC 233 (2013)
- FOIA's purpose is to encourage disclosure, and, to that end, its exemptions are to be interpreted narrowly; LBP-13-5, 77 NRC 233 (2013)
- government has the burden of proving that a requested document falls within one of FOIA's exemptions; LBP-13-5, 77 NRC 233 (2013)
- licensee's concerns about NRC's administration of FOIA cannot overcome the agency's duty to investigate alleged violations; CLI-13-5, 77 NRC 223 (2013)
- licensee's motion to quash a subpoena duces tecum because production of the requested file would compromise its employee concerns program by potentially subjecting information contained in the file to public disclosure as an official agency record under FOIA is denied; CLI-13-5, 77 NRC 223 (2013)
- nine categories of documents may be exempted from disclosure; LBP-13-5, 77 NRC 233 (2013)
- NRC considers whether Exemption 7 would prevent public disclosure of allegation and investigation information from release; CLI-13-5, 77 NRC 223 (2013)
- requirements and exemptions under FOIA reflect a balancing of public disclosure with confidentiality, but this balancing does not affect the NRC's authority to obtain requested information; CLI-13-5, 77 NRC 223 (2013)
- FUEL**
- contention alleging that license renewal application fails to consider plutonium fuel use, which would place it outside the current licensing basis, is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- See also Mixed Oxide Fuel
- FUEL CLADDING**
- licensee must protect spent fuel cladding from degradation during storage or confine the fuel in such a way that degradation does not cause operational problems when removed from storage; LBP-12-24, 76 NRC 503 (2012)
- FUEL FABRICATION FACILITY LICENSING**
- adequacy finding on applicant's material control and accounting program requires the board to make a case-by-case determination, guided by the Atomic Energy Act's mandate that no license to possess special nuclear material may be issued if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 39 (2014)

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- applicant bears the ultimate burden of proof in materials licensing proceedings; LBP-14-1, 79 NRC 39 (2014)
- applicant has demonstrated that its program of automated equipment, computer systems (and their verification), and the use of secured and tamper-safed item storage area boundaries, satisfactorily demonstrates the ability to verify the presence and integrity of all strategic special nuclear material items in storage; LBP-14-1, 79 NRC 39 (2014)
- applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to rapidly assess the validity of alleged thefts; LBP-14-1, 79 NRC 39 (2014)
- applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to resolve the nature and cause of any MC&A alarm within approved time periods in each of the four storage areas at issue; LBP-14-1, 79 NRC 39 (2014)
- applicant's proposal to seal and design strategic special nuclear material item storage locations to be tamper-safed or equivalent to tamper-safing such that confirmation that the physical boundary of these locations has not been breached ensures the integrity of these items; LBP-14-1, 79 NRC 39 (2014)
- at the construction authorization request stage, the board dismissed a material control and accounting contention as moot, pending submittal of applicant's Fundamental Nuclear Material Control Plan which would require inclusion of a detailed MC&A program; LBP-14-1, 79 NRC 39 (2014)
- licensing of a MOX facility has been governed by a two-part licensing process designed specifically for it; LBP-14-1, 79 NRC 39 (2014)
- material control and accounting system is required for a fuel fabrication facility; LBP-14-1, 79 NRC 39 (2014)
- NRC may issue a license to possess and use 5 or more formula kilograms of strategic special nuclear material only if applicant can establish, implement, and maintain a Commission-approved material control and accounting system that will achieve general performance objectives; LBP-14-1, 79 NRC 39 (2014)
- quantitative accuracy of the MMIS/PLC computer system data must be considered in determining whether requirements of 10 C.F.R. 74.55(b)(1) are satisfied by applicant's plans; LBP-14-1, 79 NRC 39 (2014)
- requirements for performance of applicant's material control and accounting system neither prescribe nor proscribe any methodology for achievement of those performance requirements; LBP-14-1, 79 NRC 39 (2014)
- to meet the reasonable assurance standard, applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-14-1, 79 NRC 39 (2014)
- FUEL LOADING**
- holder of a combined license for a newly built reactor may not load fuel or operate except as provided in accordance with Part 50, Appendix E; LBP-15-4, 81 NRC 156 (2015)
- upon docketing of certifications of permanent shutdown and fuel removal, licensee's licenses no longer authorize operation of the reactors or placement or retention of fuel into the reactor vessels and licensee is prohibited from restarting or loading fuel; DD-15-7, 82 NRC 257 (2015)
- FUEL REMOVAL**
- licensee must provide certifications to NRC Staff that it has permanently removed fuel from its reactors; DD-15-7, 82 NRC 257 (2015)
- "permanent fuel removal" from a nuclear power reactor facility is defined as a certification by licensee to NRC that it has permanently removed all fuel assemblies from the reactor vessel; LBP-15-4, 81 NRC 156 (2015)
- upon docketing of certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, license will no longer authorize operation of the reactor or emplacement or retention of fuel in the reactor vessel; CLI-15-20, 82 NRC 211 (2015)
- FUKUSHIMA ACCIDENT**
- accident does not provide a seriously different picture of the environmental impact of a proposed uranium enrichment facility from what was previously envisioned; LBP-11-26, 74 NRC 499 (2011)
- accident does not significantly alter the overall environmental picture for severe reactor accidents at the site; CLI-12-15, 75 NRC 704 (2012)
- accident-related contentions are rejected as premature, and would not have addressed the standards for reopening, contention admissibility, or rule waiver; CLI-12-6, 75 NRC 352 (2012)

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although the Task Force Report on the Fukushima accident did not justify initiating a generic NEPA review, the Commission acknowledged that new and significant information may come to light that must be considered in individual reactor licensing proceedings; LBP-11-32, 74 NRC 654 (2011)

any changes adopted as a result of the Fukushima accident or the Task Force Report can and will be implemented through the normal regulatory process; LBP-11-28, 74 NRC 604 (2011); LBP-11-32, 74 NRC 654 (2011)

any evaluation of the Fukushima events will include consideration of lessons learned that may apply to spent fuel pools; LBP-12-1, 75 NRC 1 (2012)

any rule or policy changes NRC may make as a result of its post-Fukushima review may be made irrespective of whether a license renewal application is pending, or whether final action on an application has been taken; CLI-12-6, 75 NRC 352 (2012)

as part of the NRC post-Fukushima lessons-learned activities, NRC is requiring all licensees to reevaluate seismic hazards at their sites, and to this end, issued a request for information; DD-15-1, 81 NRC 193 (2015)

as tangible Fukushima lessons emerge, Fukushima-related contentions in individual adjudications may become more plausible, except insofar as NRC is taking generic steps to address them; LBP-12-18, 76 NRC 127 (2012)

because the full implications of the Fukushima events for U.S. facilities are unknown, any generic NEPA duty does not accrue; LBP-11-27, 74 NRC 591 (2011); LBP-12-8, 75 NRC 539 (2012)

board does not consider intervenor's petition, which requests rulemaking and suspension of the proceeding, because the discussion in the petition's body specifically directs those requests to the Commission, which has already responded to these requests; LBP-11-34, 74 NRC 685 (2011)

boards are encouraged to seek guidance from the Commission with regard to new contentions based on the accident; LBP-11-32, 74 NRC 654 (2011)

claims for relief from Fukushima-related events are premature; LBP-11-27, 74 NRC 591 (2011); LBP-11-28, 74 NRC 604 (2011); LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011); LBP-11-36, 74 NRC 768 (2011); LBP-11-37, 74 NRC 774 (2011); LBP-11-39, 74 NRC 862 (2011)

Commission declined to conduct a generic NEPA analysis on the effects of Fukushima-related events; CLI-12-7, 75 NRC 379 (2012)

Commission declined to suspend adjudications or any final licensing decisions because of the accident, finding no imminent risk to public health and safety or to common defense and security; CLI-11-8, 74 NRC 214 (2011); CLI-11-10, 74 NRC 251 (2011); CLI-12-5, 75 NRC 301 (2012); CLI-12-11, 75 NRC 523 (2012)

Commission responses to requests for suspension of reactor licensing reviews and associated adjudications in the wake of the Three Mile Island accident and 9/11 terrorist attacks are discussed; LBP-11-37, 74 NRC 774 (2011)

contention in a license renewal proceeding based on applicant's failure to consider alleged new and significant information arising from NRC's Fukushima Task Force Report was rejected; LBP-12-8, 75 NRC 539 (2012)

contention is denied for failure of its proponent to contact the other parties to resolve the issue presented by the contention prior to its submission; LBP-11-37, 74 NRC 774 (2011)

contention is denied for failure to reference any specific portion of the application at issue; LBP-11-37, 74 NRC 774 (2011)

contention is denied for failure to show the contention is within the scope of the proceeding or is material to the findings NRC must make to support the requested licensing action; LBP-11-37, 74 NRC 774 (2011)

contention that petitioners did not relate to any unique characteristics of the particular site at issue was akin to the generic type of NEPA review that the Commission declared premature; LBP-12-18, 76 NRC 127 (2012)

contention that the environmental report fails to satisfy 10 C.F.R. 51.53(c)(2) because it does not include information about plans to modify the facility in response to post-Fukushima enforcement order is inadmissible; LBP-12-15, 76 NRC 14 (2012)

contention was inadmissible because petitioner offered nothing to link the outcome of the Fukushima events to either the nuclear power plant or the license renewal application and thus failed to show any dispute with the application; CLI-12-13, 75 NRC 681 (2012)

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contentions based on the Fukushima accident must be relevant to the present proceeding and must link the events at Fukushima to the risk of a severe accident at the site that is the subject of the proceeding; LBP-12-1, 75 NRC 1 (2012)

continued operation and continued licensing activities following the accident do not pose an imminent risk to public health and safety; CLI-13-2, 77 NRC 39 (2013); LBP-12-18, 76 NRC 127 (2012)

continuing licensing processes in accordance with current regulations pending completion of long-term analyses of the accident would cause no imminent risk to public health and safety because current regulations provide for incorporating new requirements into existing licenses as they are shown to be necessary; CLI-12-9, 75 NRC 421 (2012)

current regulatory approach and the resultant plant capabilities provide confidence to conclude that a sequence of events similar to the Fukushima accident is unlikely to occur in the U.S.; DD-15-6, 81 NRC 884 (2015); DD-15-6, 81 NRC 884 (2015)

depending on NRC Staff's resolution of Fukushima-related rulemaking petitions, Staff could seek Commission permission to suspend one or more of the generic determinations in the license renewal environmental rules and include a new analysis in pending, plant-specific environmental impact statements; LBP-12-1, 75 NRC 1 (2012)

environmental impacts of the accident are not so significant as to satisfy the Commission's criterion for supplementing an environmental impact statement; LBP-12-18, 76 NRC 127 (2012)

even for licenses that NRC issues before completing its review of hazards like those at Fukushima, any new Fukushima-driven requirements can be imposed later, if necessary, to protect public health and safety; CLI-15-19, 82 NRC 151 (2015)

events at Fukushima, and the ensuing NRC response, are not, at this point, to be considered new and significant information under NEPA; LBP-12-8, 75 NRC 539 (2012)

events of Fukushima do not present a sufficiently grave threat to public safety that reactor licensing proceedings should be suspended; LBP-12-1, 75 NRC 1 (2012)

for license renewal safety review, it is not clear at this point whether any enhancements or changes considered by the Fukushima Task Force will bear on license renewal regulations, which are focused more narrowly on the proper management of aging; CLI-12-10, 75 NRC 479 (2012)

for pending license renewal applications, where the period of extended operation will not begin for at least a year, there is no imminent threat to public health and safety that requires suspension of licensing proceedings or decisions; LBP-11-35, 74 NRC 701 (2011)

for suspension of licensing proceedings, petitioners must show that continuation of proceedings, pending consideration of a rulemaking petition, would jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge from NRC's continued evaluation of the impacts of the Fukushima accident; LBP-11-33, 74 NRC 675 (2011)

Fukushima-related contention based on a Staff Requirements Memorandum are inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 774 (2011)

full implications of the Fukushima accident for U.S. facilities are unknown, and thus any generic NEPA duty, if one is appropriate at all, does not accrue now; LBP-11-33, 74 NRC 675 (2011)

given that NRC will have the opportunity to further consider the concerns that rulemaking petitioners have expressed, and as it further considers actions related to the Fukushima events, it declines to suspend any proceeding pending resolution of the rulemaking petition; CLI-14-7, 80 NRC 1 (2014)

however "significance" is defined, the accident and its aftermath have (as any such severe accident would do) clearly painted a seriously different picture of the environmental landscape; LBP-11-23, 74 NRC 287 (2011)

if new and significant information on Fukushima events comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, NRC will assess the significance of that information as appropriate; CLI-12-7, 75 NRC 379 (2012)

if recommendations of the NRC's Near-Term Task Force review of the accident constitute relevant new and significant information, then the draft supplemental environmental impact statement must address them; LBP-11-28, 74 NRC 604 (2011)

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“imminent risk” reflects NRC’s determination that, post-Fukushima, continued operation of U.S. nuclear plants and continued licensing activities pose no imminent risk to public health and safety; CLI-15-19, 82 NRC 151 (2015)

in response to the Fukushima accident in Japan, NRC is conducting a comprehensive safety review of the requirements and guidance associated with accident mitigation measures; CLI-12-1, 75 NRC 39 (2012)

in the context of NRC’s post-Fukushima activities, nothing learned to date requires immediate cessation of NRC review of license applications; CLI-15-19, 82 NRC 151 (2015)

in the future the Commission might provide relevant guidance regarding the proper time frame for adjudicating Fukushima-related contentions; LBP-11-39, 74 NRC 862 (2011)

intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 259 (2011)

issuance of a Staff Requirements Memorandum directing Staff to implement “without delay” the recommendations of the Fukushima Task Force does not render contentions admissible; LBP-11-36, 74 NRC 768 (2011)

motion to admit a new contention arguing that applicant’s environmental report fails to satisfy NEPA because it does not address findings and recommendations raised by Task Force Report on the Fukushima Dai-ichi accident is denied as premature and insufficiently focused on the license renewal application; LBP-11-28, 74 NRC 604 (2011)

motions and petitions related to the Fukushima events are denied as premature; CLI-12-2, 75 NRC 63 (2012); CLI-12-7, 75 NRC 379 (2012)

moving forward with decisions and proceedings will have no effect on NRC’s ability to implement necessary rule or policy changes that might come out of its review of the accident; LBP-11-32, 74 NRC 654 (2011); LBP-11-35, 74 NRC 701 (2011)

neither new procedures nor a separate timetable for raising new issues related to the Fukushima events are warranted; CLI-12-3, 75 NRC 132 (2012); CLI-12-13, 75 NRC 681 (2012); CLI-12-15, 75 NRC 704 (2012)

new information from studies of the Fukushima event as to potential consequences of a severe accident at a U.S. nuclear power plant is irrelevant to any uncertainty that might exist regarding which agency has authority over cleanup after a severe accident; LBP-11-20, 74 NRC 65 (2011)

new information requiring NRC Staff to prepare supplemental environmental review documents must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-11-27, 74 NRC 591 (2011)

no imminent risk to public health and safety or to the common defense and security post-Fukushima necessitates suspensions; LBP-12-18, 76 NRC 127 (2012)

none of the post-Fukushima orders or information requests can be characterized as approvals that must be obtained in connection with renewal of an operating license; LBP-12-15, 76 NRC 14 (2012)

NRC continues to comprehensively assess the accident, including carefully reviewing all recommendations outlined by NRC’s Task Force studying the accident; CLI-12-10, 75 NRC 479 (2012)

NRC continues to consider the nuclear events in Japan, and the agency is in the process of implementing and prioritizing actions to be taken in response to the accident; CLI-11-14, 74 NRC 801 (2011)

NRC has in place well-established regulatory processes by which to impose any new requirements or other enhancements that may be needed; CLI-12-2, 75 NRC 63 (2012); CLI-12-6, 75 NRC 352 (2012)

NRC need not conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as a part of the environmental review for new reactor and license renewal decisions; LBP-11-32, 74 NRC 654 (2011)

NRC regulations and case law already provide clear and uniform standards to determine the timeliness of motions to add new contentions on the Fukushima accident; LBP-11-32, 74 NRC 654 (2011)

NRC Staff review of combined license application relative to regulatory actions that the NRC has taken in response to lessons learned from the accident is discussed; CLI-15-13, 81 NRC 555 (2015)

NRC Staff verification of Fukushima-related license conditions should be a straightforward matter of applying a defined set of requirements; CLI-12-2, 75 NRC 63 (2012)

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NRC understanding of the details of the failure modes at the Fukushima Dai-ichi site continues to evolve and NRC continues to learn more about the extent of the damage at the site; LBP-11-28, 74 NRC 604 (2011)

NRC will address any new information presenting a seriously different picture of the environmental impact of a proposed project than previously assessed; CLI-12-10, 75 NRC 479 (2012)

NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-11-5, 74 NRC 141 (2011); LBP-11-35, 74 NRC 701 (2011)

NRC's post-Fukushima lessons learned and information-gathering process authorize NRC to collect information from licensees to determine whether licenses should be modified, suspended, or revoked; LBP-15-27, 82 NRC 184 (2015)

ongoing regulatory and oversight processes provide reasonable assurance that each plant continues to comply with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-12-3, 75 NRC 132 (2012); CLI-12-5, 75 NRC 301 (2012)

petitioner does not identify how the Fukushima accident paints a seriously different picture of the environment, given the bounding severe accident scenarios assumed in the GEIS analysis and its consideration of liquid pathways; CLI-12-15, 75 NRC 704 (2012)

petitioner fails to specifically explain why a materially different result would have been likely had information currently available from the Fukushima accident been considered ab initio in the severe accident mitigation alternatives analysis or why that information presents a significant safety or environmental issue; LBP-11-35, 74 NRC 701 (2011)

petitioner's attempt to tie NEPA environmental justice claim to Fukushima Task Force report is an improper effort to interpose concerns that could have been raised at the outset of the proceeding; LBP-11-37, 74 NRC 774 (2011)

petitioner's request to hold the license renewal proceeding in abeyance until the Commission resolves petitioner's request to suspend the proceeding pending evaluation of the Fukushima accident is denied because the Commission has denied the suspension request; LBP-11-35, 74 NRC 701 (2011)

petitioners asserted that NRC actions following the events of September 11, 2001, and the accident at Fukushima Dai-ichi were insufficient to satisfy NRC's general obligation under the Atomic Energy Act to protect public health and safety; CLI-15-4, 81 NRC 221 (2015)

petitioners' request for a safety analysis relative to Fukushima-related concerns was granted to the extent that the requested analyses had already been undertaken; CLI-12-9, 75 NRC 421 (2012)

petitioners' requests to suspend various licensing proceedings, pending completion of long-term analyses of the Fukushima events and the issuance of any resulting regulatory changes were denied; CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012)

petitions for suspension of proceeding and rescission of regulations that make generic conclusions about environmental impacts of severe reactor and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings are denied; LBP-11-39, 74 NRC 862 (2011)

post-Fukushima spent fuel pool concerns are being addressed through rulemaking on mitigation of beyond-design-basis events; DD-15-1, 81 NRC 193 (2015)

proper mechanism for raising Fukushima-related, application-specific concerns in ongoing combined license cases is to file a new contention, consistent with the applicable procedural rules; CLI-11-5, 74 NRC 141 (2011)

raising new issues related to the Fukushima events does not warrant new procedures or a separate timetable; CLI-12-6, 75 NRC 352 (2012)

reference to generic agency recommendations alone, without facts or expert opinion that explain their significance for the unique characteristics of the sites or reactors that are the subject of the petitions, does not provide sufficient support for the common contention; LBP-12-18, 76 NRC 127 (2012)

request for analysis of whether Fukushima events constitute new and significant information under NEPA is premature; LBP-12-1, 75 NRC 1 (2012)

request for suspension of proceedings and other relief after the Fukushima Dai-ichi accident was denied; CLI-15-13, 81 NRC 555 (2015)

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- request that NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions is premature; LBP-12-18, 76 NRC 127 (2012)
- request that NRC order licensees to comply with twelve specific recommendations in the Near-Term Task Force Report is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order the immediate suspension of the operating licenses of all General Electric boiling-water reactors that use the Mark I primary containment system, citing the Fukushima Dai-ichi accident in Japan as its basis, is resolved; DD-15-1, 81 NRC 193 (2015)
- request to suspend licensing and rulemaking activities pending completion of the NRC Task Force's evaluation of the implications of the Fukushima accident and issuance of any proposed regulatory decisions and/or environmental analyses is denied; LBP-12-18, 76 NRC 127 (2012)
- request to suspend proceedings because of Fukushima accident is denied; CLI-12-14, 75 NRC 692 (2012)
- requests for a generic NEPA analysis were premature where NRC evaluation of Fukushima Dai-ichi events was still ongoing; LBP-15-24, 82 NRC 68 (2015)
- requests to suspend ongoing adjudicatory and licensing activities pending full consideration of the safety and environmental implications of the Fukushima accident are denied; LBP-11-34, 74 NRC 685 (2011)
- spent fuel storage pool matters will be addressed, if studies of implications from Fukushima warrant, through more generic regulatory reform; LBP-11-35, 74 NRC 701 (2011)
- suspension of license renewal proceedings in light of the Fukushima accident is unnecessary because current regulatory and oversight processes provide reasonable assurance that each plant continues to comply with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-12-6, 75 NRC 352 (2012)
- suspension of reactor licensing proceedings in light of the events at Fukushima is denied; LBP-11-33, 74 NRC 675 (2011)
- there is no imminent safety reason to halt new reactor licensing because there is sufficient time to implement new Fukushima-related requirements before operation; CLI-12-2, 75 NRC 63 (2012)
- to the extent NRC's review of the Fukushima accident leads to new rules applicable to any pending application, the Commission has sufficient authority and time to apply them to any new license that may be issued; CLI-11-5, 74 NRC 141 (2011)
- to the extent that Fukushima events provide the basis for contentions appropriate for litigation in individual proceedings, NRC procedural rules contain ample provisions through which litigants may seek admission of new or amended contentions; LBP-12-18, 76 NRC 127 (2012)
- unsupported speculation that fresh analysis might lead NRC to require additional mitigation measures simply does not raise a significant safety issue or an exceptionally grave issue; LBP-11-23, 74 NRC 287 (2011)
- until NRC defines and imposes on licensees new requirements arising from the Fukushima events, such requirements are highly speculative; LBP-11-33, 74 NRC 675 (2011)
- GENERAL DESIGN CRITERIA**
- applicant for a construction permit must include the principal design criteria for a proposed facility and the relationship of the design bases to the PDC as part of the preliminary safety analysis report; DD-15-11, 82 NRC 361 (2015)
- GENERAL LICENSES**
- all Part 50 and Part 52 reactor licensees may be granted a general license to store spent fuel in an independent spent fuel storage installation; CLI-15-4, 81 NRC 221 (2015)
- GENERATORS**
- See Diesel Generators
- GENERIC ENVIRONMENTAL IMPACT STATEMENT**
- absent a rule waiver, NRC Staff is not expected to revisit the impact determinations made in the Continued Storage GEIS as part of its site-specific NEPA reviews; CLI-15-10, 81 NRC 535 (2015)
- adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a generic environmental impact statement; LBP-12-8, 75 NRC 539 (2012)

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although NRC has issued a GEIS for in situ uranium recovery facilities that assesses potential ISR facility construction/operation/decommissioning impacts, for the initial licensing of each individual ISR facility, NRC Staff will first prepare a draft supplemental environmental impact statement; LBP-15-3, 81 NRC 65 (2015)

applicants should rely on the GEIS for terrorism-related issues in a license renewal application; CLI-11-11, 74 NRC 427 (2011)

as an alternative ground for excluding a NEPA terrorism contention, NRC Staff's determination in the GEIS that the environmental impacts of a terrorist attack were bounded by those resulting from internally initiated events is sufficient to address the environmental impacts of terrorism; CLI-11-11, 74 NRC 427 (2011)

assumptions used in the analysis of impacts of continued storage of spent fuel are sufficiently conservative to bound the impacts such that variances that may occur between sites are unlikely to result in environmental impact determinations greater than those presented in the continued storage GEIS; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

because generic impact determinations on impacts of continued storage have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings; LBP-14-15, 80 NRC 151 (2014)

because the GEIS provides a severe accident impacts analysis that envelopes potential impacts at all existing plants, the environmental impacts of severe accidents during the license renewal term already have been addressed generically in bounding fashion; LBP-12-18, 76 NRC 127 (2012)

board improperly allowed petitioner to challenge the GEIS's generic finding regarding severe accident consequences; CLI-15-6, 81 NRC 340 (2015)

Category 1 issues are those resolved generically by the GEIS and need not be addressed as part of license renewal; LBP-12-8, 75 NRC 539 (2012)

challenges to the GEIS's determinations amount to attacks on NRC regulations and are not within the scope of license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)

Commission adopted a GEIS to identify and analyze the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-12, 81 NRC 452 (2015)

Commission directed licensing boards to reject pending waste confidence contentions after adopting a GEIS to identify and analyze environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-5, 81 NRC 249 (2015)

Commission sensibly has chosen to address high-level waste disposal generically rather than unnecessarily to revisit the same waste disposal questions, license by license, when reviewing individual applications; LBP-14-16, 80 NRC 183 (2014)

contention that supplementation of the environmental impact statement is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the Continued Storage GEIS and Rule is inadmissible; CLI-15-10, 81 NRC 535 (2015)

contentions on Category 1 issues amount to a challenge to the regulation barring challenges to generic environmental findings; CLI-12-19, 76 NRC 377 (2012)

Continued Storage Rule and supporting GEIS to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 535 (2015)

depending on NRC Staff's resolution of Fukushima-related rulemaking petitions, NRC Staff could seek Commission permission to suspend one or more of the generic determinations in the license renewal environmental rules and include a new analysis in pending, plant-specific environmental impact statements; LBP-12-1, 75 NRC 1 (2012)

environmental impacts of license renewal are classified as either Category 1, which are generically addressed by the NRC's GEIS for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 11 (2011)

for each license renewal application, NRC Staff must prepare a plant-specific supplement to the GEIS that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts; LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012)

GEIS findings with respect to severe accident consequences are not subject to challenge in individual license renewal proceedings; CLI-15-6, 81 NRC 340 (2015)

GEIS for in-situ leach uranium milling facilities addresses, among other topics, matters specified in section 51.45; LBP-15-3, 81 NRC 65 (2015)

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GEIS for ISL mining is subject to an appropriate challenge in an adjudicatory proceeding; LBP-15-11, 81 NRC 401 (2015)

GEIS was adopted to identify and analyze the environmental impacts of continued storage of spent nuclear fuel; LBP-14-16, 80 NRC 183 (2014)

generic analyses of the environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 221 (2015)

generic approach to high-level waste disposal has been endorsed by higher courts; LBP-14-16, 80 NRC 183 (2014)

generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 340 (2015)

impact determinations in the Continued Storage GEIS shall be deemed incorporated into the environmental impact statements associated with combined license and license renewal applications; CLI-15-10, 81 NRC 535 (2015)

impacts of continued storage will not vary significantly across sites and can be analyzed generically; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

it is not clear NRC Staff relied upon the GEIS when preparing the draft supplemental environmental impact statement because it was not incorporated by reference or mentioned in any other manner; LBP-15-11, 81 NRC 401 (2015)

license renewal applicant can adopt findings of the GEIS, designated as Category 1 issues in Table B-1 of Appendix B to Subpart A of Part 51; LBP-13-13, 78 NRC 246 (2013)

license renewal applicant need not include analyses of the environmental impacts of Category 1 issues in its environmental report because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 377 (2012)

license renewal applicant's environmental report may adopt the findings of the GEIS, but must also include site-specific analyses of Category 2 issues; CLI-15-6, 81 NRC 340 (2015)

license renewal provisions cover environmental issues relating to onsite spent fuel storage generically, and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

licensing boards were instructed to hold in abeyance any contentions on waste confidence matters until after the Commission's issuance of a new GEIS; LBP-14-16, 80 NRC 183 (2014)

NRC adopted a GEIS identifying and analyzing environmental impacts of continued storage of spent nuclear fuel and associated revisions to the Temporary Storage Rule in 10 C.F.R. 51.23; LBP-15-1, 81 NRC 15 (2015); LBP-15-5, 81 NRC 249 (2015)

NRC has resolved many environmental impacts for license renewal through a GEIS and these issues need not be revisited in site-specific EISs; CLI-14-7, 80 NRC 1 (2014)

NRC need not conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as a part of the environmental review for new reactor and license renewal decisions; LBP-11-32, 74 NRC 654 (2011)

NRC need not incorporate a GEIS by reference where the Commission has already taken public comment and performed a comprehensive analysis of the environmental consequences of continued spent fuel storage; CLI-15-10, 81 NRC 535 (2015)

NRC Staff uses applicant's environmental report as a starting point for its own environmental review of a license renewal application, the results of which are published as a supplement to the GEIS; CLI-15-6, 81 NRC 340 (2015)

public comment will be afforded in advance on any generic waste confidence document that NRC issues on remand, be it a fresh rule, a policy statement, an environmental assessment, or an environmental impact statement; CLI-12-16, 76 NRC 63 (2012)

request that NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions is premature; LBP-12-18, 76 NRC 127 (2012)

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spent fuel pool GEIS is not limited to discussing only normal operations, but also discusses potential accidents and other nonroutine events, and thus need not be included in the severe accident mitigation alternatives analysis for license renewal; LBP-15-5, 81 NRC 249 (2015)

to meet its environmental review burden in license renewal cases, NRC Staff developed the GEIS, which contains findings that apply to all nuclear power plants and are codified in Appendix B of Subpart A of 10 C.F.R. Part 51; LBP-13-13, 78 NRC 246 (2013)

to the extent that petitioner challenges the GEIS, its remedy is a petition for rulemaking or a petition for a waiver of the rules based on circumstances; CLI-11-11, 74 NRC 427 (2011)

GENERIC ISSUES

a severe accident mitigation alternative need not be implemented during a particular plant's license renewal review if the Commission is concurrently resolving the safety improvement achieved by that SAMA through a generic process attached to the agency's review of all plants' current licensing bases; LBP-11-17, 74 NRC 11 (2011)

adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a generic environmental impact statement; CLI-13-7, 78 NRC 199 (2013); LBP-12-8, 75 NRC 539 (2012)

admission of contentions that NRC may ultimately deal with generically through notice-and-comment rulemaking is precluded; LBP-11-32, 74 NRC 654 (2011)

agency did not need to assess site-specific impacts of continuing to store the spent fuel in either an onsite or offsite storage facility in new reactor licensing environmental impact statements or environmental assessments beyond the expiration dates of reactor licenses; LBP-14-16, 80 NRC 183 (2014)

all uranium fuel cycle and waste management issues, including low-level waste storage and disposal, mixed waste storage and disposal, onsite spent fuel storage, and transportation, are Category 1 issues with a small impact; LBP-11-2, 73 NRC 28 (2011)

as tangible Fukushima lessons emerge, Fukushima-related contentions in individual adjudications may become more plausible, except insofar as the NRC is taking generic steps to address them; LBP-12-18, 76 NRC 127 (2012)

because Category 1 issues already have been reviewed on a generic basis, applicant's environmental report need not provide a site-specific analysis of these issues; CLI-11-11, 74 NRC 427 (2011)

because NRC does not know today the full implications of the Fukushima events for U.S. facilities, any generic NEPA duty, if one is appropriate at all, does not accrue now; LBP-12-8, 75 NRC 539 (2012)

because the full implications of the Fukushima events for U.S. facilities are unknown, any generic NEPA duty does not accrue; LBP-11-27, 74 NRC 591 (2011)

categories of actions are exempt from NEPA review where NRC has made a generic finding that the actions do not individually or cumulatively have a significant effect on the human environment; LBP-15-26, 82 NRC 163 (2015)

Category 1 impacts are those that NRC has determined are common across plants and are outside the scope of individual license renewal proceedings; LBP-13-13, 78 NRC 246 (2013)

Category 1 issues are environmental issues that NRC has resolved generically and therefore does not consider in specific license renewal proceedings; CLI-15-18, 82 NRC 135 (2015); LBP-12-8, 75 NRC 539 (2012)

Category 1 issues are not subject to challenge in a relicensing proceeding because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-13, 73 NRC 534 (2011)

challenges to the generic environmental impact statement's determinations amount to attacks on NRC regulations and are not within the scope of license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)

Commission approval of a rule waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist; CLI-15-6, 81 NRC 340 (2015)

comprehensive generic analysis may be used to evaluate onsite risks that are essentially common to all plants, as long as NRC provides the opportunity for concerned parties to raise site-specific differences at the time of a specific site's licensing; LBP-12-18, 76 NRC 127 (2012)

concerns that apply to all spent fuel pools at all reactors are more appropriately addressed via rulemaking or other appropriate generic activity; CLI-12-6, 75 NRC 352 (2012)

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consideration in adjudicatory proceedings of issues presently to be taken up by the Commission in rulemaking would be a wasteful duplication of effort; LBP-14-1, 79 NRC 39 (2014)

contention that applicant's SAMA analysis improperly ignored radioactive waste disposal is outside the scope of the proceeding because it directly challenges the generic determinations in Table B-1 of Appendix B to Part 51; LBP-11-2, 73 NRC 28 (2011)

exception in 10 C.F.R. 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in certain license renewal adjudications; CLI-13-7, 78 NRC 199 (2013)

Fukushima contention that petitioners did not relate to any unique characteristics of the particular site at issue was akin to the generic type of NEPA review that the Commission declared premature; LBP-12-18, 76 NRC 127 (2012)

generic analysis remains appropriate for spent fuel pool accidents in license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

generic determinations are appropriately excluded from litigation in individual proceedings; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

generic findings are reflected regarding impacts of spent fuel storage after the cessation of licensed operation of a nuclear power plant; CLI-14-8, 80 NRC 71 (2014)

generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing; LBP-12-3, 75 NRC 164 (2012)

generally applicable concerns are not appropriate for resolution in an adjudicatory proceeding, a rulemaking petition being the appropriate mechanism for raising those concerns; CLI-12-6, 75 NRC 352 (2012)

impacts of continued storage will not vary significantly across sites and can be analyzed generically; LBP-14-16, 80 NRC 183 (2014)

licensing proceedings are not the appropriate venue for generic issues, especially those that are about to become the subject of rulemaking; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)

"new and significant information" requirement does not override, for purposes of litigating the issues in an adjudicatory proceeding, the exclusion of Category 1 issues in section 51.53(c)(3)(i) from site-specific review; CLI-12-19, 76 NRC 377 (2012)

NRC has discretion to resolve issues generically by rulemaking; CLI-11-11, 74 NRC 427 (2011)

NRC's use of rulemaking to address generic issues has been approved by the Supreme Court; CLI-15-6, 81 NRC 340 (2015)

Part 51 license renewal provisions cover environmental issues relating to onsite spent fuel storage generically and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

pointing to alleged new and significant information is not enough to allow boards to adjudicate an issue resolved generically by regulation; LBP-15-5, 81 NRC 249 (2015)

structures and components associated only with active functions can be generically excluded from a license renewal aging management review; CLI-12-5, 75 NRC 301 (2012)

subsection (L) of 10 C.F.R. 51.53(c)(3)(ii) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in case-by-case license renewal adjudications; LBP-13-1, 77 NRC 57 (2013)

to the extent petitioner seeks to raise a generic challenge to the 10-mile plume exposure pathway EPZ, such an argument constitutes an impermissible challenge to NRC regulations; LBP-11-15, 73 NRC 629 (2011)

when engaging in rulemaking, the Commission is carving out issues from adjudication for generic resolution; CLI-13-7, 78 NRC 199 (2013)

where special circumstances make a generic rule inapplicable to a particular proceeding, participant may petition for a rule waiver or exception; CLI-15-6, 81 NRC 340 (2015)

GENERIC SAFETY ISSUES

Continued Storage Rule makes generic safety findings concerning feasibility and capacity of spent fuel disposal; LBP-15-9, 81 NRC 396 (2015)

if petitioner wishes to pursue its concerns about the safety of relocating certain surveillance frequencies generically, it may, at any time, file a petition for rulemaking to amend the regulation; CLI-13-10, 78 NRC 563 (2013)

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GEOLOGIC CONDITIONS

contention that materials license amendment application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 11 (2014)

geologic and seismic siting factors considered for design must include a determination of the safe shutdown earthquake ground motion for the site and the potential for surface tectonic and nontectonic deformations; LBP-11-16, 73 NRC 645 (2011)

GEOLOGIC REPOSITORIES

contention concerning need under NEPA to include a discussion of the environmental impacts of spent fuel pool leakage, SFP fires, and the lack of a spent fuel repository is held in abeyance; LBP-12-26, 76 NRC 559 (2012)

DOE may incorporate in its application for geologic repository information from previous reports filed with the Commission, provided that such references are clear and specific; LBP-12-24, 76 NRC 503 (2012)

in light of the dim prospects for moving forward with a geologic repository in the contemporary political environment, NRC must consider the environmental effects of storing waste in spent fuel pools or casks for extended periods; LBP-12-24, 76 NRC 503 (2012)

GOVERNMENT PARTIES

a governmental body's interest in protecting the individuals and territory that fall under that body's authority establishes an organizational interest for standing purposes; LBP-11-6, 73 NRC 149 (2011)

a municipality is deemed to have standing in a reactor licensing proceeding that involves a facility located within its boundaries; LBP-11-6, 73 NRC 149 (2011)

Commission grants standing to a governmental body within close proximity of a proposed nuclear reactor under the proximity presumption, effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability; LBP-15-19, 81 NRC 815 (2015)

where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality's boundaries, it can, for purposes of establishing standing, rely on the 50-mile proximity presumption to the same extent as an individual or an organization; LBP-11-6, 73 NRC 149 (2011)

GRANDFATHERED CONDITIONS

if licensee amends any of its grandfathered license conditions that were related to the decommissioning trust fund, from that point forward licensee must comply with all of the requirements of 10 C.F.R. 50.75(h); LBP-15-24, 82 NRC 68 (2015)

where license conditions predate issuance of 10 C.F.R. 50.75(h)(5), the plant was allowed to keep its existing license conditions; LBP-15-24, 82 NRC 68 (2015)

GREENHOUSE GAS EMISSIONS

because federal agencies typically describe their consideration of the energy requirements of a proposed action, in the context of that analysis agencies should evaluate GHG emissions; LBP-11-26, 74 NRC 499 (2011)

for power reactors, NRC Staff review should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed; LBP-11-26, 74 NRC 499 (2011)

if impacts are remote or speculative, the environmental impact statement need not discuss them, including greenhouse gas emissions; LBP-11-7, 73 NRC 254 (2011)

in assessing GHG impacts, NRC must devote its resources to taking a hard look at the issue; LBP-11-26, 74 NRC 499 (2011)

under NEPA, NRC must assess the environmental impacts of a proposed facility, including those impacts associated with GHG emissions by the proposed facility; LBP-11-26, 74 NRC 499 (2011)

under NEPA, NRC Staff must consider the cumulative impact of greenhouse gas emissions from a proposed facility; LBP-11-7, 73 NRC 254 (2011)

GROUNDWATER

admissibility of contention that environmental assessment fails to adequately describe and analyze aquifer restoration goals in light of new standards for determining alternative control limits is decided; LBP-15-15, 81 NRC 598 (2015)

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admissibility of contention that environmental assessment fails to analyze impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 401 (2015)

admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 401 (2015)

“baseline” data describe results of applicant’s preoperational or baseline groundwater quality sampling program providing data on project-wide groundwater conditions; LBP-15-16, 81 NRC 618 (2015)

Commission-approved background cannot be established until after an ISR license has been issued; LBP-15-3, 81 NRC 65 (2015)

confinement of aquifers is material to the environmental impacts of the licensing action; CLI-14-2, 79 NRC 11 (2014)

contention alleging that final supplemental environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-14-5, 79 NRC 377 (2014)

contention alleging that final supplemental environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-14-5, 79 NRC 377 (2014)

contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that draft environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that draft environmental impact statement fails to include adequate hydrogeological analysis to assess potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that draft environmental impact statement fails to include adequate hydrological information to demonstrate applicant’s ability to contain groundwater fluid migration is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that draft environmental impact statement lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that environmental assessment violates the National Environmental Policy Act in its failure to analyze groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 401 (2015)

contention that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner is decided; LBP-15-16, 81 NRC 618 (2015)

EPA drinking water maximum contaminant levels continue to be an accepted groundwater restoration standard; LBP-15-3, 81 NRC 65 (2015)

in situ recovery license applicant is barred from installing a complete wellfield and associated monitor well networks until after a license is issued; LBP-15-3, 81 NRC 65 (2015)

intervenor fails to establish the validity of their various challenges to the adequacy of the final supplemental environmental impact statement description of the baseline water quality at the ISR site; LBP-15-3, 81 NRC 65 (2015)

prelicensing monitoring program to characterize site groundwater constituents need not be coextensive with the Criterion 7A preoperational monitoring, license condition-based program intended to provide the information needed for setting Criterion 5B groundwater protection standards and UCLs; LBP-15-16, 81 NRC 618 (2015)

“primary groundwater restoration” is to return the constituent to background levels; LBP-15-3, 81 NRC 65 (2015)

regional groundwater flow modeling is discussed; LBP-13-4, 77 NRC 107 (2013)

restoration to an alternate concentration limit is permitted only when restoration to a primary or the secondary Table 5C standard is not practically achievable; LBP-15-3, 81 NRC 65 (2015)

waiting until after licensing, although before mining operations begin, to definitively establish the groundwater quality baselines and upper control limits is consistent with industry practice and NRC

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- methodology, given the sequential development of in situ leach wellfields; LBP-15-16, 81 NRC 618 (2015)
- “secondary groundwater restoration” is restoration of constituent levels to the drinking water limits enumerated in Appendix A, Table 5C; LBP-15-3, 81 NRC 65 (2015)
- GROUNDWATER CONTAMINATION**
- activities associated with, and the data coming from, preclicensing groundwater monitoring activities are associated with compliance with the dictates of 10 C.F.R. Part 40, Appendix A, Criterion 7; LBP-15-3, 81 NRC 65 (2015)
- although the Part 40, Appendix A criteria were developed for conventional uranium milling facilities, they have since been applied in limited fashion to ISR facilities; LBP-15-3, 81 NRC 65 (2015)
- applicant for a uranium ISR license is required to provide data from a groundwater monitoring program that are sufficient to establish a preclicensing site characterization baseline for assessing the potential effects of facility operations on local groundwater quality; LBP-15-3, 81 NRC 65 (2015)
- applicant’s monitoring program for establishing existing site characterization baseline values for certain site groundwater constituents prior to issuance of a source materials license for ISR facility construction and operation need not, to comply with NEPA and NRC’s Part 51 implementing regulations, be conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 65 (2015)
- as distance increases from the in situ recovery facility, petitioner with an upgradient water source must expect to provide the board with some analysis as to how any contamination will affect any wells alleged to be impacted by the facility; LBP-12-3, 75 NRC 164 (2012)
- background water quality data are used to establish existing hazardous constituent concentrations in an aquifer, which can then be used to set post-operational concentration limits; LBP-15-16, 81 NRC 618 (2015)
- bounding analysis provided in the final supplemental environmental impact statement, as supplemented in the record, provides sufficient information about a reasonable range of hazardous constituent concentration values associated with potential post-operational alternate concentration limits so as to provide an appropriate NEPA assessment of the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits; LBP-15-3, 81 NRC 65 (2015)
- claim that application fails to adequately present the true extent of historical exploration drilling, borehole abandonment details, R&D testing, changes to groundwater water quality, and interconnections of geologic strata contains no alleged facts to support this opinion and thus does not raise a genuine dispute; LBP-12-3, 75 NRC 164 (2012)
- concern about computer modeling methodology used to calculate groundwater quantity impacts is inadmissible as lacking sufficient factual or expert support and as failing to establish a material factual or legal dispute; LBP-12-3, 75 NRC 164 (2012)
- contention alleging that final supplemental environmental impact statement fails to include adequate hydrogeological information to demonstrate ability to contain fluid migration and assess potential impacts to groundwater is admissible; LBP-14-5, 79 NRC 377 (2014)
- contention asserting that because no previous ISL/ISR mining operation has been able to restore groundwater to baseline standards, applicant will be required to request that the Commission set an alternate concentration limit for aqueous contaminants is admissible; LBP-12-3, 75 NRC 164 (2012)
- contention asserting that NEPA requires a groundwater baseline characterization for an in situ recovery site is admissible; LBP-12-3, 75 NRC 164 (2012)
- contention claiming that the environmental report’s discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with NRC requirements is admissible; LBP-11-16, 73 NRC 645 (2011)
- contention contesting failure of applicant to evaluate groundwater impacts of in situ recovery is inadmissible for failure to present factual allegations and/or expert opinion to support the contention; LBP-13-6, 77 NRC 253 (2013)
- contention that draft environmental impact statement fails to analyze the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)

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- contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess adequate confinement and potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that draft environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 456 (2015)
- contention that environmental review documents fail to identify source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene in groundwater is inadmissible as untimely; LBP-15-19, 81 NRC 815 (2015)
- contention that final supplemental environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 65 (2015)
- contention that final supplemental environmental impact statement fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner is decided; LBP-15-3, 81 NRC 65 (2015)
- contention that the environmental report is deficient in concluding that environmental impacts from proposed deep injection wells will be small because the ER fails to identify the source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene is admissible; LBP-12-9, 75 NRC 615 (2012)
- contention that wastewater contains chemical contaminants that are not discussed in the environmental report, and that when the wastewater is discharged via deep injection wells, the chemicals might migrate to an aquifer is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)
- determination of background groundwater quality to include sampling of wells that are hydraulically upgradient of the waste management area is not required if non-upgradient well sampling will provide an indication of background groundwater quality that is representative, or more representative, than that provided by upgradient wells; LBP-15-3, 81 NRC 65 (2015)
- dose limits from tritium in groundwater for individual members of the public were never approached; DD-11-1, 73 NRC 7 (2011)
- environmental contention regarding cumulative impact on groundwater quantity of the in situ recovery project and the planned expansion satisfies admissibility requirements; LBP-12-3, 75 NRC 164 (2012)
- for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 164 (2012)
- groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)
- in exempting an aquifer from MCLs, EPA has to find that the aquifer cannot and will not serve as a source of drinking water because it is mineral producing and can be demonstrated to contain minerals that, considering their quantity and location, are expected to be commercially producible; LBP-15-3, 81 NRC 65 (2015)
- licensee shall establish a detection monitoring program needed for NRC to set the site-specific groundwater protection standards, and the monitoring program must be in place when specified by NRC in license conditions; LBP-15-3, 81 NRC 65 (2015)
- nineteen factors must be considered in making the "present and potential hazard" finding requisite to Commission approval of an alternate concentration limit; LBP-15-3, 81 NRC 65 (2015)
- no in situ recovery facility has ever requested that all OZ aquifer groundwater hazardous constituents be restored to CAB concentrations or Criterion 5B(5)(b) MCLs, as those are currently defined; LBP-15-3, 81 NRC 65 (2015)
- nothing in 10 C.F.R. Part 40, Appendix A, Criterion 5B precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's precicensing program were adequate

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to provide the necessary information to characterize properly the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 65 (2015)

nothing in the definition of “construction” in 10 C.F.R. 40.4 precludes the installation of wells or the use of monitoring protocols as needed to provide those background data; LBP-15-3, 81 NRC 65 (2015)

NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the ALARA dose objectives; DD-11-1, 73 NRC 7 (2011)

NRC regulations explicitly allow the use of alternate concentration limits for hazardous constituents; LBP-15-11, 81 NRC 401 (2015)

organizational interest in protecting the natural resources of the Black Hills of South Dakota with a focus on groundwater contamination from uranium mining is insufficient to establish organizational standing; LBP-13-6, 77 NRC 253 (2013)

petitioner whose property is upgradient but nonetheless located in close proximity to a proposed in situ recovery facility may be able to establish its plausible pathway with a less particularized showing; LBP-12-3, 75 NRC 164 (2012)

petitioners considerably upgradient of a mining area must provide scientific or technical support for how contaminated material from an in situ recovery site might plausibly enter their drinking water to fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)

petitioners’ request for cold shutdown because of radiological contamination of groundwater from tritium is denied; DD-11-3, 73 NRC 375 (2011)

post-licensing, preoperational activities conducted to comply with Part 40, Appendix A, Criterion 7 are associated with compliance with the dictates of 10 C.F.R. Part 40, Appendix A, Criteria 5B and 7A; LBP-15-3, 81 NRC 65 (2015)

proper sampling plan for establishing baseline values is described; LBP-15-3, 81 NRC 65 (2015)

purpose of ACLs is to address situations where restoring groundwater to baseline conditions or MCLs would not be practicable; LBP-13-9, 78 NRC 37 (2013)

requirements for groundwater restoration standards for ISR mining operations are set forth in 10 C.F.R. Part 40, Appendix A, Criterion 5B(5); LBP-15-3, 81 NRC 65 (2015)

results of review by NRC Staff and Indian tribe of applicant’s newly disclosed well log data did not paint a seriously different picture of the environmental landscape; LBP-15-16, 81 NRC 618 (2015)

site-specific data to confirm proper baseline quality values, and confirm whether existing rock units provide adequate confinement cannot be collected until an in situ leach well field has been installed; LBP-15-3, 81 NRC 65 (2015)

subset of the production and injection wells to be drilled within the boundaries of the ISR wellfield is to be used to sample groundwater from the aquifer prior to the commencement of operations to establish hazardous constituent Commission-approved background concentrations; LBP-15-3, 81 NRC 65 (2015)

three alternative standards for groundwater restoration at in situ recovery facilities are background concentrations, maximum values from chart 5C, or an alternate concentration limit; LBP-13-9, 78 NRC 37 (2013)

to have an alternate concentration limit approved, licensee must demonstrate that the hazardous constituent value is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the ACL is not exceeded; LBP-15-3, 81 NRC 65 (2015)

waiting until after licensing (although before mining operations begin) to establish definitively the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach well fields; LBP-15-3, 81 NRC 65 (2015)

water samples taken from one well located hydrologically upgradient are part of the groundwater sampling protocol; LBP-15-3, 81 NRC 65 (2015)

when an ore zone and petitioner’s water source exist in separate aquifers, the injury/causation question is whether there is an interconnection between these aquifers; LBP-12-3, 75 NRC 164 (2012)

HARMLESS ERROR

doctrine has only limited application in NEPA cases, and none where the agency has failed to take the required hard look at environmental consequences and alternatives; LBP-12-17, 76 NRC 71 (2012)

if the agency error did not affect the outcome, it did not prejudice the petitioner; LBP-14-2, 79 NRC 131 (2014)

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HAZARDOUS MATERIALS

contention that environmental review documents fail to identify source data of the chemical concentrations for ethylbenzene, heptachlor, tetrachloroethylene, and toluene in groundwater is inadmissible as untimely; LBP-15-19, 81 NRC 815 (2015)

NRC regulations explicitly allow the use of alternate concentration limits for hazardous constituents; LBP-15-11, 81 NRC 401 (2015)

uranium enrichment facility applications must identify radiological and chemical hazards, facility hazards that could affect safety of licensed materials, potential accident sequences and their consequences and likelihood of occurrence, and each item relied on for safety; LBP-12-21, 76 NRC 218 (2012)

HAZARDOUS WASTE

admissibility of contention that environmental assessment fails to adequately describe and analyze the impacts of maintaining post-operational wellfields as long-term hazardous waste facilities is decided; LBP-15-15, 81 NRC 598 (2015)

HEALTH AND SAFETY

admissibility of contention that final environmental assessment fails to adequately evaluate adverse impacts on public health and safety is decided; LBP-15-15, 81 NRC 598 (2015)

as a matter of policy, applicant's decision to improve an existing program to promote health and safety or to boost public support and confidence ought not ordinarily be viewed as conferring petitioners with an automatic opportunity to advance a new contention; LBP-15-1, 81 NRC 15 (2015)

Atomic Energy Act is designed to regulate the radiological safety aspects involved in the construction and operation of a nuclear plant; LBP-11-6, 73 NRC 149 (2011)

because the shield building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts and thus petitioner's contention concerns a subject matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 15 (2015)

before issuing a combined license, NRC must conclude that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; LBP-11-6, 73 NRC 149 (2011)

claimed deficiencies in a decommissioning plan must have health and safety significance in order to be admissible; LBP-15-24, 82 NRC 68 (2015)

Commission relied on the exception to the Backfit Rule that applies when regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public; LBP-12-18, 76 NRC 127 (2012)

contention alleging a material deficiency must link the claimed deficiency to a public health and safety or an environmental impact; LBP-15-1, 81 NRC 15 (2015)

continued operation and continued licensing activities following the Fukushima accident do not pose an imminent risk to public health and safety; CLI-13-2, 77 NRC 39 (2013)

exceptionally grave issue is one that raises a sufficiently grave threat to public safety; LBP-12-1, 75 NRC 1 (2012)

for pending license renewal applications, where the period of extended operation will not begin for at least a year, there is no imminent threat to public health and safety that requires suspension of licensing proceedings or decisions; LBP-11-35, 74 NRC 701 (2011)

general and unparticularized references to health and safety significance and material deficiencies in the environmental report would not satisfy the rule that contentions be pled with specificity; CLI-15-18, 82 NRC 135 (2015)

generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing; LBP-12-3, 75 NRC 164 (2012)

health, safety, and environmental concerns do not constitute liberty or property subject to due process protection; LBP-11-4, 73 NRC 91 (2011)

important health and safety issue referred to a licensing board by the Commission satisfies the importance factor of the multifactor sanction test; LBP-13-2, 77 NRC 71 (2013)

in any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability; LBP-11-6, 73 NRC 149 (2011)

SUBJECT INDEX

- in determining whether a federal action would significantly affect the environment, the agency should consider the degree to which the proposed action affects public health and safety; LBP-12-18, 76 NRC 127 (2012)
- license transfer proceedings do not encompass a full-scale health-and-safety review of a plant; CLI-15-8, 81 NRC 500 (2015)
- material condition of a plant's reactor vessel obviously bears on the health and safety of members of the public who reside in the plant's vicinity; LBP-15-20, 81 NRC 829 (2015)
- materials license regulations contain no express prohibition on foreign ownership, but require Staff to make a finding that license issuance will not be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)
- no imminent risk to public health and safety or to the common defense and security post-Fukushima necessitates suspensions; LBP-12-18, 76 NRC 127 (2012)
- NRC can issue nuclear power reactor licenses to applicants only upon a finding that utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; CLI-15-4, 81 NRC 221 (2015)
- NRC is prohibited from issuing a license to a nuclear power reactor if it would be inimical to the health or safety of the public; LBP-13-4, 77 NRC 107 (2013)
- NRC may deny uranium enrichment facility applicant a license based on foreign ownership, control, or domination concerns to the extent it concludes granting such a license would be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)
- NRC's enforcement order does not state that any reportable illegal, unusual, or aberrant behavior must have a nexus to public health and safety or the common defense and security in order to be reportable; LBP-14-4, 79 NRC 319 (2014)
- petitioners asserted that NRC actions following the events of September 11, 2001, and the accident at Fukushima Dai-ichi were insufficient to satisfy NRC's general obligation under the Atomic Energy Act to protect public health and safety; CLI-15-4, 81 NRC 221 (2015)
- prior to license issuance NRC must find reasonable assurance that activities authorized by the amendment can be conducted without endangering the health and safety of the public, and in compliance with Commission regulations; LBP-15-20, 81 NRC 829 (2015)
- to be inimical to the common defense and security or to the health and safety of the public, control or domination must be of such a degree that the will of the licensee is subjugated to the will of the foreign entity, and the foreign entity must have the power to direct the actions of the licensee; LBP-14-3, 79 NRC 267 (2014)
- to determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes; CLI-14-7, 80 NRC 1 (2014)
- HEALTH EFFECTS**
- health-impact potential of facility traffic-associated dust, if properly pleaded, could provide a basis for standing; LBP-12-3, 75 NRC 164 (2012)
- license renewal contention alleging higher cancer death rates in local counties than the state average is inadmissible because it is based on unsupported speculation; LBP-13-8, 78 NRC 1 (2013)
- to challenge a Category 1 issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 249 (2015)
- HEARING FILE**
- any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action must be included; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff is under a special obligation in Subpart L proceedings to create, maintain, and update a hearing file; LBP-14-2, 79 NRC 131 (2014)
- HEARING PROCEDURES**
- absent a unanimous preference for a hearing consisting of written comments, the license transfer hearing will be an oral one; CLI-14-5, 79 NRC 254 (2014)
- appeal of an order selecting a hearing procedure is permitted on the question as to whether the selection of the particular hearing procedure was in clear contravention of the criteria set forth in section 2.310; CLI-14-3, 79 NRC 31 (2014)

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Atomic Energy Act does not prescribe a specific structure for the mandatory hearing requirement, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case; LBP-12-21, 76 NRC 218 (2012)

formal adjudicatory procedures are inappropriate in export or import licensing proceedings; CLI-11-3, 73 NRC 613 (2011)

if the hearing on a contention is expected to take no more than 2 days to complete, the board can impose the Subpart N procedures for expedited proceedings with oral hearings specified in 10 C.F.R. 2.1400-1407; LBP-11-13, 73 NRC 534 (2011)

in the absence of any assertion that Subpart G procedures should be used to resolve any of the admitted contentions, the Subpart L hearing procedures will be used to adjudicate each admitted contention; LBP-11-2, 73 NRC 28 (2011)

intervenor in reactor licensing proceedings ordinarily cannot raise constitutional due process issues with respect to NRC hearing procedures, inasmuch as intervenors cannot claim government deprivation of life, liberty, or property as a result of the NRC's licensing action; LBP-11-4, 73 NRC 91 (2011)

NRC may hold an informal hearing in which it requests and considers written materials without providing for traditional trial-type procedures such as oral testimony and cross-examination; LBP-11-4, 73 NRC 91 (2011)

petitioner may address the selection of hearing procedures, taking into account the provisions of 10 C.F.R. 2.310; LBP-11-6, 73 NRC 149 (2011)

petitioner requesting Subpart G procedures must demonstrate by reference to the contention and its bases and the specific procedures in Subpart G that resolving the contention will require resolution of material issues of fact that may be best determined through use of the identified procedures; LBP-11-2, 73 NRC 28 (2011)

selection of hearing procedures for contentions at the outset of a proceeding is not immutable because availability of Subpart G procedures under 10 C.F.R. 2.310(d) depends critically on whether the credibility of eyewitnesses is important in resolving a contention, and witnesses relevant to each contention are not identified, under 10 C.F.R. 2.336(a)(1), until after contentions are admitted; LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011)

Subpart G procedures are mandated for certain proceedings and parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-11-13, 73 NRC 534 (2011)

Subpart L procedures provide for a more informal proceeding in which discovery is generally prohibited except for specified mandatory disclosures under 10 C.F.R. 2.336 and the mandatory production of the hearing file under 10 C.F.R. 2.1203(a); LBP-11-13, 73 NRC 534 (2011)

Subpart L procedures will ordinarily be used in proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits; LBP-11-6, 73 NRC 149 (2011)

upon admission of a contention in a licensing proceeding, the board must identify the specific hearing procedures to be used to adjudicate the contention; LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)

when using Subpart L procedures, the board has the primary responsibility for questioning the witnesses at any evidentiary hearing; LBP-11-13, 73 NRC 534 (2011)

within 15 days from an order granting a hearing, each party must indicate what kind of hearing it prefers; CLI-14-5, 79 NRC 254 (2014)

HEARING REQUESTS

appeals of board rulings on hearing requests, petitions to intervene, and access to certain nonpublic information are governed by 10 C.F.R. 2.311(a); CLI-12-6, 75 NRC 352 (2012)

boards may grant requests for hearing and petitions to intervene if they determine that requestor/petitioner has standing and has proposed at least one admissible contention; LBP-13-8, 78 NRC 1 (2013)

boards must find that petitioner has standing and has proposed at least one admissible contention; CLI-12-19, 76 NRC 377 (2012)

Commission denies portions of a hearing request but refers petitioner's underlying concerns to the Executive Director for Operations for consideration as an enforcement action; CLI-15-14, 81 NRC 729 (2015)

denial of hearing request on enforcement order is appealable as of right; CLI-13-2, 77 NRC 39 (2013)

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for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-11-21, 74 NRC 115 (2011)

for proceedings for which a Federal Register notice of agency action is published, the hearing request must be filed not later than the time specified in the notice of proposed action; CLI-14-11, 80 NRC 167 (2014)

for proceedings in which a Federal Register notice is not published, the hearing request shall be filed by the later of 60 days after publication of notice on the NRC website or 60 days after the requestor receives actual notice of a pending application, but not more than 60 days after agency action on the application; CLI-14-11, 80 NRC 167 (2014)

hearing request on safety concerns over steam generator replacement is referred to the Executive Director for Operations for disposition; CLI-14-11, 80 NRC 167 (2014)

hearing request or petition to intervene must set forth with particularity the contentions sought to be raised by satisfying the six criteria; LBP-11-21, 74 NRC 115 (2011)

if the 20-day deadline for requesting a hearing in 10 C.F.R. 2.103(b) applies, NRC Staff's failure to comply with its own responsibilities under that provision bars Staff from invoking it; LBP-11-19, 74 NRC 61 (2011)

in proceedings for which a Federal Register notice of agency action is published, a hearing request must be filed not later than the time specified in the notice or if no notice is specified, 60 days from the date of publication of the notice; CLI-15-5, 81 NRC 329 (2015)

in proceedings for which a notice of agency action is not published, a hearing request must be filed not later than the latest of 60 days after publication of notice on the NRC Web site or 60 days after the requestor receives actual notice of a pending application but not more than 60 days after agency action on the application; CLI-15-5, 81 NRC 329 (2015)

name and identity of requestor, nature of requestor's right to be a party, and nature and extent of the requestor's/petitioner's property, financial, or other interests in the proceeding must be stated; LBP-14-4, 79 NRC 319 (2014)

notice failing to contain a specific time limit for administrative review, as required by federal regulations, does not trigger a time bar; LBP-11-19, 74 NRC 61 (2011)

one authorized to make a "request" is merely given permission to ask for something, not to demand it; LBP-13-3, 77 NRC 82 (2013)

regarding amendment of a license, NRC must grant a hearing upon the request of any person whose interest may be affected by the proceeding and admit any such person as a party; LBP-11-29, 74 NRC 612 (2011)

request for hearing and/or petition for leave to intervene will be granted if the board determines that requestor/petitioner has standing and has proposed at least one admissible contention; LBP-12-8, 75 NRC 539 (2012)

request for hearing on Staff denial of permission to use an alternative method for demonstrating decommissioning funding assurance is granted; LBP-11-19, 74 NRC 61 (2011)

requests for hearing and petitions for leave to intervene must set forth with particularity the contentions sought to be raised and must satisfy all six requirements of 10 C.F.R. 2.309(f)(1); CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

requests for hearing must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; LBP-13-3, 77 NRC 82 (2013)

section 2.311(d)(1) provides for appeals as of right on the question of whether a request for hearing should have been wholly denied; CLI-11-11, 74 NRC 427 (2011)

time for applicant to request a hearing should be tolled until notice is issued if NRC Staff fails to provide the notice and hearing opportunity mandated by 10 C.F.R. 2.103(b); LBP-11-19, 74 NRC 61 (2011)

to show standing, petitioner must state its name, address, and telephone number, nature of its right under the applicable statutes to be made a party, nature and extent of property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on its interest; LBP-11-29, 74 NRC 612 (2011)

usual rule of regulatory interpretation is that different language is intended to mean different things, and thus a demand for a hearing is not to be treated as a mere request for a hearing; LBP-13-3, 77 NRC 82 (2013)

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where applicant has raised sufficient question as to the appropriate deadline, the board may conclude that it would be unfair to penalize applicant on account of what might be ambiguity in NRC's own regulations; LBP-11-19, 74 NRC 61 (2011)

HEARING REQUESTS, LATE-FILED

Commission does not consider hearing requests after the deadline in section 2.309(b) has passed absent a determination that the petitioner has demonstrated good cause by showing the criteria of this section have been met; CLI-14-11, 80 NRC 167 (2014)

having no one to represent petitioners' perspective if the hearing requests are denied is insufficient to excuse untimeliness; LBP-12-16, 76 NRC 44 (2012)

hearing requests were dismissed as untimely and referred to the Executive Director for Operations for consideration under section 2.206; CLI-12-20, 76 NRC 437 (2012)

HEARING REQUIREMENTS

NRC rules provide a mechanism for supplementing an original NEPA analysis, but the rules do not guarantee a hearing nor is a hearing necessary to satisfy NRC's NEPA obligations; CLI-13-7, 78 NRC 199 (2013)

HEARING RIGHTS

actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA; LBP-15-27, 82 NRC 184 (2015)

agency actions not formally labeled as license amendments nevertheless can constitute de facto license amendments and accordingly trigger hearing rights for the public under Atomic Energy Act § 189a; CLI-15-5, 81 NRC 329 (2015); CLI-15-14, 81 NRC 729 (2015)

agency approval or authorization is a necessary component of NRC action that affords a hearing opportunity under Atomic Energy Act § 189a, but not all agency approvals granted to licensees constitute de facto license amendments; CLI-14-11, 80 NRC 167 (2014); CLI-15-14, 81 NRC 729 (2015)

allegation that agency conduct amounts to a legal wrong is sufficient to establish union's right to judicial review; LBP-14-4, 79 NRC 319 (2014)

although the Commission retains broad authority to define standards and thresholds for determining when new information raises a material issue of a plant's conformity with the Atomic Energy Act, if such information is presented, it must provide a hearing upon request; LBP-11-22, 74 NRC 259 (2011)

any amendment to an existing license as a result of NRC review of licensee seismic hazard reevaluations that leads to changes in the current licensing basis would be subject to a hearing opportunity; CLI-15-21, 82 NRC 295 (2015)

any person whose interest may be affected may request a hearing in a proceeding granting, suspending, revoking, or amending any license; CLI-13-2, 77 NRC 39 (2013)

applicant denied a senior reactor operator license has the right to demand a hearing, rather than being required to negotiate the contention admissibility requirements and a possible appeal in the event a hearing is granted; LBP-13-3, 77 NRC 82 (2013)

argument that applying heightened late-filing standards to contentions triggered by the NRC Staff's review documents violates a petitioner's AEA hearing rights has been considered and rejected; CLI-12-14, 75 NRC 692 (2012)

Atomic Energy Act § 189a has been interpreted to require that the hearing must encompass all material factors bearing on the licensing decision raised by the requester; LBP-11-22, 74 NRC 259 (2011)

automatic participation at a hearing may be denied only when the Commission is seeking to make a facility's operation safer; CLI-13-2, 77 NRC 39 (2013)

because resolution of a rule exemption request directly affects licensability of the proposed facility, the exemption raises material questions directly connected to an agency licensing action and thus comes within the hearing rights of interested parties; CLI-13-1, 77 NRC 1 (2013)

board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 437 (2012)

board need not address the issue of standing where petitioner has failed to demonstrate the existence of a licensing action subject to AEA hearing rights; LBP-15-27, 82 NRC 184 (2015)

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change to a facility that is allowed under 10 C.F.R. 50.59 without prior NRC approval is not a license amendment triggering hearing rights; LBP-15-27, 82 NRC 184 (2015)

Commission cannot restrict the opportunity for a hearing so much that it effectively removes from the hearing, issues that are material to the licensing decision; CLI-12-14, 75 NRC 692 (2012)

Commission is required to grant a hearing upon the request of any person whose interest may be affected by certain agency proceedings; CLI-11-3, 73 NRC 613 (2011); LBP-11-8, 73 NRC 349 (2011)

Commission refers a limited portion of the hearing request to the licensing board to determine whether petitioner has identified an NRC activity that requires an opportunity to request an adjudicatory hearing; CLI-15-14, 81 NRC 729 (2015)

Commission shall grant a hearing to, and admit as a party to, any licensing proceeding any person whose interest may be affected by the proceeding; LBP-11-22, 74 NRC 259 (2011); LBP-14-4, 79 NRC 319 (2014)

Congress assumed that individuals establishing a right to be heard in opposition to a license application would be heard with reasonable expedition; LBP-11-30, 74 NRC 627 (2011)

Congress intentionally limited the opportunity for a hearing to certain designated agency actions which do not include exemptions; LBP-15-18, 81 NRC 793 (2015); LBP-15-24, 82 NRC 68 (2015)

criteria of 10 C.F.R. 50.59 were used as an analytical tool to address the question of whether a confirmatory action letter issued to the licensee by NRC Staff constituted a de facto license amendment that would be subject to a hearing opportunity; LBP-13-11, 78 NRC 177 (2013)

de facto license amendment would exist, and hearing rights would be triggered, if NRC were to grant licensee greater operating authority or otherwise alter terms of the license or permit licensee to go beyond its existing license authority; LBP-15-27, 82 NRC 184 (2015)

demand for a hearing by the subject of an enforcement order is automatic without regard to satisfying section 2.309; LBP-14-4, 79 NRC 319 (2014); LBP-14-4, 79 NRC 319 (2014)

demand for a hearing is understood to confer the right to a hearing; LBP-13-3, 77 NRC 82 (2013); LBP-14-4, 79 NRC 319 (2014)

demand for a hearing on denial of application for a senior reactor operator license is granted; LBP-13-3, 77 NRC 82 (2013)

direction is given on what licensee actions do and do not constitute a de facto license amendment triggering hearing rights; CLI-15-14, 81 NRC 729 (2015)

enforcement orders must inform licensee or any other person adversely affected by the order of his or her right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)

exemption cannot remove a matter germane to a licensing proceeding from consideration in a hearing; LBP-15-24, 82 NRC 68 (2015)

exemption request is subject to a hearing where the plant already has a license and is seeking an exemption from the decommissioning financial assurance requirements based on an earlier exemption that it had received during its license renewal; LBP-15-24, 82 NRC 68 (2015)

exemptions ordinarily do not trigger hearing rights when an already-licensed facility is asking for relief from performing a duty imposed by NRC regulations; LBP-15-18, 81 NRC 793 (2015); LBP-15-24, 82 NRC 68 (2015)

extreme delay in the completion of the Staff's environmental review, and thus the equal delay in hearing intervenors' claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act; LBP-11-30, 74 NRC 627 (2011)

general tendency of the law, when deciding which consequences give rise to actionable rights, is not to go beyond the first step; LBP-14-4, 79 NRC 319 (2014)

hearing on exemption-related matters is necessary insofar as resolution of the exemption request directly affects the licensability of a proposed fuel storage site and the exemption raises material questions directly connected to an agency licensing action; LBP-15-18, 81 NRC 793 (2015)

hearing rights are provided in licensing actions concerning the granting of any license upon the request of any person whose interest may be affected by the proceeding; LBP-15-16, 81 NRC 618 (2015)

if a hearing could be invoked each time NRC engaged in oversight over or inquiry into plant conditions, NRC's administrative process could be brought to a virtual standstill; CLI-14-11, 80 NRC 167 (2014); LBP-15-27, 82 NRC 184 (2015)

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if AEA § 189a is to serve its intended purpose, parties in interest must be afforded a meaningful opportunity to request a hearing before the Commission retroactively reinvents the terms of an extant license by voiding its implicit limitations on the licensee's conduct; LBP-13-7, 77 NRC 307 (2013)

if an enforcement order blacklists a worker by name, under 10 C.F.R. 2.202(a)(3) he has the right to demand a hearing even though he may be motivated by purely economic concerns; LBP-14-4, 79 NRC 319 (2014)

if applicant subsequently wished to change its commitments to any significant extent, it would need to file a license amendment request, which could then be challenged by seeking a hearing; LBP-14-3, 79 NRC 267 (2014)

if licensee or other person to whom an order is issued consents to its issuance, or the order confirms actions agreed to by the licensee or such other person, that consent or agreement constitutes a waiver by the licensee or such other person of a right to a hearing and any associated rights; LBP-14-4, 79 NRC 319 (2014)

if licensee sought to relocate its surveillance frequencies from its operating license to a licensee-controlled document, then it would need to request a license amendment, which would trigger an opportunity for a member of the public to request a hearing; CLI-13-10, 78 NRC 563 (2013)

if NRC Staff finds that an application does not comply with regulatory requirements, it must inform applicant in writing of the nature of any deficiencies or the reason for the proposed denial and the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)

in any proceeding for the amending of any license, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding; LBP-13-7, 77 NRC 307 (2013)

in denying an exemption request, Staff is required to inform applicant of the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)

in establishing the evidentiary standard of "relevant, material, and reliable evidence" being admissible in a hearing, 10 C.F.R. 2.337 thereby establishes the right of all parties to present such admissible evidence; LBP-11-4, 73 NRC 91 (2011)

issuance of power uprate license amendment in advance of hearing did not deprive intervenor of hearing rights because the license amendment may be revoked or conditioned after hearing; CLI-15-17, 82 NRC 33 (2015)

license amendments are subject to a hearing opportunity; CLI-13-9, 78 NRC 551 (2013)

license denial letter that contained apparent boilerplate that was incomplete and perforce misleading does not accord with concepts of fundamental fairness and might well counter hearing rights granted under the Atomic Energy Act; LBP-13-3, 77 NRC 82 (2013)

licensee and any other person adversely affected by an enforcement order have equal rights to a hearing; LBP-14-4, 79 NRC 319 (2014)

licensing actions that alter the terms of a license or otherwise authorize additional operating activities trigger hearing rights for the public under section 189a of the Atomic Energy Act; CLI-15-5, 81 NRC 329 (2015)

meaning of "other person adversely affected by the order" in 10 C.F.R. 2.202(a)(3) is discussed; LBP-14-4, 79 NRC 319 (2014)

member of the public may challenge an action taken under 10 C.F.R. 50.59 only by means of a petition under 10 C.F.R. 2.206; LBP-15-27, 82 NRC 184 (2015)

mere possibility of a future license amendment does not trigger a hearing opportunity today; LBP-15-27, 82 NRC 184 (2015)

neither licensee activities nor NRC inspection of or inquiry about those activities provides the opportunity for a hearing under the Atomic Energy Act because those activities only concern compliance with the terms of an existing license; CLI-14-11, 80 NRC 167 (2014)

no petition or other request for review of or hearing on the NRC Staff's significant hazards determination will be entertained by the Commission; LBP-13-11, 78 NRC 177 (2013)

no significant hazards consideration determination is a procedural device to determine when, not whether, petitioners' right to a hearing under the Atomic Energy Act will occur; LBP-15-26, 82 NRC 163 (2015)

nonlicensee with a purely economic interest has an automatic right to demand a hearing under section 2.202(a)(3) without showing standing or proffering an admissible contention; LBP-14-4, 79 NRC 319 (2014)

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nonparty petitioners may not challenge a confirmatory order embodying a settlement if the order improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

NRC approvals of plant restart and lifting suspensions did not trigger AEA § 189a hearing rights; CLI-15-14, 81 NRC 729 (2015)

NRC has latitude to define who is an “affected person” within the meaning of Atomic Energy Act § 189a, 42 U.S.C. § 2239(a); LBP-12-3, 75 NRC 164 (2012)

NRC is required to provide an opportunity to request a hearing under the Atomic Energy Act on a license amendment; CLI-15-21, 82 NRC 295 (2015)

NRC must afford interested persons an opportunity for a hearing on the granting, suspending, revoking, or amending of any license; CLI-15-5, 81 NRC 329 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-18, 81 NRC 793 (2015)

NRC must afford interested persons an opportunity for a hearing on the granting, suspending, revoking, or amending of any license; CLI-14-11, 80 NRC 167 (2014)

NRC must provide an opportunity for hearing in any proceeding under the Atomic Energy Act for the granting, suspending, revoking, or amending of any license; LBP-15-27, 82 NRC 184 (2015)

NRC oversight activities gathering information about and evaluating plant performance, regardless of the findings it makes, do not alter the conditions of a license and therefore cannot form the basis for the right to request a hearing; CLI-14-11, 80 NRC 167 (2014)

NRC preserves the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-11-22, 74 NRC 259 (2011)

NRC Staff inspections and confirmatory action letters are oversight activities normally conducted to ensure that licensees comply with existing NRC requirements and license conditions and therefore do not typically trigger the opportunity for a hearing under the AEA; CLI-15-5, 81 NRC 329 (2015)

NRC Staff’s decision at the conclusion of its administrative reviews is the final Staff position and hence the only Staff position open to applicant’s challenge before the presiding officer; LBP-14-2, 79 NRC 131 (2014)

NRC Staff’s ongoing enforcement of regulations and license conditions does not trigger hearing rights; LBP-15-24, 82 NRC 68 (2015)

opportunity for a hearing must be provided for an amendment to an operating license, combined license, or manufacturing license; LBP-15-17, 81 NRC 753 (2015)

opportunity for a hearing on license amendments is provided; CLI-12-20, 76 NRC 437 (2012)

orders issued under 10 C.F.R. 2.202 alter the requirements of a license and therefore fall generally under the terms of Atomic Energy Act § 189a; CLI-13-2, 77 NRC 39 (2013)

oversight activities at times involve enforcement actions, including orders and civil penalties, to which a hearing right or opportunity attaches; CLI-15-5, 81 NRC 329 (2015)

party that has successfully intervened in a licensing proceeding may propose new contentions for litigation until the license is issued; LBP-11-22, 74 NRC 259 (2011)

person adversely affected by an enforcement order has a legal right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)

person does not need to wait until being charged with a crime and in the dock before he can challenge an order that imposes new burdens and liabilities on him; LBP-14-4, 79 NRC 319 (2014)

person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof; LBP-14-4, 79 NRC 319 (2014)

petitioner cannot create a hearing opportunity merely by claiming that a facility is improperly operating outside its licensing basis, but such claims are appropriately raised in a petition to initiate an enforcement proceeding; LBP-15-27, 82 NRC 184 (2015)

petitioner failed to demonstrate the existence of a licensing action subject to hearing rights under section 189a of the Atomic Energy Act; CLI-15-21, 82 NRC 295 (2015)

petitioner is not entitled to request a hearing where NRC has neither granted greater authority than that provided by its existing licenses nor otherwise altered the terms of those licenses; LBP-15-27, 82 NRC 184 (2015)

petitioner may obtain a hearing on a section 2.202 order only if the measures to be taken under the order would, in themselves, harm the petitioner; CLI-13-2, 77 NRC 39 (2013)

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petitioner must address its hearing request to a matter that triggers a hearing opportunity; CLI-15-5, 81 NRC 329 (2015)

petitioners' reliance on loss of future opportunities to challenge by adjudicatory intervention licensee-initiated changes in the low-level effluent monitoring details fell short of an admissible contention; LBP-12-25, 76 NRC 540 (2012)

"rational basis review" was applied to intervenor's challenge to the NRC's 2004 changes to its procedural rules, citing cases involving challenges to laws regulating aspects of prisoners' right to access to the courts; LBP-11-4, 73 NRC 91 (2011)

referrals may be made when a petition does not satisfy the legal requirements for a hearing or intervention and it is determined that referral to the section 2.206 process is appropriate; CLI-12-20, 76 NRC 437 (2012)

request for exemption from a rule, by itself, does not give rise to an opportunity for hearing; CLI-13-1, 77 NRC 1 (2013)

scope of the referral is limited to whether NRC granted licensee greater authority than that provided by its existing licenses or otherwise altered the terms of its existing licenses, thereby entitling petitioner to an opportunity to request a hearing; CLI-15-14, 81 NRC 729 (2015)

senior reactor operator license applicant who does not accept a proposed license denial may, within 20 days of the date of the denial letter, demand a hearing; LBP-14-2, 79 NRC 131 (2014)

significant delays in NRC Staff's review potentially deprive an Indian tribe of its hearing rights; CLI-12-4, 75 NRC 154 (2012)

standing criteria for federally recognized Indian tribes are less stringent, but only where the facility at issue is within the tribe's boundaries; LBP-12-24, 76 NRC 503 (2012)

standing is refused only when congressional intent specifically precludes the party or issue from obtaining judicial review; LBP-14-4, 79 NRC 319 (2014)

submittal of updated final safety analysis report pages does not constitute a licensing action but is only intended to provide information; LBP-15-27, 82 NRC 184 (2015)

substance of the NRC action determines entitlement to a section 189a hearing, not the particular label that NRC chooses to assign to its action; LBP-13-7, 77 NRC 307 (2013)

target of an enforcement order has the right to demand and receive, not merely request, a hearing; LBP-14-11, 80 NRC 125 (2014)

terms of section 2.202 orders often have been negotiated with the affected licensee or licensees, who would have little incentive to negotiate if so doing would expose them to formal litigation over additional terms or requirements that third-party petitioners would like to see imposed; CLI-13-2, 77 NRC 39 (2013)

there is no fundamental right to participate in administrative adjudications; LBP-11-4, 73 NRC 91 (2011)

to obtain a hearing, petitioner must show that its request is timely, that it has standing to obtain a hearing, and that it has proposed at least one admissible contention; CLI-14-11, 80 NRC 167 (2014)

union's argument that it may demand a hearing on a confirmatory order without complying with intervention requirements of section 2.309(a) is incorrect; LBP-14-4, 79 NRC 319 (2014)

when licensee requests a rule exemption in a related license amendment application, hearing rights on the amendment application are considered to encompass the exemption request as well; CLI-13-1, 77 NRC 1 (2013); LBP-15-18, 81 NRC 793 (2015); LBP-15-24, 82 NRC 68 (2015)

when the police power of the federal government is deployed to order a person to perform certain actions, under pain of losing his or her livelihood, liberty, and/or property, then that person has a right to challenge the order, and have a hearing to determine what the order means and whether it comports with the law; LBP-14-4, 79 NRC 319 (2014)

where an enforcement order imposes measures to enhance safety, a petitioner cannot obtain a hearing to litigate whether additional safety measures should be imposed; CLI-13-2, 77 NRC 39 (2013)

where plaintiff is not itself the subject of the contested regulatory action, the zone-of-interests test denies a right of review if plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit; LBP-14-4, 79 NRC 319 (2014)

whether licensee employees, as represented by a union, have a right to demand a hearing because they are persons adversely affected by a confirmatory order is discussed; LBP-14-4, 79 NRC 319 (2014)

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whether licensee or other person consents to an order, other persons adversely affected by an order issued under section 2.202 to modify, suspend or revoke a license will be offered an opportunity for a hearing consistent with current practice and the authority of the Commission to define the scope of the proceeding on an enforcement order; LBP-14-4, 79 NRC 319 (2014)

See also Deferral of Hearing

HEAT SINK

plants must employ an ultimate heat sink to transfer heat from structures, systems, and components that are important to safety; LBP-15-13, 81 NRC 456 (2015)

request that NRC take enforcement action until the licensee completes an independent root-cause assessment for the rise in ultimate heat sink temperature is denied; DD-15-10, 82 NRC 201 (2015)

system must be provided to transfer heat from structures, systems, and components important to safety to an ultimate heat sink under normal operating and accident conditions, and must be able to perform this safety function with either onsite or offsite power, assuming a single component failure; DD-15-11, 82 NRC 361 (2015)

HIGH-BURNUP FUEL

if NRC Staff safety review reveals any new and significant information relating to the environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 404 (2014)

HIGH-LEVEL WASTE REPOSITORY APPLICATION

before a final decision approving or disapproving a construction authorization application may be reached, not only must the Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 219 (2013)

Department of Energy may be required to supplement its final environmental impact statement when there is new information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-13-8, 78 NRC 219 (2013)

NRC is directed to adopt the Department of Energy environmental impact statement to the extent practicable; CLI-13-8, 78 NRC 219 (2013)

NRC is ordered to promptly resume the licensing process for the high-level radioactive waste repository construction authorization application unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining; CLI-13-8, 78 NRC 219 (2013)

presiding officer in the adjudication will determine the extent to which adoption by the NRC of the Department of Energy's repository environmental impact statement and its supplements is practicable, which in turn will satisfy NRC's NEPA obligations; CLI-13-8, 78 NRC 219 (2013)

HIGH-LEVEL WASTE REPOSITORY PROCEEDING

Commission exercises its inherent supervisory authority to direct the board to complete all necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding; CLI-11-7, 74 NRC 212 (2011)

given the posture of the case, the Commission declines to decide a petition for review but will allow petitioner to file a motion to reinstate its petition should the proceeding be reactivated at a future time; CLI-11-15, 74 NRC 815 (2011)

in light of current fiscal constraints, the board suspends the proceeding; LBP-11-24, 74 NRC 368 (2011)

procedural rule governing appeals in a 10 C.F.R. Part 2, Subpart J proceeding provides for review only in the limited circumstances prescribed in the rule; CLI-11-13, 74 NRC 635 (2011)

HIGH-LEVEL WASTE REPOSITORY

Congress expressly recognized and impliedly approved NRC's regulatory scheme and practice under which the safety of interim storage of high-level wastes at commercial nuclear power reactor sites has been determined separately from the safety of government-owned permanent storage facilities that have not yet been established; CLI-15-4, 81 NRC 221 (2015)

in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 221 (2015)

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NRC's Waste Confidence Decision Update and Temporary Storage Rule were invalidated because there was not even a prospective site for a repository, let alone progress toward the actual construction of one; LBP-14-16, 80 NRC 183 (2014)
responsibility for constructing and operating a waste repository was assigned to the Department of Energy, not NRC; CLI-15-4, 81 NRC 221 (2015)
waste confidence rule expressed the Commission's reasonable assurance that a repository was likely to be available by 2007-2009; LBP-14-16, 80 NRC 183 (2014)

HISTORIC SITES

agencies must take a hard look at preserving important historic and cultural aspects of our national heritage; LBP-15-16, 81 NRC 618 (2015)
Class III archeological survey involves a professionally conducted, pedestrian survey of an entire target area to identify properties that may be eligible for inclusion on the National Register of Historic Places; LBP-15-16, 81 NRC 618 (2015)
demolition of a historic unit to build a new unit will result in a finding of adverse effect under applicable criteria in 36 C.F.R. 800.5; CLI-15-13, 81 NRC 555 (2015)
failure to have made any effort to evaluate the cumulative impact of the independent spent fuel storage installation expansion on archaeological sites has been held to be one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)
federal agency must assess the effects of the undertaking on any eligible historic properties found; LBP-15-16, 81 NRC 618 (2015)
federal agency must confer with a State Historic Preservation Officer and seek the approval of the ACHP; LBP-15-16, 81 NRC 618 (2015)
federal agency must determine whether identified properties are eligible for listing on the National Register based on the criteria in 36 C.F.R. 60.4; LBP-15-16, 81 NRC 618 (2015)
federal agency must make a reasonable and good-faith effort to identify historic properties; LBP-15-16, 81 NRC 618 (2015)
historical/cultural resources are considered eligible for listing on the National Register of Historic Places if they meet one or more of four criteria; LBP-11-26, 74 NRC 499 (2011)
in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)
materials license application must provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that cultural and historic resources are identified and protected; LBP-15-16, 81 NRC 618 (2015)

HYDRODYNAMICS

contention that draft EIS is deficient because its evaluation of the operation of the radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 815 (2015)

HYDROGEN CONTROL

request that licensee replace passive autocatalytic recombiners in the containment electrically powered thermal hydrogen recombiners is denied; DD-13-1, 77 NRC 347 (2013)
suppositions/speculation regarding effectiveness of hydrogen control mechanisms are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

HYDROGEOLOGY

adequacy of the final environmental impact statement regarding site geology and hydrology is discussed; LBP-13-4, 77 NRC 107 (2013)
admissibility of contention that environmental assessment failed to analyze impacts on the project from earthquakes, especially concerning secondary porosity and adequate confinement is decided; LBP-15-11, 81 NRC 401 (2015)
admissibility of contention that environmental assessment fails to describe and analyze the environmental impacts of new porosity and permeability in the aquifer caused by mining activity is decided; LBP-15-15, 81 NRC 598 (2015)
confinement of aquifers is material to the environmental impacts of the licensing action; CLI-14-2, 79 NRC 11 (2014)

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contention alleging that final supplemental environmental impact statement fails to include adequate hydrogeological information to demonstrate ability to contain fluid migration and assess potential impacts to groundwater is admissible; LBP-14-5, 79 NRC 377 (2014)

contention contesting adequacy of hydrogeologic information provided in application regarding fluid migration is admissible; LBP-13-6, 77 NRC 253 (2013)

contention that draft environmental impact statement fails to include adequate hydrological information to demonstrate applicant's ability to contain groundwater fluid migration is admissible; LBP-13-10, 78 NRC 117 (2013)

contention that draft environmental impact statement fails to include an adequate hydrogeological analysis to assess adequate confinement and potential impacts to groundwater is admissible; LBP-13-9, 78 NRC 37 (2013)

site-specific data to confirm proper baseline quality values, and confirm whether existing rock units provide adequate confinement, cannot be collected until an in situ leach wellfield has been installed; LBP-15-3, 81 NRC 65 (2015)

ICE CONDENSER

contention that ice condenser containments lack acceptable aging management plans to adequately maintain critical components of the containment for 20 years of additional operation is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that license renewal application lacks supporting documentation providing analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 1 (2013)

IMMEDIATE EFFECTIVENESS

Commission temporarily suspended the immediate effectiveness rule following the Three Mile Island accident; CLI-11-5, 74 NRC 141 (2011)

immediately effective enforcement orders must be based on preliminary investigation or other emerging information that is reasonably reliable and indicates the need for immediate action; LBP-11-8, 73 NRC 349 (2011)

license amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention has filed a request for a hearing; LBP-15-17, 81 NRC 753 (2015)

licensee or other person to whom the Commission has issued an immediately effective order may move the presiding officer to set aside the immediate effectiveness of the order; LBP-14-4, 79 NRC 319 (2014)

no significant hazards consideration determination permits NRC to make an authorized license amendment effective immediately rather than awaiting the outcome of an adjudicatory challenge; LBP-15-26, 82 NRC 163 (2015)

NRC Staff may determine that exigent circumstances exist such that there is insufficient time for a full 30-day public comment period on a license amendment request; LBP-15-13, 81 NRC 456 (2015)

standard that must be met before NRC Staff can issue an immediately effective enforcement order is one of adequate evidence, which is akin to the test for probable cause; LBP-11-8, 73 NRC 349 (2011)

when an adjudicatory proceeding has been initiated with respect to a license amendment issued with a no significant hazards determination, once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision; LBP-15-13, 81 NRC 456 (2015)

IMMEDIATE EFFECTIVENESS REVIEW

licensee challenged NRC Staff's use of immediately effective orders after fulfilling the underlying requirements of those orders; CLI-13-9, 78 NRC 551 (2013)

IMPARTIALITY

NRC Staff is but one of the parties to a licensing proceeding, and the positions that it may take are in no way binding upon the licensing board; LBP-12-23, 76 NRC 445 (2012)

IMPORT LICENSES

categorical exclusion from the NEPA requirement to prepare an environmental assessment or environmental impact statement for the issuance of import licenses involving low-level radioactive waste is provided; CLI-11-3, 73 NRC 613 (2011)

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- Department of State provides the Commission with Executive Branch views on the merits of import/export applications; CLI-11-3, 73 NRC 613 (2011)
- discretionary hearing may be held on export or import licenses if a hearing would be in the public interest and would assist the Commission in making the statutory determinations required by the Atomic Energy Act; CLI-11-3, 73 NRC 613 (2011)
- discretionary hearing to discuss policy issues related to import of foreign low-level radioactive waste and domestic incineration and transportation issues is not warranted because these issues are either challenges to the Commission's regulations or are outside the scope of the proceeding; CLI-11-3, 73 NRC 613 (2011)
- discretionary hearing to discuss the adequacy of information provided by applicant in a public forum would not assist the Commission in making its determinations on the export and import license applications because the applicant provided the information required by the Commission's regulations; CLI-11-3, 73 NRC 613 (2011)
- formal adjudicatory procedures are inappropriate in export or import licensing proceedings; CLI-11-3, 73 NRC 613 (2011)
- key action that will allow incineration of imported low-level-radioactive waste material is the domestic license authorizing such processing, not NRC's grant of an import license; CLI-11-3, 73 NRC 613 (2011)
- no proximity presumption applies in an import/export licensing case because petitioners have not shown that the import or export involves a significant source of radioactivity producing an obvious potential for offsite consequences; CLI-11-3, 73 NRC 613 (2011)
- petitioners' claims of potential injury are also so speculative, and separate from the import and export license, that they do not amount to cognizable harm for purposes of standing; CLI-11-3, 73 NRC 613 (2011)
- petitioners' generalized institutional interest in public forums and in preventing processing of foreign waste is insufficient to confer standing; CLI-11-3, 73 NRC 613 (2011)
- request for waiver of 10 C.F.R. 51.22(c)(15) is denied; CLI-11-3, 73 NRC 613 (2011)
- state reviewed the applications and the authorizations and found no technical reason to prohibit processing of imported waste; CLI-11-3, 73 NRC 613 (2011)
- to determine if a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189a, the Commission has long applied contemporaneous judicial concepts of standing; CLI-11-3, 73 NRC 613 (2011)
- to waive a Part 110 rule or regulation, petitioner must show special circumstances concerning the subject of the hearing such that application of the rule or regulation would not serve the purposes for which it was adopted; CLI-11-3, 73 NRC 613 (2011)
- IN CAMERA PROCEEDINGS**
- in camera* hearing sessions may be held when information sought to be withheld from public disclosure is offered into evidence; CLI-15-24, 82 NRC 331 (2015)
- IN CAMERA REVIEW**
- boards can request that a document for which a deliberative process privilege is claimed be provided to it for *in camera* inspection; LBP-13-5, 77 NRC 233 (2013)
- presiding officers may make a determination about the validity of a deliberative process privilege claim without reviewing a document *in camera* if the affidavit outlining the reasons for nondisclosure is sufficiently detailed; LBP-13-5, 77 NRC 233 (2013)
- IN SITU LEACH MINING**
- admissibility of contention that environmental assessment fails to adequately describe and analyze impacts of maintaining post-operational wellfields as long-term hazardous waste facilities is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental assessment fails to adequately describe and analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 401 (2015)
- admissibility of contention that environmental assessment fails to conduct the required hard look at impacts of the proposed mine and fails to consult with the U.S. Fish & Wildlife Service is decided; LBP-15-11, 81 NRC 401 (2015)

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although 10 C.F.R. Part 40 applies to ISL mining, some of the specific requirements in Part 40, such as many of those found in Appendix A, address hazards posed only by conventional uranium milling operations, and do not carry over to ISL mining; LBP-15-16, 81 NRC 618 (2015)

although NRC has issued a generic environmental impact statement for in situ uranium recovery facilities that assesses potential ISR facility construction/operation/decommissioning impacts, for the initial licensing of each individual ISR facility, NRC Staff will first prepare a draft supplemental environmental impact statement; LBP-15-3, 81 NRC 65 (2015)

although the Part 40, Appendix A criteria were developed for conventional uranium milling facilities, they have since been applied in limited fashion to ISR facilities; LBP-15-3, 81 NRC 65 (2015)

any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 253 (2013)

applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an environmental report with its application; LBP-15-3, 81 NRC 65 (2015)

applicant for a uranium ISR license is required to provide data from a groundwater monitoring program that are sufficient to establish a precicensing site characterization baseline for assessing the potential effects of facility operations on local groundwater quality; LBP-15-3, 81 NRC 65 (2015)

applicant's monitoring program for establishing existing site characterization baseline values for certain site groundwater constituents prior to issuance of a source materials license for ISR facility construction and operation need not, to comply with NEPA and NRC's Part 51 implementing regulations, be conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 65 (2015)

as distance increases from the in situ recovery facility, petitioner with an upgradient water source must expect to provide the board with some analysis as to how any contamination will affect any wells alleged to be impacted by the facility; LBP-12-3, 75 NRC 164 (2012)

claim that alternate concentration limit could not be accurately generated until the post-operational decommissioning process did not account for the possible creation of a bounding analysis based on the historical experience at other ISR sites; LBP-13-10, 78 NRC 117 (2013)

confinement of aquifers is material to the environmental impacts of the licensing action; CLI-14-2, 79 NRC 11 (2014)

"construction" does not include site exploration, including preconstruction monitoring to establish background information related to the environmental impacts of construction or operation, or the protection of environmental values; LBP-15-3, 81 NRC 65 (2015)

contention asserting that because no previous ISL/ISR mining operation has been able to restore groundwater to baseline standards, applicant will be required to request that NRC set an alternate concentration limit for aqueous contaminants is admissible; LBP-12-3, 75 NRC 164 (2012)

contention asserting that NEPA requires a groundwater baseline characterization for an in situ recovery site is admissible; LBP-12-3, 75 NRC 164 (2012)

contention contesting adequacy of hydrogeologic information provided in application regarding fluid migration is admissible; LBP-13-6, 77 NRC 253 (2013)

contention contesting failure of applicant to evaluate groundwater impacts of in situ recovery is inadmissible for failure to present factual allegations and/or expert opinion to support the contention; LBP-13-6, 77 NRC 253 (2013)

contention that environmental assessment fails to adequately describe air quality impacts is inadmissible as untimely; LBP-15-11, 81 NRC 401 (2015)

contention that environmental assessment violates the National Environmental Policy Act in its failure to analyze groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 401 (2015)

contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)

contention that FSEIS fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 65 (2015)

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contention that the draft environmental impact statement fails to adequately assess cumulative impacts of the proposed action and another proposed ISL uranium mining operation is inadmissible; LBP-13-10, 78 NRC 117 (2013)

environmental contention regarding cumulative impact on groundwater quantity of the in situ recovery project and the planned expansion satisfies admissibility requirements; LBP-12-3, 75 NRC 164 (2012)

environmental impact statement must discuss any adverse environmental effects that cannot be avoided should the proposal be implemented and must provide a reasonably complete discussion of possible mitigation measures; LBP-15-11, 81 NRC 401 (2015)

EPA-approved state permitting authority for Class I injection wells is the regulatory entity from which applicant must seek and obtain the permit necessary to allow it to operate a deep injection well at the site; LBP-13-6, 77 NRC 253 (2013)

for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 164 (2012)

generic environmental impact statement for in-situ leach mining is subject to an appropriate challenge in an adjudicatory proceeding; LBP-15-11, 81 NRC 401 (2015)

generic environmental impact statement for in-situ leach uranium milling facilities addresses, among other topics, matters specified in section 51.45; LBP-15-3, 81 NRC 65 (2015)

in situ recovery license applicant is barred from installing a complete wellfield and associated monitor well networks until after a license is issued; LBP-15-3, 81 NRC 65 (2015)

in situ recovery process, which is also referred to as the in situ leach process, is described; LBP-12-3, 75 NRC 164 (2012)

intervenors fail to establish the validity of their various challenges to the adequacy of the FSEIS description of the baseline water quality at the ISR site; LBP-15-3, 81 NRC 65 (2015)

licensee shall establish a detection monitoring program needed for NRC to set the site-specific groundwater protection standards, and the monitoring program must be in place when specified by NRC in license conditions; LBP-15-3, 81 NRC 65 (2015)

licensing strategy whereby applicant seeks initial in situ recovery licensing authorization to mine a particular area on which a central processing plant is located, followed thereafter by additional license amendments to cover ISR activities on contiguous or nearby areas, has been employed previously under the agency's ISR facility licensing regime; LBP-13-10, 78 NRC 117 (2013)

no in situ recovery facility has ever requested that all OZ aquifer groundwater hazardous constituents be restored to CAB concentrations or Criterion 5B(5)(b) MCLs, as those are currently defined; LBP-15-3, 81 NRC 65 (2015)

nothing in 10 C.F.R. Part 40, Appendix A, Criterion 5B precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's precicensing program were adequate to provide the necessary information to characterize properly the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 65 (2015)

NRC could consider adopting, at least for the initial construction/operation authorization of in situ recovery facilities, a standing regime by which persons living or having substantial contacts within a 50-mile radius of the facility are afforded standing; LBP-12-3, 75 NRC 164 (2012)

NRC regulations explicitly allow the use of alternate concentration limits for hazardous constituents; LBP-15-11, 81 NRC 401 (2015)

NRC Staff must prepare an environmental impact statement in connection with a license to possess and use source and AEA §11e(2) byproduct material for the purpose of in situ uranium recovery; LBP-15-3, 81 NRC 65 (2015)

pertinent to the question of whether a facility is a connected action is whether the facility lacks any independent utility in the absence of the completion of the other sites; LBP-13-10, 78 NRC 117 (2013)

petitioner whose property is upgradient but nonetheless located in close proximity to a proposed in situ recovery facility may be able to establish its plausible pathway with a less particularized showing; LBP-12-3, 75 NRC 164 (2012)

petitioners considerably upgradient of a mining area must provide scientific or technical support for how contaminated material from an in situ recovery site might plausibly enter their drinking water to fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)

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- relative to an individual ISR facility, when NRC Staff formulates its draft and final supplemental environmental impact statement conclusions regarding the environmental impacts of a proposed action or alternative actions, it uses as guidance a standard scheme to categorize or quantify the impacts; LBP-15-3, 81 NRC 65 (2015)
- requirements for groundwater restoration standards for ISR mining operations are set forth in 10 C.F.R. Part 40, Appendix A, Criterion 5B(5); LBP-15-3, 81 NRC 65 (2015)
- “source material” is defined as uranium being extracted through the ISL process; LBP-15-16, 81 NRC 618 (2015)
- section 40.31(h) applies to uranium mills, but not to in situ recovery facilities; LBP-14-5, 79 NRC 377 (2014)
- site-specific data to confirm proper baseline quality values, and confirm whether existing rock units provide adequate confinement cannot be collected until an in situ leach well field has been installed; LBP-15-3, 81 NRC 65 (2015)
- standing was found for petitioner fishing a river 60 miles downstream from a proposed in situ recovery facility expansion alleged to allow drainage into the river from operations; LBP-12-3, 75 NRC 164 (2012)
- subset of the production and injection wells to be drilled within the boundaries of the ISR wellfield is to be used to sample groundwater from the aquifer prior to the commencement of operations to establish hazardous constituent Commission-approved background concentrations; LBP-15-3, 81 NRC 65 (2015)
- surface water contamination has played a significant role in standing determinations in in situ recovery cases; LBP-12-3, 75 NRC 164 (2012)
- waiting until after licensing (although before mining operations begin) to establish definitively the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach well fields; LBP-15-3, 81 NRC 65 (2015)
- when an ore zone and petitioner’s water source exist in separate aquifers, the injury/causation question is whether there is an interconnection between those aquifers; LBP-12-3, 75 NRC 164 (2012)
- when petitioners considerably upgradient of the mining area fail to explain how contaminated material from the in situ recovery site might plausibly enter their drinking water, they fail to demonstrate that they fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)
- INCINERATION**
- discretionary hearing to discuss policy issues related to import of foreign low-level radioactive waste and domestic incineration and transportation issues is not warranted because these issues are either challenges to the Commission’s regulations or are outside the scope of the proceeding; CLI-11-3, 73 NRC 613 (2011)
- key action that will allow incineration of imported low-level-radioactive waste material is the domestic license authorizing such processing, not NRC’s grant of an import license; CLI-11-3, 73 NRC 613 (2011)
- INCORPORATION BY REFERENCE**
- absence of any reference to “cumulative impacts” in a document incorporated by reference negates any intention to incorporate any discussion of cumulative impacts from these prior documents into an environmental report, consistent with the maxim of *expressio unius est exclusio alterius*, i.e., the expression of one thing is to the exclusion of another; LBP-12-24, 76 NRC 503 (2012)
- agencies can, consistent with NEPA regulations, incorporate by reference analyses and information from existing documents into an environmental assessment or environmental impact statement provided the material has been appropriately cited and described; LBP-15-11, 81 NRC 401 (2015)
- although the entire record is considered on appeal, including pleadings that appellants ask to be adopted by reference, the Commission’s decision responds to the arguments made explicitly in the appellate brief; CLI-11-8, 74 NRC 214 (2011)
- applicant may incorporate material by reference that the applicant itself has previously submitted, not material prepared by NRC Staff; LBP-12-24, 76 NRC 503 (2012)
- ASME Code for Operation and Maintenance of Nuclear Power Plants is incorporated by reference; CLI-12-9, 75 NRC 421 (2012)
- briefs on appeal must be comprehensive, concise, and self-contained and incorporation of pleadings or arguments by reference is discouraged; CLI-12-3, 75 NRC 132 (2012)

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Commission discourages incorporating pleadings or arguments by reference; LBP-15-5, 81 NRC 249 (2015)

“deemed incorporated” function of 10 C.F.R. 51.23(b) provides administrative efficiency by adding the environmental impacts of continued storage to site-specific environmental impact statements without additional work by the Staff; CLI-15-10, 81 NRC 535 (2015)

DOE may incorporate, in its geologic repository application, information from previous reports filed with the Commission, provided that such references are clear and specific; LBP-12-24, 76 NRC 503 (2012)

environmental report for a limited work authorization application for a site where a construction permit was issued but construction of the plant was never completed may incorporate the earlier environmental impact statement; LBP-12-24, 76 NRC 503 (2012)

environmental report for application for land disposal of radioactive waste may incorporate by reference information contained in the application or in any previous application, statement, or report filed with the Commission provided that such references are clear and specific; LBP-12-24, 76 NRC 503 (2012)

environmental reports prepared under 10 C.F.R. 51.53(a) may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or site, or any information contained in a related final environmental document previously prepared by NRC Staff; LBP-12-24, 76 NRC 503 (2012)

for a contract to incorporate the terms of extrinsic material by reference, it must explicitly, or at least precisely, identify the written material being incorporated and must clearly communicate that the purpose of the reference is to incorporate the referenced material into the contract; LBP-12-24, 76 NRC 503 (2012)

for materials licenses amendment or renewal applications or other forms of permission for which applicant has previously submitted an environmental report, the supplement to applicant’s ER may be limited to incorporating by reference, updating, or supplementing the information previously submitted to reflect any significant environmental change, including any resulting from operational experience or a change in operations or proposed decommissioning activities; LBP-12-24, 76 NRC 503 (2012)

impact determinations in the continued storage generic environmental impact statement shall be deemed incorporated into the environmental impact statements associated with combined license and license renewal applications; CLI-15-10, 81 NRC 535 (2015)

issue on appeal is not properly briefed by incorporating by reference papers filed with the licensing board; CLI-11-8, 74 NRC 214 (2011)

it is not clear that NRC Staff relied upon the generic environmental impact statement when preparing the draft supplemental environmental impact statement because it was not incorporated by reference or mentioned in any other manner; LBP-15-11, 81 NRC 401 (2015)

it is not sufficient to incorporate by reference large portions of material where doing so would force one to sift through it in search of asserted factual support that is not otherwise specified; LBP-12-24, 76 NRC 503 (2012)

language used to incorporate extrinsic material by reference must explicitly, or at least precisely, identify the written material being incorporated; LBP-12-24, 76 NRC 503 (2012)

latest edition and addenda of the ASME Boiler and Pressure Vessel Code has been incorporated by reference in 10 C.F.R. 50.55a(b)(2); LBP-15-20, 81 NRC 829 (2015)

license application for byproduct material may incorporate information contained in previous applications, statements, or reports filed with the Commission, provided that the reference is clear and specific; LBP-12-24, 76 NRC 503 (2012)

license for source material may incorporate information contained in previous applications, statements, or reports filed with the Commission, provided that the reference is clear and specific; LBP-12-24, 76 NRC 503 (2012)

notice of incorporated terms is reasonable where, under the particular facts of the case, a reasonably prudent person should have seen them; LBP-12-24, 76 NRC 503 (2012)

NRC need not undertake incorporation by reference of a generic environmental impact statement where the Commission has already taken public comment and performed a comprehensive analysis of the environmental consequences of continued spent fuel storage; CLI-15-10, 81 NRC 535 (2015)

NRC Staff is incorporating the 2012 edition of the ASME code by reference into 10 C.F.R. 50.55a; CLI-15-13, 81 NRC 555 (2015)

SUBJECT INDEX

- operating license application may incorporate any pertinent information submitted with a construction permit application; LBP-12-24, 76 NRC 503 (2012)
- paper to be incorporated into a written instrument by reference must be so referred to and described in the instrument that the paper may be identified beyond all reasonable doubt; LBP-12-24, 76 NRC 503 (2012)
- post-operating license stage supplement to applicant's environmental report may incorporate by reference any information contained in applicant's construction permit stage ER; LBP-12-24, 76 NRC 503 (2012)
- reference by the contracting parties to an extraneous writing for a particular purpose makes it a part of their agreement only for the purpose specified; LBP-12-24, 76 NRC 503 (2012)
- reference to applicable sections of the GALL Report is permissible, but applicant must also provide sufficient plant-specific information to demonstrate that its aging management plan will be designed and implemented consistent with the report; LBP-13-13, 78 NRC 246 (2013)
- requirements of section XI of the ASME Boiler and Pressure Vessel Code on inservice inspections are incorporated by reference in 10 C.F.R. 50.55a(b) and 50.55a(g)(4); CLI-11-8, 74 NRC 214 (2011)
- special nuclear materials license applications may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission if the references are clear and specific; LBP-12-24, 76 NRC 503 (2012)
- where extraneous writing is incorporated for a specific purpose, the writing will be incorporated only to the extent of the reference and for the specific purpose intended, and the reference must be clear and unequivocal; LBP-12-24, 76 NRC 503 (2012)
- wholesale incorporation by reference does not serve the purposes of a pleading; LBP-15-5, 81 NRC 249 (2015)
- ### INDEPENDENT SPENT FUEL STORAGE INSTALLATION
- applications for renewal of an ISFSI license must describe the aging management plan for management of issues associated with aging that could adversely affect structures, systems, and components important to safety; LBP-12-24, 76 NRC 503 (2012)
- current licensing basis for an ISFSI includes plant-specific design-basis information defined in 10 C.F.R. 50.2 as documented in the most recent final safety analysis report; LBP-12-24, 76 NRC 503 (2012)
- failure to have made any effort to evaluate the cumulative impact of the ISFSI expansion on archaeological sites has been held to be one of the most egregious shortfalls of the environmental assessment; LBP-14-6, 79 NRC 404 (2014)
- general license may be granted to all Part 50 and Part 52 reactor licensees to store spent fuel in an ISFSI; CLI-15-4, 81 NRC 221 (2015)
- it is not necessary or appropriate to throw open the full gamut of provisions in a facility's current licensing basis to reanalysis during the license renewal review, because the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-12-24, 76 NRC 503 (2012)
- license applicants were permitted to omit any discussion of any environmental impact of spent fuel storage in independent spent fuel storage installations for the period following the term of the initial ISFSI license in any environmental report, environmental impact statement, environmental assessment, or other analysis; LBP-12-24, 76 NRC 503 (2012)
- licensees must limit releases of radioactive materials to as low as is reasonably achievable, and establish operational limits to prevent doses to the public that exceed the limits of 10 C.F.R. 72.104(a)-(c); LBP-12-24, 76 NRC 503 (2012)
- pressure monitoring system that functions to alert ISFSI operators of potential storage problems, specifically a leak of one of the seals, is intended to meet the requirements for monitoring of dry spent fuel storage; LBP-12-24, 76 NRC 503 (2012)
- section 51.61 applies to an application for an ISFSI; LBP-15-24, 82 NRC 68 (2015)
- spent nuclear fuel can be stored safely at licensed nuclear facilities until such time as a long-term geologic storage facility is constructed; LBP-12-24, 76 NRC 503 (2012)
- stringent safety requirements apply to construction and operation of reactor spent fuel pools and ISFSIs; CLI-15-4, 81 NRC 221 (2015)

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INDEPENDENT SPENT FUEL STORAGE INSTALLATION PROCEEDINGS

board applied the late-filing standards to a post-9/11 contention related to the risk of a terrorist attack on the ISFSI and found the contention timely but denied admission of both the safety and environmental aspects of the contention; CLI-11-5, 74 NRC 141 (2011)

challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of the license renewal proceeding; LBP-12-24, 76 NRC 503 (2012)

contention that draft environmental assessment fails to adequately address potential impacts of the reasonably foreseeable expansion of an independent spent fuel storage installation on cultural and historic resources is admissible; LBP-14-6, 79 NRC 404 (2014)

petitioner in materials licensing actions is entitled to a presumption of standing if petitioner resides in the zone of reasonably foreseeable harm from the source of radioactivity and the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-12-24, 76 NRC 503 (2012)

ruling on petitions for waiver of application of the waste confidence rule in ISFSI license renewal proceeding is deferred and held it in abeyance; LBP-12-24, 76 NRC 503 (2012)

INFORMAL PROCEEDINGS

NRC may hold an informal hearing in which it requests and considers written materials without providing for traditional trial-type procedures such as oral testimony and cross-examination; LBP-11-4, 73 NRC 91 (2011)

INITIAL DECISIONS

board shall include additional NRC Staff actions necessary if inconsistent with prior Staff action approving or denying the application; CLI-15-17, 82 NRC 33 (2015)

denial of summary disposition does not constitute a full or partial initial decision warranting immediate Commission review; CLI-11-10, 74 NRC 251 (2011)

if the board's findings after the evidentiary hearing affect NRC Staff's conclusions in the environmental assessment, then those conclusions would have to be revisited; CLI-15-17, 82 NRC 33 (2015)

NRC Staff typically prepares the record of decision, but when a hearing is held, the board's initial decision constitutes the record of decision as to those issues that were litigated during the hearing; LBP-13-13, 78 NRC 246 (2013)

petitions for review are allowed after a full or partial initial decision, both of which are considered final decisions; CLI-11-10, 74 NRC 251 (2011); CLI-11-14, 74 NRC 801 (2011)

when an adjudicatory proceeding has been initiated with respect to a license amendment issued with a no significant hazards determination, once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision; LBP-15-13, 81 NRC 456 (2015)

See also Partial Initial Decisions

INJUNCTIVE RELIEF

district court did not abuse its discretion in balancing the harms in favor of an injunction related to an electric utility's Clean Water Act permit for the construction of a new power plant; LBP-14-6, 79 NRC 404 (2014)

irreparable harm element of the test for issuance of injunctive relief was met where the tribe's evidence showed that a phase of the project would involve damage to at least one known site, and virtually ensure some loss or damage; LBP-15-2, 81 NRC 48 (2015)

movant must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief; LBP-15-2, 81 NRC 48 (2015)

preliminary injunction halting a solar energy project was granted based on a tribal claim that the project would not avoid most of the 459 cultural sites identified, and that the NEPA and NHPA process had been insufficient; LBP-15-2, 81 NRC 48 (2015)

when considering stays or other forms of temporary injunctive relief, the Commission has applied the stay factors outlined in 10 C.F.R. 2.342(e), which restate commonplace principles of equity; CLI-14-6, 79 NRC 445 (2014)

See also Stay

INJURY IN FACT

aesthetic harms may amount to an injury in fact sufficient for standing; CLI-12-12, 75 NRC 603 (2012)

SUBJECT INDEX

although a party who is not injured by a board's ruling has no right to appeal that ruling, it may file a supporting brief at the appropriate time; CLI-12-6, 75 NRC 352 (2012)

cause of injury to intervention petitioner need not flow directly from the challenged action, but the chain of causation must be plausible; CLI-15-25, 82 NRC 389 (2015)

extreme delay in the completion of Staff's environmental review, and thus the equal delay in hearing intervenors' claim of injury, raises issues of compliance with section 189a of the Atomic Energy Act; LBP-11-30, 74 NRC 627 (2011)

increases in risk can at times be injuries in fact sufficient to confer standing; LBP-14-4, 79 NRC 319 (2014)

individual tribal member who does not reside on a tribal reservation where a facility is proposed to be located must show injury in fact relative to that member's activities on the reservation even when the reservation is asserted to be on aboriginal tribal lands; LBP-13-6, 77 NRC 253 (2013)

injury can result when the risk of encountering environmental harms prevents a plaintiff from taking an action; LBP-14-4, 79 NRC 319 (2014)

intervention petitioner must allege an injury in fact that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; CLI-15-25, 82 NRC 389 (2015)

intervention petitioner must demonstrate that the asserted injury is plausibly linked to the challenged action; CLI-15-25, 82 NRC 389 (2015)

litigants are not entitled to challenge a board ruling unless and until that ruling has worked a concrete injury to his personal interests; CLI-12-6, 75 NRC 352 (2012)

mere potential exposure to minute doses of radiation within regulatory limits does not constitute a distinct and palpable injury on which standing can be founded; CLI-11-3, 73 NRC 613 (2011)

nonradiological impacts can be a basis for standing; LBP-13-6, 77 NRC 253 (2013)

organizational standing in an agency adjudicatory proceeding could arise based on an asserted injury to a tangible asset, such as a building or land owned or regularly utilized by an organization, that is located near a proposed licensing activity; LBP-13-6, 77 NRC 253 (2013)

organizational standing is footed in the capacity of an organization to show a discrete injury to its organizational interests; LBP-13-6, 77 NRC 253 (2013)

party seeking a stay must specifically and reasonably demonstrate an injury, not merely allege generalized harm; LBP-15-2, 81 NRC 48 (2015)

petitioner need only show that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury; LBP-13-6, 77 NRC 253 (2013)

petitioners are not required to demonstrate their asserted injury with certainty at the admission stage of the proceeding; CLI-15-25, 82 NRC 389 (2015)

potential harm necessary to demonstrate standing in NRC proceedings need not relate to physical or bodily injury; CLI-12-12, 75 NRC 603 (2012)

risk of future harm as an injury is both actual and imminent; LBP-14-4, 79 NRC 319 (2014)

standing can be based on diminishment of recreational enjoyment of wildlife area due to, among other factors, an increase in dust due to traffic on adjacent highway; CLI-12-12, 75 NRC 603 (2012)

when a radiological health or safety impact is asserted to provide the basis for a petitioner's injury in fact, in lieu of the usual injury and causation showings, petitioner can attempt to establish its standing based on the proximity plus protocol by showing that the proposed licensing action involves a significant source of radiation, which has an obvious potential for offsite consequences; LBP-13-6, 77 NRC 253 (2013)

whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source; LBP-13-6, 77 NRC 253 (2013)

See also Irreparable Injury

INSPECTION

although intervenors disagree with applicant's opportunistic inspection strategy for managing rebar corrosion, they merely assert, and do not plausibly explain, how applicant's approach will lead to a material safety impact; LBP-15-1, 81 NRC 15 (2015)

basis of NRC Staff's reasonable assurance finding on combined license applicant's squib valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 63 (2012)

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- inservice testing and inspection program for squib valves in combined license applications is discussed; CLI-15-13, 81 NRC 555 (2015)
- inservice visual inspection of containment system must comply with ASME Boiler and Pressure Vessel Code Section XI; LBP-15-26, 82 NRC 163 (2015)
- inspection to determine effects of wet or underwater conditions on underground safety-related electrical cables is discussed; DD-15-1, 81 NRC 193 (2015)
- intervenor must do more than point to issues with the shield building, but must also indicate what is wrong with applicant's response and its amended inspection program and why intervenor believes the particular inspection program makes the license renewal application unacceptable; LBP-15-1, 81 NRC 15 (2015)
- neither licensee activities nor NRC inspection of or inquiry about those activities provides the opportunity for a hearing under the Atomic Energy Act because those activities only concern compliance with the terms of an existing license; CLI-14-11, 80 NRC 167 (2014)
- NRC Staff inspections and confirmatory action letters are oversight activities normally conducted to ensure that licensees comply with existing NRC requirements and license conditions and therefore do not typically trigger the opportunity for a hearing under the AEA; CLI-15-5, 81 NRC 329 (2015)
- NRC's inspection process is separate from its licensing process; LBP-15-27, 82 NRC 184 (2015)
- periodic visual inspections of the accessible interior and exterior surfaces of the containment system are required to identify structural deterioration that may affect containment integrity; LBP-15-26, 82 NRC 163 (2015)
- request for an Office of the Inspector General inspection on why different NRC regions have different analysis criteria for similar primary coolant pump events was forwarded on to the OIG; DD-15-3, 81 NRC 713 (2015)
- request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 489 (2014)
- requirements of section XI of the ASME Boiler and Pressure Vessel Code on inservice inspections are incorporated by reference in 10 C.F.R. 50.55a(b), 50.55a(g)(4); CLI-11-8, 74 NRC 214 (2011)
- through the regulatory process, which includes plant inspections, notice and guidance to licensees, and enforcement actions, NRC takes a host of measures to improve the ability to timely detect and correct inadvertent leaks to assure compliance with public dose limits; LBP-11-2, 73 NRC 28 (2011)
- under 10 C.F.R. 40.41(g) and 70.32(k), a uranium enrichment facility cannot be operated until the agency verifies through inspection that the facility has been constructed in accordance with the license; LBP-11-11, 73 NRC 455 (2011)
- walkdowns and inspections performed by licensee, industry, and NRC personnel following an earthquake that exceeded the plant's design basis are described; DD-12-2, 76 NRC 391 (2012)
- See also NRC Inspection
- INSPECTION REPORTS**
- even reports documenting violations are not de facto license amendments; LBP-15-27, 82 NRC 184 (2015)
- such reports could be seen as objective evidence that applicant may not adequately manage aging in the future; CLI-11-11, 74 NRC 427 (2011)
- INSTRUMENTATION**
- Commission administratively exempted from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 421 (2012)
- modernization plans for seismic instrumentation following failure of an annunciation panel in the main control room are discussed; DD-12-2, 76 NRC 391 (2012)
- request for additional instrumentation for all Mark I spent fuel storage pools has been addressed through an order modifying licenses with regard to reliable spent fuel pool instrumentation; DD-15-1, 81 NRC 193 (2015)

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- request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise technical specifications for spent fuel pool instrumentation is denied; DD-13-3, 78 NRC 571 (2013)
- request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)
- request that technical specification for control room emergency ventilation system instrumentation be changed to require that the control building air intake radiation-high function be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)
- request that technical specification for secondary containment isolation instrumentation be changed to require the reactor building exhaust radiation-high function to be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)
- INTEGRATED PLANT ASSESSMENT**
- applicant must demonstrate that effects of aging will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-13-13, 78 NRC 246 (2013)
- contention that does not actually challenge any specific part of the integrated plant assessment or time-limited aging analyses fails to demonstrate the existence of a genuine dispute with applicant; LBP-15-6, 81 NRC 314 (2015)
- each application must contain an IPA that is a detailed assessment, conducted at a component and structure level, rather than at a more generalized system level; LBP-13-13, 78 NRC 246 (2013)
- license renewal applicant must demonstrate that effects of aging for each structure and component will be managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 340 (2015)
- license renewal applicant must perform an IPA to identify structures and components that are subject to aging management review; CLI-15-6, 81 NRC 340 (2015)
- license renewal applications must include an IPA demonstrating that effects of aging on plant systems, structures, and components will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-13-8, 78 NRC 1 (2013); LBP-13-13, 78 NRC 246 (2013)
- INTEGRATED SAFETY ANALYSIS**
- all credible accident sequences must be identified in the ISA Summary as well as items relied on for safety and necessary safety controls; LBP-12-21, 76 NRC 218 (2012)
- along with the requirement to perform an ISA is the requirement for applicant to provide the NRC Staff with an ISA summary, the content of which is specified in 10 C.F.R. 70.65(b); LBP-11-11, 73 NRC 455 (2011)
- applicant for a Part 70 license is required to establish and maintain a safety program, which includes performing an ISA; LBP-11-11, 73 NRC 455 (2011)
- applicant must consider potential accident sequences caused either by deviations in the processes that will be conducted at the proposed facility or by credible external events, including natural phenomena; LBP-11-11, 73 NRC 455 (2011)
- items relied on for safety that are a central focus of the ISA process for a uranium enrichment facility are the subject of three proposed license conditions; LBP-11-11, 73 NRC 455 (2011)
- items relied upon for safety in uranium enrichment facilities should be described in sufficient detail to allow a Staff reviewer to understand the IROFS's functions in relation to the performance standards in section 70.61, which specifies limitations on the levels of risk for credible high- and intermediate-consequence accidents and nuclear criticality accidents; LBP-11-11, 73 NRC 455 (2011)
- process designs for uranium enrichment facilities should be described in a level of detail sufficient to allow a Staff reviewer to understand the theory of operation for the process; LBP-11-11, 73 NRC 455 (2011)
- requirements for uranium enrichment facility licensing are detailed; LBP-12-21, 76 NRC 218 (2012)
- summary must accompany the uranium enrichment facility license application and contain a general description of the site and the facility with emphasis on factors that could affect safety and description of each process analyzed in the ISA; LBP-12-21, 76 NRC 218 (2012)

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to perform an appropriate ISA, NUREG-1520 standard review plan guidance for fuel cycle facilities indicates that applicant should identify the process designs, accident sequences, and items relied upon for safety that are associated with the facility; LBP-11-11, 73 NRC 455 (2011)
uranium enrichment facility licensee must submit an annual update of the ISA summary; LBP-12-21, 76 NRC 218 (2012)

INTENT

affirmative misconduct means an affirmative misrepresentation or affirmative concealment of a material fact by the government, although it does not require that the government intended to mislead a party; LBP-12-16, 76 NRC 44 (2012)
estoppel claimant must prove a false representation by the government, that the government had the intent to induce the plaintiff to act on the misrepresentation, plaintiff's lack of knowledge or inability to obtain the true facts, and plaintiff's reliance on the misrepresentation to his detriment; LBP-12-16, 76 NRC 44 (2012)

INTEREST

governmental body's interest in protecting the individuals and territory that fall under that body's authority establishes an organizational interest for standing purposes; LBP-11-6, 73 NRC 149 (2011)
prospective intervenors must show a direct, substantial, and legally protectable interest, the test for which is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process; LBP-11-4, 73 NRC 91 (2011)

INTERESTED GOVERNMENTAL ENTITY

entities who failed to raise admissible contentions were eligible to participate in the license renewal proceeding; LBP-13-13, 78 NRC 246 (2013)
governmental entity is permitted to participate in the proceeding as an interested local governmental body and will thus have the opportunity to support intervenors' already-admitted contention; LBP-15-19, 81 NRC 815 (2015)
if at least one petitioner demonstrates standing and proffers an admissible contention so that its petition to intervene is granted, section 2.315(c) allows a local governmental body that has not been admitted as a party to participate in a hearing as an interested nonparty; LBP-11-6, 73 NRC 149 (2011)
litigation opportunities available to an entity participating as a local governmental body pursuant to 10 C.F.R. 2.315(c) are discussed; LBP-15-19, 81 NRC 815 (2015)
local governmental body that is not admitted as a party shall, upon request, be permitted to participate in a hearing as an interested nonparty; LBP-11-6, 73 NRC 149 (2011)
representative of a governmental entity that wishes to participate as a nonparty in the proceeding must identify those contentions on which it will participate in advance of any hearing held; LBP-15-11, 81 NRC 401 (2015)
such a nonparty may introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without being required to take a position with respect to the issue, file proposed findings, and petition for review by the Commission; LBP-11-6, 73 NRC 149 (2011)

INTERESTED STATE PARTICIPATION

brief stay of the close of a licensing proceeding was ordered to allow a state the opportunity to request status as an interested governmental entity; CLI-12-6, 75 NRC 352 (2012)

INTERPRETATION

board may employ case law interpreting FOIA Exemption 5 when determining whether the deliberative process privilege applies in an NRC proceeding; LBP-13-5, 77 NRC 233 (2013)
Commission precedent interprets the term, "severe accidents," to encompass only reactor accidents and not spent fuel pool accidents; LBP-11-2, 73 NRC 28 (2011)
FOIA's purpose is to encourage disclosure, and, to that end, its exemptions are to be interpreted narrowly; LBP-13-5, 77 NRC 233 (2013)
intervenors' allegations are viewed in a light favorable to intervenors; LBP-15-11, 81 NRC 401 (2015)
NRC must consider varying interpretations and the wisdom of its policy on a continuing basis; LBP-14-4, 79 NRC 319 (2014)
principle of *expressio unis est exclusio alterius* is discussed; LBP-15-11, 81 NRC 401 (2015)
See also Construction of Meaning; Regulations, Interpretation; Statutory Construction

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INTERROGATORIES

NRC Staff counsel may file written interrogatories that the target of an enforcement order must answer; LBP-14-11, 80 NRC 125 (2014)

target of an enforcement order may serve interrogatories on NRC Staff, must show that answers to the interrogatories are necessary to a proper decision in the proceeding, and may ask the board to direct NRC Staff to answer those interrogatories; LBP-14-11, 80 NRC 125 (2014)

INTERVENORS

although applicant carries the burden of proof on safety issues, intervenors have the initial burden of going forward with each contention and must provide sufficient evidence to support the claims made; LBP-14-1, 79 NRC 39 (2014)

because the scope of intervenors' participation in adjudications is limited to their admitted contentions, they are barred from participation in the uncontested portion of the hearing; LBP-14-9, 80 NRC 15 (2014)

by participating in NRC proceedings, intervenors accept the obligation of uncovering relevant, publicly available information; CLI-12-13, 75 NRC 681 (2012); CLI-12-21, 76 NRC 491 (2012)

NRC Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 319 (2014)

party that has successfully intervened in a licensing proceeding may propose new contentions for litigation until the license is issued; LBP-11-22, 74 NRC 259 (2011)

petitioners are obliged to present factual allegations and/or expert opinion necessary to support its contention; LBP-15-1, 81 NRC 15 (2015); LBP-15-5, 81 NRC 249 (2015)

petitioners are required to provide factual allegations or expert testimony to show a potential deficiency in applicant's aging management plan; LBP-15-5, 81 NRC 249 (2015)

INTERVENTION

admissible contention is required for grant of a hearing request; LBP-15-17, 81 NRC 753 (2015)

any person or organization seeking to intervene as a party in an NRC adjudicatory proceeding addressing a proposed licensing action must establish standing and proffer at least one admissible contention; LBP-11-13, 73 NRC 534 (2011)

board determined that confirmatory action letter was a de facto license amendment, which allows for public intervention; LBP-14-1, 79 NRC 39 (2014)

Commission denies a request for a hearing and to intervene in this license transfer proceeding; CLI-15-8, 81 NRC 500 (2015)

Commission did not intend to relieve third-party individuals who are not the subject of an enforcement order, but who nonetheless seek a hearing on the order, from satisfying the requirements for a petition for intervention in section 2.309; LBP-14-4, 79 NRC 319 (2014)

confirmatory action letter is an enforcement process that does not allow for public intervention; LBP-14-1, 79 NRC 39 (2014)

Congress called upon the Commission to make fundamental changes in its public hearing process to ensure that hearings adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; LBP-11-6, 73 NRC 149 (2011)

contention admissibility criteria are strict by design but should not be turned into a fortress to deny intervention; LBP-15-20, 81 NRC 829 (2015)

contention admissibility rule should not serve as a fortress to deny intervention; LBP-11-6, 73 NRC 149 (2011)

court will examine a specific barrier to participation, in isolation, and generally conclude that it is not illegal; LBP-14-4, 79 NRC 319 (2014)

hearing request and party status as an intervenor may only be granted to a petitioner if it demonstrates standing and proffers at least one admissible contention that meets the requirements of 10 C.F.R.

2.309(f); CLI-15-23, 82 NRC 321 (2015); LBP-11-22, 74 NRC 259 (2011); LBP-11-29, 74 NRC 612 (2011); LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015)

interested stakeholders who stand to benefit from a confirmatory order's safety measures may intervene in a contested enforcement proceeding to protect its interest in ensuring that the order is upheld as issued; CLI-13-2, 77 NRC 39 (2013)

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legal standards in sections 2.309(d) and (f) are relevant when evaluating a third-party petition for hearing on a confirmatory order; LBP-14-4, 79 NRC 319 (2014)

licensing boards must consider the nature of petitioner's right under the AEA or the National Environmental Policy Act to be made a party to the proceeding, nature and extent of petitioner's property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued in the proceeding on petitioner's interest; LBP-15-17, 81 NRC 753 (2015)

participation in a licensing proceeding requires a demonstration of standing; LBP-15-17, 81 NRC 753 (2015)

petition is denied for failure to submit an admissible contention; LBP-13-8, 78 NRC 1 (2013); LBP-13-11, 78 NRC 177 (2013)

petitioner may obtain a hearing on a section 2.202 order only if the measures to be taken under the order would, in themselves, harm the petitioner; CLI-13-2, 77 NRC 39 (2013)

petitioner must allege such a personal stake in the outcome of the controversy as to demonstrate that a concrete adverseness exists that will sharpen the presentation of issues; CLI-15-25, 82 NRC 389 (2015)

petitioners have an ironclad obligation to review the application thoroughly and to base their challenges on its contents; CLI-12-5, 75 NRC 301 (2012)

petitioners must articulate at the outset the specific issues they wish to litigate as a prerequisite to gaining formal admission as parties; CLI-15-9, 81 NRC 512 (2015)

prospective intervenors must show a direct, substantial, and legally protectable interest, the test for which is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process; LBP-11-4, 73 NRC 91 (2011)

referrals may be made when a petition does not satisfy the legal requirements for a hearing or intervention and it is determined that referral to the section 2.206 process is appropriate; CLI-12-20, 76 NRC 437 (2012)

third-party requests for a hearing on an enforcement order have been treated as a petition for intervention under the Commission's generally applicable rules; LBP-14-4, 79 NRC 319 (2014)

to become a party, petitioner must establish standing and proffer at least one admissible contention; LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-16, 73 NRC 645 (2011)

to intervene as a party, a union must establish standing and proffer at least one admissible contention; LBP-14-4, 79 NRC 319 (2014)

to obtain a hearing, petitioner must show that its request is timely, that it has standing to obtain a hearing, and that it has proposed at least one admissible contention; CLI-14-11, 80 NRC 167 (2014)

too freely allowing third parties to contest enforcement settlements at hearings would undercut NRC's policy favoring enforcement settlements; LBP-14-4, 79 NRC 319 (2014)

where the Commission finds that exigent circumstances exist and it also determines that an amendment involves no significant hazards considerations, it will provide a hearing after issuance, if one has been requested by a person who satisfies the intervention requirements of 10 C.F.R. 2.309; CLI-15-25, 82 NRC 389 (2015)

See also Standing to Intervene

INTERVENTION, DISCRETIONARY

discretionary hearing may be held on export or import licenses if a hearing would be in the public interest and would assist the Commission in making the statutory determinations required by the Atomic Energy Act; CLI-11-3, 73 NRC 613 (2011)

discretionary intervention is permitted only where at least one petitioner has established standing and at least one contention has been admitted; CLI-14-11, 80 NRC 167 (2014); CLI-15-14, 81 NRC 729 (2015); LBP-14-4, 79 NRC 319 (2014)

if petitioner fails to show standing pursuant to section 2.309(d), a board may grant discretionary standing when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; LBP-11-29, 74 NRC 612 (2011)

individuals or groups may seek discretionary intervention if the requirements necessary to be afforded standing as of right cannot be established; LBP-13-6, 77 NRC 253 (2013)

licensing board rejected union's claim to standing, but the appeal board under the rules then in effect permitted discretionary intervention; LBP-14-4, 79 NRC 319 (2014)

six criteria have been articulated; LBP-14-4, 79 NRC 319 (2014)

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INTERVENTION PETITIONERS

petitioner has the right to file a reply; LBP-15-13, 81 NRC 456 (2015)
petitioners, not just parties, may request a rule waiver in NRC adjudicatory proceedings; CLI-12-19, 76 NRC 377 (2012)
right to reply is intended to provide an opportunity to legitimately amplify arguments made in the intervention petition in response to applicant and NRC Staff answers; LBP-15-13, 81 NRC 456 (2015)

INTERVENTION PETITIONS

although a board may view petitioner's supporting information in a light favorable to the petitioner, NRC contention admissibility rules require petitioner (not the board) to supply all elements for a valid intervention petition; LBP-11-16, 73 NRC 645 (2011); LBP-11-29, 74 NRC 612 (2011); LBP-13-8, 78 NRC 1 (2013)
any person whose interests may be affected by the license renewal proceeding, and who wishes to participate as a party, must file a petition for leave to intervene within 60 days of the notice of hearing in accordance with 10 C.F.R. 2.309; LBP-12-8, 75 NRC 539 (2012)
arguments not raised before the board or not clearly articulated in the petition for review are deemed waived; LBP-15-5, 81 NRC 249 (2015)
boards are to construe intervention petitions in favor of petitioners in determining whether petitioner has demonstrated standing; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)
boards may grant requests for hearing and petitions to intervene if they determine that petitioner has standing and has proposed at least one admissible contention; LBP-11-21, 74 NRC 115 (2011); LBP-12-8, 75 NRC 539 (2012); LBP-12-25, 76 NRC 540 (2012); LBP-13-8, 78 NRC 1 (2013); LBP-13-11, 78 NRC 177 (2013); LBP-13-12, 78 NRC 239 (2013)
cause of injury to intervention petitioner need not flow directly from the challenged action, but the chain of causation must be plausible; CLI-15-25, 82 NRC 389 (2015)
Commission denies hearing request, but refers the matters raised to the Executive Director of Operations for consideration as a request for enforcement action; CLI-15-5, 81 NRC 329 (2015)
deadline for answer to hearing petition is specified; CLI-11-3, 73 NRC 613 (2011)
hearing request is granted where petitioners have submitted a timely petition, established representational standing, and proffered an admissible contention; LBP-15-20, 81 NRC 829 (2015)
hearing request or petition to intervene must set forth with particularity the contentions sought to be raised by satisfying six criteria; CLI-12-5, 75 NRC 301 (2012); CLI-15-20, 82 NRC 211 (2015); LBP-11-21, 74 NRC 115 (2011)
intervention petition must be filed within the time specified in any notice of proposed action; LBP-15-13, 81 NRC 456 (2015)
intervention petitioner must allege an injury in fact that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; CLI-15-25, 82 NRC 389 (2015)
intervention petitions must be filed within 60 days based on the documents then in existence, meaning that the petition must be based on the documents submitted with the application; LBP-11-22, 74 NRC 259 (2011)
issues raised in an intervention petition or answer are within the appropriate scope of a reply brief; LBP-15-5, 81 NRC 249 (2015)
license amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention has filed a request for a hearing; LBP-15-17, 81 NRC 753 (2015)
name, address, and phone number of the requestor or petitioner must be provided; LBP-15-20, 81 NRC 829 (2015)
NRC is lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-11-13, 73 NRC 534 (2011)
petition is denied for failure to proffer an admissible contention; LBP-11-21, 74 NRC 115 (2011)
petition pursuant to 10 C.F.R. 2.714, which was abolished in 2004, is treated as though filed under section 2.309; LBP-13-12, 78 NRC 239 (2013)
petitioner has some latitude to supplement or cure a standing showing in its reply pleading, but any additional arguments should be supported by either the declaration that accompanied the original hearing request or a supplemental affidavit; LBP-12-3, 75 NRC 164 (2012)

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petitioner must demonstrate standing and propose at least one contention that meets the criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi); CLI-15-21, 82 NRC 295 (2015)

petitioner must satisfy the six pleading requirements of 10 C.F.R. 2.309(f)(1); LBP-15-13, 81 NRC 456 (2015)

petitioner must set forth with particularity the contentions it seeks to have litigated in a hearing; CLI-15-8, 81 NRC 500 (2015)

petitioner must state the nature of petitioner's statutory right to be made a party to the proceeding, nature and extent of petitioner's property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on petitioner's interest; LBP-15-13, 81 NRC 456 (2015); LBP-15-19, 81 NRC 815 (2015)

petitioners must include their name, address, and telephone contact information, nature of their right under the AEA to be made a party, nature of their interest in the proceeding, and possible effect of any decision or order that might be issued on their interest; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

petitions must be timely, demonstrate standing, and proffer at least one admissible contention; CLI-15-5, 81 NRC 329 (2015); LBP-15-6, 81 NRC 314 (2015)

pleadings submitted by pro se petitioners are afforded greater leniency than petitions drafted with the assistance of counsel; LBP-15-5, 81 NRC 249 (2015)

reply must be filed within 7 days after the filing of answers to an intervention petition; LBP-11-21, 74 NRC 115 (2011)

requests for hearing and petitions for leave to intervene must set forth with particularity the contentions sought to be raised and must satisfy all six requirements of 10 C.F.R. 2.309(f)(1); CLI-12-8, 75 NRC 393 (2012)

timeliness of an initial hearing petition in different situations is defined as being filed between 20 and 60 days after certain specified events; LBP-15-11, 81 NRC 401 (2015)

INTERVENTION PETITIONS, LATE-FILED

although an intervention petition itself was timely filed, the board must balance the eight factors to determine whether petitioner's late-filed exhibits are admissible; LBP-11-13, 73 NRC 534 (2011)

because a pro se first-time filer experienced problems with the NRC E-Filing system, the board concludes that petitioners' efforts demonstrate the requisite good cause for acceptance of the nontimely exhibits for consideration with the timely filed petition; LBP-11-13, 73 NRC 534 (2011)

boards must balance the eight factors to determine whether petitioner's late-filed petition will be considered; LBP-11-2, 73 NRC 28 (2011)

determination as to whether requests or petitions are filed in a timely manner shall be subject to a reasonableness standard and are not subject to the 30-day deadline applicable to motions by existing parties to add or amend contentions; LBP-15-6, 81 NRC 314 (2015)

electronic filing is only complete when the filer performs the last act that it must perform to transmit a document in its entirety; LBP-11-13, 73 NRC 534 (2011)

failure to comply with pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-11-7, 73 NRC 254 (2011)

good cause for the failure to file on time is the most important of the late-filing factors; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

if any portion of a filing is untimely tendered, it must be accompanied by a motion to file out of time; LBP-11-13, 73 NRC 534 (2011)

intervention petitioner can justify filing a petition after the initial deadline has expired by showing that the contention is based on new information and that the petition was filed promptly after the new information became available; LBP-12-25, 76 NRC 540 (2012)

intervention petitioner must either file its petition by the date specified in the Federal Register notice or show good cause for filing after the deadline; LBP-12-25, 76 NRC 540 (2012)

lack of prejudice, standing alone, does not excuse an untimely filing, but it is a factor the Commission has considered in determining whether good cause exists; LBP-15-4, 81 NRC 156 (2015)

persistent difficulties with the NRC electronic filing system despite petitioners' good-faith efforts is good cause for late filing; LBP-11-2, 73 NRC 28 (2011)

persons not currently parties may file timely petitions to intervene provided that they satisfy the good-cause criteria; LBP-15-6, 81 NRC 314 (2015)

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petitioners who are proceeding pro se should be shown greater leeway on the question of whether they have demonstrated good cause for lateness than petitioners represented by counsel; LBP-11-13, 73 NRC 534 (2011)

prejudice is not a factor in the balancing test for nontimely filings; LBP-11-13, 73 NRC 534 (2011)

State intervenor provided good cause for its late E-filing submission because the State submitted its petition to NRC by e-mail before the deadline lapsed and the delay was purely a matter of obtaining digital credentials for the system, not an attempt to gain extra time to prepare a pleading or otherwise to flout NRC's procedural requirements; LBP-15-4, 81 NRC 156 (2015)

INTERVENTION RULINGS

absent error of law or abuse of discretion, the Commission generally defers to board rulings on contention admissibility; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

appeal as of right from a board's ruling on an intervention petition is permitted only upon denial of a petition to intervene and/or request for hearing, on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied; CLI-14-3, 79 NRC 31 (2014)

appeal as of right on the question of whether an initial intervention petition should have been wholly denied or, alternatively, was granted improperly are governed by 10 C.F.R. 2.311; CLI-12-7, 75 NRC 379 (2012); CLI-12-12, 75 NRC 603 (2012)

appeal as of right on the question whether a hearing request should have been wholly denied is allowed; CLI-12-19, 76 NRC 377 (2012)

appeals of board rulings on hearing requests, petitions to intervene, and access to certain nonpublic information are governed by 10 C.F.R. 2.311(a); CLI-12-6, 75 NRC 352 (2012)

applicant may file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-12-12, 75 NRC 603 (2012)

at the contention admissibility stage, it is simply not appropriate for boards to decide what additional information, if any, is necessary to cure a claimed deficiency in a license application; CLI-11-11, 74 NRC 427 (2011)

automatic right exists to appeal a board decision on the question whether a petition to intervene should have been wholly denied; CLI-15-25, 82 NRC 389 (2015)

board erred in admitting a contention pertaining to a plant's safety culture; CLI-11-11, 74 NRC 427 (2011)

board examines the information, facts, and expert opinions provided by petitioners to confirm that they do indeed provide adequate support for the contention; LBP-15-20, 81 NRC 829 (2015)

board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 437 (2012)

board is free to decide contention admissibility on a theory different from those argued by the litigants, but only if it explains the specific basis of its ruling and gives litigants a chance to present arguments (and, where appropriate, evidence) regarding the board's new theory; LBP-14-4, 79 NRC 319 (2014)

board is obliged to independently assess petitioners' standing, even if it is unchallenged; LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015)

board may grant a timely filed petition to intervene if it concludes that petitioner has established standing and proffered at least one admissible contention; LBP-15-26, 82 NRC 163 (2015)

board rulings on standing are accorded substantial deference on appeal; CLI-12-12, 75 NRC 603 (2012); CLI-14-2, 79 NRC 11 (2014)

boards are to construe intervention petitions in favor of petitioners in determining whether petitioner has demonstrated standing; LBP-11-2, 73 NRC 28 (2011)

boards do not adjudicate disputed facts at contention admissibility stage; LBP-12-8, 75 NRC 539 (2012)

boards have an independent obligation to determine whether petitioners meet the threshold criterion for intervention even if their standing is uncontested; LBP-12-24, 76 NRC 503 (2012)

boards may appropriately view petitioner's supporting information in a light favorable to petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-12-25, 76 NRC 540 (2012); LBP-13-6, 77 NRC 253 (2013)

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boards must do more than uncritically accept a party's mere assertion that a particular document supplies the basis for its contention, without even reviewing the document itself to determine if it appears to support a litigable contention; LBP-11-6, 73 NRC 149 (2011)

boards should not supply new information not otherwise present in the adjudicatory record in order to cure deficiencies in a petition; CLI-12-12, 75 NRC 603 (2012)

Commission affirmed the board's standing ruling, but declined to accept review of challenges to the board's admission of two contentions because petitioner had failed to perfect its appeal by challenging the validity of the board's admissibility rulings regarding other contentions; LBP-15-3, 81 NRC 65 (2015)

Commission generally defers to board threshold rulings on contention admissibility, unless it finds an error of law or abuse of discretion; CLI-11-11, 74 NRC 427 (2011); CLI-12-12, 75 NRC 603 (2012); CLI-12-14, 75 NRC 692 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-15-18, 82 NRC 135 (2015)

Commission generally prefers that licensing boards make initial factual determinations; CLI-14-2, 79 NRC 11 (2014)

even if there are no objections to petitioners' representational standing, boards have an independent obligation to determine whether they have adequately demonstrated standing; LBP-11-2, 73 NRC 28 (2011)

for a hearing petitioner to take an appeal pursuant to section 2.311(c), petitioner must claim that, after considering all pending contentions, the board has erroneously denied a hearing; CLI-14-3, 79 NRC 31 (2014)

if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether standing has been satisfied; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

in assessing whether petitioner has demonstrated its standing, licensing boards are to construe petitions in favor of petitioners; CLI-15-25, 82 NRC 389 (2015); LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

interlocutory review of a board's dismissal of a new contention is granted only upon a showing of extraordinary circumstances; CLI-12-13, 75 NRC 681 (2012)

intervenor normally is not allowed to challenge a board's rejection of contentions where the board has granted a hearing on any contention; CLI-12-12, 75 NRC 603 (2012)

license applicant may take an appeal under 2.311(d)(1) if it contends that, after considering all pending contentions, the board has erroneously granted a hearing to the petitioner; CLI-14-3, 79 NRC 31 (2014)

licensing board order granting a request for hearing on the question whether the request should have been wholly denied is appealable; CLI-15-23, 82 NRC 321 (2015)

licensing board rulings will be addressed by the Commission after a licensing board has issued a final decision in a case, barring extraordinary circumstances; CLI-13-3, 77 NRC 51 (2013)

licensing boards must specify each basis relied upon for admitting a contention; CLI-12-5, 75 NRC 301 (2012)

limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, that is, when it has admitted or rejected all proposed contentions; CLI-14-3, 79 NRC 31 (2014); LBP-14-8, 79 NRC 519 (2014); LBP-15-1, 81 NRC 15 (2015)

merits determination cannot be resolved at the contention admissibility stage of the proceeding; LBP-11-6, 73 NRC 149 (2011)

NRC rules of practice provide for an automatic right to appeal a licensing board decision deciding standing and contention admissibility, on the question whether a petition to intervene and request for hearing should have been granted, or denied in its entirety; CLI-12-8, 75 NRC 393 (2012); CLI-14-2, 79 NRC 11 (2014)

NRC Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 319 (2014)

once the board makes its determination that petitioner has articulated sufficient detail as to how the proposed action would affect its members, it would not be appropriate for the board to weigh the evidence to determine whether the harm to petitioner's members is certain; CLI-15-25, 82 NRC 389 (2015)

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proximity-based standing based on frequent contacts is a determination to be made by a licensing board after weighing all the information provided; LBP-15-17, 81 NRC 753 (2015)

to define scope of an admitted contention properly, the board should have specified which bases were admitted; LBP-13-6, 77 NRC 253 (2013)

to evaluate petitioner's standing, boards construe the petition in favor of petitioner; LBP-14-4, 79 NRC 319 (2014)

to grant a hearing request, boards must find that petitioner has standing and has proposed at least one admissible contention; CLI-12-19, 76 NRC 377 (2012)

under 10 C.F.R. 2.311, appeal of a ruling on contentions is allowed only if the order wholly denies an intervention petition or a party other than the petitioner alleges that a petition for leave to intervene or a request for hearing should have been wholly denied; CLI-12-7, 75 NRC 379 (2012)

where petitioner has made no effort to establish that any proximity plus presumption should be applicable in determining standing relative to the challenged licensing action, boards must look to traditional standing precepts of injury and causation, as well as redressibility, to determine whether a sufficient factual and legal demonstration of standing has been made; LBP-13-6, 77 NRC 253 (2013)

INVESTIGATION

Congress has vested NRC with authority to issue subpoenas in conjunction with investigations that the NRC deems necessary to protect public health or to minimize danger to life or property in matters involving nuclear materials; CLI-13-5, 77 NRC 223 (2013)

licensee's concerns about NRC's administration of FOIA cannot overcome the agency's duty to investigate alleged violations; CLI-13-5, 77 NRC 223 (2013)

NRC has authority to conduct any investigations it deems necessary and proper to the administration or enforcement of its authority, which includes any regulations or orders issued pursuant to the Atomic Energy Act; CLI-13-5, 77 NRC 223 (2013)

INVESTIGATIVE REPORTS

NRC considers whether Exemption 7 would prevent public disclosure of allegation and investigation information from release; CLI-13-5, 77 NRC 223 (2013)

IRREPARABLE INJURY

absent a showing of irreparable injury, stay standards can only be met if movant can demonstrate a virtual certainty of success on the merits; CLI-15-17, 82 NRC 33 (2015)

claim of violation of the National Historic Preservation Act did not in itself establish irreparable harm warranting interlocutory review; CLI-15-17, 82 NRC 33 (2015)

Commission will consider taking discretionary interlocutory review where the requesting party shows that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 33 (2015)

denial of summary disposition neither threatens NRC Staff with immediate and serious irreparable impact that could not be alleviated through a petition for review of the presiding officer's final decision nor affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-10, 74 NRC 251 (2011)

even if a party moving for a stay fails to show irreparable injury, a board may still grant a stay if movant has made an overwhelming showing or a demonstration of virtual certainty that it will prevail on the merits; LBP-15-2, 81 NRC 48 (2015)

expense is not irreparable harm; CLI-15-24, 82 NRC 331 (2015)

for a potential injury to be irreparable, it must be shown to be imminent, certain, and great; LBP-15-2, 81 NRC 48 (2015)

harming Native American artifacts would constitute an irreparable injury because artifacts are, by their nature, unique, and their historical and cultural significance make them difficult to value monetarily; LBP-15-2, 81 NRC 48 (2015)

if motions for stay of effectiveness demonstrate neither irreparable injury nor that reversal of the licensing board is a virtual certainty, then the remaining factors need not be considered; CLI-12-11, 75 NRC 523 (2012)

immediate, irreparable harm is not presumed by a NEPA violation, even assuming such a violation has occurred; CLI-15-17, 82 NRC 33 (2015)

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injury that has never been the focus of a lawsuit cannot constitute irreparable harm; LBP-15-2, 81 NRC 48 (2015)

irreparable injury is the most important of the factors for grant or denial of a stay; LBP-15-2, 81 NRC 48 (2015)

labor and expense of pursuing litigation that petitioner sought to curtail do not constitute irreparable harm; CLI-11-10, 74 NRC 251 (2011)

merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-14-4, 79 NRC 249 (2014)

most important of the stay criteria is irreparable injury; CLI-12-11, 75 NRC 523 (2012)

ordinary burden to parties in pursuing litigation pending rulemaking does not justify disrupting ongoing license review; CLI-11-1, 73 NRC 1 (2011)

parties seeking a stay must show that they face imminent, irreparable harm that is both certain and great; CLI-12-11, 75 NRC 523 (2012)

rejection of contention where petitioner has other contentions pending for hearing does not constitute serious and irreparable harm or affect the structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 33 (2015)

test for issuance of injunctive relief was met where the tribe's evidence showed that a phase of the project would involve damage to at least one known site, and virtually ensure some loss or damage; LBP-15-2, 81 NRC 48 (2015)

to qualify as irreparable harm justifying a stay, the asserted harm must be related to the underlying claim; CLI-12-11, 75 NRC 523 (2012); LBP-15-2, 81 NRC 48 (2015)

to show imminent, irreparable harm to cultural resources, petitioner must describe with specificity the resources and the manner in which they are threatened; CLI-15-17, 82 NRC 33 (2015)

upon a strong showing of irreparable injury, stay movant need not always establish a high probability of success on the merits; LBP-15-2, 81 NRC 48 (2015)

without a showing of irreparable injury, petitioners seeking a stay of effectiveness must make an overwhelming showing of likely success on the merits; CLI-12-11, 75 NRC 523 (2012)

See also Injury in Fact

JURISDICTION

National Labor Relations Board is the agency equipped to handle alleged violations of the National Labor Relations Act, including collective bargaining disputes; LBP-14-4, 79 NRC 319 (2014)

petitions for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision and that procedural deficiency is reason enough to deny the request; CLI-12-17, 76 NRC 207 (2012)

radon emissions are regulated by EPA; LBP-15-16, 81 NRC 618 (2015)

See also Licensing Boards, Jurisdiction; Nuclear Regulatory Commission, Jurisdiction; Presiding Officer, Jurisdiction

LABOR ISSUES

labor disputes are not within the scope of enforcement proceedings; LBP-14-4, 79 NRC 319 (2014)

licensee is obliged to give local union notice and an opportunity to bargain over the effects of its decision to implement changes in the terms and conditions of the employees' employment regarding behavioral observations of security concerns; CLI-15-16, 81 NRC 810 (2015)

National Labor Relations Board is the agency equipped to handle alleged violations of the National Labor Relations Act, including collective bargaining disputes; LBP-14-4, 79 NRC 319 (2014)

LABOR UNIONS

both the union employee and the insured can be viewed as having incurred legal fees insofar as they have paid for legal services in advance as a component of the union dues or insurance premiums; LBP-11-8, 73 NRC 349 (2011)

licensing board rejected union's claim to standing, but the appeal board under the rules then in effect permitted discretionary intervention; LBP-14-4, 79 NRC 319 (2014)

to establish representational standing, union must show that the interests it seeks to protect are germane to its own purposes, identify by name and address at least one member who qualifies for standing in his or her own right, show that it is authorized by that member to request a hearing on his or her behalf, and show that neither the claim asserted nor the relief requested requires that member's participation in the proceeding in an individual capacity; LBP-14-4, 79 NRC 319 (2014)

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to intervene as a party, a union must establish standing and proffer at least one admissible contention; LBP-14-4, 79 NRC 319 (2014)

union's argument that it may demand a hearing on a confirmatory order without complying with intervention requirements of section 2.309(a) is incorrect; LBP-14-4, 79 NRC 319 (2014)

union's organizational standing argument was rejected in an indirect license transfer proceeding initiated before the Commission because it was merely the Local's representational standing argument dressed up in different clothes; LBP-14-4, 79 NRC 319 (2014)

whether licensee employees, as represented by a union, have a right to demand a hearing because they are persons adversely affected by a confirmatory order is discussed; LBP-14-4, 79 NRC 319 (2014)

LEAKAGE

acceptance criteria for Type A leak rate limits embodied in the technical specification are established to ensure that, in the event of a design-basis accident, the dose received by a member of the general public will not exceed the regulatory limits; LBP-15-26, 82 NRC 163 (2015)

because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions as defined by 10 C.F.R. 54.4(a)(1)-(3), the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 28 (2011)

containments must be designed to remain essentially leaktight during postulated accidents; LBP-13-8, 78 NRC 1 (2013)

contention that applicant must include a discussion of environmental impacts of spent fuel pool leakage, fires, and lack of a spent fuel repository is dismissed; LBP-14-12, 80 NRC 138 (2014)

contention that license renewal application lacks supporting documentation providing analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 1 (2013)

in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 221 (2015)

intervenor's reliance on long-available documents regarding leakages and notices of violation made a contention untimely as filed; LBP-15-11, 81 NRC 401 (2015)

key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 28 (2011)

leakage rate acceptance limit is based on minimizing leakage that would occur at the calculated peak containment internal pressure related to the design-basis loss-of-coolant accident; LBP-15-26, 82 NRC 163 (2015)

licensees must conduct periodic containment leakage tests to ensure that leakage does not exceed allowable rates; LBP-15-26, 82 NRC 163 (2015)

liquid released from a pipe where the pressure boundary is maintained would not be sufficient to exceed the dose limits specified in 10 C.F.R. Part 54; LBP-13-13, 78 NRC 246 (2013)

NRC argument that leaks from spent fuel pools will not occur because the NRC is on duty was rejected; LBP-13-4, 77 NRC 107 (2013)

NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 71 (2014)

overall integrated leakage rate must not exceed the allowable leakage rate with margin, as specified in the Technical Specifications; LBP-15-26, 82 NRC 163 (2015)

petitioners' request for cold shutdown because of radiological contamination of groundwater from tritium is denied; DD-11-3, 73 NRC 375 (2011)

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)

request for immediate action on leakage from the safety injection refueling water tank did not meet the criteria for review; DD-15-3, 81 NRC 713 (2015)

required Type A containment leakage test measures total leakage rate from all potential leakage paths, including containment liner welds, valves, fittings, and components that penetrate the containment; LBP-15-26, 82 NRC 163 (2015)

SUBJECT INDEX

simply referencing a study without explaining the information's significance relative to the potential containment leakage monitored by the testing at issue does not establish its materiality; LBP-15-26, 82 NRC 163 (2015)

through the regulatory process, which includes plant inspections, notice and guidance to licensees, and enforcement actions, NRC takes a host of measures to improve the ability to timely detect and correct inadvertent leaks to assure compliance with public dose limits; LBP-11-2, 73 NRC 28 (2011)

Type B pneumatic tests detect and measure local leakage rates across pressure-retaining, leakage-limiting boundaries other than valves; LBP-15-26, 82 NRC 163 (2015)

Type C pneumatic tests measure containment isolation valve leakage rates; LBP-15-26, 82 NRC 163 (2015)

LEGAL AUTHORITIES

grant of discretionary review must show that a board's ruling was a departure from, or contrary to, established law; CLI-15-7, 81 NRC 481 (2015)

petition for review must raise a substantial question with respect to whether a necessary legal conclusion is without governing precedent or is contrary to established law; CLI-15-7, 81 NRC 481 (2015)

specific regulations control over general regulations; CLI-15-10, 81 NRC 535 (2015)

LEGAL STANDARDS

contention frames a legal dispute over the meaning of a regulation's direction that a license amendment shall be in accord with the provisions of 10 C.F.R. 50.75(h)(5); LBP-15-24, 82 NRC 68 (2015)

LIABILITY INSURANCE

award of attorneys' fees under the Equal Access to Justice Act can include fees paid by a third-party liability insurer; LBP-11-8, 73 NRC 349 (2011)

claimant with a legally enforceable right to full indemnification of attorney fees from a solvent third party cannot be deemed to have incurred that expense for purposes of the Equal Access to Justice Act, and hence is not eligible for an award of fees under that Act; LBP-11-8, 73 NRC 349 (2011)

denying Equal Access to Justice Act awards in insurance contexts would undermine the dual purposes of EAJA by both maintaining financial deterrents for those who would want to challenge unjust government action and not deterring unreasonable government actions; LBP-11-8, 73 NRC 349 (2011)

holders of a Parts 40/70 uranium enrichment facility license are required to maintain adequate nuclear liability insurance, with proof of such insurance necessary prior to a license being issued; LBP-11-11, 73 NRC 455 (2011)

in an actuarial sense the cost of the defense, to the extent borne by the insurance company, is a cost that the insured paid for, just as he would have paid a lawyer for his defense had he had no insurance; LBP-11-8, 73 NRC 349 (2011)

nothing in the Equal Access to Justice Act suggests a purpose to prevent a contractual agreement, or more broadly, to discourage the purchase of liability insurance; LBP-11-8, 73 NRC 349 (2011)

LICENSE AMENDMENT PROCEEDINGS

Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding; LBP-13-7, 77 NRC 307 (2013)

LICENSE AMENDMENTS

agency actions not formally labeled as license amendments nevertheless can constitute de facto license amendments and accordingly trigger hearing rights for the public under section 189a of the AEA; CLI-15-14, 81 NRC 729 (2015)

agency approval or authorization is a necessary component of Commission action that affords a hearing opportunity under AEA § 189a, but not all agency approvals granted to licensees constitute de facto licensee amendments; CLI-15-14, 81 NRC 729 (2015)

amendment requests do not require an updated or separate emergency plan unless such a plan would be germane to the type of amendment request under review or is part of a licensee's periodic update of emergency plans; LBP-11-29, 74 NRC 612 (2011)

any changes to the facility as described in the final safety analysis report must be either submitted to the NRC for approval through a license amendment or changed in accordance with the provisions of this section; DD-11-3, 73 NRC 375 (2011)

board determined that confirmatory action letter was a de facto license amendment, which allows for public intervention; LBP-14-1, 79 NRC 39 (2014)

SUBJECT INDEX

considerations that NRC should review for grant of a license amendment are defined in 10 C.F.R. 50.40; LBP-15-17, 81 NRC 753 (2015)

deviations from the original design must be evaluated against the criteria in 10 C.F.R. 70.72 to determine if a license amendment is required or if applicant could make the change without NRC approval; LBP-12-21, 76 NRC 218 (2012)

direction is given on what licensee actions do and do not constitute a de facto license amendment triggering hearing rights; CLI-15-14, 81 NRC 729 (2015)

if a license were amended, the public's only means to participate in future schedule changes would be through a request for action under 10 C.F.R. 2.206; LBP-15-17, 81 NRC 753 (2015)

if applicant subsequently wished to change its commitments to any significant extent, it would need to file a license amendment request, which could then be challenged by seeking a hearing; LBP-14-3, 79 NRC 267 (2014)

in determining whether a license or permit amendment will be issued to applicant, the Commission is to be guided by the considerations that govern issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate; LBP-15-17, 81 NRC 753 (2015)

licensee action without NRC approval of an increase in authority or alteration of the terms of the license does not constitute a de facto amendment; CLI-15-14, 81 NRC 729 (2015)

licensee cannot amend the terms of its license unilaterally; CLI-15-14, 81 NRC 729 (2015)

licenses may be amended to add appropriate conditions, depending on whether the conditions are within the scope of the certified design; CLI-12-9, 75 NRC 421 (2012)

NRC is empowered to issue an order amending any license as it deems necessary to effectuate the provisions of the Act to promote the common defense and security or to protect health or to minimize danger to life or property; LBP-13-7, 77 NRC 307 (2013)

NRC may at any time before expiration of a license, require further written statements from licensee to determine whether a license should be modified; LBP-13-7, 77 NRC 307 (2013)

petitioners' premise that a series of NRC Staff communications relating to plant oversight should be considered as an element of a single, overarching de facto license amendment was rejected; CLI-15-14, 81 NRC 729 (2015)

whenever licensee desires to amend the license, application for an amendment must be filed with the Commission; CLI-15-14, 81 NRC 729 (2015)

See also Materials License Amendment Applications; Materials License Amendment Proceedings; Materials License Amendments; Operating License Amendments

LICENSE APPLICATIONS

all information that applicant uses to support its license renewal application has to be maintained in an auditable and retrievable form; LBP-13-13, 78 NRC 246 (2013)

although environmental contentions ultimately challenge NRC's compliance with the National Environmental Policy Act, applicant may advocate for a particular challenged position set forth in the environmental impact statement; LBP-12-5, 75 NRC 227 (2012)

applicant may incorporate material by reference that the applicant itself has previously submitted, not material prepared by NRC Staff; LBP-12-24, 76 NRC 503 (2012)

applicants must provide information that is complete and accurate in all material respects; LBP-15-24, 82 NRC 68 (2015)

each reactor license renewal application must contain a list of structures and components subject to aging management review; LBP-13-13, 78 NRC 246 (2013)

if an application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding; CLI-13-10, 78 NRC 563 (2013)

if NRC Staff detects deficiencies in an application before or after a notice of hearing opportunity is issued, applicant will freely be given (outside the adjudicatory process) ample opportunity to amend it; LBP-11-9, 73 NRC 391 (2011)

intervention petitions must be filed within 60 days based on the documents then in existence, meaning that the petition must be based on the documents submitted with the application; LBP-11-22, 74 NRC 259 (2011)

license applications must specifically state information that NRC, by rule or regulation, may determine to be necessary to decide technical and financial qualifications of applicant; DD-15-8, 82 NRC 107 (2015)

SUBJECT INDEX

NRC preserves the right to a hearing when an application is amended by allowing new or amended contentions to be filed in response to material new information; LBP-11-22, 74 NRC 259 (2011)
permitting an application to be modified or improved throughout the NRC's review is compatible with the dynamic licensing process followed in Commission licensing proceedings; CLI-11-2, 73 NRC 333 (2011)
public interest can well be served by revisions to an application that end up "getting it right" and by the Staff's expected thorough analysis of such revisions; LBP-11-9, 73 NRC 391 (2011)
See also Combined License Application; Contested License Applications; Early Site Permit Application; License Renewal Applications; Materials License Amendment Applications; Materials License Applications; Operating License Amendment Applications; Operating License Applications; Uncontested License Applications

LICENSE CONDITIONS

although NRC takes the position that it lacks authority to impose environmental restrictions on transmission corridors, those impacts should have been analyzed as a direct effect of the NRC action even under NRC's new interpretation; LBP-14-9, 80 NRC 15 (2014)
although the Commission found NRC Staff's review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 555 (2015)
boards cannot assume that applicants will not comply with its regulatory responsibilities, including its license conditions; LBP-15-3, 81 NRC 65 (2015)
Commission imposed a license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities following a beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink; CLI-12-9, 75 NRC 421 (2012)
Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation, or order, such additional requirements and conditions with respect to licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary in order to protect health or to minimize danger of life or property; LBP-15-16, 81 NRC 618 (2015)
current licensing basis of an operating license shall continue during the license renewal period, but these conditions may be supplemented or amended as necessary to protect the environment during the term of the renewed license and will be derived from information contained in the supplement to the environmental report, as analyzed and evaluated in the NRC record of decision; LBP-11-17, 74 NRC 11 (2011)
current reactor licensees comply with the requirements of section 50.54(hh)(2) through conditions on their operating licenses; LBP-11-21, 74 NRC 115 (2011)
even if licensee chooses to satisfy a license condition by incorporating the condition into its inservice testing program, it still must comply with 10 C.F.R. 50.55a(f)(4) throughout the life of the plant; CLI-12-9, 75 NRC 421 (2012)
future actions on which the draft environmental impact statement purports to rely in its analysis of impacts constitute a license condition, the use of which is permitted in NEPA documents; LBP-13-9, 78 NRC 37 (2013)
if a board determines after full adjudication that the license amendment should not have been granted, it may be revoked or conditioned; LBP-15-16, 81 NRC 618 (2015)
if combined licenses issue without including license conditions, NRC regulations relevant to the finality of decisions could result in some additional administrative requirements to be satisfied in imposing new requirements on licensee; CLI-12-9, 75 NRC 421 (2012)
if licensee amends any of its grandfathered license conditions that were related to the decommissioning trust fund, from that point forward licensee must comply with all requirements of 10 C.F.R. 50.75(h); LBP-15-24, 82 NRC 68 (2015); LBP-15-28, 82 NRC 233 (2015)
if licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of 10 C.F.R. 50.75(h); LBP-15-24, 82 NRC 68 (2015)
implication that any agency prerequisite with which applicant must comply to operate a plant during an extended term constitutes an "approval" under 10 C.F.R. 51.45(d) would entail an unreasonably strained definition of "approval"; LBP-12-15, 76 NRC 14 (2012)

SUBJECT INDEX

in a combined license proceeding, the Commission may require implementation of mitigation measures it deems necessary and appropriate by imposing conditions in the license; LBP-12-18, 76 NRC 127 (2012)

in granting a proposed license, board may condition it upon some precautionary measures required at the chosen site; LBP-15-16, 81 NRC 618 (2015)

in NEPA context, path that licensee and NRC Staff must follow relative to a license condition is sufficiently clear that continuing to hold the hearing open while it is completed would be an unnecessary extension of the adjudicatory process; LBP-15-3, 81 NRC 65 (2015)

in setting license conditions, NRC Staff may assume that a licensee will comply with all requirements imposed by the license; LBP-15-16, 81 NRC 618 (2015)

issued licenses can be revoked, conditioned, modified, or affirmed based on the evidence reviewed at the evidentiary hearing; LBP-15-16, 81 NRC 618 (2015)

items relied on for safety that are a central focus of the integrated safety analysis process are the subject of three proposed license conditions for a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011)

licensee cannot be exempted from license conditions without a license amendment modifying such conditions; LBP-15-28, 82 NRC 233 (2015)

licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent; DD-11-6, 74 NRC 420 (2011)

licensee shall establish a detection monitoring program needed for NRC to set the site-specific groundwater protection standards, and the monitoring program must be in place when specified by NRC in license conditions; LBP-15-3, 81 NRC 65 (2015)

licenses may be altered as a result of the evidentiary hearing; CLI-15-17, 82 NRC 33 (2015)

licenses may be amended to add appropriate conditions, depending on whether the conditions are within the scope of the certified design; CLI-12-9, 75 NRC 421 (2012)

licensing board imposes a license condition directing implementation of a surveillance program for explosively actuated valves prior to fuel load; CLI-12-2, 75 NRC 63 (2012)

not all licensee commitments must be converted into license conditions in order to be enforceable; LBP-14-3, 79 NRC 267 (2014)

NRC authority to review offsite impacts of transmission lines goes beyond merely factoring them into a final cost-benefit balance and includes as well the authority where necessary to impose license conditions to minimize those impacts; LBP-11-6, 73 NRC 149 (2011)

NRC can, as a condition of licensure, insist that offsite transmission lines built solely to serve a nuclear facility be designed to minimize environmental disturbance; LBP-14-9, 80 NRC 15 (2014)

NRC has authority to impose environmental restrictions on new transmission lines intended to serve new nuclear power plants; LBP-14-9, 80 NRC 15 (2014)

NRC has the authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-10, 74 NRC 251 (2011)

NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 15 (2014)

NRC licensees require a license amendment to modify license conditions; LBP-15-24, 82 NRC 68 (2015)

NRC may impose such additional conditions, requirements, and limitations on a license as may be necessary to effectuate the purposes of the Atomic Energy Act and the agency's regulations; LBP-11-11, 73 NRC 455 (2011)

NRC Staff granted an exemption from 10 C.F.R. 74.33(c)(5) subject to license conditions that require applicant to submit, for the Staff's prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 218 (2012)

NRC Staff has authority to require implementation of non-aging-management severe accident mitigation alternatives through its current licensing basis backfit review under Part 50 or through setting conditions of the license renewal; LBP-11-17, 74 NRC 11 (2011)

NRC Staff may impose additional requirements to protect against a reevaluated flood hazard; DD-15-5, 81 NRC 877 (2015)

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- NRC Staff verification of Fukushima-related license conditions should be a straightforward matter of applying a defined set of requirements; CLI-12-2, 75 NRC 63 (2012)
- NRC uses environmental impact information to determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; LBP-14-9, 80 NRC 15 (2014)
- NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-11-11, 74 NRC 427 (2011); LBP-11-35, 74 NRC 701 (2011)
- Pentapartite Agreement between the United States and four European governments to prevent new restricted data from being disseminated to European nationals will be a prerequisite to the NRC Staff issuing a facility clearance; LBP-11-11, 73 NRC 455 (2011)
- qualifications of nuclear criticality safety manager for uranium enrichment facility are imposed as a license condition; LBP-11-11, 73 NRC 455 (2011)
- reasonable assurance of financial qualifications can be ensured through license conditions; LBP-14-3, 79 NRC 267 (2014)
- record of decision must also summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-12-18, 76 NRC 127 (2012); LBP-13-9, 78 NRC 37 (2013)
- regulation of offsite transmission lines is within NRC's authority under section 101 of the Atomic Energy Act and nothing in the AEA precludes NRC from implementing, through issuance of conditional licenses, NEPA's environmental mandate; LBP-14-9, 80 NRC 15 (2014)
- request under 10 C.F.R. 50.54(f) is to enable the Commission to determine whether or not the license should be modified, suspended, or revoked; CLI-15-14, 81 NRC 729 (2015)
- Staff imposed a license condition on a uranium enrichment facility to ensure that clearances are obtained before classified matter is processed, stored, reproduced, transmitted, handled, or accessed; LBP-11-11, 73 NRC 455 (2011)
- there is no time limit on when licensee can seek an amendment to the license conditions relating to its decommissioning trust fund; LBP-15-24, 82 NRC 68 (2015)
- to be an acceptable method for providing reasonable assurance of financial qualifications, a proposed license condition must be ministerial and by its very nature require and be readily susceptible to post-licensing verification such that the NRC Staff is not deferring its safety finding through the use of the license condition; LBP-14-3, 79 NRC 267 (2014)
- to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to a testing program for squib valves; CLI-12-9, 75 NRC 421 (2012)
- under the Atomic Energy Act, NRC can issue conditional licenses for regulatory purposes, and thus there can be no objection to its use of the same means to achieve environmental ends as well; LBP-14-9, 80 NRC 15 (2014)
- uranium enrichment facility license must have a condition requiring the licensee to maintain and follow a source material control and accounting program and maintain records of any MC&A program changes made without Commission approval for 5 years from the date of the change; LBP-11-11, 73 NRC 455 (2011)
- when contentions in contested hearings are purportedly resolved by license conditions, the Commission has stated that such conditions must be drawn very precisely; LBP-12-21, 76 NRC 218 (2012)
- where license conditions predate issuance of 10 C.F.R. 50.75(h)(5), the plant was grandfathered and allowed to keep its existing license conditions; LBP-15-24, 82 NRC 68 (2015)
- where the combined license application references a certified design, elements of the licensing basis already have been established, and thus NRC would have to establish a regulatory basis for any change to the established design regardless of whether the COLs have issued; CLI-12-9, 75 NRC 421 (2012)
- LICENSE EXPIRATION**
- contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 239 (2013)

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each specific license expires at the end of the day on the date stated in the license unless licensee has filed an application for renewal not less than 30 days before that expiration date; CLI-15-17, 82 NRC 33 (2015)

earliest that a license renewal application may be submitted is 20 years before the expiration date of the operating license in effect; CLI-13-7, 78 NRC 199 (2013)

existing license will not be deemed to have expired until the license renewal application has been finally determined; CLI-15-6, 81 NRC 340 (2015)

licensee may continue to operate a reactor under an expired license if a license renewal application is timely submitted; CLI-14-5, 79 NRC 254 (2014); LBP-13-13, 78 NRC 246 (2013)

power reactor licensee may preserve its license by filing a renewal application at least 5 years before its license is set to expire, affording NRC Staff ample time to complete the required environmental and safety reviews; LBP-11-30, 74 NRC 627 (2011)

specific licenses expire on the date stated in the license unless licensee has filed a request for renewal not less than 30 days prior to that date, and a license in timely renewal expires on the day on which NRC makes a final determination to deny the request, or, if the determination states an expiration date, then the stated expiration date; CLI-12-4, 75 NRC 154 (2012)

time frame for SAMA analysis is inherent in NRC's regulatory scheme, which provides for a 40-year license term, with the possibility of license renewal for an additional 20-year period; CLI-13-7, 78 NRC 199 (2013)

when licensee has made timely and sufficient application for a renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-11-30, 74 NRC 627 (2011); LBP-15-2, 81 NRC 48 (2015); LBP-15-11, 81 NRC 401 (2015)

LICENSE RENEWAL APPLICATIONS

absent a transfer, license renewal application will be denied where licensee remains under foreign ownership, control, or domination; CLI-14-5, 79 NRC 254 (2014)

applicant is required to list structures and components subject to an aging management review; LBP-13-8, 78 NRC 1 (2013)

applicant must update its LRA annually to reflect changes in its current licensing basis, but such updating does not explicitly extend to the environmental report; LBP-11-32, 74 NRC 654 (2011)

contention fails because it contests NRC Staff's safety review rather than the license renewal application; LBP-15-15, 81 NRC 598 (2015)

earliest that a license renewal application may be submitted is 20 years before the expiration date of the operating license in effect; CLI-13-7, 78 NRC 199 (2013)

licensee may continue to operate a reactor under an expired license if a license renewal application is timely submitted; CLI-14-5, 79 NRC 254 (2014)

NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)

petitioners request that NRC amend 10 C.F.R. 54.17(c) to permit a reactor licensee to file a license renewal application no sooner than 10 years before the expiration of the current license; CLI-11-1, 73 NRC 1 (2011)

petitioner's request that the Commission defer a decision on the license renewal applications pending disposition of its forthcoming rulemaking and other potential events is premature and is therefore denied; CLI-14-6, 79 NRC 445 (2014)

severe accident mitigation alternatives analysis for relicensing must be performed by licensee and included in the license renewal application; LBP-12-26, 76 NRC 559 (2012)

there was no prejudice to intervenor where the board considered licensee's supplement to the application, which contained the updated aging management plan, because intervenor could have sought to amend its contention to respond to the supplement; CLI-12-10, 75 NRC 479 (2012)

timing of license issuance is informed by instruction for NRC Staff to promptly issue its approval or denial of the application consistent with its findings, and despite the pendency of a hearing; LBP-15-2, 81 NRC 48 (2015)

when licensee has made timely and sufficient application for a license renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined

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by the agency; LBP-11-30, 74 NRC 627 (2011); LBP-15-2, 81 NRC 48 (2015); LBP-15-11, 81 NRC 401 (2015)

See also Operating License Renewal
LICENSE RENEWAL PROCEEDINGS

brief stay of the close of a licensing proceeding was ordered to allow a state the opportunity to request status as an interested governmental entity; CLI-12-6, 75 NRC 352 (2012)
challenges to the design of the nuclear power plant are outside the scope of a license renewal proceeding; LBP-11-23, 74 NRC 287 (2011)
nothing in NRC case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans; LBP-14-6, 79 NRC 404 (2014)
See also Operating License Renewal; Operating License Renewal Proceedings

LICENSE RENEWALS

in context of a renewal application, reasonable assurance is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-14-1, 79 NRC 39 (2014)
proceedings have been consolidated for the renewal of a materials license and to contest NRC Staff's denial of that renewal in order to, among other things, litigate a common issue only once; CLI-14-5, 79 NRC 254 (2014)
See also Materials License Renewal; Operating License Renewal; Operating License Renewal Proceedings

LICENSE TRANSFER APPLICATIONS

applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 500 (2015)
applicant must submit estimates for total annual operating costs for each of the first 5 years of facility operation; CLI-15-8, 81 NRC 500 (2015)
Commission decision does not foreclose NRC Staff's ability to request additional information on any part of the license transfer application; CLI-15-26, 82 NRC 408 (2015)
de novo standard is applicable to review of an NRC Staff decision on a license transfer application; CLI-15-26, 82 NRC 408 (2015)
denial of applications typically is on grounds of operating costs and inability to pay the annual cost for spent fuel storage; CLI-14-5, 79 NRC 254 (2014)
environmental analysis under NEPA need not be included; CLI-15-8, 81 NRC 500 (2015)
five years of financial revenue-and-expense estimates must be submitted as part of a license transfer application; CLI-15-26, 82 NRC 408 (2015)
formulas, based on reactor type and power level, are provided in 10 C.F.R. 50.75(c) for determining minimum dollar amounts required to demonstrate reasonable assurance of decommissioning funding; CLI-15-8, 81 NRC 500 (2015)
general information required for an application in provided in 10 C.F.R. 50.33; CLI-14-5, 79 NRC 254 (2014)
issuance of a request for additional information does not alone establish deficiencies in an application or that NRC Staff will go on to find any of applicant's clarifications, justifications, or other responses to be unsatisfactory; CLI-15-8, 81 NRC 500 (2015)
licensee is required to submit an application to NRC; CLI-14-5, 79 NRC 254 (2014)
NEPA and 10 C.F.R. Part 52 requirements do not apply in the license transfer context; CLI-15-8, 81 NRC 500 (2015)
subject areas that license transfer applications must address are outlined in 10 C.F.R. 50.80(b)(1)(i), (2); CLI-15-8, 81 NRC 500 (2015)
when promulgating Subpart M, the Commission was well aware that most license transfer issues would be financial in nature; CLI-14-5, 79 NRC 254 (2014)

LICENSE TRANSFER PROCEEDINGS

absent a unanimous preference for a hearing consisting of written comments, the license transfer hearing will be an oral one; CLI-14-5, 79 NRC 254 (2014)
although NRC Staff is not required to be a party to a license transfer adjudication, the Commission directs the Staff to become a party; CLI-14-5, 79 NRC 254 (2014)
any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 254 (2014)

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- Commission denies a request for a hearing and to intervene in a license transfer proceeding; CLI-15-8, 81 NRC 500 (2015)
- Commission has authority to rule that a license transfer case be adjudicated under Subpart L; CLI-14-5, 79 NRC 254 (2014)
- distance of 3 miles in a license transfer proceeding between facility and organization's offices does not qualify for organizational standing; LBP-13-6, 77 NRC 253 (2013)
- following an evidentiary proceeding, presiding officer certifies the record of the proceeding to the Commission for its final decision; LBP-14-10, 80 NRC 85 (2014)
- full-scale health-and-safety reviews of a plant are not required; CLI-15-8, 81 NRC 500 (2015)
- hearings are to be oral in nature unless the parties unanimously move for a hearing consisting of written comments; CLI-14-5, 79 NRC 254 (2014)
- NRC Staff is not required to be a party to a license transfer adjudication; CLI-14-5, 79 NRC 254 (2014)
- NRC Staff is required to notify the presiding officer and the parties whether it desires to participate as a party in a license transfer proceeding; CLI-14-5, 79 NRC 254 (2014)
- once the nature of a license transfer hearing is settled, Subpart M and NRC Model Milestones set a default schedule for the remainder of the proceeding; CLI-14-5, 79 NRC 254 (2014)
- ordinarily, the Commission itself presides over license transfer hearings, but NRC rules allow the Commission to designate one or more Commissioners or any other person permitted by law to preside; CLI-14-5, 79 NRC 254 (2014)
- procedural rules in Subpart M govern adjudications on transfer applications; CLI-14-5, 79 NRC 254 (2014)
- provisions of 10 C.F.R. Part 2, Subpart M, together with the generally applicable intervention provisions in 10 C.F.R. Part 2, Subpart C, govern adjudicatory proceedings on license transfer applications; CLI-15-8, 81 NRC 500 (2015)
- record of licensing board evidentiary hearing on application must be certified to the Commission; CLI-15-26, 82 NRC 408 (2015)
- scope of Subpart M proceedings covers all adjudicatory proceedings on an application for transfer of control of an NRC license, without distinction as to how the proceeding commences; CLI-14-5, 79 NRC 254 (2014)
- Subpart M logically applies to all license transfer hearing requests, regardless of who files them, because the types of issues litigated (e.g., financial assurance, technical qualifications, foreign ownership, and staffing levels) are likely to be similar regardless of whether they are initiated by intervention petitions or by challenges to a Staff action; CLI-14-5, 79 NRC 254 (2014)
- union's organizational standing argument was rejected in an indirect license transfer proceeding initiated before the Commission because it was merely the Local's representational standing argument dressed up in different clothes; LBP-14-4, 79 NRC 319 (2014)
- upon completion of a license transfer hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision; CLI-14-5, 79 NRC 254 (2014)
- where the Commission does not preside over a license transfer proceeding, the presiding officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented; CLI-14-5, 79 NRC 254 (2014)
- LICENSE TRANSFERS**
- absent a transfer, license renewal application will be denied where licensee remains under foreign ownership, control, or domination; CLI-14-5, 79 NRC 254 (2014)
- for power reactors, NRC developed a Commission-approved standard review plan to assist in evaluating applications for reactor licenses or applications for the transfer of such licenses; LBP-11-11, 73 NRC 455 (2011)
- license transfer applicant must demonstrate that the proposed transferee is qualified to hold the license; CLI-15-26, 82 NRC 408 (2015)
- licensee must obtain NRC's written consent prior to transferring an NRC license; CLI-15-26, 82 NRC 408 (2015)
- proposed transferee for an operating license must satisfy the same financial qualification requirements that apply to an applicant for an initial operating license; CLI-15-26, 82 NRC 408 (2015)

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written consent from NRC is required for all direct or indirect license transfers; CLI-15-8, 81 NRC 500 (2015)

LICENSEE CHARACTER

absent documentary support, NRC has declined to assume that licensees will contravene its regulations; CLI-11-9, 74 NRC 233 (2011)

Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; CLI-14-11, 80 NRC 167 (2014); LBP-15-4, 81 NRC 156 (2015)
management integrity contentions are admissible in license renewal proceedings only if they rely on specific supporting information, including references to a serious incident involving shutdown where management responsible for the incident remained in place, a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert in support of the contention; LBP-13-8, 78 NRC 1 (2013)

more subjective appraisal of declining property values might be permissible in the context of a licensing action associated with an applicant or facility shown to have engaged in a continuous and pervasive course of illegal conduct; LBP-12-3, 75 NRC 164 (2012)

See also Management Character and Competence

LICENSEE EMPLOYEES

adequacy of nuclear criticality safety manager qualifications for uranium enrichment facility is discussed and a license condition is imposed; LBP-11-11, 73 NRC 455 (2011)

applicant with foreign ownership can still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of applicant responsible for special nuclear material be U.S. citizens; LBP-14-3, 79 NRC 267 (2014)

as de facto targets of an enforcement order, licensee employees have automatic standing if they are adversely affected by an enforcement order; LBP-14-4, 79 NRC 319 (2014)

boards lack authority to order NRC Staff to bring licensee employees into settlement negotiations; LBP-14-4, 79 NRC 319 (2014)

contention that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on the off-duty employees of licensee not otherwise required by the NRC to observe and report the offsite, off-duty conduct of fellow employees is inadmissible; LBP-14-4, 79 NRC 319 (2014)

employees are protected against unnecessary or excessive restrictions on their conduct; LBP-14-4, 79 NRC 319 (2014)

individuals who are subject to an access authorization program shall, at a minimum, report any concerns arising from behavioral observation and are individually liable if they fail to do so; LBP-14-4, 79 NRC 319 (2014)

licensee is obliged to give local union notice and an opportunity to bargain over the effects of its decision to implement changes in the terms and conditions of the employees' employment regarding behavioral observations of security concerns; CLI-15-16, 81 NRC 810 (2015)

under certain circumstances, a licensee or vendor might be required to disclose confidential ECP information (including the identity of a concerned individual) at the behest of a government agency (including the NRC), or in response to a subpoena; CLI-13-5, 77 NRC 223 (2013)

whether licensee employees, as represented by a union, have a right to demand a hearing because they are persons adversely affected by a confirmatory order is discussed; LBP-14-4, 79 NRC 319 (2014)

LICENSEE EVENT REPORTS

current licensing basis includes licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports; LBP-11-21, 74 NRC 115 (2011)

relief valve failure and inoperability found during the refueling outage, which potentially affected the ability of the SRVs to satisfy design actuation requirements, meets the requirements for an LER; DD-11-6, 74 NRC 420 (2011)

LICENSEES

during a nuclear emergency in the United States, the individual licensee and the appropriate state and local government officials have direct responsibilities for the coordinated response to the event; LBP-11-15, 73 NRC 629 (2011)

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licensee is required to ensure that the site can be safely maintained and decommissioned, even in the face of unexpected costs; LBP-15-24, 82 NRC 68 (2015)

licensees cannot amend the terms of their license unilaterally; CLI-14-11, 80 NRC 167 (2014)

NRC Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 319 (2014)

protecting against the threat of air attacks is not within licensees' responsibilities because a private security force cannot reasonably be expected to defend against such attacks and adequate protection is ensured through the actions of other federal agencies with defense capabilities and air-safety expertise; CLI-11-4, 74 NRC 1 (2011)

responsibility for constructing and operating a waste repository was assigned to the Department of Energy, not NRC; CLI-15-4, 81 NRC 221 (2015)

See Materials Licensees

LICENSES

applicants for utilization or production facilities for industrial or commercial purposes must comply with the terms of AEA § 103; LBP-14-3, 79 NRC 267 (2014)

by its nature a license is presumptively an exclusive (not an inclusive) regulatory device; LBP-13-7, 77 NRC 307 (2013)

licensing board takes official notice of NRC-issued licenses; LBP-15-3, 81 NRC 65 (2015)

regulated conduct that is neither delineated nor reasonably encompassed within delineated categories of authorized conduct presumptively remains unlicensed; LBP-13-7, 77 NRC 307 (2013)

LICENSING

NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand is appropriately addressed; CLI-12-17, 76 NRC 207 (2012)

LICENSING BOARD DECISIONS

adjudicatory records and board decisions and any Commission appellate decisions become, in effect, part of final environmental impact statements; CLI-12-1, 75 NRC 39 (2012); LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)

board is directed to rule within 140 days of the date of the referral on whether the hearing request should be granted; CLI-15-14, 81 NRC 729 (2015)

Commission affords substantial deference to licensing boards' contention admission decisions; CLI-15-6, 81 NRC 340 (2015); CLI-15-9, 81 NRC 512 (2015)

Commission decision to vacate an unreviewed board decision does not intimate any opinion on the soundness of the board's decision; CLI-13-9, 78 NRC 551 (2013); CLI-13-10, 78 NRC 563 (2013)

Commission expects its licensing boards to review testimony, exhibits, and other evidence carefully and to resolve factual disputes; CLI-13-9, 78 NRC 551 (2013)

Commission gives substantial deference to licensing board findings of fact, and it will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-14-10, 80 NRC 157 (2014)

Commission will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-15-9, 81 NRC 512 (2015)

decision of the board or Commission becomes the record of decision, which may also incorporate the final supplemental environmental impact statement; CLI-15-6, 81 NRC 340 (2015)

final environmental impact statement or supplement thereto must be considered in the agency's decisionmaking; LBP-15-3, 81 NRC 65 (2015)

final supplemental environmental impact statement is supplemented by the board's decision as well as by the hearing record; CLI-15-6, 81 NRC 340 (2015)

following an evidentiary hearing, presiding officer certifies the record of the proceeding to the Commission for its final decision; LBP-14-10, 80 NRC 85 (2014)

four factors must be addressed when the Commission or presiding officer is asked to stay effectiveness of a presiding officer's decision or action during pendency of an appeal; CLI-15-17, 82 NRC 33 (2015)

if modification of the final environmental impact statement by NRC Staff testimony or the board's decision is too substantial, recirculation of the FEIS would be required; LBP-13-13, 78 NRC 246 (2013)

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- licensing board erred in concluding that it is impossible to waive the exception in 10 C.F.R. 51.53(c)(3)(ii)(L); CLI-13-7, 78 NRC 199 (2013)
- licensing board was not justified in rendering a final judgment in the face of unfolding developments having a decided bearing and conceivably crucial effect on the issue that shaped that judgment; LBP-12-19, 76 NRC 184 (2012)
- NRC will not issue final licenses dependent upon the Waste Confidence Rule until the court's remand is appropriately addressed; LBP-12-21, 76 NRC 218 (2012)
- presiding officer's approval of settlement must give due consideration to public interest; LBP-15-21, 82 NRC 1 (2015)
- proposed questions filed by all parties will be publicly released by order of the board 30 days after its decision; LBP-13-13, 78 NRC 246 (2013)
- ruling that supplements the record should state clearly what evidence the board found credible, whether the evidence supports or alters NRC Staff's conclusions in the environmental impact statement, and what the impact of the proposed action for the specific issue is expected to be; CLI-15-6, 81 NRC 340 (2015)
- to define the scope of an admitted contention properly, boards should specify which bases are admitted; LBP-13-10, 78 NRC 117 (2013)
- to the extent that any environmental findings by the presiding officer or the Commission differ from those in the final environmental impact statement, the FEIS is deemed modified by the decision; LBP-13-13, 78 NRC 246 (2013)
- unreviewed board decisions are not binding on future boards; CLI-13-10, 78 NRC 563 (2013)
- LICENSING BOARD ORDERS**
- all parties are obliged to follow the procedures in 10 C.F.R. Part 2 and board scheduling orders; CLI-14-10, 80 NRC 157 (2014)
- board order is appealable when it disposes of a major segment of the case or terminates a party's right to participate; CLI-11-10, 74 NRC 251 (2011)
- boards are expected to explain the necessity of cross-examination in greater detail than a broad-brush reference to a proceeding's voluminous or technical nature; CLI-12-18, 76 NRC 371 (2012)
- LICENSING BOARDS**
- for mandatory proceedings on uranium enrichment facility licensing, licensing boards are to conduct a simple sufficiency review rather than a de novo review on both AEA and NEPA issues; LBP-11-11, 73 NRC 455 (2011)
- in mandatory proceedings for uranium enrichment facility licensing, boards are to make independent environmental judgments with respect to certain NEPA findings; LBP-11-11, 73 NRC 455 (2011)
- in mandatory proceedings on uranium enrichment facility licensing, boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-11-11, 73 NRC 455 (2011)
- LICENSING BOARDS, AUTHORITY**
- although a board may view petitioner's supporting information in a light favorable to the petitioner, it cannot do so by ignoring NRC contention admissibility rules, which require petitioner (not the board) to supply all of the required elements for a valid intervention petition; LBP-11-20, 74 NRC 65 (2011)
- although a licensing board is not required to recast contentions to make them acceptable, it is also not precluded from doing so; LBP-11-13, 73 NRC 534 (2011)
- although boards are accorded considerable discretion to manage proceedings before them, they need not exercise it; LBP-15-15, 81 NRC 598 (2015)
- although boards do not decide the merits or resolve conflicting evidence at the contention admission stage, materials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged; LBP-15-20, 81 NRC 829 (2015)
- although Commission approval is required before a board exercises its sua sponte authority, that authority still exists; LBP-14-9, 80 NRC 15 (2014)
- at contention admissibility stage, the board should view petitioner's support for its contention in a light favorable to petitioner, but cannot do so by ignoring the requirements set forth in 10 C.F.R. 2.309(f)(1); CLI-15-23, 82 NRC 321 (2015); LBP-15-5, 81 NRC 249 (2015); LBP-15-20, 81 NRC 829 (2015)

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Atomic Energy Act does not prescribe a specific structure for the mandatory hearing requirement, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case; LBP-12-21, 76 NRC 218 (2012)

authority empowering a licensing board to impose sanctions is found in 10 C.F.R. §§ 2.314(c) and 2.319; LBP-13-2, 77 NRC 71 (2013)

board admitted a contention without deciding if it was a contention of omission or a contention of inadequacy; LBP-15-5, 81 NRC 249 (2015)

board considered a letter written after the original petition was filed and submitted with petitioner's reply; LBP-15-5, 81 NRC 249 (2015)

board considered evidence submitted with petitioner's reply to which opposing parties didn't object; LBP-15-5, 81 NRC 249 (2015)

board decisions that have inferred additional bases for contentions beyond those supplied by the petitioner have been overturned; CLI-14-2, 79 NRC 11 (2014)

board decisions that have revised inadmissible contentions to render them admissible have been overturned; CLI-14-2, 79 NRC 11 (2014)

board has discretion to consider an untimely motion to reopen if the motion presents an exceptionally grave issue; LBP-15-14, 81 NRC 591 (2015)

board is free to decide contention admissibility on a theory different from those argued by litigants, but only if it explains the specific basis of its ruling and gives the litigants a chance to present arguments (and, where appropriate, evidence) regarding the board's new theory; LBP-14-4, 79 NRC 319 (2014)

board is prohibited from imposing restrictions on the use of 10 C.F.R. 50.61a that go beyond the requirements in the regulation; CLI-15-22, 82 NRC 310 (2015)

board may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft environmental impact statement or final EIS without the necessity for intervenors to file a new or amended contention; LBP-14-5, 79 NRC 377 (2014)

board may not supply its own bases for a contention; CLI-15-17, 82 NRC 33 (2015)

board merits determination is inappropriate at the contention admissibility stage; LBP-13-6, 77 NRC 253 (2013)

board takes official notice of the contents of a document that was discussed at the hearing, but was not submitted as an exhibit by any party; LBP-13-13, 78 NRC 246 (2013)

board's authority is not confined to a specific set of previously admitted contentions, but rather is sufficient to permit it to keep adjudication open to take account of the dynamic nature of the licensing process; LBP-11-22, 74 NRC 259 (2011)

boards (as opposed to the Commission) are not empowered to grant a request to suspend a licensing proceeding pending disposition of a rulemaking petition; LBP-11-33, 74 NRC 675 (2011)

boards are authorized to refer a ruling to the Commission if the board determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity; LBP-11-32, 74 NRC 654 (2011)

boards are empowered to approve settlements proposed by the parties; LBP-15-30, 82 NRC 339 (2015)

boards are given broad discretion in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case-management decisions; LBP-15-15, 81 NRC 598 (2015)

boards are not empowered to reword the clear language of the Commission's regulations; LBP-13-12, 78 NRC 239 (2013)

boards are not empowered to supervise or direct NRC Staff regulatory reviews; LBP-13-7, 77 NRC 307 (2013)

boards are not free to reexamine fundamental policy judgments that are reflected in Commission regulations by creating exceptions to them in situations that will frequently recur; LBP-12-6, 75 NRC 256 (2012)

boards are not to proceed with sua sponte issues absent the Commission's approval; LBP-11-9, 73 NRC 391 (2011)

boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)

boards can request that a document for which a deliberative process privilege is claimed be provided to it for in camera inspection; LBP-13-5, 77 NRC 233 (2013)

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- boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 213 (2012)
- boards cannot logically infer that identified members of one organization are also members of another organization for purpose of representational standing determinations; LBP-13-8, 78 NRC 1 (2013)
- boards cannot prohibit what regulations allow except under specific conditions; LBP-15-17, 81 NRC 753 (2015)
- boards cannot reconstruct intervenor's pleadings to find that they might be interpreted to satisfy the requirements for reopening a record where the intervenor itself has explicitly argued it need not; LBP-11-20, 74 NRC 65 (2011)
- boards do not adjudicate disputed facts at the contention admission stage; LBP-11-2, 73 NRC 28 (2011)
- boards do not sit to "flyspeck" environmental documents or to add details or nuances, but the environmental report or environmental impact statement must come to grips with all important considerations; LBP-15-5, 81 NRC 249 (2015)
- boards have all the powers necessary to perform their duties, including powers to regulate the conduct of the participants and to issue orders necessary to carry out their duties and responsibilities; LBP-13-2, 77 NRC 71 (2013)
- boards have an important but limited role in mandatory proceedings; LBP-12-21, 76 NRC 218 (2012)
- boards have authority to adjudicate exemption issues, but NRC Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 256 (2012)
- boards have authority to impose reasonable conditions on voluntary withdrawals in appropriate circumstances; LBP-15-28, 82 NRC 233 (2015)
- boards have authority under 10 C.F.R. 2.316, 2.319, 2.329 to further define petitioners' admitted contentions when redrafting would clarify the scope of the contentions; LBP-11-13, 73 NRC 534 (2011)
- boards have closed their hearings even when they were concerned with less sensitive (i.e., nonpublic but unclassified) types of information; LBP-12-21, 76 NRC 218 (2012)
- boards have considerable discretion in their evidentiary rulings; CLI-15-6, 81 NRC 340 (2015)
- boards have limited authority to consider matters in addition to those properly put into controversy by the parties; LBP-11-9, 73 NRC 391 (2011)
- boards have no authority to hear challenges to actions taken under 10 C.F.R. 50.59; LBP-13-11, 78 NRC 177 (2013)
- boards have some discretion to reformulate or narrow contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding, but this authority is limited; CLI-15-18, 82 NRC 135 (2015); LBP-15-17, 81 NRC 753 (2015)
- boards have the power to take necessary and appropriate actions consistent with the Atomic Energy Act to conduct a fair hearing; LBP-15-15, 81 NRC 598 (2015)
- boards lack authority to order NRC Staff to bring licensee employees into settlement negotiations; LBP-14-4, 79 NRC 319 (2014)
- boards lack authority to supervise NRC Staff's review; CLI-12-4, 75 NRC 154 (2012); LBP-12-19, 76 NRC 184 (2012)
- boards may appropriately view petitioner's supporting information in a light favorable to the petitioner, but failure to provide such information regarding a proffered contention requires that the contention be rejected; LBP-12-27, 76 NRC 583 (2012); LBP-15-1, 81 NRC 15 (2015)
- boards may consider any matter, but only to the extent that the board determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the board; LBP-11-9, 73 NRC 391 (2011)
- boards may examine both the statements in the document that support petitioner's assertions and those that do not; LBP-15-20, 81 NRC 829 (2015)
- boards may exclude the public from adjudicatory hearings or actions that involve restricted data, defense information, safeguards information protected from disclosure under the authority of AEA § 147, or information protected from disclosure under the authority of section 148; LBP-11-5, 73 NRC 131 (2011)
- boards may grant requests for hearing and petitions to intervene if they determine that petitioner has standing and has proposed at least one admissible contention; LBP-13-8, 78 NRC 1 (2013)

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boards may make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer; LBP-14-9, 80 NRC 15 (2014)

boards may not assume that licensee intends to contravene NRC regulations; LBP-15-24, 82 NRC 68 (2015)

boards may not raise issues sua sponte when the sole intervenor has withdrawn from the proceeding; LBP-11-22, 74 NRC 259 (2011)

boards may not rely on a Federal Register notice to put petitioner on constructive notice of a requirement that the board itself cannot discern in the regulations; LBP-13-3, 77 NRC 82 (2013)

boards may not supply information that is lacking in a contention that otherwise would be inadmissible; CLI-15-18, 82 NRC 135 (2015)

boards may on motion or on their own initiative strike any portion of a written presentation that is unreliable; LBP-11-14, 73 NRC 591 (2011)

boards may reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding; CLI-15-25, 82 NRC 389 (2015); LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-12-18, 76 NRC 127 (2012); LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015)

boards may take disciplinary action against a party that fails to comply with any prehearing order, as long as the action is just; CLI-14-10, 80 NRC 157 (2014)

boards may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-20, 74 NRC 65 (2011)

boards may view petitioner's support for its contention in a light favorable to petitioner but cannot do so by ignoring admissibility requirements; CLI-15-18, 82 NRC 135 (2015)

boards may view petitioner's supporting information in a light favorable to the petitioner, but petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-12-25, 76 NRC 540 (2012)

boards must exercise all the powers necessary to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-11-22, 74 NRC 259 (2011)

boards must request Commission approval to undertake sua sponte review; CLI-15-1, 81 NRC 1 (2015)

boards should not supply new information not otherwise present in the adjudicatory record in order to cure deficiencies in a petition; CLI-12-12, 75 NRC 603 (2012)

boards will not consider exemption requests that were not made to the NRC Staff in the first instance; LBP-12-6, 75 NRC 256 (2012)

broad discretion is given to NRC licensing boards in the conduct of NRC adjudicatory proceedings, and the Commission generally defers to board case management decisions; CLI-11-13, 74 NRC 635 (2011); CLI-14-10, 80 NRC 157 (2014)

Commission, but not a licensing board, has the power to address a protracted delay in the proceeding and to direct appropriate remedial measures; LBP-11-30, 74 NRC 627 (2011)

contention pleading rules are designed to ensure that only well-defined issues are admitted for hearing and a board should not add material not raised by a petitioner in order to render a contention admissible; CLI-11-11, 74 NRC 427 (2011)

even if there are no objections to petitioners' representational standing, boards have an independent obligation to determine whether they have adequately demonstrated standing; LBP-11-2, 73 NRC 28 (2011)

fact-finding administrative body, such as a licensing board, with authority to develop an evidentiary record, is distinguished from reviewing adjudicatory and judicial bodies, generally with a more limited record-creating authority; LBP-15-3, 81 NRC 65 (2015)

for the mandatory uncontested proceeding on a uranium enrichment facility license, a licensing board is to conduct a simple sufficiency review rather than a de novo review on both safety and environmental issues; LBP-11-26, 74 NRC 499 (2011)

guidance documents do not bind the board, and so applicant's compliance with guidance does not ensure grant of a license; LBP-14-1, 79 NRC 39 (2014)

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hearing notices are the means by which the Commission identifies the subject matters of the hearings and delegates to the boards the authority to conduct proceedings; LBP-11-22, 74 NRC 259 (2011)

if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 184 (2012)

if no genuine dispute remains, then the board may dispose of all arguments based on the pleadings; LBP-11-7, 73 NRC 254 (2011)

if petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor the petitioner, nor may the board supply information that is lacking; LBP-12-3, 75 NRC 164 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-12-27, 76 NRC 583 (2012)

if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, boards need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether the standing element at issue has been satisfied; LBP-13-6, 77 NRC 253 (2013)

in a mandatory hearing, a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-26, 74 NRC 499 (2011)

in granting a proposed license, board may condition it upon some precautionary measures required at the chosen site; LBP-15-16, 81 NRC 618 (2015)

it is for the Commission, not licensing boards, to revise its ruling; LBP-15-18, 81 NRC 793 (2015)

it is not the function of a licensing board to comb through the record searching for arguments in support of a proffered contention; LBP-11-6, 73 NRC 149 (2011)

it is the role of the Commission to review licensing board decisions, and not the role of licensing boards to review and to reconsider the wisdom of the Commission's regulations; LBP-12-6, 75 NRC 256 (2012); LBP-13-12, 78 NRC 239 (2013)

licensing board may modify or waive the provisions of its scheduling orders as it deems appropriate in the interest of sound case management; LBP-15-29, 82 NRC 246 (2015)

licensing board opinion on appealability of an order does not bind the Commission, which will make its own decision whether an appeal may be filed; LBP-14-8, 79 NRC 519 (2014)

licensing board role is not confined to arbitration of those environmental controversies as may happen to have been placed before them by the litigants in the particular case; LBP-14-9, 80 NRC 15 (2014)

licensing boards are expected to examine cited materials to verify that they do, in fact, support a contention; CLI-15-22, 82 NRC 310 (2015)

licensing boards are expected to set procedures to ensure the case is managed efficiently, in a manner that is fair to all parties; CLI-14-10, 80 NRC 157 (2014)

licensing boards are the appropriate finders of fact in most circumstances, and referral of a matter for a fact-specific dispute occurs in the ordinary course of business; CLI-13-9, 78 NRC 551 (2013); CLI-15-14, 81 NRC 729 (2015)

licensing boards can refer potentially significant safety issues that cannot be addressed through the adjudicatory process to NRC Staff for review; LBP-15-1, 81 NRC 15 (2015)

licensing boards cannot superintend the conduct of NRC Staff's technical reviews; LBP-15-2, 81 NRC 48 (2015)

licensing boards have broad powers to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-15-30, 82 NRC 339 (2015)

licensing boards lack authority to direct the NRC Staff's nonadjudicatory actions; CLI-11-14, 74 NRC 801 (2011); LBP-11-30, 74 NRC 627 (2011)

licensing boards lack authority to direct the Secretary's administrative activities regarding the handling of documents; CLI-11-13, 74 NRC 635 (2011)

licensing boards may certify novel legal or policy questions to the Commission; CLI-11-5, 74 NRC 141 (2011)

licensing boards may not disregard binding Commission case law; CLI-13-7, 78 NRC 199 (2013)

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licensing boards may not stretch the scope of admitted contentions beyond their reasonably inferred bounds, but may consider issues that, although not expressly stated, can reasonably be inferred from the arguments presented; LBP-12-17, 76 NRC 71 (2012)

licensing boards must be vested with considerable latitude in determining the course of the proceedings that they are called upon to conduct, and the Commission will enter that arena only to the extent necessary to ensure that no party has been denied a fair opportunity to advance its cause; LBP-15-29, 82 NRC 246 (2015)

licensing boards must judiciously exercise sua sponte authority when faced with a serious, and unraised, issue; LBP-14-9, 80 NRC 15 (2014)

NRC may hold an informal hearing in which it requests and considers written materials without providing for traditional trial-type procedures such as oral testimony and cross-examination; LBP-11-4, 73 NRC 91 (2011)

NRC Rules of Practice provide the board with substantial authority to regulate hearing procedures; CLI-14-10, 80 NRC 157 (2014); LBP-15-15, 81 NRC 598 (2015)

NRC Staff's independent finding of license renewal applicant's consistency with GALL does not prevent the board from reviewing the substance of the applicant's commitments and exploring deficiencies alleged by intervenors in its proceedings; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 499 (2011)

piecemeal review of licensing board decisions is disfavored, but boards may refer rulings that, although interlocutory, raise significant and novel legal or policy issues or require Commission resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 199 (2013)

presiding officer may restrict irrelevant, immaterial, unreliable, duplicative, or cumulative evidence and/or arguments; LBP-11-13, 73 NRC 534 (2011)

referring serious safety, environmental, or common defense and security matter to the Staff for resolution is not an adequate solution; LBP-11-9, 73 NRC 391 (2011)

requesting authorization from the Commission for the board, on its own motion, to examine and decide the serious safety or common defense and security matters underlying contentions is allowed to be used for matters that were initially raised by a party, where that party later withdraws; LBP-11-9, 73 NRC 391 (2011)

role of the board when a rule waiver request is filed is limited to determining whether petitioner has made a prima facie showing that it has satisfied 10 C.F.R. 2.335(b), and if not, the board may not further consider the matter; LBP-13-1, 77 NRC 57 (2013)

seeking to trigger review in extraordinary circumstances is within a board's authority and has been put to good use; LBP-11-9, 73 NRC 391 (2011)

settlement agreement approval process in 10 C.F.R. 2.338(i) is discussed; LBP-15-21, 82 NRC 1 (2015)

to eliminate the inadmissible issue of tribal notification and to clarify the scope of the subsistence consumption issue, board narrows and reformulates a contention; LBP-15-5, 81 NRC 249 (2015)

under section 2.338(i), boards may approve or reject a settlement agreement but cannot amend the agreement without consent of the parties; LBP-15-21, 82 NRC 1 (2015)

unless a schedule is so onerous or unfair that it deprives a party of procedural due process, scheduling is a matter of licensing board discretion; LBP-15-29, 82 NRC 246 (2015)

untimely motions to reopen that present an exceptionally grave issue may be admitted at the board's discretion; LBP-12-16, 76 NRC 44 (2012)

upon receipt of a motion to withdraw an application, the board may place terms and conditions on the withdrawal, deny the application, or dismiss the application with prejudice; CLI-13-10, 78 NRC 563 (2013)

when petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor petitioner, nor may the board supply information that is lacking; LBP-15-1, 81 NRC 15 (2015)

when the Commission has determined that compliance with a regulation is sufficient to provide for reasonable assurance of public health and safety, a licensing board cannot impose requirements that exceed those in the regulation; LBP-15-20, 81 NRC 829 (2015)

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- where contentions are defective for any reason, licensing boards have no duty to make them acceptable under 10 C.F.R. 2.309; LBP-13-9, 78 NRC 37 (2013)
- where no Staff guidance was available for the particular type of facility undergoing license review, the board reasonably selected a standard for a facility most like the facility under review; CLI-15-6, 81 NRC 340 (2015)
- where NRC guidance document is not directly applicable to the issue at hand, the presiding officer is afforded greater leeway in its application; CLI-15-6, 81 NRC 340 (2015)
- where the board allowed petitioners to file a corrected version of an expert declaration that contained numerous typographical errors, and where some of petitioners' corrections clearly went beyond what the board expected, the board did not try to parse which changes were authorized and did not consider or rely on the corrected version; LBP-11-2, 73 NRC 28 (2011)
- where the licensing board independently analyzed the data in the record and made its own need-for-power projection based thereon, the NRC did not abdicate its NEPA responsibilities by placing heavy reliance on the judgment of local regulatory bodies; LBP-13-4, 77 NRC 107 (2013)
- where the meaning of a regulation is clear and obvious, the regulatory language is conclusive, and the board may not disregard the letter of the regulation, but rather must enforce the regulation as written; LBP-14-7, 79 NRC 451 (2014)
- with Commission's express approval, a licensing board may make findings on a serious safety, environmental, or common defense and security matter not put into controversy by the parties; CLI-15-1, 81 NRC 1 (2015)
- LICENSING BOARDS, JURISDICTION
- after a petition to review a final order has been filed with the Commission, the board no longer has jurisdiction to consider a motion to reopen and the motion is properly filed with the Commission; CLI-12-14, 75 NRC 692 (2012)
- applying the rule of statutory construction that the mention of one thing implies the exclusion of another, the fact that the regulation sets forth three specific circumstances in which a board's jurisdiction ends implies that jurisdiction does not end in other circumstances not listed; LBP-11-22, 74 NRC 259 (2011)
- board's jurisdiction terminates when there are no longer any contested matters pending before it; CLI-15-13, 81 NRC 555 (2015); LBP-15-12, 81 NRC 452 (2015); LBP-15-29, 82 NRC 246 (2015)
- boards do not have jurisdiction to determine whether other government entities have properly followed their regulations or procedures; LBP-12-16, 76 NRC 44 (2012)
- boards lack jurisdiction to adjudicate challenges to NRC Staff's proposed no significant hazards consideration determination; LBP-13-11, 78 NRC 177 (2013)
- boards may exercise only the jurisdiction conferred upon them by the Commission; LBP-11-22, 74 NRC 259 (2011)
- generally, once there has been an appeal or petition to review a Board order, jurisdiction passes to the Commission; CLI-12-14, 75 NRC 692 (2012)
- hearing notices are the means by which the Commission identifies the subject matter of the hearings and delegates to the boards the authority to conduct proceedings; LBP-11-22, 74 NRC 259 (2011)
- in light of the board's limited jurisdiction, it concludes that petitioner may appeal its decision immediately; LBP-14-8, 79 NRC 519 (2014)
- intervenor's failure to address the reopening standards in 10 C.F.R. 2.326 creates a yawning deficiency in its submissions because the evidentiary record has been closed and the board's jurisdiction in the proceeding does not extend beyond the narrow scope of the remand; LBP-11-20, 74 NRC 65 (2011)
- it is not the province of NRC and thus the board to enforce another agency's regulations; LBP-12-12, 75 NRC 742 (2012)
- licensing board lacks authority to hold a hearing on the adequacy of a different agency's regulations; LBP-15-5, 81 NRC 249 (2015)
- licensing board's ruling resolving the last pending contention is equivalent to a final decision under 10 C.F.R. 2.341, and a licensing board's jurisdiction ends after it has rendered a final decision; LBP-15-9, 81 NRC 396 (2015)
- matters within the purview of the state public service board are outside the jurisdiction of the licensing board, which is limited to considering only the license amendment request and NRC regulations; LBP-15-24, 82 NRC 68 (2015)

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- newly constituted board applied the reopening standard to new contentions filed after the prior proceeding was terminated for want of pending or admitted contentions; LBP-11-22, 74 NRC 259 (2011)
- NRC's transfer of regulatory authority to the State of New Jersey is now final and the licensing board no longer has the jurisdiction it had retained over the proceeding, and the board terminates the proceeding; LBP-15-10, 81 NRC 399 (2015)
- section 2.318(a) does not purport to provide an exhaustive list of every situation where board jurisdiction lapses; CLI-12-14, 75 NRC 692 (2012); CLI-12-17, 76 NRC 210 (2012); CLI-12-17, 76 NRC 207 (2012)
- when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case, board jurisdiction terminates; CLI-12-14, 75 NRC 692 (2012)
- where an amended version of a dismissed contention is pending before the board, the board retains jurisdiction to decide whether to admit the proposed contention; LBP-11-22, 74 NRC 259 (2011)
- where the hearing notice does not restrict the hearing to any particular set of issues, the hearing should be understood as encompassing all issues raised by a party to the licensing proceeding that may properly be litigated under Atomic Energy Act § 189a; LBP-11-22, 74 NRC 259 (2011)
- LICENSING PROCEEDINGS**
- as long as license review is ongoing, the licensing proceeding is still in existence; CLI-12-14, 75 NRC 692 (2012)
- Atomic Energy Act does not mandate on-the-record hearings for reactor licensing proceedings and the Commission therefore has the option of replacing existing procedural requirements with more informal ones; LBP-11-8, 73 NRC 349 (2011)
- individual licensing proceedings are not the appropriate forum for evaluating SAMAs; LBP-13-1, 77 NRC 57 (2013)
- reconsideration of the agency's guidance, as a general matter, should not be resolved in an application-specific proceeding; CLI-13-4, 77 NRC 101 (2013)
- rulemaking petitioner may request a suspension of a licensing proceeding in which petitioner is a participant, pending disposition of the rulemaking petition; CLI-14-6, 79 NRC 445 (2014)
- rulemaking petitioner who is not a party to a licensing proceeding has no right under NRC rules to request a stay of that proceeding; CLI-12-6, 75 NRC 352 (2012)
- See Abeyance of Proceeding; Combined License Proceedings; Independent Spent Fuel Storage Installation Proceedings; License Renewal Proceedings; Mandatory Hearings; Materials License Amendment Proceedings; Operating License Proceedings; Operating License Renewal Proceedings; Subpart G Proceedings
- LICENSING SUPPORT NETWORK**
- licensing board directed parties defending depositions to make efforts to identify and obtain Licensing Support Network documents that must be indexed for the benefit of other parties and to circulate those indexes as soon as practicable; CLI-11-13, 74 NRC 635 (2011)
- LICENSING, PERFORMANCE-BASED**
- past or current performance could inform the review of a license renewal application; CLI-11-11, 74 NRC 427 (2011)
- LIGHTING**
- licensing board, construing the petition in favor of petitioners, based its standing finding on potential harm from traffic-generated dust and light pollution; CLI-12-12, 75 NRC 603 (2012)
- light pollution is a matter of concern as a proposed nuclear materials facility undergoes agency licensing review; LBP-12-3, 75 NRC 164 (2012)
- LIMITED APPEARANCE STATEMENTS**
- board accepted written limited appearance statements from members of the public in connection with the hearing; LBP-14-3, 79 NRC 267 (2014)
- boards may entertain oral and written limited appearance statements from members of the public in connection with a mandatory uncontested proceeding; LBP-11-26, 74 NRC 499 (2011); LBP-13-13, 78 NRC 246 (2013)
- limited appearance statement is not considered evidence in a proceeding; LBP-15-27, 82 NRC 184 (2015)
- no duty is imposed on a board to respond to such statements as litigable concerns; LBP-11-11, 73 NRC 455 (2011)

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such statements do not constitute evidence but may assist the board and/or parties in defining the issues being considered; LBP-13-13, 78 NRC 246 (2013)

LIMITED WORK AUTHORIZATION

certain "construction" activities are allowed at a reactor site pursuant to a limited work authorization as long as a site redress plan is submitted; LBP-11-11, 73 NRC 455 (2011)

Commission must determine whether NRC Staff review of a combined license application has been adequate to support the findings listed in 10 C.F.R. 52.97 and 51.107(a) for each of the licenses to be issued and in 10 C.F.R. 50.10 and 51.107(d) with respect to the limited work authorizations; CLI-12-2, 75 NRC 63 (2012)

environmental report for LWA application for a site where a construction permit was issued but construction of the plant was never completed may incorporate the earlier environmental impact statement; LBP-12-24, 76 NRC 503 (2012)

in the 2007 LWA rule, NRC decided that the building of transmission lines to serve a nuclear power plant would no longer be classified as a construction activity and would no longer require authorization from NRC; LBP-14-9, 80 NRC 15 (2014)

in the area of impacts of combined licenses and limited work authorizations, NRC Staff, in its review of new and significant information, identified a change in impacts associated with terrestrial ecology; CLI-12-2, 75 NRC 63 (2012)

scope of activities requiring permission from NRC in the form of LWAs was narrowed by eliminating the concept of commencement of construction formerly described in section 50.10(c) and the authorization formerly described in section 50.10(e)(1); LBP-14-9, 80 NRC 15 (2014)

transmission lines are expressly excluded from the delineated construction activities that would require NRC approval before being undertaken; CLI-15-1, 81 NRC 1 (2015)

uranium enrichment facility applicant seeks an exemption from regulations to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 455 (2011)

See also Preconstruction Activities

LITIGATION EXPENSES

opposing party's litigation expenses do not provide a basis for departing from the usual rule that a dismissal should be without prejudice; CLI-13-10, 78 NRC 563 (2013)

LOCAL GOVERNMENTAL BODIES

applications for water use permits are evaluated by local governmental agencies; LBP-13-4, 77 NRC 107 (2013)

during a nuclear emergency in the United States, the individual licensee and the appropriate state and local government officials have direct responsibilities for the coordinated response to the event; LBP-11-15, 73 NRC 629 (2011)

where state and local governmental bodies that have jurisdiction over the area in which adverse effects need to be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that a federal agency has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary; LBP-13-4, 77 NRC 107 (2013)

where the licensing board independently analyzed the data in the record and made its own need-for-power projection based thereon, the NRC did not abdicate its NEPA responsibilities by placing heavy reliance on the judgment of local regulatory bodies; LBP-13-4, 77 NRC 107 (2013)

LOSS OF LARGE AREAS

combined license applications must include a description and plans for implementation of the guidance and strategies required by section 50.54(hh)(2) for severe accident mitigation; CLI-11-9, 74 NRC 233 (2011)

contentions that challenge applicant's compliance with the LOLA requirements of 10 C.F.R. 50.54(hh)(2) are not admissible because they are not within the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities in case of loss of large areas of the plant due to explosions or fire; CLI-11-5, 74 NRC 141 (2011); CLI-12-2, 75 NRC 63 (2012)

section 52.80(d) mandates compliance with the agency's LOLA requirements in 10 C.F.R. 50.54(hh)(2), but does not apply to a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

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LOW-INCOME POPULATIONS

federal agencies shall identify and consider whether their actions will cause disproportionate environmental impacts on minority, low-income, or other sensitive populations; LBP-12-24, 76 NRC 503 (2012)

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

consultation duty on essential fish habitats applies to license renewals; LBP-12-10, 75 NRC 633 (2012)
contention asserting that NRC's environmental review of the license renewal application has not met the requirements of the act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)

direct consultation obligation is imposed on NRC if NRC determines that approval of a requested license renewal may adversely affect any essential fish habitat; LBP-12-10, 75 NRC 633 (2012)

essential fish habitat assessment must describe the action, its potential effects on EFH, and proposed mitigation activities, if any; LBP-12-10, 75 NRC 633 (2012)

for any federal action that may adversely affect essential fish habitats, federal agencies must provide the National Marine Fisheries Service with a written assessment of the effects of that action; LBP-12-10, 75 NRC 633 (2012)

goal of the act is to preserve commercial and recreational fishery resources through the protection of essential fish habitat; LBP-12-10, 75 NRC 633 (2012)

National Marine Fisheries Service will not recommend that state or federal agencies take actions beyond their statutory authority; LBP-12-10, 75 NRC 633 (2012)

Secretary of the Interior may promulgate such regulations as may be necessary to carry out any other provision of this act; LBP-12-10, 75 NRC 633 (2012)

MAINTENANCE

monitoring a component's performance or condition is required by the maintenance rule; CLI-15-6, 81 NRC 340 (2015)

power reactor licensees are required to monitor the performance or condition of systems, structures, and components against licensee-established goals in a manner sufficient to provide reasonable assurance that these SSCs are capable of fulfilling their intended functions; CLI-15-6, 81 NRC 340 (2015)

MAINTENANCE PROGRAMS

all structures and components that are important to safety must be maintained to manage the effects of aging, but most systems, structures, and components are adequately maintained under existing programs as required by the Maintenance Rule; CLI-15-6, 81 NRC 340 (2015)

any member of the public may seek enforcement action associated with matters affecting plant operation, including the vitality of component maintenance programs; CLI-15-6, 81 NRC 340 (2015)

because irradiated fuel is continually present in the spent fuel pool once the reactor discharges the first batch of spent fuel, and conditions are most challenging during reactor shutdown for refueling, maintenance of equipment related to the safe storage of spent fuel is typically addressed as part of shutdown risk management; DD-13-3, 78 NRC 571 (2013)

relay switches and snubbers do not rely on time-limited assumptions based on the plant's operating term, but rather are subject to ongoing maintenance programs; LBP-15-6, 81 NRC 314 (2015)

request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 489 (2014)

MANAGEMENT

applicant must establish and maintain a configuration management system to evaluate, implement, and track changes to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel; LBP-12-21, 76 NRC 218 (2012)

See also Case Management

MANAGEMENT CHARACTER AND COMPETENCE

admission of a management integrity contention relied on references to a serious incident involving shutdown of the reactor, management responsible for the incident remaining in place, and a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert witness in support of the contention; CLI-11-11, 74 NRC 427 (2011)

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claims of past and current mismanagement are outside the scope of the license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)

contentions alleging that applicants' handling of past safety issues at the plants demonstrated that the applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term are inadmissible; LBP-13-8, 78 NRC 1 (2013)

for management integrity and character to be a viable contention, there must be a direct and obvious relationship between these issues and the challenged licensing action; CLI-11-8, 74 NRC 214 (2011)

inspection reports could be seen as objective evidence that applicant may not adequately manage aging in the future; CLI-11-11, 74 NRC 427 (2011)

licensing boards may not assume that applicants will violate NRC regulations; LBP-12-3, 75 NRC 164 (2012)

management integrity contentions are admissible in license renewal proceedings only if they rely on specific supporting information, including references to a serious incident involving shutdown where management responsible for the incident remained in place, a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert in support of the contention; LBP-13-8, 78 NRC 1 (2013)

more subjective appraisal of declining property values might be permissible in the context of a licensing action associated with an applicant or facility shown to have engaged in a continuous and pervasive course of illegal conduct; LBP-12-3, 75 NRC 164 (2012)

narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; CLI-11-11, 74 NRC 427 (2011)

past violations of NRC regulations would indicate a deficiency in an application only if they are directly germane to the licensing action, rather than being of simply historical interest; CLI-12-2, 75 NRC 63 (2012)

proximity presumption was applied in a license amendment proceeding where management's lack of the required character and competence was alleged; LBP-15-17, 81 NRC 753 (2015)

this issue is beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

to the extent petitioner believes there are existing management competence questions that merit immediate action, then its remedy is to direct the Staff's attention to those matters by filing a request for action in accordance with 10 C.F.R. 2.206; CLI-11-11, 74 NRC 427 (2011)

See also Licensee Character

MANDATORY HEARINGS

although safety issues are reviewed under the adequacy and sufficiency standard, licensing boards must independently consider the final balance among the conflicting costs and benefits when reviewing National Environmental Policy Act issues; LBP-12-21, 76 NRC 218 (2012)

Atomic Energy Act does not prescribe a specific structure for the hearing requirement, and the Commission has granted licensing boards considerable flexibility to select the most appropriate approach in the circumstances of each individual case; LBP-12-21, 76 NRC 218 (2012)

based on Staff's and applicant's written responses to board questions, and on the resumes, CVs, and SPQs admitted as part of the evidentiary record to respond to the questions, the board considers safety issues resolved for the proceeding; LBP-11-11, 73 NRC 455 (2011)

because petitioners did not participate in the mandatory hearing, and were not parties to it, they may not challenge the mandatory hearing decision, as such, in court; CLI-12-11, 75 NRC 523 (2012)

because the scope of intervenors' participation in adjudications is limited to their admitted contentions, they are barred from participation in the uncontested portion of the hearing; LBP-14-9, 80 NRC 15 (2014)

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boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)

boards may entertain oral and written limited appearance statements from members of the public in connection with a mandatory uncontested proceeding; LBP-11-26, 74 NRC 499 (2011)

board's role in mandatory hearings is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but the NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-11, 73 NRC 455 (2011)

boards should not second-guess the underlying technical or factual findings by the NRC Staff; LBP-12-21, 76 NRC 218 (2012)

Commission addresses the sufficiency of NRC Staff's review of a combined license application rather than a making a de novo review; CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012)

Commission discussion regarding alternative site review supplements the environmental impact statement; LBP-11-26, 74 NRC 499 (2011)

Commission does not review combined license application de novo, but rather considers the sufficiency of NRC Staff's review of the application; CLI-15-13, 81 NRC 555 (2015)

Commission examines whether the Staff's safety review of the combined license application under 10 C.F.R. 52.97(a)(1)(i)-(v) has been adequate to support its findings; CLI-12-9, 75 NRC 421 (2012)

Commission must determine whether NRC Staff review of a combined license application has been adequate to support the findings listed in 10 C.F.R. 52.97 and 51.107(a) for each of the licenses to be issued and in 10 C.F.R. 50.10 and 51.107(d) with respect to the limited work authorizations; CLI-12-2, 75 NRC 63 (2012)

Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011)

environmental issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 555 (2015)

even if no intervention petitions are received, the Commission must still conduct adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011)

for the mandatory uncontested proceeding on a uranium enrichment facility license, a licensing board is to conduct a simple sufficiency review rather than a de novo review on both safety and environmental issues; LBP-11-26, 74 NRC 499 (2011)

for uranium enrichment facility licensing, boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-11-11, 73 NRC 455 (2011)

function of uncontested hearings is only to review the adequacy of NRC Staff's work, not to make a de novo inquiry into NEPA issues; LBP-14-9, 80 NRC 15 (2014)

giving appropriate deference to NRC Staff technical expertise, boards are to probe the logic and evidence supporting NRC Staff findings and decide whether those findings are sufficient to support license issuance; LBP-12-21, 76 NRC 218 (2012)

hearing must be held on each application to construct a nuclear power plant, regardless of whether an interested member of the public requests a hearing on the application; CLI-15-13, 81 NRC 555 (2015)

in a combined license proceeding, the Commission considers safety issues pursuant to Atomic Energy Act § 189a and environmental issues as required by National Environmental Policy Act § 102(2)(A), (C), and (E); CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012)

in addition to contested hearings on combined licenses, where interested members of the public have the right to participate and air their concerns, uncontested safety and environmental issues are considered in a mandatory hearing; CLI-12-11, 75 NRC 523 (2012)

in uranium enrichment facility licensing proceedings, boards are to make independent environmental judgments with respect to certain NEPA findings; LBP-11-11, 73 NRC 455 (2011)

license conditions imposed on applicant as a result of NRC Staff's review process and applicant-requested exemptions from agency regulatory requirements that are granted by Staff have a strong potential to fall into a "nonroutine matter" category; LBP-11-11, 73 NRC 455 (2011)

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- licensing boards are to conduct a simple sufficiency review rather than a de novo review on both AEA and NEPA issues for uranium enrichment facility licensing; LBP-11-11, 73 NRC 455 (2011)
- licensing boards conducting hearings on uncontested issues are expected to take an independent hard look at NRC Staff safety and environmental findings but are not to replicate NRC Staff work; LBP-12-21, 76 NRC 218 (2012)
- licensing boards conducting hearings on uncontested issues should conduct a simple sufficiency review of uncontested issues, not a de novo review; LBP-12-21, 76 NRC 218 (2012)
- licensing boards have an important but limited role in mandatory proceedings; LBP-12-21, 76 NRC 218 (2012)
- licensing boards must narrow their inquiry to topics or sections in Staff documents that they deem most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)
- mandatory hearings, which are required by section 189a of the Atomic Energy Act, do not involve public participation, regardless of whether a contested hearing with public participation has occurred; CLI-12-11, 75 NRC 523 (2012)
- Notice of Hearing for an uncontested combined license proceeding sets the parameters for the Commission's review; CLI-12-2, 75 NRC 63 (2012)
- NRC must conduct a hearing on the uncontested environmental and safety aspects of the proposed plant; LBP-13-4, 77 NRC 107 (2013)
- NRC needs to conduct only a single licensing action and adjudicatory proceeding to authorize construction and operation and a mandatory hearing regarding the application and the Staff's associated safety and environmental reviews, despite the absence of a petitioner challenging applicant's request; LBP-11-26, 74 NRC 499 (2011)
- NRC regulations appropriately require a hearing before the proposed license amendment becomes effective whenever the amendment creates the possibility of a new or different kind of accident; LBP-15-20, 81 NRC 829 (2015)
- NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-12-21, 76 NRC 218 (2012)
- NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 499 (2011)
- principal focus of the Commission will be on nonroutine matters; LBP-11-11, 73 NRC 455 (2011)
- purpose of a mandatory hearing is to determine whether NRC Staff's review of the application has been adequate to support the required regulatory findings; CLI-12-11, 75 NRC 523 (2012)
- relative to NEPA, in uranium enrichment facility licensing proceedings, boards are to determine whether the review conducted by NRC Staff has been adequate, but they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-11, 73 NRC 455 (2011)
- safety issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 555 (2015)
- to satisfy requirements of NEPA for a combined license, the Commission independently considers the final balance among conflicting factors in the record; CLI-12-9, 75 NRC 421 (2012)
- uncontested early site permit proceeding is subject to mandatory hearing requirements; LBP-11-10, 73 NRC 424 (2011)
- with respect to the environmental impacts of a combined license, the Commission determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and 10 C.F.R. 51.107(a)(1)-(4) have been met; CLI-12-9, 75 NRC 421 (2012)
- MATERIAL CONTROL AND ACCOUNTING**
- ability to detect the loss of plutonium in a timely manner, to allow for an effective response, is a crucial security requirement; LBP-11-9, 73 NRC 391 (2011)
- accuracy is an integral component of the portion of the regulatory requirement that addresses item presence verification; CLI-15-9, 81 NRC 512 (2015)
- adequacy finding on applicant's program requires the board to make a case-by-case determination, guided by the Atomic Energy Act's mandate that no license to possess special nuclear material may be issued

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if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 39 (2014)

alarms are not required to be resolved within any particular time frame, only that a time period be approved by NRC Staff; LBP-14-1, 79 NRC 39 (2014)

any statistical sampling plan for verifying the presence and integrity of strategic special nuclear material items must have at least 99 percent power of detecting item losses that total 5 formula kg or more, plantwide, within 30 calendar days for Category IA items and 60 calendar days for Category IB items contained in a vault or in a permanently controlled access area isolated from the rest of the material access area; CLI-15-9, 81 NRC 512 (2015)

applicant for a license to possess and use strategic special nuclear material must establish, implement, and maintain a Commission-approved MC&A system that will address the loss or theft of such material; CLI-15-9, 81 NRC 512 (2015)

applicant has demonstrated that its program of automated equipment, computer systems (and their verification), and the use of secured and tamper-safed item storage area boundaries, satisfactorily demonstrates the ability to verify the presence and integrity of all strategic special nuclear material items in storage; LBP-14-1, 79 NRC 39 (2014)

applicant's preliminary program satisfactorily demonstrates the ability to rapidly assess the validity of alleged thefts; LBP-14-1, 79 NRC 39 (2014)

applicant's preliminary program satisfactorily demonstrates the ability to resolve the nature and cause of any MC&A alarm within approved time periods in each of the four storage areas at issue; LBP-14-1, 79 NRC 39 (2014)

applicant's program must show how compliance with the requirements of section 74.51 will be accomplished; LBP-14-1, 79 NRC 39 (2014)

applicant's proposal to seal and design strategic special nuclear material item storage locations to be tamper-safed or equivalent to tamper-safing such that confirmation that the physical boundary of these locations has not been breached ensures the integrity of these items; LBP-14-1, 79 NRC 39 (2014)

applicant's sampling method, which examines data representative of the entire set of strategic special nuclear material items, and not a limited subset, samples 100% of SSNM items and thus complies with the requirement to sample a sufficient number of items to result in at least 99% power of detecting the specified losses; LBP-14-1, 79 NRC 39 (2014)

applicant's strategic special nuclear material item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 39 (2014)

applicant's verification of the integrity of the strategic special nuclear material vault boundaries on a daily basis exceeds the regulatory requirement to verify the integrity of the items every 30 or 60 days; LBP-14-1, 79 NRC 39 (2014)

applicants applying to possess 5 or more formula kilograms of strategic special nuclear material must maintain alarm resolution capabilities designed to achieve the performance objectives of section 74.51(a); LBP-14-1, 79 NRC 39 (2014)

at the construction authorization request stage, the board dismissed an MC&A contention as moot, pending submittal of applicant's Fundamental Nuclear Material Control Plan which would require inclusion of a detailed MC&A program; LBP-14-1, 79 NRC 39 (2014)

by verifying integrity of storage area boundaries, applicant can verify the integrity of all strategic special nuclear material items in storage within the required 30- and 60-day time frames; LBP-14-1, 79 NRC 39 (2014)

capability to rapidly assess the validity of alleged thefts is aimed at the rapid determination of whether an actual loss of 5 or more formula kilograms occurred; LBP-14-1, 79 NRC 39 (2014)

capability to resolve alarms within approved time periods is most clearly aimed at the prompt investigation of anomalies potentially indicative of strategic special nuclear material losses; LBP-14-1, 79 NRC 39 (2014)

capability under 10 C.F.R. 74.51(a)(1) to verify presence is most clearly aimed at ongoing confirmation of the presence of strategic special nuclear material in assigned locations; LBP-14-1, 79 NRC 39 (2014)

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capability under 10 C.F.R. 74.51(a)(4) to verify integrity is most clearly aimed at the prompt investigation of anomalies potentially indicative of strategic special nuclear material losses; LBP-14-1, 79 NRC 39 (2014)

contention challenging applicant's ability to rapidly assess the validity of alleged thefts is decided; LBP-14-1, 79 NRC 39 (2014)

contention that applicant's revised MC&A plan fails to show how confirmation and verification of theft of plutonium will be carried out in the specified timelines is inadmissible; CLI-15-9, 81 NRC 512 (2015)

contention that applicant's revised MC&A plan is deficient because its item monitoring program does not have the capability to verify, on a statistical sampling basis, the presence and integrity of strategic special nuclear material losses within the time frames specified by the regulation is inadmissible; CLI-15-9, 81 NRC 512 (2015)

contention that applicant's revised MC&A plan is inadequate to satisfy the alarm resolution requirements is inadmissible; CLI-15-9, 81 NRC 512 (2015)

definition of "power of detection" does not explicitly require a demonstration of data accuracy; LBP-14-1, 79 NRC 39 (2014)

determination regarding item integrity under 10 C.F.R. 74.55(b)(1) refers to the ability to determine that a container holding strategic special nuclear material items has not been breached and that the amount of SSNM within has not been altered; LBP-14-1, 79 NRC 39 (2014)

"formula kilogram" means strategic special nuclear material in any combination in a quantity of 1000 grams computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium); CLI-15-9, 81 NRC 512 (2015)

if applicant decides to remove a method from the approved list of alarm resolution methods, it would have to follow the prescribed change process or the license amendment process; LBP-14-1, 79 NRC 39 (2014)

intervenors fail to provide any information or support for their proposition that applicant's automated systems do not comply with the regulatory requirements and their challenges to applicant's item monitoring approach on these grounds fail; LBP-14-1, 79 NRC 39 (2014)

licensee must be able to rapidly assess the validity of alleged thefts; CLI-15-9, 81 NRC 512 (2015)

licensee must show with reasonable assurance that its proposed methodology for MC&A will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public; CLI-15-9, 81 NRC 512 (2015)

licensees are not required to conduct assessments of alleged thefts without the use of their records systems, or by first verifying the integrity and accuracy of those records systems; LBP-14-1, 79 NRC 39 (2014)

licensees must establish and maintain systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material; CLI-11-4, 74 NRC 1 (2011)

licensees must satisfy 10 C.F.R. 74.55(b)'s detection requirements for tamper-safed strategic special nuclear material items in order to achieve the performance objectives set out in section 74.51(a); LBP-14-1, 79 NRC 39 (2014)

licensees must verify on a statistical sampling basis, the presence and integrity of strategic special nuclear material items; CLI-15-9, 81 NRC 512 (2015)

licensees shall resolve the nature and cause of any MC&A alarm within approved time periods; LBP-14-1, 79 NRC 39 (2014)

materials license amendment applications must contain a full description of the applicant's program for control and accounting of special nuclear material to show how it will comply with the 10 C.F.R. Part 74 requirements; LBP-11-9, 73 NRC 391 (2011)

meaning of "verify" in the context of item presence verification is discussed; CLI-15-9, 81 NRC 512 (2015)

neither the plain language of 10 C.F.R. 74.55(b)(1) nor its regulatory history suggests that verifications of item integrity must be in any way physical; LBP-14-1, 79 NRC 39 (2014)

no requirement to quantify the potential for an adversary to take measures to conceal any abnormalities in MMIS and PLC mapping can reasonably be found in (or implied by) the language of 10 C.F.R. 74.55(b)(1); LBP-14-1, 79 NRC 39 (2014)

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NRC may issue a license to possess and use 5 or more formula kilograms of strategic special nuclear material only if applicant can establish, implement, and maintain a Commission-approved MC&A system that will achieve general performance objectives; LBP-14-1, 79 NRC 39 (2014)

NRC must be notified within 24 hours of failure to resolve an alarm within the approved time period; LBP-14-1, 79 NRC 39 (2014)

NRC Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 63 (2012)

NRC Staff granted an exemption from 10 C.F.R. 74.33(c)(5) subject to license conditions that require applicant to submit, for the Staff's prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 218 (2012)

Part 74 requires an MC&A system for a fuel fabrication facility; LBP-14-1, 79 NRC 39 (2014)

petitioner provides no support for the proposition that applicant must demonstrate that each individual resolution method can be completed, by itself, within the approved time period; LBP-14-1, 79 NRC 39 (2014)

"power of detection" means the probability that the critical value of a statistical test will be exceeded when there is an actual loss of a specific quantity of strategic special nuclear material; LBP-14-1, 79 NRC 39 (2014)

quantitative accuracy of the MMIS/PLC computer system data must be considered in determining whether requirements of 10 C.F.R. 74.55(b)(1) are satisfied by applicant's plans; LBP-14-1, 79 NRC 39 (2014)

rapid determination of strategic special nuclear material theft assessment should be completed within an 8- or 72-hour timeline; LBP-14-1, 79 NRC 39 (2014)

reports to the agency regarding unapproved changes made to the MC&A program must be filed within no more than 6 months after the changes; LBP-11-11, 73 NRC 455 (2011)

requirement in 10 C.F.R. 74.55(b) for 99% power of detection means that there must be a 99% probability that a missing item will be included within the sample chosen for inspection and would thus be detected; LBP-14-1, 79 NRC 39 (2014)

requirements for performance of applicant's material control and accounting system neither prescribe nor proscribe any methodology for achievement of those performance requirements; LBP-14-1, 79 NRC 39 (2014)

section 74.55 is not rendered superfluous by a reading that verifying the integrity of a storage area boundary will suffice to verify the integrity of the items contained therein; LBP-14-1, 79 NRC 39 (2014)

statistical sampling is to be used to achieve verification of item presence and integrity but 10 C.F.R. 74.55(b) does not prescribe a particular method of sampling, only that statistical sampling must result in at least 99% power of detecting strategic special nuclear material losses that total 5 formula kg or more; LBP-14-1, 79 NRC 39 (2014)

"strategic special nuclear material" means uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium; CLI-15-9, 81 NRC 512 (2015)

"tamper-safing" refers to use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)

there is a general overarching requirement that applicant's strategic special nuclear material item monitoring method be sufficiently accurate to provide reasonable assurance that the specific regulatory requirement is satisfied; LBP-14-1, 79 NRC 39 (2014)

to achieve strategic special nuclear material loss-related performance objectives, the system must provide the capabilities described in sections 74.55 and 74.57; LBP-14-1, 79 NRC 39 (2014)

to meet the reasonable assurance standard, applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-14-1, 79 NRC 39 (2014)

"unit process" means an identifiable segment or segments of processing activities for which the amounts of input and output strategic special nuclear material are based on measurements; CLI-15-9, 81 NRC 512 (2015)

uranium enrichment facility license must have a condition requiring the licensee to maintain and follow a source material control and accounting program and maintain records of any MC&A program changes

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- made without Commission approval for 5 years from the date of the change; LBP-11-11, 73 NRC 455 (2011)
- whether applicant's item monitoring program has the capability to verify, on a statistical sampling basis, the presence and integrity of strategic special nuclear material items is decided; LBP-14-1, 79 NRC 39 (2014)
- MATERIAL FALSE STATEMENTS**
- information provided to NRC by license applicant shall be complete and accurate in all material respects; DD-14-4, 79 NRC 506 (2014)
- request that NRC revoke license for falsification of information is addressed; DD-14-4, 79 NRC 506 (2014)
- MATERIAL INFORMATION**
- applicants must provide information that is complete and accurate in all material respects; LBP-15-24, 82 NRC 68 (2015)
- applicants shall notify NRC of information identified by the applicant as having, for the regulated activity, a significant implication for public health and safety or common defense and security; LBP-11-32, 74 NRC 654 (2011)
- information provided to NRC by an applicant must be complete and accurate in all material respects; LBP-11-32, 74 NRC 654 (2011)
- licensee or applicant must notify NRC of information that applicant or licensee has identified as having a significant implication for public health and safety or common defense and security; LBP-15-15, 81 NRC 598 (2015)
- regulatory approach of relying on licensees to submit complete and accurate information and auditing that information as appropriate is consistent with sound regulatory practice; LBP-15-24, 82 NRC 68 (2015)
- MATERIAL MISREPRESENTATIONS**
- affirmative misconduct means an affirmative misrepresentation or affirmative concealment of a material fact by the government, although it does not require that the government intended to mislead a party; LBP-12-16, 76 NRC 44 (2012)
- estoppel claimant must prove a false representation by the government, that the government had the intent to induce the plaintiff to act on the misrepresentation, plaintiff's lack of knowledge or inability to obtain the true facts, and plaintiff's reliance on the misrepresentation to his detriment; LBP-12-16, 76 NRC 44 (2012)
- incorrect information in a license amendment application is prohibited by NRC regulations; LBP-15-24, 82 NRC 68 (2015)
- petitioner's concern that information provided by licensee concerning training received by its employees was not accurate and in violation was not substantiated; DD-14-4, 79 NRC 506 (2014)
- request that NRC shut down or prohibit restart of nuclear power plants until a criminal investigation of a licensee contractor is complete and everything has been verified safe is denied; DD-14-1, 79 NRC 7 (2014)
- MATERIALITY**
- all contentions must proffer an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-12-27, 76 NRC 583 (2012)
- although NRC Staff's argument against contention admission appears to have some weight, the board need not resolve it, because the contention is inadmissible for failing to raise a genuine dispute of material fact or law with the environmental report; LBP-11-6, 73 NRC 149 (2011)
- boards accord each exhibit weight to the extent it is relevant, material, and reliable; LBP-11-18, 74 NRC 29 (2011)
- boards make threshold decisions on materiality on a case-by-case basis, given the nature of the issue and the record presented; LBP-15-24, 82 NRC 68 (2015)
- contention is inadmissible for failing to raise a material issue; LBP-15-26, 82 NRC 163 (2015)
- contention must explain what specific deficiencies exist and why they materially impact the license renewal application or environmental impact statement; LBP-15-1, 81 NRC 15 (2015)
- contention that does not focus at all on the technical specifications that are the subject of its request raises no issues that are material to any findings the NRC must make to approve the license amendment request; LBP-13-11, 78 NRC 177 (2013)

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contentions alleging deficiencies or errors in an application must also indicate some significant link between the claimed deficiency and either the public health and safety or the environment; LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012)

contentions must demonstrate that the issue raised is material to the findings NRC must make for the licensing action at issue; CLI-12-15, 75 NRC 704 (2012); LBP-12-13, 75 NRC 784 (2012)

correctness of assurance that the license conditions will be replaced by sections 50.75(h) and 50.82(a)(8) is a genuine concern relative to the appropriateness of the license amendment request, and therefore the board concludes that the state has shown the materiality of its contention; LBP-15-24, 82 NRC 68 (2015)

deference to board rulings on contention admissibility is appropriate even where the Commission may consider that the support for the contention is weak, or where the claim's materiality presents a close question; CLI-14-2, 79 NRC 11 (2014)

dispute at issue is material if its resolution would make a difference in the outcome of the licensing proceeding; CLI-14-2, 79 NRC 11 (2014)

if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-15-5, 81 NRC 249 (2015)

in explaining why there is a genuine material dispute, contention must give the board a reason to believe that the alleged deficiency will lead to a material safety or environmental outcome, based on factual or expert support; LBP-15-1, 81 NRC 15 (2015)

inadequacy in the severe accident mitigation alternatives analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 249 (2015)

inasmuch as NRC Staff relies on the benefits of proposed units to satisfy an otherwise unmet need for power, the adequacy of the need-for-power assessment is material to granting the proposed combined license; LBP-11-7, 73 NRC 254 (2011)

intervenor need only demonstrate that the issue raised in the contention is material to a licensing decision, i.e., that it would make a difference in the decision; LBP-11-7, 73 NRC 254 (2011)

issue of alleged failure to consult with a tribe is material and within the scope of materials license proceeding; LBP-15-16, 81 NRC 618 (2015)

issue raised must fall within the scope of the proceeding and be material to the findings that the NRC must make; CLI-15-8, 81 NRC 500 (2015)

material issue is one where resolution of the dispute would make a difference in the outcome of the licensing proceeding; LBP-11-23, 74 NRC 287 (2011)

materiality depends on whether the information is capable of influencing the decisionmaker, not on whether the decisionmaker would have relied on it; LBP-15-24, 82 NRC 68 (2015)

new contention is inadmissible because it relies on information that is not materially different from information previously available and already in the record; LBP-15-16, 81 NRC 618 (2015)

new contentions must be based on information materially different than the information previously available; LBP-14-5, 79 NRC 377 (2014)

petitioner fails to demonstrate that the issue of radiation dispersal due to site inundation is material to the findings the NRC must make to support approval of a combined license application; LBP-12-7, 75 NRC 503 (2012)

petitioner is required to show why the alleged error or omission is of possible significance to the grant or denial of a pending license application; LBP-15-24, 82 NRC 68 (2015)

petitioner must also show that its contention is material to the findings NRC must make to support issuance of the license amendments; CLI-15-25, 82 NRC 389 (2015)

petitioner must demonstrate that a contention asserts an issue of law or fact that is material to the findings the NRC must make to support the action that is involved in the proceeding; LBP-12-3, 75 NRC 164 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-15-19, 81 NRC 815 (2015); LBP-15-20, 81 NRC 829 (2015); LBP-15-23, 82 NRC 55 (2015)

petitioner must show why the alleged error or omission is of possible significance to the result of the proceeding; LBP-15-20, 81 NRC 829 (2015)

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- requests for hearing must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; LBP-13-3, 77 NRC 82 (2013)
- SAMA contention's admissibility is based on whether it purports to show that an additional SAMA should have been identified as potentially cost-beneficial; CLI-11-11, 74 NRC 427 (2011)
- simply referencing a study without explaining the information's significance relative to the potential containment leakage monitored by the testing at issue does not establish its materiality; LBP-15-26, 82 NRC 163 (2015)
- speculation that NRC would consider other SAMAs than have been previously considered does not demonstrate that the issue raised is material to NRC's decision; LBP-12-1, 75 NRC 1 (2012)
- subject matter of contentions must impact the grant or denial of a pending license application; LBP-12-15, 76 NRC 14 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-15-20, 81 NRC 829 (2015)
- test for materiality that would require petitioners to demonstrate quantitatively how an alleged defect would result in a violation of pertinent requirements is rejected; LBP-11-7, 73 NRC 254 (2011)
- under 10 C.F.R. 2.309(f)(1), in meeting materiality requirement, petitioner need only properly allege a defect; LBP-11-7, 73 NRC 254 (2011)
- unless petitioner sets forth a supported contention pointing to an apparent error or deficiency that may have significantly skewed the environmental conclusions, there is no genuine material dispute for hearing; LBP-15-29, 82 NRC 246 (2015)
- where implementation of a building code could not make a difference in the outcome of the proceeding, it cannot be material; LBP-11-7, 73 NRC 254 (2011)
- where the hearing notice does not restrict the hearing to any particular set of issues, the hearing should be understood as encompassing all issues raised by a party to the licensing proceeding that may properly be litigated under Atomic Energy Act § 189a; LBP-11-22, 74 NRC 259 (2011)
- whether the safe shutdown earthquake exceedance in applicant's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in this proceeding; LBP-11-10, 73 NRC 424 (2011)
- MATERIALS LICENSE AMENDMENT APPLICATIONS**
- applicant's environmental report is to discuss any irreversible and irretrievable commitments of resources that would be involved in the proposed action; LBP-12-3, 75 NRC 164 (2012)
- because resolution of a rule exemption request directly affects licensability of the proposed facility, the exemption raises material questions directly connected to an agency licensing action and thus comes within the hearing rights of interested parties; CLI-13-1, 77 NRC 1 (2013)
- for application or other form of permission for which applicant has previously submitted an environmental report, the supplement to applicant's ER may be limited to incorporating by reference, updating, or supplementing the information previously submitted to reflect any significant environmental change, including any resulting from operational experience or a change in operations or proposed decommissioning activities; LBP-12-24, 76 NRC 503 (2012)
- if NRC Staff finds that an application does not comply with regulatory requirements, it must inform applicant in writing of the nature of any deficiencies or the reason for the proposed denial and the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)
- if the 20-day deadline for requesting a hearing in 10 C.F.R. 2.103(b) applies, NRC Staff's failure to comply with its own responsibilities under that provision bars Staff from invoking it; LBP-11-19, 74 NRC 61 (2011)
- request for hearing on Staff denial of permission to use an alternative method for demonstrating decommissioning funding assurance is granted; LBP-11-19, 74 NRC 61 (2011)
- when licensee requests a rule exemption in a related license amendment application, hearing rights on the amendment application are considered to encompass the exemption request as well; CLI-13-1, 77 NRC 1 (2013)
- MATERIALS LICENSE AMENDMENT PROCEEDINGS**
- completion of NRC Staff's final environmental review document always must precede the conduct of hearings on environmental issues; LBP-11-30, 74 NRC 627 (2011)
- contention that application fails to provide sufficient information regarding the geological setting of the area to meet regulatory requirements is admissible; CLI-14-2, 79 NRC 11 (2014)

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- contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)
- generic environmental impact statement for ISL mining is subject to an appropriate challenge in an adjudicatory proceeding; LBP-15-11, 81 NRC 401 (2015)
- if proximity-based standing cannot be demonstrated, then standing must be established according to traditional principles of redressability, injury, and causation; LBP-12-3, 75 NRC 164 (2012)
- in lieu of the injury and causation showings for standing, petitioner has been able to establish promixity-plus by showing that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; LBP-12-3, 75 NRC 164 (2012)
- NRC could consider adopting, at least for the initial construction/operation authorization of in situ recovery facilities, a standing regime by which persons living or having substantial contacts within a 50-mile radius of the facility are afforded standing; LBP-12-3, 75 NRC 164 (2012)
- NRC Staff's unopposed motion to terminate the proceeding is granted; LBP-11-12, 73 NRC 531 (2011)
- whether petitioner could be affected by a materials licensing action must be determined on a case-by-case basis, taking into account petitioner's distance from the source, nature of the licensed activity, and significance of the radioactive source; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)
- MATERIALS LICENSE AMENDMENTS**
- if applicant decides to remove a method from the approved list of alarm resolution methods, it would have to follow the prescribed change process or the license amendment process; LBP-14-1, 79 NRC 39 (2014)
- source materials licensee must demonstrate that sufficient funds will be available to cover the cost of decommissioning its facility; LBP-12-6, 75 NRC 256 (2012)
- MATERIALS LICENSE APPLICATIONS**
- applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an environmental report with its application; LBP-15-3, 81 NRC 65 (2015)
- applicant must provide a full description of its program for control and accounting of special nuclear material to show how it will comply with the 10 C.F.R. Part 74 requirements; LBP-11-9, 73 NRC 391 (2011)
- applicant must provide analyses that are adequate, accurate, and complete in all material respects to demonstrate that cultural and historic resources are identified and protected; LBP-15-16, 81 NRC 618 (2015)
- applicants applying to possess 5 or more formula kilograms of strategic special nuclear material must maintain alarm resolution capabilities designed to achieve the performance objectives of section 74.51(a); LBP-14-1, 79 NRC 39 (2014)
- environmental reports must contain a description of the proposed action, a statement of its purposes, and a description of the environment affected; LBP-15-3, 81 NRC 65 (2015)
- environmental reports must discuss the five elements of 10 C.F.R. 51.45(b)(1)-(5); LBP-15-3, 81 NRC 65 (2015)
- Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 499 (2011)
- timing of source materials license renewal application enables licensee to operate under NRC's timely renewal provision until the agency renews the license; LBP-15-2, 81 NRC 48 (2015)
- MATERIALS LICENSE PROCEEDINGS**
- applicant bears the ultimate burden of proof in materials licensing proceedings; LBP-14-1, 79 NRC 39 (2014)
- application or other form of permission for which applicant has previously submitted an environmental report, the supplement to applicant's ER may be limited to incorporating by reference, updating, or supplementing the information previously submitted to reflect any significant environmental change, including any resulting from operational experience or a change in operations or proposed decommissioning activities; LBP-12-24, 76 NRC 503 (2012)
- issue of alleged failure to consult with a tribe is material and within the scope of materials license proceeding; LBP-15-16, 81 NRC 618 (2015)

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MATERIALS LICENSE RENEWAL

- admissibility of contention that applicant submit a decommissioning plan and updated financial plans related to decommissioning is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that environmental documents lack an adequate description of financial assurances sufficient to pay the costs of restoration and long-term monitoring of up to 30 years is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that final environmental assessment fails to satisfy NRC's requirement for an environmental impact statement when there are unresolved conflicts concerning reasonable alternatives is decided; LBP-15-15, 81 NRC 598 (2015)
- admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 401 (2015)
- applicant is not required to assess cumulative impacts in its environmental report, but NUREG-1748 requests that applicant discuss any past, present, or reasonably foreseeable future actions that could result in cumulative impacts when combined with the proposed action; LBP-12-24, 76 NRC 503 (2012)
- applications for renewal of an ISFSI license must describe the aging management plan for management of issues associated with aging that could adversely affect structures, systems, and components important to safety; LBP-12-24, 76 NRC 503 (2012)
- if NRC Staff grants a renewed license before a hearing takes place, intervenor may seek a stay of Staff's action; CLI-12-4, 75 NRC 154 (2012)
- it is not necessary or appropriate to throw open the full gamut of provisions in a facility's current licensing basis to reanalysis during the license renewal review, because the current licensing basis is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-12-24, 76 NRC 503 (2012)
- notification of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 48 (2015)
- NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)
- specific licenses expire on the date stated in the license unless licensee has filed a request for renewal not less than 30 days prior to that date, and a license in timely renewal expires on the day on which NRC makes a final determination to deny the request, or, if the determination states an expiration date, then on the stated expiration date; CLI-12-4, 75 NRC 154 (2012)
- stay of an NRC license is an extraordinary remedy, and a rare occurrence in NRC practice; LBP-15-2, 81 NRC 48 (2015)
- timing of license issuance is informed by instruction for NRC Staff to promptly issue its approval or denial of the application consistent with its findings, and despite the pendency of a hearing; LBP-15-2, 81 NRC 48 (2015)
- timing of source materials license renewal application enables licensee to operate under NRC's timely renewal provision until the agency renews the license; LBP-15-2, 81 NRC 48 (2015)
- when licensee has made timely and sufficient application for a renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-15-2, 81 NRC 48 (2015); LBP-15-11, 81 NRC 401 (2015)

MATERIALS LICENSE RENEWAL PROCEEDINGS

- challenge to the adequacy of the acceptance criteria or any other component of the current licensing basis is not within the scope of the proceeding; LBP-12-24, 76 NRC 503 (2012)
- petitioner is entitled to a presumption of standing if petitioner resides in the zone of reasonably foreseeable harm from the source of radioactivity and the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-12-24, 76 NRC 503 (2012)
- ruling on petitions for waiver of application of the waste confidence rule in independent spent fuel storage installation license renewal proceeding is deferred and held in abeyance; LBP-12-24, 76 NRC 503 (2012)
- there is no predefined distance marking the area of potential offsite consequences on which to establish standing and thus this must be judged on a case-by-case basis; LBP-12-24, 76 NRC 503 (2012)

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MATERIALS LICENSEES

- adequacy finding on applicant's material control and accounting program requires the board to make a case-by-case determination, guided by the Atomic Energy Act's mandate that no license to possess special nuclear material may be issued if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 39 (2014)
- grounds for license denial exist if, prior to issuance of a license to possess and use source and byproduct materials for uranium milling, there is commencement of construction by an applicant; LBP-12-3, 75 NRC 164 (2012)
- material control and accounting system is required for a fuel fabrication facility; LBP-14-1, 79 NRC 39 (2014)
- NRC may issue a license to possess and use 5 or more formula kilograms of strategic special nuclear material only if applicant can establish, implement, and maintain a Commission-approved material control and accounting system that will achieve general performance objectives; LBP-14-1, 79 NRC 39 (2014)
- section 74.55(b)(1) applies only to licensees that are authorized to possess 5 or more formula kilograms of strategic special nuclear material; LBP-14-1, 79 NRC 39 (2014)
- source materials licensees have numerous options for meeting their decommissioning funding obligations; LBP-12-6, 75 NRC 256 (2012)

MATERIALS LICENSES

- along with the requirement to perform an integrated safety analysis is the requirement for applicant to provide the NRC Staff with an ISA summary, the content of which is specified in 10 C.F.R. 70.65(b); LBP-11-11, 73 NRC 455 (2011)
 - applicant for a Part 70 license is required to establish and maintain a safety program, which includes performing an integrated safety analysis; LBP-11-11, 73 NRC 455 (2011)
 - applicant must indicate the period of time for which a Part 70 license is requested; LBP-11-11, 73 NRC 455 (2011)
 - applicant's integrated safety analysis must consider potential accident sequences caused either by deviations in the processes that will be conducted at the proposed facility or by credible external events, including natural phenomena; LBP-11-11, 73 NRC 455 (2011)
 - for a proposed nuclear materials-related activity, commencement of construction relative to that activity prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-26, 74 NRC 499 (2011)
 - key action that will allow incineration of imported low-level-radioactive waste material is the domestic license authorizing such processing, not NRC's grant of an import license; CLI-11-3, 73 NRC 613 (2011)
 - licensing strategy whereby applicant seeks initial in situ recovery licensing authorization to mine a particular area on which a central processing plant is located, followed thereafter by additional license amendments to cover ISR activities on contiguous or nearby areas, has been employed previously under the agency's ISR facility licensing regime; LBP-13-10, 78 NRC 117 (2013)
 - materials license suspension proceeding is not an adversarial adjudication for purposes of the Equal Access to Justice Act because the Atomic Energy Act does not require such a hearing to be on the record pursuant to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 349 (2011)
 - Pentapartite Agreement between the United States and four European governments to prevent new restricted data from being disseminated to European nationals will be a prerequisite to the NRC Staff issuing a facility clearance; LBP-11-11, 73 NRC 455 (2011)
 - preconstruction activities that are allowed under Part 50 are also allowed for materials licenses; LBP-11-26, 74 NRC 499 (2011)
 - regulations contain no express prohibition on foreign ownership, but require Staff to make a finding that license issuance will not be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)
 - Staff imposed a license condition on a uranium enrichment facility to ensure that clearances are obtained before classified matter is processed, stored, reproduced, transmitted, handled, or accessed; LBP-11-11, 73 NRC 455 (2011)
- See Byproduct Materials Licenses; Source Materials Licenses

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MAXIMUM CONTAMINANT LEVELS

- EPA drinking water MCLs continue to be an accepted groundwater restoration standard; LBP-15-3, 81 NRC 65 (2015)
- in exempting an aquifer from MCLs, EPA has to find that the aquifer cannot and will not serve as a source of drinking water because it is mineral producing and can be demonstrated to contain minerals that, considering their quantity and location, are expected to be commercially producible; LBP-15-3, 81 NRC 65 (2015)
- no in situ recovery facility has ever requested that all OZ aquifer groundwater hazardous constituents be restored to CAB concentrations or Criterion 5B(5)(b) MCLs, as those are currently defined; LBP-15-3, 81 NRC 65 (2015)

MEMORANDUM OF UNDERSTANDING

- NRC Staff's environmental review was conducted in cooperation with the U.S. Army Corps of Engineers, with NRC acting as lead agency and ACE as cooperating agency under a memorandum of understanding because applicants also needed permits from ACE to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

MERITS

- See Decision on the Merits

METEOROLOGICAL FACTORS

- accounting for the meteorological patterns, atmospheric transport modeling, and data issues raised by intervenor cannot credibly alter which severe accident mitigation alternatives are potentially cost-beneficial to implement; LBP-11-18, 74 NRC 29 (2011)
- sea-breeze effect and hot-spot effect must cause the expected average offsite damages to increase by at least a factor of 2 for the next most costly severe accident mitigation alternative to be cost-effective; LBP-11-18, 74 NRC 29 (2011)

MIGRATION TENET

- absent timely analysis of the section 2.309(c)(1) and (f)(1) new/amended contention precepts by the contention's sponsor, a board is not obligated to determine whether those new/amended contention requirements could have been met relative to a migrated environmental contention; LBP-13-10, 78 NRC 117 (2013)
- admitted contentions challenging applicant's environmental report may, in appropriate circumstances, function as challenges to similar portions of NRC Staff's environmental impact statement; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- admitted contentions fall under the migration tenet when information in the draft environmental impact statement is sufficiently similar to information in the environmental report; LBP-13-9, 78 NRC 37 (2013)
- although contention contesting applicant's environmental report generally may be viewed as a challenge to NRC Staff's subsequent draft environmental impact statement, new claims must be raised in a new or amended contention; LBP-13-10, 78 NRC 117 (2013)
- because primary responsibility to address and comply with AEA safety-related requirements resides with a license applicant, that application, not NRC Staff's application review, is the focus of any safety-related contentions and thus the migration tenet does not apply; LBP-13-10, 78 NRC 117 (2013)
- boards may construe an admitted contention contesting the environmental report as a challenge to a subsequently issued draft or final environmental impact statement without the need for intervenors to file a new or amended contention; LBP-12-12, 75 NRC 742 (2012); LBP-12-23, 76 NRC 445 (2012); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-15-11, 81 NRC 401 (2015)
- challenges to only the draft environmental impact statement apply equally to the final environmental impact statement; LBP-12-5, 75 NRC 227 (2012)
- challenging the environmental report preserves petitioner's right to challenge the environmental impact statement at a later stage of the proceedings; LBP-12-8, 75 NRC 539 (2012)
- contention challenging sufficiency of draft environmental impact statement as it pertains to protection of cultural resources falls within the migration tenet and is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention migrates when a licensing board construes a contention challenging the environmental section of an application as a challenge to a subsequently issued Staff NEPA document without petitioner amending the contention; CLI-15-17, 82 NRC 33 (2015)

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contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 377 (2014)

contentions migrate because the underlying issue and concern raised in response to the draft supplemental environmental impact statement remain, and because a motion for summary disposition has not been filed; LBP-14-5, 79 NRC 377 (2014)

in certain instances, contentions challenging an environmental report are deemed to migrate from challenging applicant's environmental report to challenging NRC Staff's environmental assessment; LBP-14-6, 79 NRC 404 (2014)

migration of a contention is appropriate only where the environmental analysis or discussion at issue is essentially in pari materia with applicant's analysis or discussion that is the focus of the contention; LBP-12-12, 75 NRC 742 (2012); LBP-15-11, 81 NRC 401 (2015)

tenet applies where information in the draft environmental impact statement is sufficiently similar to information in the environmental report; LBP-14-6, 79 NRC 404 (2014)

tenet helps to expedite hearings by obviating the need to file and litigate the same contention up to three times, once against the ER, once against the DEIS, and one final time against the FEIS; LBP-12-12, 75 NRC 742 (2012); LBP-12-23, 76 NRC 445 (2012)

when information in the draft environmental impact statement is sufficiently similar to information in applicant's environmental report, previously admitted contentions challenging the environmental report apply to relevant portions of the DSEIS; LBP-15-16, 81 NRC 618 (2015)

when the information in the final supplemental environmental impact statement is sufficiently similar to information in the draft SEIS, the tenet applies; LBP-14-5, 79 NRC 377 (2014)

MIGRATORY BIRD TREATY ACT

claim that NRC Staff did not engage in the consultation process relevant to issues addressed by the Migratory Bird Treaty Act and that impacts to wildlife with respect to this Act are inadequately analyzed is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 37 (2013)

contention that the final supplemental environmental impact statement violates the National Environmental Policy Act and implementing regulations by failing to conduct the required hard-look analysis of impacts of the proposed mine on species of birds and bats receiving special protection migrates as an admissible contention; LBP-14-5, 79 NRC 377 (2014)

MINORITIES

federal agencies shall identify and consider whether their actions will cause disproportionate environmental impacts on minority, low-income, or other sensitive populations; LBP-12-24, 76 NRC 503 (2012)

MISCONDUCT

although petitioner's inadvertent publication of protected information was a serious offense that exposed movant to potential economic harm and undermined integrity of the adjudicative proceeding, the significance of petitioner's misconduct is alleviated to some degree by the immediate corrective action taken by petitioner; LBP-13-2, 77 NRC 71 (2013)

board denies a motion seeking sanctions against petitioner for violating the governing protective order and nondisclosure agreement, but imposes a document review requirement upon petitioner in light of its misconduct and to enhance future compliance with the proceeding's protective order; LBP-13-2, 77 NRC 71 (2013)

licensing boards may impose reprimands, censures, or suspensions from proceedings on contumacious parties or their representatives; LBP-13-2, 77 NRC 71 (2013)

MISREPRESENTATION

estoppel claims must rely on its adversary's conduct in such a manner as to change his position for the worse, and that reliance must have been reasonable in that the party claiming the estoppel did not know nor should it have known that its adversary's conduct was misleading; LBP-12-16, 76 NRC 44 (2012)

See also Material Misrepresentation

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MITIGATION PLANS

- admissibility of contention that environmental assessment fails to adequately describe or analyze proposed mitigation measures is decided; LBP-15-11, 81 NRC 401 (2015)
- agency preparing the NEPA document must explain the statutory or regulatory requirements it is relying on and its reasons for concluding that the application of those requirements will actually result in the mitigation and monitoring it assumes will occur; LBP-15-11, 81 NRC 401 (2015)
- agency's procedural obligation to discuss mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated is distinguished from any substantive requirement to actually develop and adopt a detailed mitigation plan; LBP-14-7, 79 NRC 451 (2014)
- agency's record of decision must include a concise discussion of mitigation measures; LBP-15-16, 81 NRC 618 (2015)
- agency's reliance on mitigation in making a finding of no significant impact must be justified; LBP-14-7, 79 NRC 451 (2014)
- alternate pressurized thermal shock rule specifies mitigation processes for licensees if they project they will exceed (or they do exceed) the rules' screening criteria; LBP-15-17, 81 NRC 753 (2015)
- because NEPA imposes no substantive requirement that mitigation measures actually be taken, it should not be read to require agencies to obtain an assurance that third parties will implement particular measures; LBP-14-7, 79 NRC 451 (2014)
- before being granted a Clean Water Act section 404 permit, applicant must demonstrate to the Corps of Engineers that it has taken all appropriate and practicable steps to avoid and minimize adverse impacts; LBP-15-23, 82 NRC 55 (2015)
- contention alleging deficiencies in Corp of Engineers' compensatory mitigation methods under the Clean Water Act lacks alleged facts or expert opinions; LBP-15-23, 82 NRC 55 (2015)
- courts decide whether a mitigation plan was adequately or inadequately discussed, but the line between these two options is not well defined; LBP-15-16, 81 NRC 618 (2015)
- environmental impact statement must discuss any adverse environmental effects that cannot be avoided should the proposal be implemented and must provide a reasonably complete discussion of possible mitigation measures; LBP-15-11, 81 NRC 401 (2015)
- environmental mitigation options must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-14-9, 80 NRC 15 (2014)
- if impacts are unavoidable, applicant shall provide mitigation measures that must be, to the extent practicable, sufficient to replace lost aquatic resource functions; LBP-15-23, 82 NRC 55 (2015)
- in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)
- lead agency must make available to the public the results of relevant monitoring of mitigation measures; LBP-15-16, 81 NRC 618 (2015)
- licensees must develop strategies to mitigate a simultaneous loss of all a.c. power and loss of normal access to the ultimate heat sink; DD-15-5, 81 NRC 877 (2015)
- merely listing possible mitigation options does not satisfy NEPA; LBP-15-16, 81 NRC 618 (2015); LBP-15-23, 82 NRC 55 (2015)
- monitoring and enforcement program must be adopted where applicable for any mitigation; LBP-15-16, 81 NRC 618 (2015)
- NEPA does not demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-14-7, 79 NRC 451 (2014); LBP-15-16, 81 NRC 618 (2015); LBP-15-23, 82 NRC 55 (2015)
- NEPA imposes procedural requirements on an agency to consider mitigation options but does not mandate particular results; LBP-15-23, 82 NRC 55 (2015)
- NEPA requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated; LBP-14-7, 79 NRC 451 (2014); LBP-15-23, 82 NRC 55 (2015)
- NEPA requires the draft environmental impact statement to contain a detailed discussion of possible mitigation measures; LBP-15-23, 82 NRC 55 (2015)
- NRC issued an order on station blackout mitigation strategies requiring strategies to protect against, among many other hazards, postulated seismic events; DD-15-1, 81 NRC 193 (2015)

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- proposed mitigation measures are sufficient if they are supported by sufficient evidence, such as studies conducted by the agency, or are adequately policed; LBP-14-7, 79 NRC 451 (2014)
- reasonably complete discussion of possible mitigation measures must be included in a NEPA document, to allow the agency and the public a chance to properly evaluate the severity of the adverse effects; LBP-15-16, 81 NRC 618 (2015)
- reliance on mitigation is justified if the proposed mitigation underlying the finding of no significant impact is more than a possibility in that it is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-14-7, 79 NRC 451 (2014)
- request that NRC order licensees to modify the technical guidelines to include emergency operations procedures, severe accident mitigation guidelines, and extensive damage mitigation guidelines in an integrated manner, specify clear command and control strategies for their implementation, and stipulate appropriate qualification and training for those who make decisions during emergencies is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)
- there must be some assurance that mitigation measures constitute an adequate buffer against the negative impacts that result from the authorized activity to render such impacts so minor as to not warrant an environmental impact statement; LBP-14-7, 79 NRC 451 (2014)
- though mitigation measures must be discussed in an environmental impact statement, NEPA does not guarantee that federally approved projects will have no adverse impacts; LBP-15-16, 81 NRC 618 (2015)
- Uniform Mitigation Assessment Method code and Wetland Assessment Technique for Environmental Review code methods reflect Corps of Engineers' preferred approach to compensatory mitigation under the Clean Water Act; LBP-15-23, 82 NRC 55 (2015)
- when an agency otherwise complies with NEPA's requirement of a reasonably thorough mitigation analysis, there is no error in the agency's reliance on the Clean Water Act section 404's substantive requirements as mitigation measures even though the section 404 permit review is not yet complete; LBP-15-23, 82 NRC 55 (2015)
- when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-14-7, 79 NRC 451 (2014)
- when the adequacy of an EIS mitigation strategy is challenged, the determining issue is whether the agency took a sufficiently hard look at environmental consequences, and ensured that its decision was supported by a completely informed record; LBP-15-16, 81 NRC 618 (2015)
- where the agency has found mitigation strategies necessary to alleviate a potential impact, the associated discussion should be reasonably complete to properly evaluate the severity of the adverse effects; LBP-15-11, 81 NRC 401 (2015)
- MIXED OXIDE FUEL**
- if licensee endeavors to use MOX fuel during the license renewal term, it will need to seek a license amendment; LBP-13-8, 78 NRC 1 (2013)
- MODELS/MODELING**
- agency's failure to adequately validate a quantitative model on which it relies may lead the reviewing court to conclude that the agency's decision is arbitrary, capricious, or contrary to law; LBP-15-20, 81 NRC 829 (2015)
- MODIFICATION ORDER**
- none of the post-Fukushima orders or information requests can be characterized as approvals that must be obtained in connection with renewal of an operating license; LBP-12-15, 76 NRC 14 (2012)
- request for additional instrumentation for all Mark I spent fuel storage pools has been addressed through an order modifying licenses with regard to reliable spent fuel pool instrumentation; DD-15-1, 81 NRC 193 (2015)
- MONITORING**
- activities associated with, and the data coming from, prelicensing groundwater monitoring activities are associated with compliance with the dictates of 10 C.F.R. Part 40, Appendix A, Criterion 7; LBP-15-3, 81 NRC 65 (2015)
- agencies may provide for monitoring to ensure that their decisions are carried out and should do so in important cases; LBP-15-16, 81 NRC 618 (2015)

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although the Part 40, Appendix A criteria were developed for conventional uranium milling facilities, they have since been applied in limited fashion to ISR facilities; LBP-15-3, 81 NRC 65 (2015)

applicant for a uranium ISR license is required to provide data from a groundwater monitoring program that are sufficient to establish a precensuring site characterization baseline for assessing the potential effects of facility operations on local groundwater quality; LBP-15-3, 81 NRC 65 (2015)

applicant must establish a preoperational monitoring program that must be conducted to provide complete baseline data on a milling site and its environs; LBP-15-16, 81 NRC 618 (2015)

applicant's program for establishing existing site characterization baseline values for certain site groundwater constituents prior to issuance of a source materials license for ISR facility construction and operation need not, to comply with NEPA and NRC's Part 51 implementing regulations, be conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 65 (2015)

applicant's strategic special nuclear material item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 39 (2014)

as a matter of law and logic, if applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program was a fortiori inadequate, and intervenor had a regulatory obligation to challenge it in its original petition to intervene; LBP-11-20, 74 NRC 65 (2011)

comprehensive system of planned and periodic audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine effectiveness of the program; LBP-14-7, 79 NRC 451 (2014)

contention that final supplemental environmental impact statement fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-3, 81 NRC 65 (2015)

determination of background groundwater quality to include sampling of wells that are hydraulically upgradient of the waste management area is not required if non-upgradient well sampling will provide an indication of background groundwater quality that is representative, or more representative, than that provided by upgradient wells; LBP-15-3, 81 NRC 65 (2015)

ERDS is a direct electronic data link between licensees of operating reactors and the NRC Operations Center, and its objective is to allow NRC to monitor critical parameters during an emergency; LBP-15-4, 81 NRC 156 (2015)

fire detection systems shall be automatic and capable of operating with or without offsite power; DD-12-3, 76 NRC 416 (2012)

for agency decisions such as a combined license that are based on an environmental impact statement, a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation; LBP-12-23, 76 NRC 445 (2012)

given that legally binding monitoring and mitigation measures have been imposed via a certificate of compliance issued by the appropriate state and local agencies, board has reasonable assurance that these measures will be implemented and that these agencies will actively monitor and enforce appropriate compliance with these environmental monitoring and mitigation measures; LBP-13-4, 77 NRC 107 (2013)

if applicant's enhanced monitoring program, which was the topic of a late-filed contention, was insufficient, it must have been insufficient beforehand too; CLI-12-10, 75 NRC 479 (2012)

if, as intervenors allege, applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program embodied in its license renewal application was a fortiori inadequate, and intervenors had a regulatory obligation to challenge it in their original petition to intervene; LBP-15-1, 81 NRC 15 (2015)

in situ recovery license applicant is barred from installing a complete wellfield and associated monitor well networks until after a license is issued; LBP-15-3, 81 NRC 65 (2015)

intervenors must point to the specific ways in which the shield building monitoring aging management plan is wrong or inadequate to raise a genuine dispute with applicant's license renewal application; LBP-12-27, 76 NRC 583 (2012)

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- licensee shall establish a detection monitoring program needed for NRC to set the site-specific groundwater protection standards, and the monitoring program must be in place when specified by NRC in license conditions; LBP-15-3, 81 NRC 65 (2015)
- licensees must assess the condition of their components, monitor performance of structures, systems, and components to ensure that can of fulfill their intended functions, and establish a suitable test program to demonstrate that components will perform satisfactorily in-service; DD-13-2, 78 NRC 185 (2013)
- licensees must monitor structures, systems, and components in a manner sufficient to provide reasonable assurance that the SSCs are capable of supporting their intended function; DD-15-3, 81 NRC 713 (2015)
- monitoring and enforcement program must be adopted where applicable for any mitigation; LBP-15-16, 81 NRC 618 (2015)
- nothing in 10 C.F.R. Part 40, Appendix A, Criterion 5B precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's precicensing program were adequate to provide the necessary information to characterize properly the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 65 (2015)
- nothing in the definition of "construction" in 10 C.F.R. 40.4 precludes the installation of wells or the use of monitoring protocols as needed to provide those background data; LBP-15-3, 81 NRC 65 (2015)
- NRC Staff's reliance in an environmental impact statement on predicted future monitoring and regulatory compliance program to prevent environmental impacts is not permitted; LBP-14-9, 80 NRC 15 (2014)
- NRC, in its capacity as the federal agency charged with regulating the nuclear industry in a manner that protects public health and safety, monitors nuclear emergencies; LBP-11-15, 73 NRC 629 (2011)
- post-licensing, preoperational activities conducted to comply with Part 40, Appendix A, Criterion 7 are associated with compliance with the dictates of 10 C.F.R. Part 40, Appendix A, Criteria 5B and 7A; LBP-15-3, 81 NRC 65 (2015)
- precicensing monitoring program to characterize site groundwater constituents need not be coextensive with the Criterion 7A preoperational monitoring, license condition-based program intended to provide the information needed for setting Criterion 5B groundwater protection standards and UCLs; LBP-15-16, 81 NRC 618 (2015)
- pressure monitoring system that functions to alert ISFSI operators of potential storage problems, specifically a leak of one of the seals, is intended to meet the requirements for monitoring of dry spent fuel storage; LBP-12-24, 76 NRC 503 (2012)
- record of decision must also summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-12-18, 76 NRC 127 (2012)
- request that NRC order licensees to complete the Emergency Response Data System modernization initiative by June 2012 to ensure multiunit site monitoring capability is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)
- subset of the production and injection wells to be drilled within the boundaries of the ISR wellfield is to be used to sample groundwater from the aquifer prior to the commencement of operations to establish hazardous constituent Commission-approved background concentrations; LBP-15-3, 81 NRC 65 (2015)
- surveillance program to monitor pressurized water reactor pressure vessel is described; LBP-15-17, 81 NRC 753 (2015)
- there is a general overarching requirement that applicant's strategic special nuclear material item monitoring method be sufficiently accurate to provide reasonable assurance that the specific regulatory requirement is satisfied; LBP-14-1, 79 NRC 39 (2014)
- there is no assurance of a mitigation measure efficacy where the government conducted no study of its likely effects, proposed no monitoring to determine how effective the proposed mitigation would be, and did not consider alternatives in the event the measure fails; LBP-12-23, 76 NRC 445 (2012)

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uranium enrichment facility applicant's commitment to monitoring and the corrective action program provides reasonable assurance that public health and safety will be protected and applicant has a program in compliance with the regulations; LBP-12-21, 76 NRC 218 (2012)
waiting until after licensing, but before mining operations begin, to definitively establish groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach well fields; LBP-15-3, 81 NRC 65 (2015)
water samples taken from one well located hydrologically upgradient are part of the groundwater sampling protocol; LBP-15-3, 81 NRC 65 (2015)
See also Radiological Monitoring

MOOTNESS

absent compelling reasons, the Commission adheres to the case or controversy doctrine in its adjudicatory proceedings; LBP-13-7, 77 NRC 307 (2013)
admitted contentions of omission may be rendered moot by subsequent license-related documents filed by NRC Staff that address the alleged omission; LBP-13-9, 78 NRC 37 (2013)
alleged defects in applicant's environmental report may be mooted by the content of NRC's environmental impact statement or supplemental environmental impact statement; LBP-11-28, 74 NRC 604 (2011)
at the construction authorization request stage, the board dismissed a material control and accounting contention as moot, pending submittal of applicant's Fundamental Nuclear Material Control Plan which would require inclusion of a detailed MC&A program; LBP-14-1, 79 NRC 39 (2014)
because the plant is now permanently shut down and will not restart, no live controversy remains between the litigants; CLI-13-9, 78 NRC 551 (2013)
cases will be moot when the issues are no longer live, or the parties lack a cognizable interest in the outcome; CLI-13-9, 78 NRC 551 (2013)
contention based solely upon omissions from the environmental report is rendered moot when the missing information is supplied; LBP-11-14, 73 NRC 591 (2011)
contention dismissal based on mootness is a jurisdictional ruling, not a decision on the merits of the claim; LBP-11-22, 74 NRC 259 (2011)
contention of omission that has been admitted may be rendered moot by subsequent license-related documents filed by NRC Staff that address the alleged omission; LBP-14-5, 79 NRC 377 (2014)
controversy often ends during the pendency of appeals before the Commission or the Appeal Board; CLI-13-9, 78 NRC 551 (2013)
exception to the mootness doctrine occurs if the challenged action is too short in duration to be litigated and there is a reasonable expectation that the same party will be subjected to the same action again; CLI-13-9, 78 NRC 551 (2013); CLI-13-10, 78 NRC 563 (2013)
exception to the mootness doctrine occurs when a case is capable of repetition, yet evading review; CLI-13-10, 78 NRC 563 (2013)
future cases are appropriately decided in the context of a concrete dispute, with self-interested parties vigorously advocating opposing positions; CLI-13-9, 78 NRC 551 (2013)
general proposition that an appeal is not moot if there is a possibility of similar acts recurring in the future applies to instances where the same litigants likely will be subject to similar future action; CLI-13-9, 78 NRC 551 (2013)
hearing request was dismissed as moot where petitioner's claim was not susceptible to meaningful adjudicative relief; LBP-13-7, 77 NRC 307 (2013)
if a board were to adjudicate either the admissibility of a moot contention or the standing of a petitioner who sought to adjudicate a moot contention, it would be issuing an advisory opinion in derogation of Commission precedent; LBP-13-7, 77 NRC 307 (2013)
if a contention is rendered moot by information supplied by applicant or considered by NRC Staff in a draft environmental impact statement, the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of the NRC Staff's treatment of the relevant issue; LBP-13-9, 78 NRC 37 (2013)
if a party believes an admitted contention is mooted by the inclusion of additional information, that party may file a motion for summary disposition; LBP-14-5, 79 NRC 377 (2014)

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if all matters at issue in a contention of omission are addressed by NRC Staff in its draft environmental impact statement through the actual provision of information on all such matters, then no legal interest in that contention remains, and the contention is moot; LBP-11-4, 73 NRC 91 (2011)

if applicant cures the omission cited in a contention, the contention will become moot unless revised by intervenors; LBP-15-5, 81 NRC 249 (2015)

if applicants believe that their actions render a contention moot, then they should promptly file a motion for summary disposition; LBP-12-19, 76 NRC 184 (2012)

if the environmental impact statement addresses the concerns alleged in the contention, the original contention becomes moot and the intervenor must raise a new contention if it claims the EIS discussion is still inaccurate or incomplete; LBP-14-6, 79 NRC 404 (2014)

in ruling on whether a contention is moot, boards look to whether a justiciable controversy still exists and whether an issue is still live, such that a party still has a legal interest in the issue; LBP-11-4, 73 NRC 91 (2011)

intervenors' challenges to adequacy of applicant's environmental report with respect to environmental impacts of dewatering associated with the proposed nuclear plant continue to serve as viable challenges to similar sections of Staff's draft environmental impact statement and thus are not moot; LBP-11-1, 73 NRC 19 (2011)

it is the Commission's customary practice to vacate a challenged licensing board decision when, during the pendency of an appeal, the proceeding becomes moot; CLI-13-10, 78 NRC 563 (2013)

licensee challenged NRC Staff's use of immediately effective orders after fulfilling the underlying requirements of those orders; CLI-13-9, 78 NRC 551 (2013)

NRC Staff's issuance of an environmental assessment under NEPA does not necessarily moot contentions challenging an applicant's environmental report; LBP-14-6, 79 NRC 404 (2014)

petitioner's request for action relating to containment structural damage is mooted by licensee's decision to shut down and defuel the facility; DD-14-3, 79 NRC 500 (2014)

publication of NRC Staff's draft environmental impact statement may moot a contention challenging the environmental analysis in the applicant's environmental report, if the DEIS dispenses with the issues raised in the original contention challenging the ER; LBP-11-1, 73 NRC 19 (2011)

request that NRC order licensee to submit a license amendment application for the design and installation of replacement steam generators and for additional enforcement action is moot; DD-15-7, 82 NRC 257 (2015)

resolution of a mooted contention requires no more than a finding by the presiding officer that the matter has become moot; LBP-12-5, 75 NRC 227 (2012)

stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 551 (2013)

to show that a case is not moot, movant must show a reasonable expectation that it will be subjected to the same action again; CLI-13-9, 78 NRC 551 (2013)

vacatur is not automatic, but will depend on the nature and character of the conditions that have caused the case to become moot; CLI-13-9, 78 NRC 551 (2013)

when petitioner obtains the relief it is seeking before the admissibility of its contention is resolved, the admissibility vel non of the contention is no longer justiciable, because it no longer presents a live controversy involving a true clash of interests that is susceptible to meaningful adjudicative relief; LBP-13-7, 77 NRC 307 (2013)

where a contention alleges omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by NRC Staff in a draft environmental impact statement, the contention is moot, and intervenors must timely file a new or amended contention to raise specific challenges regarding the new information; LBP-12-5, 75 NRC 227 (2012)

where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant, the contention is moot; LBP-11-16, 73 NRC 645 (2011); LBP-12-27, 76 NRC 583 (2012)

with licensee's withdrawal of license amendment request, the proceeding is now moot; CLI-13-10, 78 NRC 563 (2013)

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MOTIONS

all motions must include a certification that movant has made a sincere effort to contact other parties in the proceeding and resolve the issue raised in the motion, and that the movant's efforts to resolve the issue have been unsuccessful; LBP-11-2, 73 NRC 28 (2011); LBP-11-15, 73 NRC 629 (2011)

although NRC rules require that motions be addressed to the presiding officer when a proceeding is pending, suspension motions are best addressed to the Commission; CLI-11-5, 74 NRC 141 (2011)

failure to read NRC regulations carefully does not constitute good cause for accepting late-filed motions; LBP-11-34, 74 NRC 685 (2011)

if any portion of a filing is untimely tendered, it must be accompanied by a motion to file out of time; LBP-11-13, 73 NRC 534 (2011)

motions must be filed no later than 10 days after the occurrence or circumstance from which the motion arises; LBP-12-26, 76 NRC 559 (2012)

motions must be rejected if they do not include a certification by the attorney or representative of the moving party that movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that movant's efforts to resolve the issue(s) have been unsuccessful; LBP-12-27, 76 NRC 583 (2012)

NRC rules do not contemplate motions filed as placeholders for a further motion to be filed later; CLI-14-6, 79 NRC 445 (2014)

parties' other professional obligations do not relieve them of their obligations to meet regulatory deadlines; LBP-11-34, 74 NRC 685 (2011)

state's motion for cross-examination was granted, insofar as it would have a reasonable opportunity to examine witnesses pursuant to NRC regulations; LBP-13-13, 78 NRC 246 (2013)

when a party requests action from the presiding officer in an NRC adjudicatory proceeding, the request must come in the form of a motion; CLI-15-13, 81 NRC 555 (2015)

MOTIONS FOR RECONSIDERATION

if leave to file the motion is granted, the motion must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, which renders the decision invalid; CLI-12-17, 76 NRC 207 (2012)

lateness is a sufficient ground on which to deny a motion; CLI-12-17, 76 NRC 207 (2012)

motion is denied for failure to meet the high standard of 10 C.F.R. 2.323(e); LBP-12-26, 76 NRC 559 (2012)

motion is procedurally defective, out of time, and fails to assert compelling circumstances justifying reconsideration; CLI-13-7, 78 NRC 199 (2013)

motion should not include new arguments or evidence unless it relates to a board concern that applicant could not reasonably have anticipated; LBP-14-7, 79 NRC 451 (2014)

motions must be filed within 10 days of the action for which reconsideration is requested; CLI-12-17, 76 NRC 207 (2012); CLI-14-10, 80 NRC 157 (2014); LBP-11-15, 73 NRC 629 (2011)

motions should be based on an elaboration of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification; CLI-12-17, 76 NRC 207 (2012)

motions should not simply reargue matters already considered but rejected; CLI-12-17, 76 NRC 207 (2012)

movant must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-14-1, 79 NRC 1 (2014); LBP-14-7, 79 NRC 451 (2014)

petitioners' request, though styled a petition for review, asked the Commission to reconsider its own prior ruling, and was therefore properly considered according to the standards governing a motion for reconsideration; CLI-12-17, 76 NRC 207 (2012)

petitions for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision and that procedural deficiency is reason enough to deny the request; CLI-12-17, 76 NRC 207 (2012)

requests to stay effectiveness of future licensing action pending judicial appeal are more appropriately styled motions to reconsider and motions to hold in abeyance; CLI-12-11, 75 NRC 523 (2012)

showing of compelling circumstances, such as the existence of a clear and material error in a decision that renders the decision invalid, is required; LBP-11-15, 73 NRC 629 (2011)

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when a petition for review is filed with the Commission at the same time as a motion for reconsideration is filed with the board, the Commission will delay considering the petition for review until after the board has ruled; CLI-12-5, 75 NRC 301 (2012)

MOTIONS TO COMPEL

overriding need or special circumstances would support granting a motion to compel; LBP-13-5, 77 NRC 233 (2013)

senior reactor operator license applicant's motion to compel NRC Staff to produce documents that had been withheld under a claim of deliberative process privilege is granted; LBP-13-5, 77 NRC 233 (2013)

MOTIONS TO DISMISS

courts may treat motions to dismiss for failure to state a claim upon which relief can be granted and motions for judgment on the pleadings as motions for summary judgment under Rule 56 if matters outside the pleadings are presented to and not excluded by the court; LBP-12-2, 75 NRC 159 (2012)

MOTIONS TO QUASH

licensee's motion to quash a subpoena duces tecum because production of the requested file would compromise its employee concerns program by potentially subjecting information contained in the file to public disclosure as an official agency record under FOIA is denied; CLI-13-5, 77 NRC 223 (2013)

NRC subpoenas have been quashed or limited when the subpoena was not closely drawn or NRC did not consider alternative means for obtaining the requested information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 223 (2013)

recipient of a subpoena issued by the NRC's Office of Investigations may move to quash the subpoena pursuant to 10 C.F.R. 2.702(f); CLI-13-5, 77 NRC 223 (2013)

MOTIONS TO REOPEN

ability of a totally unfunded group to provide testimony from experts is not taken into account in ruling on motions to reopen; LBP-11-20, 74 NRC 65 (2011)

absence of a competent affidavit deprives the board of the ability or even the opportunity to substantively consider whether a materially different result would be obtained as is required by the regulatory reopening standards; LBP-11-23, 74 NRC 287 (2011)

affidavits accompanying motions to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-12-6, 75 NRC 352 (2012); LBP-15-14, 81 NRC 591 (2015)

affidavits accompanying the motion must set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied; LBP-12-10, 75 NRC 633 (2012)

affidavits setting forth factual and/or technical bases for the reopening criteria must address each criterion separately and provide a specific explanation of why it has been met; CLI-12-10, 75 NRC 479 (2012); LBP-11-20, 74 NRC 65 (2011)

affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein; LBP-11-23, 74 NRC 287 (2011)

after a petition to review a final order has been filed with the Commission, the board no longer has jurisdiction to consider a motion to reopen and the motion is properly filed with the Commission; CLI-12-14, 75 NRC 692 (2012)

after a record has closed, finality attaches to the hearing process, and after that point, only timely, significant issues will be considered; CLI-12-3, 75 NRC 132 (2012)

all of the criteria of 10 C.F.R. 2.326(a) must be satisfied; CLI-11-8, 74 NRC 214 (2011)

although the quality of evidence presented for reopening must be at least of a level sufficient to

withstand a motion for summary disposition, more is required; CLI-12-10, 75 NRC 479 (2012)

any contention, regardless of when it is filed, must meet the requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-11-20, 74 NRC 65 (2011)

arguments that more conservative severe accident mitigation alternatives analysis needs to be performed, using 95th percentile computations, and not using a discount factor to evaluate the time effects of cleanup costs are policy matters that are solely within Commission jurisdiction and represent inadmissible challenges to binding Commission rulings; LBP-11-20, 74 NRC 65 (2011)

bare assertions and speculation do not supply the requisite support to satisfy the standards for reopening a record; CLI-11-2, 73 NRC 333 (2011); CLI-11-8, 74 NRC 214 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011)

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bare assertions are insufficient to demonstrate a genuine dispute on a material issue of law or fact under general contention admissibility requirements in section 2.309(f)(1)(vi), let alone a motion to reopen, which sets a higher evidentiary standard; CLI-12-3, 75 NRC 132 (2012)

because petitioner' claim of likelihood of success on the merits is conclusory, with no attempt to show how they would be likely to prevail, the motion to reopen falls far short of meeting the requirements of section 2.326(a)(3); LBP-12-10, 75 NRC 633 (2012)

because the motion to reopen and contention are based on information that is neither new nor materially different from information that was previously available, the motion and contention are untimely; LBP-12-11, 75 NRC 731 (2012)

board denies as untimely a motion to reopen and admit a new contention alleging that the licensee lacks certain required environmental permits and approvals from state and federal agencies; LBP-12-16, 76 NRC 44 (2012)

board has discretion to consider an untimely motion to reopen if the motion presents an exceptionally grave issue; LBP-15-14, 81 NRC 591 (2015)

boards are in a better position than the Commission to consider any expert affidavit or affidavits that petitioner submits to support its motion to reopen; CLI-12-14, 75 NRC 692 (2012)

boards cannot reconstruct intervenor's pleadings to find that they might be interpreted to satisfy the requirements for reopening a record where the intervenor itself has explicitly argued it need not; LBP-11-20, 74 NRC 65 (2011)

boards should not have to hunt for information that the agency's procedural rules require be explicitly identified and fully explained; CLI-11-8, 74 NRC 214 (2011); CLI-12-3, 75 NRC 132 (2012); LBP-12-10, 75 NRC 633 (2012)

both the reopening and contention admissibility criteria require that new contentions be timely presented, generally within 30-60 days of the availability of the information on which the contention is based; CLI-12-21, 76 NRC 491 (2012)

burden of satisfying the reopening requirements is a heavy one and rests with movant; CLI-11-2, 73 NRC 333 (2011); CLI-12-21, 76 NRC 491 (2012); CLI-15-19, 82 NRC 151 (2015)

challenge to the inputs and methodology in the SAMA analysis is impermissibly late; CLI-12-10, 75 NRC 479 (2012)

contention asserting that the NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)

contention regarding limitations and phenomena that were widely known, and should have been known to intervenor, at the outset of the proceeding, and thus could have been raised long ago, is untimely; LBP-11-23, 74 NRC 287 (2011)

contention that final safety analysis report is deficient because it does not include information provided in applicant's seismic evaluation process report is rejected; LBP-15-14, 81 NRC 591 (2015)

denial or conditioning of a license would obviously be a materially different result; CLI-12-14, 75 NRC 692 (2012)

during pendency of remand, intervenors are free to submit a motion to reopen the record pursuant to 10 C.F.R. 2.326, should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; LBP-11-20, 74 NRC 65 (2011)

each of the criteria for reopening a record must be separately addressed in an affidavit, with a specific explanation of why it has been met; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

environmental issue raised in untimely motion to reopen could be exceptionally grave depending on the circumstances of the case and the facts presented but will be granted rarely and only in truly extraordinary circumstances; CLI-12-21, 76 NRC 491 (2012)

evidence contained in affidavits supporting a motion to reopen must meet the admissibility standards, i.e., be relevant, material, and reliable; CLI-12-3, 75 NRC 132 (2012); LBP-11-23, 74 NRC 287 (2011); LBP-15-14, 81 NRC 591 (2015)

evidence contained in affidavits supporting a motion to reopen must meet the standards of 10 C.F.R. 2.337; CLI-12-6, 75 NRC 352 (2012)

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evidence in affidavits supporting a motion to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-12-3, 75 NRC 132 (2012)

exceptionally grave issue is one that raises a sufficiently grave threat to public safety; LBP-12-1, 75 NRC 1 (2012); LBP-12-11, 75 NRC 731 (2012)

exceptionally grave issues may be considered in the discretion of the presiding officer even if untimely presented; LBP-12-1, 75 NRC 1 (2012)

expert's affidavit supporting a motion to reopen must supply the factual and legal foundation for assertions that the reopening criteria are satisfied; LBP-11-20, 74 NRC 65 (2011)

for a motion to be timely presented, movant must show that the issue sought to be raised could not have been raised earlier; LBP-11-20, 74 NRC 65 (2011)

for a motion to reopen to be granted and a new contention admitted after termination of a proceeding, the motion must meet all of the requirements of 10 C.F.R. 2.326 for reopening a record, and the new contention must have been submitted in a timely fashion and demonstrate admissibility as required at 10 C.F.R. 2.309; LBP-12-11, 75 NRC 731 (2012)

for an environmental issue to be "significant" for the purposes of reopening a record, new information must paint a seriously different picture of the environmental landscape; LBP-12-1, 75 NRC 1 (2012)

Fukushima-related motions have been denied as premature; CLI-12-2, 75 NRC 63 (2012); CLI-12-7, 75 NRC 379 (2012)

heavier burden applies to motions to reopen than to proponents of contentions in ongoing proceedings; CLI-11-5, 74 NRC 141 (2011)

in affidavits accompanying motions to reopen, each of the criteria must be separately addressed, with a specific explanation of why it has been met; CLI-11-8, 74 NRC 214 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-10, 75 NRC 633 (2012)

in codifying the reopening requirements, the more neutral "exceptionally grave issue" language was chosen over the case law-based "sufficiently grave threat to public safety" phrasing; CLI-12-21, 76 NRC 491 (2012)

in weighing the timeliness factors for motions to reopen, greatest weight is accorded to good cause for failure to file on time; CLI-11-8, 74 NRC 214 (2011)

intervenor must file a motion demonstrating, among other things, that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; LBP-12-19, 76 NRC 184 (2012)

intervenor seeking a new hearing on a new contention after the board has closed the evidentiary record must move to reopen the evidentiary record and meet a deliberately higher threshold standard than that for an ordinary late-filed contention; CLI-12-15, 75 NRC 704 (2012)

intervenor seeking to have new evidence admitted after a licensing board has closed the evidentiary record must demonstrate sufficient grounds for reopening the record; CLI-12-10, 75 NRC 479 (2012)

intervenor's vague claim that it will rely on testimony from an expert witness and government documents does not provide the requisite concise statement of facts or expert support; LBP-11-23, 74 NRC 287 (2011)

intervenor's speculation that further review of certain issues might change some conclusions in the final safety evaluation report does not justify restarting the hearing process; LBP-11-23, 74 NRC 287 (2011)

issues not previously litigated must satisfy the balancing test of 10 C.F.R. 2.309(c) in addition to the reopening standards; CLI-12-3, 75 NRC 132 (2012)

level of support required to sustain a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012)

like issues related to standing and contention admissibility, the question whether a pleading satisfies the requirements of section 2.326 and therefore justifies reopening a closed proceeding is a threshold issue; CLI-11-8, 74 NRC 214 (2011)

litigants seeking to reopen a record must comply fully with section 2.326(b); LBP-12-10, 75 NRC 633 (2012)

"materially different result" requirement of section 2.326(a)(3) is analyzed using the Commission's test of whether it has been shown that a motion for summary disposition could be defeated; LBP-12-1, 75 NRC 1 (2012)

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mere mention of the future filing of an affidavit does not satisfy the requirement of section 2.326(b); LBP-14-8, 79 NRC 519 (2014)

motion relating to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in section 2.309(c); CLI-11-8, 74 NRC 214 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-15-14, 81 NRC 591 (2015)

motion to file new or amended contentions must address the motion to reopen standards after an intervention petition has been denied; LBP-11-20, 74 NRC 65 (2011)

motion to reopen will not be granted unless movant satisfies all three criteria in 10 C.F.R. 2.326(a) and the motion is accompanied by an affidavit that satisfies section 2.326(b); CLI-15-19, 82 NRC 151 (2015)

motions could be rejected solely on the basis of the appellants' failure to address the reopening standards in the supporting affidavit; LBP-12-10, 75 NRC 633 (2012)

motions must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of 10 C.F.R. 2.326(a) have been satisfied; CLI-11-8, 74 NRC 214 (2011); CLI-12-3, 75 NRC 132 (2012); LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-15-14, 81 NRC 591 (2015)

motions must be supported by affidavit, be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely if the evidence had been available; LBP-14-8, 79 NRC 519 (2014)

motions must be supported by an affidavit written by an individual with knowledge of the facts alleged, and the affidavit must explain why each of the criteria has been met; CLI-12-15, 75 NRC 704 (2012)

motions must be timely (or, if untimely, raise an exceptionally grave matter), address a significant safety or environmental issue, and demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-12-6, 75 NRC 352 (2012); CLI-12-15, 75 NRC 704 (2012); LBP-11-20, 74 NRC 65 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-1, 75 NRC 1 (2012); LBP-15-14, 81 NRC 591 (2015)

motions must be timely; CLI-12-21, 76 NRC 491 (2012)

motions relating to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in 10 C.F.R. 2.309(c) and the admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-12-10, 75 NRC 633 (2012)

motions that relate to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in 10 C.F.R. 2.309(c); LBP-12-1, 75 NRC 1 (2012)

motions to admit a new contention must be submitted in a timely fashion, based on new information that is materially different from information previously available or a balancing of the factors in 10 C.F.R. 2.326 must weigh in favor of admitting the contention; LBP-12-16, 76 NRC 44 (2012)

motions to reopen may be granted, even if untimely presented, when the motion presents an exceptionally grave issue; LBP-12-11, 75 NRC 731 (2012)

motions to reopen must be accompanied by a supporting affidavit; CLI-12-14, 75 NRC 692 (2012)

motions to reopen the record in NRC adjudicatory proceedings are governed by 10 C.F.R. 2.326; CLI-15-19, 82 NRC 151 (2015)

movant has the burden to present information in a manner that complies with section 2.326(b); LBP-12-10, 75 NRC 633 (2012)

movant must demonstrate that a materially different result would be likely had the newly proffered evidence been considered initially; CLI-12-10, 75 NRC 479 (2012)

moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition; CLI-11-2, 73 NRC 333 (2011)

new contention filed after the record has closed must also satisfy general contention admissibility requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-12-16, 76 NRC 44 (2012)

new contentions must paint a seriously different picture of the environmental landscape that would require supplementation of an environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

new or amended contentions not related to the question of foreign ownership that an interested person may wish to file during the pendency of the combined license application are subject to usual rules of practice, including rules governing reopening the record of a closed proceeding; CLI-13-4, 77 NRC 101 (2013)

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NRC generally disfavors the filing of new contentions at the eleventh hour of an adjudication, a policy that is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; CLI-11-2, 73 NRC 333 (2011)

NRC imposes a deliberately heavy burden on petitioners seeking to reopen a record, even with respect to an existing contention; CLI-11-2, 73 NRC 333 (2011)

NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-10, 75 NRC 479 (2012)

NRC's demanding regulatory requirements for reopening the record regarding contentions submitted after the record has closed must be satisfied; LBP-11-20, 74 NRC 65 (2011)

NRC's standard for motions to reopen was upheld and the court deferred to the NRC's application of its rules as long as it is reasonable; CLI-15-19, 82 NRC 151 (2015)

once a proceeding has closed, the mechanism to raise a new issue no longer would be a contention accompanied by a motion to reopen, but rather a request for action under 10 C.F.R. 2.206 or a petition for rulemaking under 10 C.F.R. 2.802; CLI-12-3, 75 NRC 132 (2012)

party may move to reopen the case to allow it to litigate a new version of a previously rejected contention, even if the licensing board has closed the evidentiary record and the Commission has issued its final decision authorizing the Staff to issue the license for the proposed facility; LBP-11-22, 74 NRC 259 (2011)

petitioner failed to satisfy NRC standards for reopening because its motion was untimely and it failed to demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-11-2, 73 NRC 333 (2011)

petitioner must act reasonably and promptly after learning of the new information on which its motion to reopen is based; LBP-11-23, 74 NRC 287 (2011)

petitioner proffers no new information on station blackout or mitigation measures, and the events therefore cannot form the basis for an assertion of timeliness of a motion to reopen; LBP-11-35, 74 NRC 701 (2011)

petitioner who seeks both to reopen the record and to submit a late contention must successfully satisfy two elevated standards; CLI-11-2, 73 NRC 333 (2011)

petitioner's assertion that recriticality is demonstrated by the relative quantities of radionuclides released is not self-evident and is clearly of the class of statements that must be supported by expert opinion; LBP-11-23, 74 NRC 287 (2011)

placeholder contentions that challenge the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-15, 81 NRC 803 (2015)

post-9/11 motion to reopen satisfied rules for reopening the record and for late-filed contentions, but contention involving a license amendment request for reconfiguring a spent fuel pool was inadmissible; CLI-11-5, 74 NRC 141 (2011)

presiding officer has discretion to consider an exceptionally grave issue even if untimely presented; LBP-11-20, 74 NRC 65 (2011)

proper inquiry under 10 C.F.R. 2.326(a)(3) goes to the likelihood that a different result will be reached if the information is considered; CLI-12-10, 75 NRC 479 (2012)

proponent must show that the motion is timely, addresses a significant safety or environmental issue, and a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-11-2, 73 NRC 333 (2011); CLI-12-3, 75 NRC 132 (2012)

proponent necessarily faces a heavy burden; CLI-12-3, 75 NRC 132 (2012)

proponents of contentions must challenge aspects of license applications with specificity, backed up with substantive technical support, mere conclusions or speculation being insufficient, but an even heavier burden applies to motions to reopen; LBP-11-35, 74 NRC 701 (2011)

rationale for NRC's policy of generally disfavoring the filing of new contentions at the eleventh hour of an adjudication is based on the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; LBP-11-20, 74 NRC 65 (2011)

rehearings are not matters of right, but are pleas to discretion; LBP-11-20, 74 NRC 65 (2011)

reopening standards expressly contemplate contentions that raise issues not previously litigated; CLI-12-3, 75 NRC 132 (2012)

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reopening will only be allowed where proponent presents material, probative evidence that either could not have been discovered before or could have been discovered but is so grave that, in the judgment of the presiding officer, it must be considered anyway; CLI-12-10, 75 NRC 479 (2012)

reply affidavit that did not accompany the motion to reopen will not be considered in determining whether petitioners have satisfied 10 C.F.R. 2.326(b); LBP-12-10, 75 NRC 633 (2012)

request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 65 (2011)

rule governing motions to reopen sets a high standard; LBP-14-4, 79 NRC 319 (2014)

Secretary of the Commission refers motions to reopen to the Atomic Safety and Licensing Board Panel pursuant to her authority; CLI-12-14, 75 NRC 692 (2012)

section 2.326(a)(3) expressly refers to a motion to reopen a closed record to consider additional evidence and newly proffered evidence; LBP-11-22, 74 NRC 259 (2011)

speculation that further review of certain issues might change some conclusions in the final safety evaluation report does not justify restarting the hearing process; LBP-11-23, 74 NRC 287 (2011)

standard for a motion to reopen is measured using the Commission's test of whether it has been shown that a motion for summary disposition could be defeated; LBP-11-23, 74 NRC 287 (2011)

standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-8, 74 NRC 214 (2011); CLI-12-10, 75 NRC 479 (2012); LBP-11-20, 74 NRC 65 (2011); LBP-11-35, 74 NRC 701 (2011)

standard for determining whether a materially different result would be obtained is measured using the Commission's test of whether it has been shown that a motion for summary disposition could be defeated; CLI-11-8, 74 NRC 214 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011)

standard for when an issue is "significant" in the context of reopening a closed record is the same as the standard for when supplementation of an environmental impact statement is required, i.e., the new and significant information must paint a seriously different picture of the environmental landscape; LBP-11-23, 74 NRC 287 (2011)

support required for a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-3, 75 NRC 132 (2012)

supporting affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-11-8, 74 NRC 214 (2011); LBP-11-35, 74 NRC 701 (2011)

supporting evidence must be sufficiently compelling to suggest a likelihood of materially affecting the ultimate results in the proceeding; CLI-12-10, 75 NRC 479 (2012)

to accept the argument that a reopening standard may never be applied in situations where a petitioner seeks to add previously unlitigated material would effectively render the regulation meaningless; CLI-12-3, 75 NRC 132 (2012)

to have a new contention admitted after the contested proceeding has terminated, petitioner must meet three criteria; CLI-12-14, 75 NRC 692 (2012)

to the extent that petitioner challenges the board's decision to apply the reopening standards strictly, its challenge constitutes an improper collateral attack on NRC regulations; CLI-11-2, 73 NRC 333 (2011)

unsupported speculation that fresh analysis might lead NRC to require additional mitigation measures simply does not raise a significant safety issue or an exceptionally grave issue; LBP-11-23, 74 NRC 287 (2011)

untimeliness constitutes sufficient grounds on its own for denying the motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 44 (2012)

untimely motion to reopen the proceeding and admit a new contention concerning licensee's impacts on the roseate tern, a federally listed endangered species, is denied; LBP-12-11, 75 NRC 731 (2012)

untimely motions that present an exceptionally grave issue may be admitted at the board's discretion; CLI-12-21, 76 NRC 491 (2012); LBP-12-16, 76 NRC 44 (2012)

when a motion to reopen is untimely, the section 2.326(a)(1) "exceptionally grave" test supplants the section 2.326(a)(2) "significant safety or environmental issue" test; CLI-11-8, 74 NRC 214 (2011); LBP-12-1, 75 NRC 1 (2012); LBP-12-10, 75 NRC 633 (2012)

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when determining whether a new contention is timely for purposes of reopening a record, the Commission looks to whether the information on which it is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability; CLI-12-21, 76 NRC 491 (2012)

where a motion to reopen relates to a contention not previously in controversy, the motion must demonstrate that the balance of the nontimely filing factors in section 2.309(c) favors granting the motion to reopen; LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011)

where the proceeding remained open during the pendency of a remand, but the record remained closed, any contentions raising genuinely new issues would have to be accompanied by a motion to reopen; CLI-12-3, 75 NRC 132 (2012)

whether a proposed alternative method for estimating a macroscopic frequency of occurrence of a severe offsite radiological release should have been used in the severe accident mitigation alternatives analysis could have been raised when the original license renewal application was submitted and thus is not timely; LBP-11-35, 74 NRC 701 (2011)

See also Reopening a Record

MOTIONS TO STRIKE

motion to strike may be granted where a pleading or other submission contains information that is irrelevant; LBP-14-6, 79 NRC 404 (2014)

proper method for raising an issue addressed in a motion to strike is to seek leave to file a reply in support of the summary disposition motion; LBP-11-14, 73 NRC 591 (2011)

MOTIONS TO WITHDRAW

conditions set by boards on voluntary withdrawals are set on a case-by-case basis, with any conditions tailored to address the particular circumstances of that proceeding; LBP-15-28, 82 NRC 233 (2015)

motion to withdraw application without prejudice is granted and proceeding is terminated; CLI-14-8, 80 NRC 71 (2014)

when a motion to withdraw an application is unopposed and the withdrawal causes no apparent harm to the public or any party, it is appropriate to grant the motion without prejudice or imposition of additional terms; LBP-12-20, 76 NRC 215 (2012)

when the board has issued a Notice of Hearing, withdrawal of a license amendment request shall be on such terms as the presiding officer may prescribe; LBP-15-28, 82 NRC 233 (2015)

withdrawal of an application after issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; LBP-12-20, 76 NRC 215 (2012)

MULTIUNIT EVENTS

request that NRC order licensees to add guidance to emergency plans that documents how to perform a multiunit dose assessment (including releases from spent fuel pools) using licensee's site-specific dose assessment software and approach until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to conduct periodic training and exercises for multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to determine and implement required staff to fill all necessary positions for responding to a multiunit event until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to ensure that emergency planning equipment and facilities are sufficient for dealing with multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide reasonable protection for equipment from the effects of design-basis external events and to add equipment as needed to address multiunit events while other requirements are being revised and implemented is addressed; DD-14-2, 79 NRC 489 (2014)

MUNICIPALITY

interests a municipality seeks to represent on behalf of its residents are germane to its own purposes in the context or standing; LBP-11-6, 73 NRC 149 (2011)

municipality is deemed to have standing in a reactor licensing proceeding that involves a facility located within its boundaries; LBP-11-6, 73 NRC 149 (2011)

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where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality's boundaries, it can, for purposes of establishing standing, rely on the 50-mile proximity presumption to the same extent as an individual or an organization; LBP-11-6, 73 NRC 149 (2011)

MUNITIONS

possession of depleted uranium at multiple installations without an NRC license and performance of decommissioning at a military installation without proper NRC authorization is a violation of 10 C.F.R. 40.3; DD-11-5, 74 NRC 399 (2011)

request for enforcement action against U.S. Army for post-license-expiration possession and release into the environment of depleted uranium from spent spotting rounds is granted in part and denied in part; DD-11-5, 74 NRC 399 (2011)

NATIONAL ENVIRONMENTAL POLICY ACT

absent a valid regulation limiting NRC's NEPA obligations, the consideration of alternative severe accident mitigation measures may not be excluded from the agency's NEPA reviews; LBP-12-18, 76 NRC 127 (2012)

accident sequence with a probability conservatively estimated at 2.0×10^{-7} per reactor year is remote and speculative for the purposes of NEPA; LBP-11-38, 74 NRC 817 (2011)

act is intended to require federal agencies to consider the environmental consequences of their actions and to foster informed public participation in the decision-making process; LBP-12-12, 75 NRC 742 (2012)

act itself does not mandate particular results, but simply prescribes the necessary process; LBP-12-12, 75 NRC 742 (2012)

actions requiring an environmental impact statement or a supplement to an EIS are a limited work authorization, construction permit for a nuclear power reactor, testing facility, or fuel reprocessing plant, or an early site permit; LBP-11-10, 73 NRC 424 (2011)

actual range of alternatives must be considered so that agencies are precluded from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only applicant's proposed project; LBP-15-15, 81 NRC 598 (2015)

admissible contention challenging consideration of alternatives must show that a particular alternative was not discussed in the draft environmental impact statement and provide some support that the alternative is reasonable; LBP-13-9, 78 NRC 37 (2013)

adverse environmental effects that must be assessed under NEPA include aesthetic, historic, cultural, economic, social, or health effects; LBP-15-16, 81 NRC 618 (2015)

aesthetic impacts of energy sources may vary according to individual location; LBP-11-4, 73 NRC 91 (2011)

agencies are afforded considerable discretion to decide the extent to which public involvement is practicable; CLI-15-17, 82 NRC 33 (2015)

agencies are encouraged to coordinate the National Historic Preservation Act § 106 process with the agency's process for complying with NEPA; LBP-12-23, 76 NRC 445 (2012)

agencies are encouraged to incorporate consultation procedures on endangered/threatened species and essential fish habitat into their NEPA review; LBP-12-10, 75 NRC 633 (2012)

agencies are given broad discretion to keep their NEPA inquiries within appropriate and manageable boundaries; LBP-15-3, 81 NRC 65 (2015)

agencies are not permitted to define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives; LBP-12-17, 76 NRC 71 (2012)

agencies are not required to analyze impacts of alternatives that are speculative, remote, impractical, or unviable; CLI-12-5, 75 NRC 301 (2012)

agencies are not required to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions; LBP-13-10, 78 NRC 117 (2013)

agencies are not required to elevate environmental concerns over other appropriate considerations; LBP-12-18, 76 NRC 127 (2012); LBP-14-9, 80 NRC 15 (2014)

agencies are not required to wait until inchoate information matures into something that later might affect its review; CLI-12-7, 75 NRC 379 (2012)

agencies are permitted to select their own methodology for mitigation analysis as long as that methodology is reasonable; LBP-11-7, 73 NRC 254 (2011)

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agencies are required to create an environmental impact statement, and the moment at which an agency must have a final statement ready is the time at which it makes a recommendation or report on a proposal for federal action; LBP-13-10, 78 NRC 117 (2013)

agencies are required to exercise a degree of skepticism in dealing with self-serving statements from the prime beneficiary of a project and to look at the general goal of the project, rather than only those alternatives preferred by the applicant; LBP-12-17, 76 NRC 71 (2012)

agencies are required to study, develop, and describe appropriate alternatives; CLI-12-9, 75 NRC 421 (2012)

agencies are required to take a hard look at the environmental consequences of an action before proceeding; LBP-12-10, 75 NRC 633 (2012)

agencies are required to use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in decisionmaking that may impact the environment; CLI-12-9, 75 NRC 421 (2012)

agencies are to consider environmental impacts of their actions to the fullest extent possible; LBP-12-21, 76 NRC 218 (2012)

agencies have an obligation to consider every significant aspect of the environmental impact of a proposed action and inform the public that it has indeed considered environmental concerns in its decisionmaking process; LBP-11-7, 73 NRC 254 (2011)

agencies may select their own methodology as long as that methodology is reasonable; CLI-12-6, 75 NRC 352 (2012); LBP-13-4, 77 NRC 107 (2013)

agencies must consider the environmental impacts of major federal actions significantly affecting the quality of the human environment, as well as alternatives to the proposed action, in an environmental impact statement; LBP-12-23, 76 NRC 445 (2012)

agencies must devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-12-17, 76 NRC 71 (2012)

agencies must prepare an environmental impact statement before approving any major federal action that will significantly affect the quality of the human environment; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-12-17, 76 NRC 71 (2012)

agencies must rigorously explore and objectively evaluate all reasonable alternatives and briefly discuss reasons for eliminating alternatives; LBP-12-17, 76 NRC 71 (2012)

agencies must take a hard look at preserving important historic and cultural aspects of our national heritage; LBP-15-16, 81 NRC 618 (2015)

agencies must take a hard look at the environmental consequences before taking a major action and to report the result of that hard look in an environmental impact statement; LBP-11-6, 73 NRC 149 (2011)

agencies need not discuss alternatives that are infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area; LBP-13-9, 78 NRC 37 (2013)

agencies need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequentially small; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

agencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action; LBP-11-13, 73 NRC 534 (2011)

agencies shall plan for involving the public in the National Historic Preservation Act § 106 process but may use the agency's procedures for public involvement under NEPA if they provide adequate opportunities for public involvement; LBP-12-23, 76 NRC 445 (2012)

agencies shall use the criteria for scope in 40 C.F.R. 1508.25 to determine which proposal shall be the subject of a particular environmental impact statement; LBP-11-10, 73 NRC 424 (2011)

agencies should consider both the context and intensity of environmental impacts; LBP-11-26, 74 NRC 499 (2011)

agencies violate NEPA when their EIS fails to adequately respond to the critical opinions of their own experts; LBP-12-18, 76 NRC 127 (2012)

agency cannot relinquish its NEPA responsibility to evaluate environmental impacts by relying on expected compliance with environmental standards of another agency; LBP-15-23, 82 NRC 55 (2015)

agency decisions regarding the need to supplement an environmental impact statement based on new and significant information are subject to the rule of reason; LBP-11-26, 74 NRC 499 (2011)

agency is required to consider all reasonable alternatives; LBP-15-15, 81 NRC 598 (2015)

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agency responsibilities in situations where an agency has no ability because of lack of statutory authority to address the impact is distinguished from situations where an agency is only constrained by its own regulations from considering impacts; LBP-14-9, 80 NRC 15 (2014)

agency responsible for preparing the environmental impact statement must define the scope of the issues it will address; LBP-11-10, 73 NRC 424 (2011)

agency that has prepared an EIS cannot simply rest on the original document but must be alert to new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned action, even after a proposal has received initial approval; LBP-12-18, 76 NRC 127 (2012)

agency's consideration of three alternative routes is sufficient to meet its NEPA obligations to consider reasonable transmission line route alternatives; LBP-11-6, 73 NRC 149 (2011)

agency's narrowed construction of its statutory authority, as distinct from an express prohibition by Congress, may not be used to limit the agency's obligations under NEPA; LBP-14-9, 80 NRC 15 (2014)

aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 11 (2011)

allowing agencies to avoid a NEPA violation through a subsequent, conclusory statement that it would not have reached a different result even with the proper analysis would significantly undermine the statutory scheme; LBP-12-17, 76 NRC 71 (2012)

alternative energy sources that will be dependent on future environmental safeguards and technological developments may be excluded from the NEPA alternatives discussion; LBP-15-3, 81 NRC 65 (2015)

alternative that fails to meet the purpose of the project does not need to be further examined in the environmental report; LBP-11-6, 73 NRC 149 (2011)

alternatives analysis is the heart of the environmental impact statement; CLI-12-9, 75 NRC 421 (2012); LBP-11-16, 73 NRC 645 (2011); LBP-12-17, 76 NRC 71 (2012)

alternatives discussion need not include every possible alternative, but rather every reasonable alternative; LBP-15-3, 81 NRC 65 (2015)

alternatives might not be feasible for a variety of reasons, including a failure of an alternative to meet the project's purpose and need; LBP-13-9, 78 NRC 37 (2013)

alternatives must be considered as they exist and are likely to exist, not merely as they exist at the present time; LBP-12-17, 76 NRC 71 (2012)

although a SAMA analysis considers safety issues, it is actually an environmental review that must be judged under NEPA's rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 246 (2015)

although an agency may coordinate and, where practicable, integrate its NEPA and National Historic Preservation Act review efforts, the two statutes impose separate and distinct obligations; LBP-15-16, 81 NRC 618 (2015)

although NEPA does not direct any particular substantive result, all environmental consequences of the proposed action, including connected actions, must be fully evaluated in the FEIS; LBP-12-12, 75 NRC 742 (2012)

although NEPA does not explicitly mention cost-benefit balancing, courts have interpreted the statute as requiring federal agencies to balance the environmental costs against the anticipated benefits of a proposed action; LBP-11-7, 73 NRC 254 (2011)

although NEPA does not mention mitigation, by administrative practice and regulation, mitigation plays an important role in the discharge by federal agencies of their procedural duty under NEPA to prepare an EIS; LBP-12-18, 76 NRC 127 (2012)

although NEPA does not require an agency preparing an environmental impact statement to respond to EPA concerns, an agency's failure even to address them in the EIS at the very least brings into question the sufficiency of the agency's analysis; LBP-14-9, 80 NRC 15 (2014)

although NEPA establishes a national policy in favor of protecting the human environment, NEPA does not require the agency to select the most environmentally benign alternative, but rather merely prohibits uninformed rather than unwise agency action; LBP-13-4, 77 NRC 107 (2013)

although NEPA mandates that an agency prepare an environmental impact statement and take a hard look at the environmental impacts of a proposed agency action, NEPA itself does not mandate particular results, but simply prescribes the necessary process; LBP-13-4, 77 NRC 107 (2013)

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- although NEPA's requirements are procedural, federal agencies are held to a strict standard of compliance with the Act's requirements; LBP-12-18, 76 NRC 127 (2012)
- although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 559 (2012)
- although NRC may regard preconstruction activities as outside the scope of a combined license application, these activities are within the scope of the NEPA review because they are all connected actions; LBP-14-9, 80 NRC 15 (2014)
- although NRC must take a hard look under NEPA, NEPA itself does not mandate particular results; LBP-13-13, 78 NRC 246 (2013)
- although there are many possible combinations of wind and solar power, storage, and natural gas, it is not necessary to examine every possible combination; LBP-11-4, 73 NRC 91 (2011)
- although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-12-5, 75 NRC 227 (2012); LBP-13-4, 77 NRC 107 (2013)
- among the limited issues within the scope of a license renewal proceeding are alternatives for reducing adverse environmental impacts listed as Category 2 issues in Appendix B to Subpart A of 10 C.F.R. Part 51; LBP-11-2, 73 NRC 28 (2011)
- analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment; LBP-13-9, 78 NRC 37 (2013)
- appeal board's ruling that the environmental impact statement was deemed modified by the parties' stipulations at hearing did not violate the letter or spirit of NEPA; CLI-15-6, 81 NRC 340 (2015)
- applicant and Staff treatment of need for the construction and operation of uranium enrichment facilities should explain why the proposed action is needed, describe the underlying need for the proposed action, but should not be written merely as a justification of the proposed action or to alter the choice of alternatives; LBP-11-26, 74 NRC 499 (2011)
- applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 534 (2011)
- applicant's environmental report must contain a sufficient analysis of potential environmental consequences and alternatives to enable the NRC Staff to prepare an environmental impact statement that fulfills the agency's obligations under NEPA; LBP-11-14, 73 NRC 591 (2011)
- applicant's environmental report must describe reasonably foreseeable environmental impacts, discussed in proportion to their significance, and adverse environmental effects that cannot be avoided should the proposal be implemented; LBP-11-6, 73 NRC 149 (2011)
- applicant's environmental report must discuss appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources; LBP-11-6, 73 NRC 149 (2011)
- applicant's obligation is to consider alternatives as they exist and are likely to exist; LBP-11-2, 73 NRC 28 (2011)
- applicant's use of the MAAP code to generate fission product source terms for use in its severe accident mitigation alternatives analysis is reasonable under NEPA; LBP-12-26, 76 NRC 559 (2012)
- application-specific NEPA review represents a snapshot in time, and although NEPA requires that NRC conduct its environmental review with the best information available at that time, it does not require that NRC wait until inchoate information matures into something that later might affect its review; LBP-12-10, 75 NRC 633 (2012)
- appropriate inquiry under NEPA is not whether there are alternative models that NRC could have used, or whether the analysis could have been refined, or improved by gathering additional data, but whether the NRC's chosen methodology is reasonable; LBP-13-4, 77 NRC 107 (2013)
- as a NEPA analysis, the severe accident mitigation alternatives analysis is not based on either the best-case or the worst-case accident scenarios, but on mean accident consequence values, averaged over the many hypothetical severe accident scenarios; LBP-13-13, 78 NRC 246 (2013)
- as a tool for assessing the significance of potential impacts, NRC regulations establish a standard scheme; LBP-11-26, 74 NRC 499 (2011)

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as long as the adverse effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-13-4, 77 NRC 107 (2013)

as part of its NEPA analysis, NRC must provide information that addresses the purpose and need for the proposed action; LBP-11-26, 74 NRC 499 (2011)

as part of NRC's NEPA analysis for licensing a nuclear power plant, the agency must balance the costs and benefits resulting from issuance of a license, but the environmental impact statement need not always contain a formal or mathematical cost-benefit analysis; LBP-11-7, 73 NRC 254 (2011)

Atomic Energy Act and NEPA and the regulations promulgated under each must be viewed in pari materia; LBP-14-9, 80 NRC 15 (2014)

because a solely wind- or solar-powered facility could not satisfy the project's purpose, there was no need to compare the impact of such facilities to the impact of the proposed nuclear plant; LBP-11-7, 73 NRC 254 (2011)

because NEPA imposes no substantive requirement that mitigation measures actually be taken, it should not be read to require agencies to obtain an assurance that third parties will implement particular measures; LBP-14-7, 79 NRC 451 (2014)

because NEPA is premised on a rule of reason, NRC need only consider reasonable alternatives to a proposed action; LBP-11-26, 74 NRC 499 (2011)

because NRC does not know today the full implications of the Fukushima events for U.S. facilities, any generic NEPA duty, if one is appropriate at all, does not accrue now; LBP-12-8, 75 NRC 539 (2012)

because NRC has established a requirement to provide information to be used by NRC Staff in fulfillment of its obligation under NEPA, suitability of applicant's severe accident mitigation alternatives analysis must be judged by the requirements of NEPA; LBP-11-18, 74 NRC 29 (2011)

because severe accident mitigation alternatives analysis is site-specific, NEPA demands no fully developed plan or detailed examination of specific measures that will be used to mitigate adverse environmental effects; LBP-11-18, 74 NRC 29 (2011); LBP-11-23, 74 NRC 287 (2011)

because the full implications of the Fukushima events for U.S. facilities are unknown, any generic NEPA duty does not accrue; LBP-11-27, 74 NRC 591 (2011)

before implementing any major federal action significantly affecting the quality of the human environment, NRC must prepare an environmental impact statement that describes the action, its effects, and alternatives to the proposed action; LBP-12-10, 75 NRC 633 (2012)

Biological Opinion and its accompanying Incidental Take Statement issued by U.S. Fish and Wildlife Service were arbitrary and capricious because they were based in part on a conservation plan that was not enforceable under the Endangered Species Act; LBP-12-23, 76 NRC 445 (2012)

blindly adopting applicant's statement of the purpose of the action is a losing position because it does not allow for the full consideration of alternatives required by NEPA; LBP-12-17, 76 NRC 71 (2012)

board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to NRC Staff's final environmental impact statement; LBP-15-3, 81 NRC 65 (2015)

boards are required to consider alternatives as they exist and are likely to exist; CLI-12-5, 75 NRC 301 (2012)

boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)

broad national commitment to protecting and promoting environmental quality is declared by the Act; LBP-13-13, 78 NRC 246 (2013)

burden of NEPA compliance lies with NRC Staff; LBP-15-2, 81 NRC 48 (2015); LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

careful consideration of severe accident mitigation design alternatives is required under NEPA, and NRC's failure to consider them is a violation of NEPA; LBP-12-8, 75 NRC 539 (2012)

case-by-case balancing judgment by the federal agency conducting the NEPA review is mandated; LBP-15-23, 82 NRC 55 (2015)

cask certification for transportation poses such a minimal environmental impact that it merits a categorical exclusion from NEPA; LBP-14-6, 79 NRC 404 (2014)

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categorical exclusion from the NEPA requirement to prepare an environmental assessment or environmental impact statement for the issuance of import licenses involving low-level radioactive waste is provided; CLI-11-3, 73 NRC 613 (2011)

certainty or precision is not required in environmental documents, but rather an estimate of anticipated (not unduly speculative) impacts; LBP-12-9, 75 NRC 615 (2012); LBP-12-18, 76 NRC 127 (2012)

certification by agencies without overall responsibility for the particular federal action in question that its own environmental standards are satisfied attend only to one aspect of the problem without considering the broad range of environmental concerns and considerations mandated by NEPA; LBP-15-23, 82 NRC 55 (2015)

circulation of a draft environmental assessment is not required in all cases; CLI-15-17, 82 NRC 33 (2015)

Clean Water Act imposes substantive restrictions on agency action, and NEPA imposes procedural requirements aimed at integrating environmental concerns into the very process of agency decision-making; LBP-15-23, 82 NRC 55 (2015)

Commission declined to conduct a generic NEPA analysis on the effects of Fukushima-related events; CLI-12-7, 75 NRC 379 (2012)

complete mitigation plan does not have to be actually formulated and adopted before the agency makes its decision; LBP-13-4, 77 NRC 107 (2013)

compliance with NEPA is a primary duty of every federal agency, and fulfillment of this responsibility should not depend on vigilance and limited resources of environmental plaintiffs; LBP-12-18, 76 NRC 127 (2012)

compliance with the act is ultimately the responsibility of NRC; CLI-12-13, 75 NRC 681 (2012)

concept of alternatives evolves, and agencies must explore alternatives as they become better known and understood; LBP-11-13, 73 NRC 534 (2011)

conducting Clean Water Act section 404 permit review after issuance of the final environmental impact statement does not impact an agency's duty under NEPA, but rather serves to highlight the distinction between NEPA and the CWA; LBP-15-23, 82 NRC 55 (2015)

consideration of alternatives is the heart of the environmental impact statement; LBP-11-35, 74 NRC 701 (2011)

consideration of alternatives under NEPA that are technologically unproven is unnecessary; LBP-15-3, 81 NRC 65 (2015)

consideration of impacts with either a low probability of occurrence, or where the link between the agency action and the claimed impact is too attenuated to find the proposed federal action to be the proximate cause of that impact are excluded under NEPA; LBP-13-4, 77 NRC 107 (2013)

consideration of reasonable alternatives is required for operating license renewal; CLI-12-8, 75 NRC 393 (2012)

consideration of remote and speculative impacts in an environmental impact statement is not required; LBP-12-5, 75 NRC 227 (2012)

consideration of severe accident mitigation alternatives in its environmental impact statements and supplements thereto is required at the operating license stage; LBP-12-15, 76 NRC 14 (2012)

considering alternatives under NEPA, agencies should take into account the needs and goals of the parties involved in the application; LBP-12-17, 76 NRC 71 (2012)

consistent with NEPA's rule of reason, applicant and NRC Staff acted on the basis of best available information and analysis in completing the SAMA evaluation; LBP-13-13, 78 NRC 246 (2013)

contention asserting that NEPA requires a groundwater baseline characterization for an in situ recovery site is admissible; LBP-12-3, 75 NRC 164 (2012)

contention of omission on a matter related to NEPA must describe the information that should have been included in applicant's environmental report and provide the legal basis that requires the omitted information to be included; LBP-15-5, 81 NRC 249 (2015)

contention that draft environmental impact statement fails to comply with NEPA with regard to impacts on wildlife, and fails to comply with the Endangered Species Act and Migratory Bird Treaty Act is admissible in part; LBP-13-9, 78 NRC 37 (2013)

contention that environmental assessment violates NEPA in its failure to analyze groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 401 (2015)

contention that NRC has failed to engage other relevant federal, state, and local agencies and has not analyzed impacts subject to jurisdiction and control of these other agencies, and has thus failed to

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- comply with NEPA's action-forcing mandate and general purpose is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- contention that NRC has promulgated a regulation that violates NEPA is inadmissible; LBP-13-12, 78 NRC 239 (2013)
- contention that the draft environmental impact statement fails to consider all reasonable alternatives is inadmissible; LBP-13-9, 78 NRC 37 (2013)
- Continued Storage Rule and supporting generic environmental impact statement to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 535 (2015)
- Corps of Engineers improperly constrained NEPA analysis; LBP-14-6, 79 NRC 404 (2014)
- Council on Environmental Quality regulation requiring an environmental impact statement to consider reasonably foreseeable impacts rather than a worst-case analysis is entitled to substantial deference and NEPA does not require a worst-case analysis in an EIS; LBP-13-4, 77 NRC 107 (2013)
- court may not substitute its own judgment for that of an agency, and agencies are not constrained by NEPA to select only the most environmentally benign option; LBP-15-16, 81 NRC 618 (2015)
- cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-11-26, 74 NRC 499 (2011)
- defining the scope of effects of a project requires engagement with governments of affected tribes through an early and open process aimed at identifying concerns, potential impacts, relevant effects of past actions, and possible alternative actions; LBP-15-16, 81 NRC 618 (2015)
- DEIS, like the environmental report, must cover all significant environmental impacts associated with the combined license, including offsite environmental impacts; LBP-11-1, 73 NRC 19 (2011)
- development and discussion of a wide range of alternatives to any proposed federal action is so important that it is mandated by NEPA when any proposal involves unresolved conflicts concerning alternative uses of available resources, and the requirement is independent of and of wider scope than the duty to file an EIS; LBP-13-13, 78 NRC 246 (2013)
- direct impacts are those caused by the action that is the subject of the environmental impact statement, and occurring at the same time and place as that action, while indirect impacts are caused by the action at a later time or more distant place, yet are still reasonably foreseeable; LBP-11-26, 74 NRC 499 (2011)
- discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 combined license proceeding; LBP-12-15, 76 NRC 14 (2012)
- discussion of alternatives that present severe engineering requirements or are imprudent for reasons including their high cost, safety hazards, and operational difficulties is excluded under NEPA; LBP-15-3, 81 NRC 65 (2015)
- discussion of mitigation measures is an important part of an agency's hard look at the environmental consequences of a proposed federal action; LBP-14-7, 79 NRC 451 (2014)
- discussion of steps that can be taken to mitigate adverse environmental consequences plays an important role in the environmental analysis under NEPA; LBP-12-18, 76 NRC 127 (2012)
- doctrine of harmless error has only limited application in NEPA cases, and none where the agency has failed to take the required hard look at environmental consequences and alternatives; LBP-12-17, 76 NRC 71 (2012)
- draft environmental impact statement must contain a detailed discussion of possible mitigation measures; LBP-15-23, 82 NRC 55 (2015)
- draft environmental impact statement need not include a fully formulated or adopted mitigation plan, but its discussion must provide sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-15-23, 82 NRC 55 (2015)
- duty to prepare an environmental impact statement and to identify and consider every significant environmental impact is tempered by the rule of reason; LBP-13-4, 77 NRC 107 (2013)
- duty to supplement the final environmental impact statement is mandatory, is not avoidable through findings of compliance with the agency's safety regulations, and is waivable only where the consequences are remote and highly improbable; CLI-12-11, 75 NRC 523 (2012)
- ensuring continued availability of diverse, reliable sources of domestic enrichment services to provide low-enriched uranium for domestic power reactors supports a finding of need for the facility; LBP-11-26, 74 NRC 499 (2011)

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environmental considerations that the environmental report must discuss are equivalent to, and in most instances verbatim restatements of, environmental considerations that NEPA requires the agency to describe in detail in the environmental impact statement; LBP-15-5, 81 NRC 249 (2015)

environmental contentions are initially based on applicant's environmental report which will inform the Staff's NEPA review; LBP-13-10, 78 NRC 117 (2013)

environmental documents need consider only those environmental impacts that are reasonably foreseeable, not those that are remote and speculative possibilities; LBP-12-9, 75 NRC 615 (2012)

environmental impact statement must consider the direct, indirect, and cumulative impacts of an action; LBP-11-7, 73 NRC 254 (2011)

environmental impact statement must describe the potential environmental impact of the proposed action and discuss any reasonable alternatives; LBP-11-7, 73 NRC 254 (2011)

environmental impact statement must include a detailed statement by the responsible agency official on, among other things, the environmental impact of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action; LBP-11-10, 73 NRC 424 (2011)

environmental impact statement must only address those environmental impacts that are reasonably foreseeable; LBP-13-4, 77 NRC 107 (2013)

environmental impact statements are not intended to be research documents, reflecting the frontiers of scientific methodology, studies, and data; CLI-12-5, 75 NRC 301 (2012); LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-13-4, 77 NRC 107 (2013)

environmental impact statements are required to furnish only such information as appears reasonably necessary under the circumstances for evaluation of the project, rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible; LBP-13-4, 77 NRC 107 (2013)

environmental impact statements are subject to a rule of reason that grants the agency a degree of deference exempting it from examining impacts that it in good faith deems to be remote and speculative or inconsequentially small; LBP-11-39, 74 NRC 862 (2011)

environmental impact statements are to include a detailed statement by the responsible official on alternatives to the proposed action; LBP-12-17, 76 NRC 71 (2012)

environmental impact statement's hard look must examine reasonably foreseeable environmental impacts emanating from the proposed action; LBP-11-39, 74 NRC 862 (2011)

environmental impact statements must address the cumulative impact of the proposed action; LBP-13-4, 77 NRC 107 (2013)

environmental impact statements must include a detailed discussion of measures that might mitigate the adverse environmental consequences of the proposed action; LBP-13-4, 77 NRC 107 (2013)

environmental impact statements must include a detailed statement of reasonable alternatives to the proposed action; LBP-14-9, 80 NRC 15 (2014)

environmental impacts of license renewal are classified as either Category 1, which are generically addressed by NRC's generic environmental impact statement for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 11 (2011)

environmental implications of new and significant information must be considered under NEPA before NRC may grant renewed operating licenses; LBP-11-32, 74 NRC 654 (2011)

environmental justice, as applied to the NRC, means that the agency will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities; LBP-13-13, 78 NRC 246 (2013)

environmental report need only consider the range of alternatives that are capable of achieving the goals of the proposed action; LBP-11-13, 73 NRC 534 (2011)

environmental report's adequacy is examined under NEPA as well as under Part 51 because the ER is the basis upon which the NRC's environmental impact statement will be prepared; LBP-11-13, 73 NRC 534 (2011); LBP-11-14, 73 NRC 591 (2011)

environmental reports need only discuss reasonably foreseeable environmental impacts of a proposed action; LBP-12-7, 75 NRC 503 (2012)

environmental review must provide a sufficient discussion of alternatives to enable the decisionmaker to take a hard look at environmental factors, and to make a reasoned decision; LBP-11-13, 73 NRC 534 (2011)

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establishment of baseline conditions of the affected environment is a fundamental requirement of the NEPA process; LBP-13-9, 78 NRC 37 (2013)

events at Fukushima, and the ensuing NRC response, are not, at this point, to be considered new and significant information under NEPA; LBP-12-8, 75 NRC 539 (2012)

every combined license application must be accompanied by an environmental report to aid the Commission in its preparation of an environmental impact statement; LBP-11-6, 73 NRC 149 (2011)

every federal decision need not be verified by reduction to mathematical absolutes for insertion into a precise formula; LBP-11-7, 73 NRC 254 (2011)

evidence of significant actual utility commitments provides a compelling showing in support of the need for uranium enrichment facility; LBP-11-26, 74 NRC 499 (2011)

examination of every conceivable aspect of federally licensed projects is not required, but only a discussion of reasonably foreseeable impacts; LBP-13-4, 77 NRC 107 (2013)

examples of need for the proposed facility include a benefit provided if the proposed action is granted or descriptions of the detriment that will be experienced without approval of the proposed action; LBP-11-26, 74 NRC 499 (2011)

Exec. Order No. 12898 did not, in itself, create new substantive authority for federal agencies and thus NRC determined that it would endeavor to carry out the environmental justice principles as part of the agency's responsibilities under NEPA; CLI-15-6, 81 NRC 340 (2015)

extent to which operation and maintenance costs of a solar facility may present a comparative benefit is immaterial since the four-part combination of alternative energy sources is not environmentally preferable to two new nuclear units; LBP-11-4, 73 NRC 91 (2011)

factor bolstering the need for a uranium enrichment facility is the recognized margin level that exists in the existing enrichment market to offset potential supply problems as well as maintain a level of reasonable market competition; LBP-11-26, 74 NRC 499 (2011)

federal agencies are required to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives; LBP-12-17, 76 NRC 71 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-14-9, 80 NRC 15 (2014)

federal agencies are required to take a hard look at the environmental impacts of a proposed action, as well as reasonable alternatives to that action; LBP-15-3, 81 NRC 65 (2015)

federal agencies are required, to the fullest extent possible, to include in every recommendation or report on proposals for major federal actions significantly affecting the quality of the human environment a detailed statement on the environmental impact of the proposed action; LBP-13-13, 78 NRC 246 (2013)

federal agencies have a continuing obligation to supplement an existing environmental impact statement if the proposed action has not been taken, in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-12-7, 75 NRC 379 (2012)

federal agencies must prepare an environmental impact statement for those proposed actions that have the potential to significantly affect the quality of the human environment; LBP-11-7, 73 NRC 254 (2011); LBP-15-16, 81 NRC 618 (2015)

federal agencies must rigorously explore and objectively evaluate all reasonable alternatives and devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; LBP-11-14, 73 NRC 591 (2011)

federal agencies must use all practicable means to avoid environmental degradation to the extent consistent with other essential considerations of national policy; LBP-14-9, 80 NRC 15 (2014)

final environmental impact statement does not comply with NEPA if it fails to meaningfully address EPA concerns in its decision; LBP-14-9, 80 NRC 15 (2014)

final environmental impact statement is not required to be a Ph.D. dissertation on specific topics; LBP-13-4, 77 NRC 107 (2013)

final environmental impact statements need not discuss remote and speculative alternatives, but must consider only alternatives that bring about the ends of the proposed project; LBP-12-17, 76 NRC 71 (2012)

for a proposed nuclear materials-related activity, commencement of construction relative to that activity prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-26, 74 NRC 499 (2011)

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- for an alternative energy source to be considered reasonable for an operating license renewal proceeding, the alternative should be commercially viable and technically capable of producing an equal amount of baseload power now or in the near future, but no later than the expiration date of the current operating license; CLI-12-8, 75 NRC 393 (2012)
- for environmental contentions, the burden of proof falls on NRC Staff because NRC, not the applicant, bears the ultimate responsibility for complying with NEPA's dictates; LBP-12-5, 75 NRC 227 (2012)
- for NEPA contentions, the burden of proof shifts to NRC Staff, because NRC, not applicant, bears the ultimate burden of complying with NEPA; LBP-11-38, 74 NRC 817 (2011)
- for new information to be sufficiently significant to merit the preparation of a supplemental final environmental impact statement, the information must paint a seriously different picture of the environmental landscape; CLI-12-11, 75 NRC 523 (2012)
- for siting alternatives, an agency's duty under NEPA is to study all alternatives that appear reasonable and appropriate for study at the time of drafting the environmental impact statement; CLI-12-5, 75 NRC 301 (2012)
- Fukushima contention that petitioners did not relate to any unique characteristics of the particular site at issue was akin to the generic type of NEPA review that the Commission declared premature; LBP-12-18, 76 NRC 127 (2012)
- full implications of the Fukushima accident for U.S. facilities are unknown, and thus any generic NEPA duty, if one is appropriate at all, does not accrue now; LBP-11-33, 74 NRC 675 (2011)
- general statements by an agency about possible effects and some risk do not constitute the hard look required by NEPA absent a justification of why more definitive information could not be provided; LBP-12-5, 75 NRC 227 (2012)
- generation of baseload power is an acceptable purpose for a licensing action and has been determined to be broad enough to permit consideration of a host of energy-generating alternatives; LBP-11-13, 73 NRC 534 (2011)
- goals of NEPA are to ensure that agency decisionmakers will have detailed information concerning significant environmental impacts of proposed projects when they make their decisions and to guarantee that such information will be available to the larger audience that may also play a role in the decisionmaking process; LBP-12-17, 76 NRC 71 (2012); LBP-13-13, 78 NRC 246 (2013)
- government agencies are required to comply with NEPA to the fullest extent possible; LBP-14-9, 80 NRC 15 (2014)
- hard look at the environmental effects of the planned action, not a circular restatement of NRC Staff's own conclusions, is required; LBP-15-11, 81 NRC 401 (2015)
- hard look is subject to a rule of reason, and consideration of environmental impacts need not address all theoretical possibilities, but only those that have some reasonable possibility of occurring; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)
- hard look must emerge from an engagement in informed and reasoned decisionmaking, as the agency obtains opinions from its own experts and experts outside the agency and gives careful scientific scrutiny and responds to all legitimate concerns that are raised; LBP-15-16, 81 NRC 618 (2015)
- hard look under NEPA is intended to foster both informed agency decisionmaking and informed public participation so as to ensure that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct; LBP-15-3, 81 NRC 65 (2015)
- hard-look requirement is tempered by a rule of reason that requires agencies to address only impacts that are reasonably foreseeable, not those that are remote and speculative; LBP-14-7, 79 NRC 451 (2014)
- if an alternative is commercially feasible and capable of bringing about the ends of the proposed project, then Staff may not dismiss it merely because it is inconsistent with the preferences of interested parties, or for other reasons inconsistent with NEPA's rule of reason; LBP-12-17, 76 NRC 71 (2012)
- if important factors in the cost-benefit balancing cannot be quantified, they may be discussed qualitatively; LBP-11-7, 73 NRC 254 (2011)
- if new and significant information on Fukushima events comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, NRC will assess the significance of that information as appropriate; CLI-12-7, 75 NRC 379 (2012)
- if NRC Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by Staff for its significance, consistent with NEPA requirements; CLI-12-19, 76 NRC 377 (2012)

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- if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-18, 76 NRC 127 (2012); LBP-13-4, 77 NRC 107 (2013)
- if the NRC Staff safety review reveals any new and significant information relating to the environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 404 (2014)
- immediate, irreparable harm is not presumed by a NEPA violation, even assuming such a violation has occurred; CLI-15-17, 82 NRC 33 (2015)
- impact of a proposed action on public safety is an issue that must be considered under both NEPA and the Atomic Energy Act; LBP-12-18, 76 NRC 127 (2012)
- impacts that are remote and speculative may be excluded from consideration; LBP-12-1, 75 NRC 1 (2012)
- implicit in NEPA's demand that an agency prepare a detailed environmental impact statement is an understanding that the EIS will discuss the extent to which adverse effects can be avoided; LBP-12-18, 76 NRC 127 (2012)
- importing analysis from a previously completed environmental assessment while disregarding intervening events would render meaningless NEPA's requirement to supplement an environmental impact statement or environmental assessment; LBP-15-13, 81 NRC 456 (2015)
- in assessing greenhouse gas impacts, NRC must devote its resources to taking a hard look at the issue; LBP-11-26, 74 NRC 499 (2011)
- in defining the scope of the environmental impact statement, all connected actions must be analyzed in one statement; LBP-11-10, 73 NRC 424 (2011)
- in enacting NEPA, Congress's twin aims were to require an agency to consider every significant aspect of the environmental impact of a proposed action and ensure that the agency will inform the public that it has considered environmental concerns in its decisionmaking process; LBP-11-6, 73 NRC 149 (2011)
- in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the Council on Environmental Quality; LBP-11-7, 73 NRC 254 (2011)
- in mandatory hearings on uranium enrichment facility licensing, boards are to determine whether the review conducted by NRC Staff has been adequate, but they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-11, 73 NRC 455 (2011)
- in mandatory proceedings for uranium enrichment facility licensing, boards are to make independent environmental judgments with respect to certain NEPA findings; LBP-11-11, 73 NRC 455 (2011)
- in NEPA context, path that licensee and NRC Staff must follow relative to a license condition is sufficiently clear that continuing to hold the hearing open while it is completed would be an unnecessary extension of the adjudicatory process; LBP-15-3, 81 NRC 65 (2015)
- in parallel with NRC Staff's role under NEPA to assess environmental impacts, the Environmental Protection Agency possesses authority under the Clean Air Act to set numerical standards for air pollutants from emission sources; LBP-11-26, 74 NRC 499 (2011)
- in ruling that NRC had appropriately interpreted the Atomic Energy Act to include regulatory authority over attendant transmission lines, the court did not decide whether NEPA is an independent source of substantive jurisdiction; LBP-14-9, 80 NRC 15 (2014)
- in the context of license renewal, NRC's Atomic Energy Act safety review under Part 54 does not compromise or limit NEPA; LBP-13-8, 78 NRC 1 (2013)
- in uncontested hearings, it is NRC's duty to ensure, among other things, that it has adhered to its obligations under NEPA; CLI-15-1, 81 NRC 1 (2015)
- intervenor litigated whether the performance-based licensing complies with the Atomic Energy Act and NEPA, and whether undue discretion was accorded to licensee; LBP-15-16, 81 NRC 618 (2015)
- irrespective of the cause of the impact or the appropriate level of administrative scrutiny, for the purpose of NEPA evaluation, NRC regulations categorize impacts as direct, indirect, and cumulative; LBP-11-26, 74 NRC 499 (2011)
- issuance of a renewed operating license for a nuclear power reactor is a major federal action under NEPA; LBP-12-8, 75 NRC 539 (2012)

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issuance of an early site permit and the subsequent authorization of construction and operation of a new nuclear power plant qualify as connected actions under 40 C.F.R. 1508.25 and should be evaluated in one environmental impact statement; LBP-11-10, 73 NRC 424 (2011)

it is not necessary that every alternative device and thought conceivable by the mind of man be considered, but a hard look must be taken at the environmental consequences; LBP-12-1, 75 NRC 1 (2012)

it is NRC Staff, not petitioners, that has the burden of complying with NEPA; LBP-15-5, 81 NRC 249 (2015)

it would be incongruous with NEPA's approach to environmental protection, and with the Act's manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval; LBP-15-13, 81 NRC 456 (2015)

it would be inconsistent with NEPA's reliance on procedural mechanisms, as opposed to substantive, result-based standards, to demand the presence in an environmental impact statement of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-13-4, 77 NRC 107 (2013)

language of NEPA indicates that Congress did not intend that it be precluded by the Atomic Energy Act; LBP-12-18, 76 NRC 127 (2012)

legislative history and case law require compliance with NEPA unless compliance is impossible, or another statute specifically prohibits compliance with NEPA; LBP-12-18, 76 NRC 127 (2012)

level of analysis required in an environmental impact statement is more rigorous than is required when the agency has determined on the basis of its environmental assessment that the project as proposed will not result in significant environmental impact; LBP-14-7, 79 NRC 451 (2014)

license renewal applicant's environmental report must address environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-5, 75 NRC 301 (2012)

license transfer applications need not include an environmental analysis under NEPA; CLI-15-8, 81 NRC 500 (2015)

"major construction activity" is defined as a construction project, or other undertaking having similar physical impacts, that is a major federal action significantly affecting the quality of the human environment as referred to in NEPA; LBP-12-10, 75 NRC 633 (2012)

mandate to federal agencies is to consider a broad range of environmental effects that are reasonably likely to ensue as a result of a major federal action; CLI-15-6, 81 NRC 340 (2015)

mere listing of proposed mitigation measures in the draft environmental impact statement is insufficient under NEPA; LBP-15-23, 82 NRC 55 (2015)

merely describing an alternative is insufficient to comply with NEPA; LBP-11-14, 73 NRC 591 (2011)

merely offering general statements about possible effects and some risk does not constitute a hard look at environmental impacts absent a justification regarding why more definitive information could not be provided; LBP-11-38, 74 NRC 817 (2011)

merely pointing to a government compliance program is insufficient to demonstrate compliance with NEPA's requirement that agencies take a hard look at the environmental consequences of their proposed actions; LBP-12-23, 76 NRC 445 (2012)

merely referencing an actual or anticipated certification by another agency fails to satisfy NEPA requirements; LBP-14-9, 80 NRC 15 (2014)

mitigation measures assessed in the SAMA analysis under NEPA are supplemental to those already required under NRC safety regulations for reasonable assurance of safe operation and likewise to those NRC may order or require under ongoing regulatory oversight over reactor safety, pursuant to the Atomic Energy Act; CLI-12-15, 75 NRC 704 (2012)

mitigation must be discussed only in sufficient detail to ensure that environmental consequences have been fairly evaluated; LBP-11-7, 73 NRC 254 (2011)

need for power is a shorthand expression for the benefit side of the cost-benefit balance that NEPA mandates for a proceeding considering the licensing of a nuclear power plant; LBP-11-6, 73 NRC 149 (2011)

neither a fully developed plan nor a detailed explanation of specific measures that will be employed to mitigate the adverse impacts of a proposed action is required; LBP-11-7, 73 NRC 254 (2011)

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neither certainty nor precision is called for, but rather an estimate of anticipated, not unduly speculative, impacts; LBP-15-16, 81 NRC 618 (2015)

neither NRC nor applicant need consider any alternative that does not bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-11-2, 73 NRC 28 (2011); LBP-13-13, 78 NRC 246 (2013)

NEPA applies to agencies of the federal government, not to private parties such as applicants for NRC licenses; LBP-11-32, 74 NRC 654 (2011)

NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-13-13, 78 NRC 246 (2013)

NEPA does not demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act; LBP-15-16, 81 NRC 618 (2015)

NEPA does not impose a substantive obligation for a reviewing agency to require or enforce mitigation measures discussed in an environmental assessment; LBP-14-6, 79 NRC 404 (2014)

NEPA does not mandate how an agency must fulfill its obligations; LBP-11-23, 74 NRC 287 (2011)

NEPA does not mandate particular results, but simply prescribes the necessary process that agencies must follow in evaluating environmental impacts; LBP-12-17, 76 NRC 71 (2012); LBP-15-19, 81 NRC 815 (2015)

NEPA does not mandate substantive results but rather imposes procedural restraints on agencies, requiring them to take a hard look at the environmental impacts of a proposed action and reasonable alternatives to that action; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

NEPA does not require a fully developed plan that will mitigate all environmental harm before an agency can act, but only requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated; LBP-11-14, 73 NRC 591 (2011); LBP-12-23, 76 NRC 445 (2012); LBP-14-7, 79 NRC 451 (2014)

NEPA does not require a worst-case analysis; LBP-11-38, 74 NRC 817 (2011)

NEPA does not require adoption of best practices, particularly in the face of a potentially significant resource commitment; LBP-15-3, 81 NRC 65 (2015)

NEPA does not require agencies to elevate environmental concerns over other appropriate considerations; LBP-12-17, 76 NRC 71 (2012)

NEPA does not require NRC Staff to analyze every conceivable aspect of the proposed project; LBP-15-16, 81 NRC 618 (2015)

NEPA does not require NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-11-11, 74 NRC 427 (2011)

NEPA ensures that agencies will not act on incomplete information, only to regret their decision after it is too late to correct; LBP-12-17, 76 NRC 71 (2012)

NEPA has a dual purpose of ensuring that federal officials fully take into account the environmental consequences of a federal action before reaching major decisions and informing the public, Congress, and other agencies of those consequences; LBP-11-35, 74 NRC 701 (2011); LBP-12-1, 75 NRC 1 (2012)

NEPA imposes no legal duty on NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

NEPA imposes no substantive requirement that mitigation measures actually be taken; LBP-11-14, 73 NRC 591 (2011); LBP-13-4, 77 NRC 107 (2013)

NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 389 (2015)

NEPA imposes procedural restraints on agencies, which require them to take a hard look at the environmental impacts of a proposed action and the reasonable alternatives to that action; LBP-12-17, 76 NRC 71 (2012)

NEPA is a procedural statute and although it requires a hard look at mitigation measures, it does not, in and of itself, provide the statutory basis for their implementation; CLI-11-14, 74 NRC 801 (2011); LBP-11-39, 74 NRC 862 (2011)

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- NEPA is intended to ensure that environmental impacts will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast; LBP-13-4, 77 NRC 107 (2013)
- NEPA is not intended to encompass every possible impact, and does not encompass potential losses due to individuals' perception of a risk; CLI-12-15, 75 NRC 704 (2012); LBP-12-24, 76 NRC 503 (2012)
- NEPA is not violated when an agency issues a supplemental environmental impact statement before the Corps of Engineers completes a Clean Water Act section 404 permit review; LBP-15-23, 82 NRC 55 (2015)
- NEPA itself does not mandate a cost-benefit analysis, but the statute is generally regarded as calling for some sort of a weighing of the environmental costs against the economic, technical, or other public benefits of a proposal; LBP-11-6, 73 NRC 149 (2011)
- NEPA mandates a case-by-case balancing judgment on the part of federal agencies, not the private parties seeking federal action; LBP-14-9, 80 NRC 15 (2014)
- NEPA obligations supplement existing statutory authority and must be complied with to the fullest extent, unless there is a clear conflict of statutory authority; LBP-14-9, 80 NRC 15 (2014)
- NEPA only mandates an examination of reasonably foreseeable environmental impacts of the proposed project; LBP-11-33, 74 NRC 675 (2011)
- NEPA requirements are subject to a rule of reason, and an environmental impact statement need not address remote and highly speculative consequences; LBP-14-9, 80 NRC 15 (2014)
- NEPA requires a hard look at severe accident mitigation measures; LBP-12-26, 76 NRC 559 (2012)
- NEPA requires a reasonably complete discussion of possible mitigation measures; LBP-15-11, 81 NRC 401 (2015)
- NEPA requires acknowledgment of tribal hunting and fishing rights, as well as an analysis of how the project will affect those rights; LBP-15-5, 81 NRC 249 (2015)
- NEPA requires consideration of reasonable alternatives, not all conceivable ones; CLI-12-5, 75 NRC 301 (2012)
- NEPA requires that agencies provide a reasonably complete discussion of possible severe accident mitigation measures; LBP-12-18, 76 NRC 127 (2012)
- NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)
- NEPA severe accident mitigation alternatives analysis need not reflect the most conservative, or worst-case, analysis; LBP-12-26, 76 NRC 559 (2012)
- NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-11-38, 74 NRC 817 (2011); LBP-13-4, 77 NRC 107 (2013); LBP-13-13, 78 NRC 246 (2013)
- NEPA's "hard look" is tempered by a rule of reason; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)
- NEPA's hard-look requirement does not allow sweeping generalities about possible effects and risk without a justification as to why more definitive information was not provided; LBP-13-13, 78 NRC 246 (2013)
- NEPA's legislative history reflects Congress's concern that agencies might attempt to avoid any compliance with NEPA by narrowly construing other statutory directives to create a conflict with NEPA; LBP-14-9, 80 NRC 15 (2014)
- NEPA's procedural obligation is carried out through an agency's issuance of an environmental impact statement documenting the agency's hard look at potential environmental impacts of the proposed action and reasonable alternatives thereto; LBP-11-39, 74 NRC 862 (2011)
- NEPA's purpose is to influence the decisionmaking process by focusing the federal agency's attention on the environmental consequences of a proposed project, so as to ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast; LBP-14-9, 80 NRC 15 (2014)
- NEPA's requirements, like publication of the environmental impact statement, implement NEPA's sweeping policy goals by ensuring that agencies will take a hard look at environmental consequences; LBP-13-13, 78 NRC 246 (2013)
- NEPA's rule of reason is a judicial device to ensure that common sense and reason are not lost in the rubric of regulation and thus requires only reasonable forecasting; LBP-13-13, 78 NRC 246 (2013)

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no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance with NEPA; LBP-14-9, 80 NRC 15 (2014)

nondiscretionary duty is imposed on NRC to amend an environmental impact statement if new and significant information comes to light; LBP-12-18, 76 NRC 127 (2012)

non-NEPA document, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 401 (2015)

nonspeculative irreversible and irretrievable commitment of resources requires that an ER provide an impacts analysis of such an occurrence; LBP-13-10, 78 NRC 117 (2013)

nothing in NEPA, which applies to agencies of the federal government, can be read to require an applicant to update its environmental report; LBP-11-34, 74 NRC 685 (2011)

NRC cannot delegate its NEPA responsibilities to a private party; LBP-11-32, 74 NRC 654 (2011)

NRC cannot look to the sufficiency of safety standards enacted under the Atomic Energy Act to avoid its NEPA obligations; LBP-12-18, 76 NRC 127 (2012)

NRC failed to comply with NEPA in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-14-8, 80 NRC 71 (2014)

NRC generally defers to an applicant's stated purpose as long as that purpose is not so narrow as to eliminate alternatives; LBP-11-13, 73 NRC 534 (2011)

NRC has a continuing duty to take a hard look at new and significant information for each major federal action to be taken; CLI-13-7, 78 NRC 199 (2013)

NRC has established small, moderate, and large levels of impacts; LBP-11-26, 74 NRC 499 (2011)

NRC hearings on NEPA issues focus entirely on the adequacy of NRC Staff's work; LBP-15-16, 81 NRC 618 (2015)

NRC is neither required nor authorized to order implementation of mitigation measures analyzed in an environmental analysis; CLI-12-10, 75 NRC 479 (2012)

NRC is not required to suspend its licensing decisions upon receipt of a claim of new and significant information; CLI-14-7, 80 NRC 1 (2014)

NRC is not required to use the absolutely best scientific methodology available; LBP-13-4, 77 NRC 107 (2013)

NRC is not required to wait until inchoate information matures into something that might affect its review; CLI-12-15, 75 NRC 704 (2012)

NRC is precluded from avoiding the Act's requirements by simply relying on another agency's conclusions about a federal action's impact on the environment; LBP-13-4, 77 NRC 107 (2013)

NRC is required to analyze potential terrorist attacks as part of its NEPA review with regard to facilities located in the Ninth Circuit; LBP-12-21, 76 NRC 218 (2012)

NRC is required to assess the relationship between local short-term uses of the environment and the long-term productivity of the environment; CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012)

NRC is required to consider severe accident mitigation alternatives; LBP-13-1, 77 NRC 57 (2013)

NRC is required to construe its existing statutory authority consistently with NEPA's goals; LBP-14-9, 80 NRC 15 (2014)

NRC is required to describe the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-12-9, 75 NRC 421 (2012)

NRC is required to describe unavoidable adverse environmental impacts; CLI-12-9, 75 NRC 421 (2012)

NRC is required to take a hard look at alternatives, including severe accident mitigation alternatives, and to provide a rational basis for rejecting alternatives that are cost-effective; LBP-12-8, 75 NRC 539 (2012)

NRC is required to take a hard look at the environmental impacts of a proposed action; LBP-14-7, 79 NRC 451 (2014)

NRC is required to undertake research needed to adequately expose environmental harms; LBP-14-9, 80 NRC 15 (2014)

NRC may decline to examine remote and speculative risks or events with inconsequentially small probabilities; LBP-11-26, 74 NRC 499 (2011)

NRC may not abdicate its duty under NEPA to other agencies to consider environmental impacts, even if those agencies have special expertise relating to environmental impacts; LBP-13-4, 77 NRC 107 (2013)

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- NRC must adequately consider impacts to visual and aesthetic resources in its NEPA review; LBP-12-3, 75 NRC 164 (2012)
- NRC must assess the environmental impacts of a proposed facility, including those impacts associated with greenhouse gas emissions by the proposed facility; LBP-11-26, 74 NRC 499 (2011)
- NRC must conduct its environmental review with the best information available at that time; CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012)
- NRC must consider reasonably foreseeable environmental impacts of the proposed licensing action, but need not consider remote and speculative impacts, particularly if the impact cannot easily be estimated at the current time, and an appropriate future opportunity will exist for the agency to analyze the impact; LBP-12-3, 75 NRC 164 (2012)
- NRC must make a diligent effort to involve the public in implementation of NEPA procedures; LBP-15-16, 81 NRC 618 (2015)
- NRC must rigorously explore and objectively analyze environmental impacts, so that merely offering general statements about possible effects and some risk does not constitute a hard look absent a justification regarding why more definitive information could not be provided; LBP-11-26, 74 NRC 499 (2011)
- NRC must take a hard look at environmental consequences of each agency action; LBP-13-4, 77 NRC 107 (2013)
- NRC must use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in decisionmaking that may impact the environment; CLI-12-2, 75 NRC 63 (2012)
- NRC need not conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as a part of the environmental review for new reactor and license renewal decisions; LBP-11-32, 74 NRC 654 (2011)
- NRC need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequentially small; LBP-13-13, 78 NRC 246 (2013)
- NRC policy statement is not a sufficient vehicle to preclude consideration of severe accident mitigation design alternatives, and NRC must take the requisite hard look at them, giving them the careful consideration and disclosure required by the National Environmental Policy Act; CLI-12-19, 76 NRC 377 (2012)
- NRC Staff is not required to examine very conceivable aspect of federally licensed projects in preparing its environmental impact statement; LBP-15-3, 81 NRC 65 (2015)
- NRC Staff is obliged to undertake a full and independent evaluation of the environmental impacts of applicant's proposed action; LBP-12-9, 75 NRC 615 (2012)
- NRC Staff is required to conduct its environmental review with the best information available when the review is undertaken; CLI-12-15, 75 NRC 704 (2012); LBP-12-8, 75 NRC 539 (2012)
- NRC Staff is required to reevaluate any prior analysis if it is presented with any new and significant information that would cast doubt on a previous environmental analysis; LBP-12-8, 75 NRC 539 (2012)
- NRC Staff is to consider and weigh the environmental, technical, and other costs and benefits of a proposed action and alternatives, and, to the fullest extent practicable, quantify the various factors considered; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff must assess the relationship between local short-term uses and long-term productivity of the environment, consider alternatives, and describe the unavoidable adverse environmental impacts and the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-15-13, 81 NRC 555 (2015)
- NRC Staff must consider the cumulative impact of greenhouse gas emissions from a proposed facility; LBP-11-7, 73 NRC 254 (2011)
- NRC Staff must consult with and obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved; LBP-11-26, 74 NRC 499 (2011)
- NRC Staff must include new and significant information in a supplemental draft environmental impact statement; LBP-11-34, 74 NRC 685 (2011)
- NRC Staff, not the applicant, bears the ultimate burden of establishing compliance with NEPA; LBP-12-17, 76 NRC 71 (2012)
- NRC Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; CLI-12-5, 75 NRC 301 (2012)

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NRC Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 149 (2011)

NRC Staff's obligations under Part 51 and NEPA are not limited to only those severe accident mitigation alternatives that address aging management; LBP-11-17, 74 NRC 11 (2011)

NRC Staff's reference to, and reliance in its draft environmental impact statement on, state issuance of a site certification order and associated certificate of compliance on groundwater use does not dispense with NRC's duty under NEPA to conduct an independent hard look at environmental impacts related to active dewatering during operations at a nuclear plant; LBP-11-1, 73 NRC 19 (2011)

NRC violated the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-12-16, 76 NRC 63 (2012)

NRC will supplement an EIS if there are substantial changes in the proposed action relevant to environmental concerns or new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-12-7, 75 NRC 379 (2012)

NRC, as an independent regulatory agency, is not bound by those portions of Council on Environmental Quality NEPA regulations that have a substantive impact on the way in which the Commission performs its regulatory functions; LBP-11-35, 74 NRC 701 (2011)

NRC, not applicant, bears the ultimate burden of establishing compliance with NEPA; LBP-14-7, 79 NRC 451 (2014)

NRC's AEA safety review under Part 54 does not compromise or limit NEPA; LBP-15-5, 81 NRC 249 (2015)

NRC's analysis, in its final environmental impact statement, of issues relating to dewatering associated with construction and operation of the proposed plants is adequate and satisfies the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)

NRC's decision to include transmission lines that serve a nuclear power plant within the definition of "utilization facility" in 42 U.S.C. § 2014(cc) was upheld; LBP-14-9, 80 NRC 15 (2014)

NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-11-16, 73 NRC 645 (2011)

on issues arising under NEPA, intervenor must file contentions based on the applicant's environmental report, but may amend those contentions or file new contentions; CLI-13-7, 78 NRC 199 (2013); LBP-11-7, 73 NRC 254 (2011)

once NRC completes its environmental review, its record of decision must state whether NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted, and summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-11-17, 74 NRC 11 (2011)

one important component of an environmental impact statement is the discussion of possible actions that might mitigate adverse environmental consequences; LBP-11-7, 73 NRC 254 (2011)

only reasonable forecasting of need for power is required in an environmental impact statement; LBP-12-5, 75 NRC 227 (2012)

Part 40, Appendix A, Criteria 4(e) and 5G(2) refer to safety criteria that apply to applicants and licensees and are not relevant to the NEPA review; LBP-13-9, 78 NRC 37 (2013)

particular decisions that an agency must reach are not mandated, but rather only the process the agency must follow while reaching decisions; LBP-11-17, 74 NRC 11 (2011)

particular results are not mandated and, accordingly, a fully developed mitigation plan is not demanded before an agency can act; LBP-15-23, 82 NRC 55 (2015)

petitioner's assertion that continued operation of an independent spent fuel storage installation causes fear and anxiety among its members is not a valid claim under NEPA; LBP-12-24, 76 NRC 503 (2012)

policies set forth by NEPA prevent NRC Staff from segmenting the disposal issues from the inquiry into whether applicant will be allowed to create 11e(2) byproduct material in the first instance; LBP-13-9, 78 NRC 37 (2013)

preliminary injunction halting a solar energy project was granted based on a tribal claim that the project would not avoid most of the 459 cultural sites identified, and that the NEPA and NHPA process had been insufficient; LBP-15-2, 81 NRC 48 (2015)

preparation of the biological assessment may be consolidated with interagency cooperation procedures required by other statutes, such as NEPA; LBP-12-11, 75 NRC 731 (2012)

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presiding officer in the adjudication will determine the extent to which adoption by the NRC of DOE's repository EIS and its supplements is practicable, which in turn will satisfy NRC's NEPA obligations; CLI-13-8, 78 NRC 219 (2013)

previously recognized availability policy for domestic enrichment services supports a NEPA finding of a need for the construction and operation of uranium enrichment facilities; LBP-11-26, 74 NRC 499 (2011)

primary obligation of satisfying the requirements of NEPA rests on the agency; LBP-12-18, 76 NRC 127 (2012)

principal goals of NEPA's environmental impact statement requirement are to force agencies to take a hard look at the environmental consequences of a proposed project, and, by making relevant analyses openly available, to permit the public a role in the agency's decision-making process; LBP-11-14, 73 NRC 591 (2011)

procedural requirement is imposed on an agency's decisionmaking process by mandating that an agency consider the environmental impacts of a proposed action and inform the public that it has taken those impacts into account in making its decision; LBP-11-17, 74 NRC 11 (2011)

procedural requirements are imposed on an agency to consider mitigation options, but particular results are not mandated; LBP-15-23, 82 NRC 55 (2015)

project goals determine the alternatives that are considered reasonable; LBP-12-17, 76 NRC 71 (2012)

proper question is not whether there are plausible alternative choices for use in the SAMA analysis, but whether the analysis that was done is reasonable under NEPA; LBP-15-29, 82 NRC 246 (2015)

proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement; LBP-11-10, 73 NRC 424 (2011)

psychological fears or stigma effects are not cognizable NEPA claims; CLI-12-5, 75 NRC 301 (2012)

purpose of EIS preparation is to obviate the need for speculation by ensuring that available data are gathered and analyzed prior to the implementation of the proposed action; LBP-15-23, 82 NRC 55 (2015)

purpose of NEPA is to help public officials make decisions that are based on understanding of environmental consequences, and take decisions that protect, restore, and enhance the environment; LBP-11-23, 74 NRC 287 (2011)

purpose of the supplemental-SAMA-analysis exception in 10 C.F.R. 51.53(c)(3)(ii)(L) is to reflect NRC's view that one SAMA analysis, as a general matter, satisfies NRC's NEPA obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; CLI-13-7, 78 NRC 199 (2013)

quibbling over the details of an economic analysis would effectively stand NEPA on its head by asking that the license be rejected not due to environmental costs, but because the economic benefits are not as great as estimated; LBP-11-7, 73 NRC 254 (2011); LBP-12-5, 75 NRC 227 (2012)

reasonable alternatives under NEPA are limited to those alternatives that will bring about the ends of the proposed action; LBP-11-21, 74 NRC 115 (2011)

reasonable alternatives under NEPA do not include alternatives that are impractical, that present unique problems, or that cause extraordinary costs; LBP-15-3, 81 NRC 65 (2015)

reasonably close causal relationship between the environmental effect and the alleged cause is required; LBP-12-21, 76 NRC 218 (2012)

regardless of their classification as direct, indirect, or cumulative, impacts that are reasonably foreseeable are to be assessed in an environmental impact statement; LBP-11-26, 74 NRC 499 (2011)

regulation of offsite transmission lines is within NRC's authority under section 101 of the Atomic Energy Act and nothing in the AEA precludes NRC from implementing, through issuance of conditional licenses, NEPA's environmental mandate; LBP-14-9, 80 NRC 15 (2014)

relationship between the uranium enrichment facility's product and production of high-level waste is too attenuated to show the requirement of a reasonably close causal relationship required by NEPA; LBP-12-21, 76 NRC 218 (2012)

reliance on a state permit, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 401 (2015)

remote and speculative alternatives need not be addressed in a final environmental impact statement, but NEPA requires NRC Staff to consider reasonable alternatives that are likely to be available within the time frame of the proposed action; LBP-12-17, 76 NRC 71 (2012)

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remote and speculative alternatives need not be addressed in an applicant's environmental report; LBP-11-2, 73 NRC 28 (2011)

request for analysis of whether Fukushima events constitute new and significant information under NEPA is premature; LBP-12-1, 75 NRC 1 (2012)

requirement that an environmental impact statement contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from the Council on Environmental Quality's implementing regulations; LBP-13-4, 77 NRC 107 (2013)

requirement that federal agencies prepare an environmental impact statement when considering a major action serves the statute's action-forcing purpose in two ways; LBP-11-7, 73 NRC 254 (2011)

requirement to discuss alternatives to the proposed action does not extend to the construction of transmission line corridors, because it is not "construction" as defined in 10 C.F.R. 50.10; LBP-11-6, 73 NRC 149 (2011)

requirement to prepare an environmental impact statement is a procedural mechanism designed to ensure that agencies give proper consideration to the environmental consequences of their actions; LBP-12-18, 76 NRC 127 (2012)

requirement to prepare an environmental impact statement places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action; LBP-13-4, 77 NRC 107 (2013)

rule of reason excludes consideration of remote and speculative impacts or worst-case scenarios; LBP-13-4, 77 NRC 107 (2013)

"rule of reason" is a judicial device to ensure that common sense and reason are not lost in the rubric of regulation; LBP-11-26, 74 NRC 499 (2011)

rule of reason is inherent in NEPA and its implementing regulations; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)

rule of reason means that an agency must only consider reasonably foreseeable impacts in its environmental impact statement, and need not address those that are remote and speculative or inconsequentially small; LBP-12-17, 76 NRC 71 (2012)

rule of reason would not exclude consideration of demand-side management as part of an alternatives analysis when applicant is a state-regulated utility; LBP-11-6, 73 NRC 149 (2011)

rule that excluded certain environmental impacts from NEPA consideration and deferred totally to environmental quality standards devised and administered by other agencies violated NEPA; LBP-15-23, 82 NRC 55 (2015)

separate actions may be considered connected if, among other things, they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-11-10, 73 NRC 424 (2011)

severe accident mitigation alternatives analyses need not reflect the most conservative, or worst-case, analysis; CLI-12-10, 75 NRC 479 (2012)

severe accident mitigation alternatives analysis evaluates the degree to which specific additional mitigation measures may reduce the probability or consequences of various accident scenarios on a site-specific basis; LBP-13-13, 78 NRC 246 (2013)

severe accident mitigation alternatives analysis fulfills the requirement to provide a consideration of alternatives to mitigate severe accidents and therefore is governed by NEPA's rule of reason; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

severe accident mitigation alternatives analysis is based on mean accident consequence values, averaged over the many hypothetical severe accident scenarios; LBP-13-13, 78 NRC 246 (2013)

severe accident mitigation alternatives analysis is conducted pursuant to NEPA, and thus is an environmental issue, not a safety issue; LBP-15-1, 81 NRC 15 (2015)

severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis, and the agency's obligations under NEPA are tempered by a practical rule of reason; LBP-11-18, 74 NRC 29 (2011)

severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis; CLI-12-1, 75 NRC 39 (2012); LBP-13-13, 78 NRC 246 (2013)

severe accident mitigation alternatives analysis is not part of the agency's safety review for license renewal under the Atomic Energy Act, but is instead a mitigation alternatives analysis conducted pursuant to NEPA; LBP-13-8, 78 NRC 1 (2013)

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- Staff's environmental impact statement need only discuss those alternatives that will bring about the ends of the proposed action; LBP-12-15, 76 NRC 14 (2012)
- standing claims based on economic impacts are only cognizable in NRC proceedings with regard to NEPA-based concerns; LBP-12-3, 75 NRC 164 (2012)
- statute itself does not mandate particular results, but simply prescribes the necessary process; LBP-11-7, 73 NRC 254 (2011)
- subject of postdecision supplemental environmental impact statements is not expressly addressed in NEPA; LBP-12-18, 76 NRC 127 (2012)
- taking a hard look at environmental impacts fosters informed decisionmaking and public participation and thus ensures that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct it; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)
- test for determining when a nonfederal project should be analyzed under NEPA as a major federal action is discussed; LBP-14-9, 80 NRC 15 (2014)
- there exists an obligation to consider alternatives as they exist and are likely to exist; LBP-11-13, 73 NRC 534 (2011)
- there is no NEPA requirement to use the best scientific methodology; LBP-11-38, 74 NRC 817 (2011)
- there is no NEPA requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-15-3, 81 NRC 65 (2015)
- there is no requirement to use the best scientific methodology, and NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-12-5, 75 NRC 227 (2012)
- there will always be more data that could be gathered, but agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-13-13, 78 NRC 246 (2013)
- though mitigation measures must be discussed in an environmental impact statement, NEPA does not guarantee that federally approved projects will have no adverse impacts; LBP-15-16, 81 NRC 618 (2015)
- to be analyzed under NEPA as a major federal action, a nonfederal project must restrict or limit the statutorily prescribed federal decisionmakers' choice of reasonable alternatives; LBP-14-9, 80 NRC 15 (2014)
- to bring NEPA into play, a possible future action must at least constitute a proposal pending before the agency (i.e., ripeness), and must be in some way interrelated with the action that the agency is actively considering (i.e., nexus); LBP-13-10, 78 NRC 117 (2013); LBP-14-6, 79 NRC 404 (2014)
- to constitute a basis for supplementing an EIS, the new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-12-7, 75 NRC 379 (2012)
- to ensure that the Act's broad national commitment to protecting and promoting environmental quality is infused in the actions of the federal government, NEPA establishes certain action-forcing procedures on each federal agency; LBP-13-4, 77 NRC 107 (2013)
- to evaluate an operating license renewal application, NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011)
- to issue an early site permit, NRC must include in an environmental impact statement a detailed statement on the environmental impacts of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action; LBP-11-10, 73 NRC 424 (2011)
- to make an impact statement something more than an exercise in frivolous boilerplate, the concept of alternatives must be bounded by some notion of feasibility; LBP-13-4, 77 NRC 107 (2013)
- to require worst-case analyses can easily lead to limitless NEPA analyses because it is always possible to introduce yet another variable to a hypothetical scenario to conjure up a worse worst case; CLI-12-1, 75 NRC 39 (2012)
- to satisfy requirements of NEPA for a combined license, the Commission independently considers the final balance among conflicting factors in the record; CLI-12-9, 75 NRC 421 (2012)

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- to the extent that applicant proposes modifications to the facility in response to a request for information, NEPA also requires the consideration of the effectiveness and relative costs of a range of alternatives for satisfying the NRC's concerns; LBP-12-15, 76 NRC 14 (2012)
- to the extent there are important NEPA qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms; LBP-15-5, 81 NRC 249 (2015)
- to the fullest extent possible, all federal agencies shall include in every major federal action significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action; LBP-13-4, 77 NRC 107 (2013)
- under the rule of reason governing NEPA, the concept of alternatives must be bounded by some notion of feasibility; CLI-12-15, 75 NRC 704 (2012)
- under the rule of reason, NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-13-13, 78 NRC 246 (2013)
- until NRC defines and imposes on licensees new requirements arising from the Fukushima events, such requirements are highly speculative; LBP-11-33, 74 NRC 675 (2011)
- weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations; LBP-11-7, 73 NRC 254 (2011)
- when a decision to which NEPA obligations attach is made without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent has been suffered; LBP-14-9, 80 NRC 15 (2014)
- when agencies propose major federal actions significantly affecting the quality of the human environment, preparation of an environmental impact statement is required; LBP-12-18, 76 NRC 127 (2012); LBP-14-9, 80 NRC 15 (2014)
- when an agency otherwise complies with NEPA's requirement of a reasonably thorough mitigation analysis, there is no error in the agency's reliance on the Clean Water Act section 404's substantive requirements as mitigation measures even though the section 404 permit review is not yet complete; LBP-15-23, 82 NRC 55 (2015)
- when NEPA contentions are involved, the burden of proof shifts to NRC Staff; LBP-15-16, 81 NRC 618 (2015)
- when the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved; CLI-12-5, 75 NRC 301 (2012)
- where increased air pollution in California resulting from two export turbines at a Mexican plant was a direct effect of the new transmission lines, DOE was required to evaluate the air pollution impacts under NEPA; LBP-14-9, 80 NRC 15 (2014)
- with regard to reasonably foreseeable impacts, NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-15-3, 81 NRC 65 (2015)
- within the geographic boundary of the Ninth Circuit, NRC may not exclude NEPA terrorism contentions categorically; CLI-11-11, 74 NRC 427 (2011)
- within the rule of reason, an environmental impact statement must address both the direct and indirect effects or impacts; LBP-13-4, 77 NRC 107 (2013)
- without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an environmental impact statement to inform agency deliberation and facilitate public involvement would be greatly degraded; LBP-12-17, 76 NRC 71 (2012)
- worst-case analysis is not required; LBP-12-5, 75 NRC 227 (2012); LBP-13-13, 78 NRC 246 (2013)
- NATIONAL HISTORIC PRESERVATION ACT**
- Act and its implementing regulations do not require that the agency implement any mitigation measures, let alone that those measures meet a certain standard of protection for historic properties; LBP-12-23, 76 NRC 445 (2012)
- agencies are encouraged to coordinate the NHPA § 106 process with the agency's process for complying with NEPA; LBP-12-23, 76 NRC 445 (2012)
- agencies shall plan for involving the public in the NHPA § 106 process but may use the agency's procedures for public involvement under NEPA if they provide adequate opportunities for public involvement; LBP-12-23, 76 NRC 445 (2012)

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agency official must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking; LBP-13-6, 77 NRC 253 (2013)

agency officials must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input; LBP-12-23, 76 NRC 445 (2012)

all adverse effects to any NRHP-eligible historic or cultural resource must be considered during any federal undertaking; LBP-11-26, 74 NRC 499 (2011)

alleged failure to consult with a tribe on historic and cultural resources is material and within the scope of a materials license proceeding; LBP-13-9, 78 NRC 37 (2013)

although an agency may coordinate and, where practicable, integrate its National Environmental Policy Act and NHPA review efforts, the two statutes impose separate and distinct obligations; LBP-15-16, 81 NRC 618 (2015)

before licensing any federally assisted undertaking, federal agencies must take into account the effect of the undertaking on any site that is included or eligible for inclusion in the National Register of Historic Places; LBP-12-23, 76 NRC 445 (2012)

burden of fulfilling the Act's consultation requirements rests exclusively with the NRC, not with the applicant; LBP-12-23, 76 NRC 445 (2012)

claim of violation of NHPA did not in itself establish irreparable harm warranting interlocutory review; CLI-15-17, 82 NRC 33 (2015)

Commission approved NRC Staff completion of some NHPA documents after the environmental impact statement process was complete, but before the license was issued; LBP-15-16, 81 NRC 618 (2015)

compliance with NHPA does not relieve a federal agency of the duty of complying with the environmental impact statement requirement to the fullest extent possible; LBP-15-16, 81 NRC 618 (2015)

contention alleging a failure to protect historic and cultural resources is admissible; LBP-13-9, 78 NRC 37 (2013)

contention alleging that an Indian tribe had not been consulted concerning cultural resources, in violation of the Act, was premature because NRC Staff, not applicant, has the duty to consult with the tribe under the Act, and Staff had not completed its review process; LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 253 (2013)

demolition of a historic unit to build a new unit will result in a finding of adverse effect under applicable criteria in 36 C.F.R. 800.5; CLI-15-13, 81 NRC 555 (2015)

federal agency must assess the effects of the undertaking on any eligible historic properties found; LBP-15-16, 81 NRC 618 (2015)

federal agency must confer with a State Historic Preservation Officer and seek the approval of the ACHP; LBP-15-16, 81 NRC 618 (2015)

federal agency must determine whether identified properties are eligible for listing on the National Register based on the criteria in 36 C.F.R. 60.4; LBP-15-16, 81 NRC 618 (2015)

federal law not only recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal land, but as well has imposed on federal agencies a consultation requirement under NHPA to ensure protection of tribal interests in cultural resources; CLI-14-2, 79 NRC 11 (2014)

in consultation with identified parties, agency must develop alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the environmental assessment or draft environmental impact statement; LBP-15-16, 81 NRC 618 (2015)

it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)

NRC must also allow the federal Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to a combined license; LBP-12-23, 76 NRC 445 (2012)

NRC Staff is required to consult with interested parties, including Indian tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 11 (2014)

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- NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)
- petitioner should not wait for NRC Staff to perform its responsibilities under NHPA before it raises a claim that information is lacking; CLI-14-2, 79 NRC 11 (2014)
- preliminary injunction halting a solar energy project was granted based on a tribal claim that the project would not avoid most of the 459 cultural sites identified, and that the NEPA and NHPA process had been insufficient; LBP-15-2, 81 NRC 48 (2015)
- procedures for an agency to follow in complying with section 106 are listed; LBP-12-23, 76 NRC 445 (2012)
- programmatic agreement may be used to implement the NHPA § 106 process in situations where the effects on historic properties cannot be fully determined prior to the approval of an undertaking, such as where an applicant proposes a phased approach to developing its project; LBP-15-16, 81 NRC 618 (2015)
- that NRC Staff will develop additional information relevant to cultural resources, as part of its NHPA review, does not preclude a challenge to the application's cultural resources discussion; CLI-14-2, 79 NRC 11 (2014)
- though the materials license has already been issued, the land disturbance in the project area will proceed in stages in compliance with NHPA § 106; LBP-15-16, 81 NRC 618 (2015)
- to the extent that intervenors' proposed contention is based on asserted deficiencies in NRC Staff's process for soliciting public participation pursuant to the National Historic Preservation Act, the contention fails to demonstrate a genuine dispute on a material issue of fact or law; LBP-12-23, 76 NRC 445 (2012)
- tribal member who regularly visits tribal migratory route on national monument land to pursue cultural undertakings has standing under NHPA to raise concerns; LBP-13-6, 77 NRC 253 (2013)
- tribes have a procedural right to be consulted regarding historic preservation matters; LBP-13-6, 77 NRC 253 (2013)
- NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT**
- applicant for a federal discharge permit must provide a certification from the state that the proposed activity will not violate state water pollution control standards; LBP-12-16, 76 NRC 44 (2012)
- it is appropriate for NRC Staff to give substantial weight to state agency's decision that issuing the NPDES permit would be environmentally acceptable; LBP-15-11, 81 NRC 401 (2015)
- NRC is precluded from second-guessing the conclusions in NPDES permits; LBP-12-16, 76 NRC 44 (2012)
- NATIONAL SECURITY INFORMATION**
- boards may exclude the public from adjudicatory hearings or actions that involve restricted data, defense information, safeguards information protected from disclosure under the authority of AEA § 147, or information protected from disclosure under the authority of section 148; LBP-11-5, 73 NRC 131 (2011)
- relative to the issue of foreign ownership or control, NRC imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information; LBP-11-11, 73 NRC 455 (2011)
- NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT**
- NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)
- NATIVE AMERICAN RESERVATIONS**
- individual tribal member who does not reside on a tribal reservation where a facility is proposed to be located must show injury in fact relative to that member's activities on the reservation even when the reservation is asserted to be on aboriginal tribal lands; LBP-13-6, 77 NRC 253 (2013)
- NATIVE AMERICANS**
- agencies are to ensure that the federal government operates within a government-to-government relationship with federally recognized Native American tribes, reflecting respect for the rights of self-government due the sovereign tribal governments; LBP-15-16, 81 NRC 618 (2015)
- agency official must consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking; LBP-13-6, 77 NRC 253 (2013)

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allegation that the Continued Storage Rule and generic environmental impact statement fail to address the trust responsibility that NRC owes an Indian tribe represents a collateral attack on the Continued Storage Rule and GEIS; LBP-14-16, 80 NRC 183 (2014)

although it might be fatal for standing purposes if an Indian tribe were seeking to have intervenors represent their interests in the proceeding, intervenors' lack of authority to represent them is not a bar to intervenors raising the tribe's contention; LBP-12-12, 75 NRC 742 (2012)

applicant is not required to discuss the federal government's trust responsibility to Indian tribes in its environmental report; LBP-12-24, 76 NRC 503 (2012)

areas of potential effect of a federal undertaking must be designated, and the lead federal agency must consult with the state historic preservation office regarding the presence and protection of historic and cultural resources in the designated area, as well as any federally recognized Native American groups with an ancestral interest in the property, to determine if resources important to the tribe are present; LBP-11-26, 74 NRC 499 (2011)

argument that, in addition to the tribe, individual tribal representative has standing to sue under NHPA section 106 consultation provisions is rejected; LBP-13-6, 77 NRC 253 (2013)

as a sovereign body, Native American tribes maintain a strong interest in its members' welfare such that its organizational purpose is germane to the interests it seeks to represent in proceeding; LBP-13-6, 77 NRC 253 (2013)

consultation must provide an Indian tribe with a reasonable opportunity to identify its concerns about historic properties and advise on their identification and evaluation, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects; LBP-15-16, 81 NRC 618 (2015)

contention alleging failure to involve or consult all interested tribes as required by federal law is admissible; LBP-14-5, 79 NRC 377 (2014)

contention alleging that an Indian tribe had not been consulted concerning cultural resources, in violation of the National Historic Preservation Act, was premature because NRC Staff, not applicant, has the duty to consult with the tribe under the Act, and Staff had not completed its review process; LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of NRC Staff's draft environmental impact statement; LBP-15-5, 81 NRC 249 (2015)

contention contesting how the consultation mandate is being carried out can be raised in the first instance only after the Staff's draft environmental impact statement; LBP-13-6, 77 NRC 253 (2013)

federal agencies must consult with any Indian tribe that attaches religious and cultural significance to the sites; LBP-15-16, 81 NRC 618 (2015)

federal government bears a trust responsibility to Native American tribes, and the NRC, as a federal agency, owes a fiduciary duty to tribes and their members; LBP-11-30, 74 NRC 627 (2011)

federal government owes a trust responsibility to Indian tribes; LBP-12-24, 76 NRC 503 (2012)

federal law not only recognizes that tribes have a protected interest in cultural resources found on their aboriginal land, but as well has imposed on federal agencies a consultation requirement under the National Historic Preservation Act to ensure the protection of tribal interests in cultural resources; CLI-14-2, 79 NRC 11 (2014)

federal trust responsibility to Indian tribes extends not just to the Interior Department, but attaches to the federal government as a whole; LBP-12-24, 76 NRC 503 (2012)

federal trust responsibility to Indian tribes rests solely with the federal government and cannot be discharged by applicants; LBP-12-24, 76 NRC 503 (2012)

First Nations in Canada must receive invitations to participate in the environmental impact statement scoping process when there are transboundary environmental impacts from a project; LBP-12-12, 75 NRC 742 (2012)

for federal agencies that do not manage, control, or supervise Indian affairs, unless there is a specific duty that has been placed on the agency with respect to Indians, this responsibility is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes; LBP-14-6, 79 NRC 404 (2014)

government fulfills its trust duties by executing federal law, not by waiving federal law; LBP-14-16, 80 NRC 183 (2014)

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government's trust responsibility is at its apex when it comes to managing tribal resources and preventing confiscation or environmental degradation of those resources; LBP-14-16, 80 NRC 183 (2014)

harming Native American artifacts would constitute an irreparable injury because artifacts are, by their nature, unique, and their historical and cultural significance make them difficult to value monetarily; LBP-15-2, 81 NRC 48 (2015)

Indian tribe's treaty-based claims of ownership of mining site and international treaty-based claims cannot support the admission of environmental assessment contention; LBP-15-11, 81 NRC 401 (2015)

individual tribal member who does not reside on a tribal reservation where a facility is proposed to be located must show injury in fact relative to that member's activities on the reservation even when the reservation is asserted to be on aboriginal tribal lands; LBP-13-6, 77 NRC 253 (2013)

individual tribal member's assertion of an interest based on cultural resource concerns must show that there is a concrete or particularized injury to herself as an individual; LBP-13-6, 77 NRC 253 (2013)

irreparable harm element of the test for issuance of injunctive relief was met where the tribe's evidence showed that a phase of the project would involve damage to at least one known site, and virtually ensure some loss or damage; LBP-15-2, 81 NRC 48 (2015)

issue of the alleged failure to consult with a tribe on historic and cultural resources is material and within the scope of a materials license proceeding; LBP-13-9, 78 NRC 37 (2013); LBP-15-16, 81 NRC 618 (2015)

it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)

NEPA requires acknowledgment of tribal hunting and fishing rights, as well as an analysis of how the project will affect those rights; LBP-15-5, 81 NRC 249 (2015)

NRC considered Indian tribe's trust responsibility concerns during its rulemaking; LBP-14-16, 80 NRC 183 (2014)

NRC exercises its fiduciary duty in the context of its authorizing statutes, including the Atomic Energy Act, and implements any fiduciary responsibility by ensuring that tribal members receive the same protections under implementing regulations that are available to other persons; LBP-14-16, 80 NRC 183 (2014)

NRC must prepare an environmental impact statement that adequately evaluates the environmental impacts of relicensing, including impacts to tribal hunting and fishing rights and subsistence consumption; LBP-15-5, 81 NRC 249 (2015)

NRC Staff is required to consult with interested parties, including tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 11 (2014)

NRC Staff must include in the final supplemental environmental impact statement an analysis of significant problems and objections raised by any affected Indian tribes, and by other interested persons; LBP-15-16, 81 NRC 618 (2015)

petitioner asserts standing based on use of proposed site to gather eagle feathers for ceremonial and religious uses; LBP-13-6, 77 NRC 253 (2013)

preliminary injunction halting a solar energy project was granted based on a tribal claim that the project would not avoid most of the 459 cultural sites identified, and that the NEPA and NHPA process had been insufficient; LBP-15-2, 81 NRC 48 (2015)

standing criteria for federally recognized Indian tribes are less stringent, but only where the facility at issue is within the tribe's boundaries; LBP-12-24, 76 NRC 503 (2012)

to eliminate the inadmissible issue of tribal notification and to clarify the scope of the subsistence consumption issue, board narrows and reformulates a contention; LBP-15-5, 81 NRC 249 (2015)

tribal member who regularly visits tribal migratory route on national monument land to pursue cultural undertakings has standing under NHPA to raise concerns; LBP-13-6, 77 NRC 253 (2013)

tribe has an organizational interest in protecting cultural artifacts connected with it; CLI-14-2, 79 NRC 11 (2014)

tribes have a procedural right to be consulted regarding historic preservation matters; LBP-13-6, 77 NRC 253 (2013)

tribe's statutorily recognized interest in tribal cultural resources that may still be extant on its recognized aboriginal lands provides a cognizable interest for the purpose of establishing its standing; LBP-13-6, 77 NRC 253 (2013)

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under NEPA, defining the scope of effects of a project requires engagement with governments of affected tribes through an early and open process aimed at identifying concerns, potential impacts, relevant effects of past actions, and possible alternative actions; LBP-15-16, 81 NRC 618 (2015)

when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual or nongovernmental organization, whether via a proximity presumption or otherwise; LBP-13-6, 77 NRC 253 (2013)

NEED FOR POWER

applicant who is a state-regulated utility is in a position to implement and promote programs such as energy conservation, efficiency, and load management such that the need for additional generation capacity may be reduced; LBP-11-6, 73 NRC 149 (2011)

assessment need not precisely identify future market conditions and energy demand, or develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power; LBP-11-7, 73 NRC 254 (2011)

assessments must be only at a level of detail sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-12-5, 75 NRC 227 (2012)

because the assessment necessarily entails forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, need-for-power assessments are properly conservative; LBP-11-7, 73 NRC 254 (2011); LBP-12-5, 75 NRC 227 (2012)

contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-11-13, 73 NRC 534 (2011); LBP-13-12, 78 NRC 239 (2013)

demand for electricity is the justification for building any power plant, and satisfaction of that demand is the principal beneficial factor weighed against the environmental costs in striking the balance that NEPA requires; LBP-11-7, 73 NRC 254 (2011)

discussion of need for power is required in an environmental report, but applicant need not precisely identify future market conditions and energy demand or develop other detailed analyses in order to establish with certainty that construction and operation of a nuclear power plant are the most economical alternative; LBP-11-6, 73 NRC 149 (2011)

forecasts need not precisely identify future market conditions and energy demand, or develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power; LBP-12-5, 75 NRC 227 (2012)

given the legal responsibility imposed upon a public utility to provide at all times adequate, reliable service, and the severe consequences that may attend upon a failure to discharge that responsibility, the most that can be required is that the forecast be a reasonable one in light of what is ascertainable at the time made; LBP-11-7, 73 NRC 254 (2011); LBP-12-5, 75 NRC 227 (2012)

if demand for power turns out to be less than predicted, it cannot be argued that the cost of the unneeded generating capacity may turn up in customers' electric bills because the surplus can be profitably marketed to other systems or the new capacity can replace older, less efficient units; LBP-12-5, 75 NRC 227 (2012)

in its analysis, NRC Staff may rely on studies and forecasts prepared by expert, independent agencies charged with the duty of ensuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands; LBP-11-7, 73 NRC 254 (2011)

inasmuch as NRC Staff relies on the benefits of proposed units to satisfy an otherwise unmet need for power, the adequacy of the need-for-power assessment is material to granting the proposed combined license; LBP-11-7, 73 NRC 254 (2011)

inherent in any forecast of future electric power demands is a substantial margin of uncertainty; LBP-11-6, 73 NRC 149 (2011)

it is sufficient if the analysis is at a level of detail to reasonably characterize the costs and benefits associated with proposed licensing actions; LBP-11-7, 73 NRC 254 (2011)

license renewal applicants need not include a need-for-power discussion in their environmental reports; CLI-14-6, 79 NRC 445 (2014); LBP-11-21, 74 NRC 115 (2011)

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NEPA only requires reasonable forecasting; LBP-12-5, 75 NRC 227 (2012)

NRC must address any purported need for additional power during its environmental review of a combined license application; LBP-11-7, 73 NRC 254 (2011)

NRC Staff is not required to analyze the need for the power for license renewal; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's need-for-power analysis may accord an expert, independent agency's forecasts and studies great weight and may give heavy reliance to those forecasts and studies absent a showing that they contain a fundamental error; LBP-11-7, 73 NRC 254 (2011)

operating license renewal applications need not discuss the need for power; LBP-11-2, 73 NRC 28 (2011)

potential legislative action that might result in a reduction in demand is speculative and therefore does not provide a basis for admission of a contention on need for power; LBP-11-7, 73 NRC 254 (2011)

regardless of whether NRC itself conducts the need-for-power assessment or relies on another agency's forecasts and studies, that assessment need only be reasonable; LBP-11-7, 73 NRC 254 (2011)

state public service commission's determination of need for power may be relied on by the NRC in its own analysis, as long as that determination is neither shown nor appears on its face to be seriously defective; LBP-11-6, 73 NRC 149 (2011)

supplemental environmental impact statements for license renewal are not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 246 (2013)

this is a shorthand expression for the benefit side of the cost-benefit balance that NEPA mandates for a proceeding considering the licensing of a nuclear power plant; LBP-11-6, 73 NRC 149 (2011)

where the licensing board independently analyzed the data in the record and made its own need-for-power projection based thereon, NRC did not abdicate its NEPA responsibilities by placing heavy reliance on the judgment of local regulatory bodies; LBP-13-4, 77 NRC 107 (2013)

NEED TO KNOW

board determination of expert's need to know with regard to a document withheld as safeguards information was reversed; LBP-11-9, 73 NRC 391 (2011)

lack of clarity in the terms and application of the agency's newly established SUNSI policy contributed to intervenors' misapprehension that they were required to demonstrate a need for the information in order to request SUNSI documents; LBP-11-9, 73 NRC 391 (2011)

NRC Staff was admonished for having imposed a stricter-than-necessary standard of "need" for access to SUNSI; LBP-11-9, 73 NRC 391 (2011)

petitioner was denied access to a safeguards-protected design-related document on the basis of his lacking a need to know; LBP-11-9, 73 NRC 391 (2011)

NEGATION ACTION PLAN

applicant's plan addresses not only how it avoids foreign ownership, control, or domination now, but how it will continue to avoid foreign ownership, control, or domination throughout the entire license period; LBP-14-3, 79 NRC 267 (2014)

applicant's plan is part of its final safety analysis report and therefore is part of the licensing basis of the facility; LBP-14-3, 79 NRC 267 (2014)

combined license will not be issued where applicants are 100% owned by a foreign corporation, which is 85% owned by the French government, and the foreign corporation has the power to exercise ownership, control, or domination over applicants, and the Negation Action Plan submitted by applicants does not negate this situation; LBP-12-19, 76 NRC 184 (2012)

if applicant's plan can successfully wall off the foreign entity from influencing applicant's decisionmaking regarding nuclear safety, security, and reliability concerns, then the AEA's prohibition on foreign control or domination will not stand in the way of the applicant seeking that license; LBP-14-3, 79 NRC 267 (2014)

where a foreign entity proposed to own 100% of the entire facility, a negation action plan was of no consequence; LBP-14-3, 79 NRC 267 (2014)

NEUTRON FLUENCE

consistency check is required if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 753 (2015)

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consistency check seeks to compare, for a specific material type, the model's projected embrittlement with the actual embrittlement values at the same fluence provided by material samples; LBP-15-17, 81 NRC 753 (2015)

if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 753 (2015)

in calculating embrittlement reference temperatures, licensee must calculate neutron flux through the reactor pressure vessel using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases; LBP-15-17, 81 NRC 753 (2015)

surveillance data must be used in the consistency check when it is a heat-specific match for one or more of the materials for which the reference temperature is being calculated and three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 753 (2015)

when fluence of a material sample is known, it must be used in the consistency check if it is of the appropriate chemical composition; CLI-15-22, 82 NRC 310 (2015)

NEUTRON IRRADIATION

embrittlement of reactor pressure vessel walls, decreasing their fracture toughness, is discussed; LBP-15-17, 81 NRC 753 (2015)

exemption from the surveillance program is allowed if a reactor's lifetime irradiation levels are below a certain threshold; LBP-15-17, 81 NRC 753 (2015)

long-term exposure to neutron radiation and elevated temperatures in a reactor vessel decrease the vessel materials' fracture toughness, or resistance to fracture; LBP-15-20, 81 NRC 829 (2015)

NO SIGNIFICANT HAZARDS DETERMINATION

apart from discretionary review by the Commission, NRC Staff's no significant hazards consideration determination under section 50.92(c) may not be contested; LBP-15-26, 82 NRC 163 (2015)

determination is a procedural decision barred from litigation; LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015)

determination permits NRC to make an authorized license amendment effective immediately rather than awaiting the outcome of an adjudicatory challenge; LBP-15-26, 82 NRC 163 (2015)

eligibility conditions for a no significant hazards consideration determination on a proposed amendment are discussed; LBP-15-26, 82 NRC 163 (2015)

final determination allows the Commission to issue the challenged license amendment before the petitioner's request for a hearing is adjudicated; LBP-15-17, 81 NRC 753 (2015)

final determination does not either prevent the adjudication from proceeding or restrict the licensing board's substantive determination on public health and safety issues; LBP-15-17, 81 NRC 753 (2015)

license amendment request is not categorically exempt from environmental review if it involves a significant hazards consideration that excludes it from categorical exemption pursuant to the criteria in section 51.22(c)(9)(i); LBP-15-26, 82 NRC 163 (2015)

licensing boards lack jurisdiction to adjudicate challenges to NRC Staff's proposed no significant hazards consideration determination; LBP-13-11, 78 NRC 177 (2013)

preparation of an environmental impact statement for the proposed action is unnecessary if NRC Staff determines that the proposed action will not have a significant effect on the quality of the human environment; CLI-15-25, 82 NRC 389 (2015)

process for making the determination is discussed; LBP-15-26, 82 NRC 163 (2015)

this procedural device determines when, not whether, petitioners' right to a hearing under the Atomic Energy Act will occur; LBP-15-26, 82 NRC 163 (2015)

when an adjudicatory proceeding has been initiated with respect to a license amendment issued with such a determination, once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision; LBP-15-13, 81 NRC 456 (2015)

when licensee submits its license amendment application to NRC, it must provide the agency with its analysis about the issue using the standards in 10 C.F.R. 50.92; LBP-15-17, 81 NRC 753 (2015)

where NRC Staff takes action pursuant to this determination and issues a license amendment prior to a presiding officer's initial decision, the Staff will thereafter take appropriate action (if necessary) in accordance with the presiding officer's decision; CLI-15-25, 82 NRC 389 (2015)

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where the Commission finds that exigent circumstances exist and it also determines that an amendment involves no significant hazards considerations, it will provide a hearing after issuance, if one has been requested by a person who satisfies the intervention requirements of 10 C.F.R. 2.309; CLI-15-25, 82 NRC 389 (2015)

NO-ACTION ALTERNATIVE

applicant must provide a discussion of the no-action alternative in its environmental report; LBP-12-8, 75 NRC 539 (2012)

discussion of the no-action alternative need only include feasible, nonspeculative alternatives; LBP-12-8, 75 NRC 539 (2012)

environmental impact statements must consider the alternative of no action; LBP-12-8, 75 NRC 539 (2012)

extent of the no-action discussion is governed by a rule of reason; LBP-12-8, 75 NRC 539 (2012)

NRC Staff is not obligated to fully adopt, or agree with, all comments to the draft supplemental environmental impact statement regarding the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

there need not be much discussion in the environmental documents because it is most simply viewed as maintaining the status quo; LBP-12-8, 75 NRC 539 (2012)

when taking the requisite hard look at environmental consequences of the alternatives to the proposed licensing action, the environmental impact statement must discuss the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

NOISE

increase in noise levels is a significant impact because the agency's environmental assessment made no firm commitment to any noise mitigation measures; LBP-12-23, 76 NRC 445 (2012)

NONCOMPLIANCES

request that NRC take enforcement action to correct alleged noncompliance with fire protection regulations is granted; DD-12-3, 76 NRC 416 (2012)

use of operator manual actions in lieu of the protection methods specified in 10 C.F.R. Part 50, Appendix R, § III.G.2 is not consistent with the regulations, and plants need regulatory approval for each specific OMA proposed; DD-12-3, 76 NRC 416 (2012)

NONDISCLOSURE AGREEMENTS

board denies a motion seeking sanctions against petitioner for violating the governing protective order and nondisclosure agreement, but imposes a document review requirement on petitioner in light of its misconduct and to enhance future compliance with the proceeding's protective order; LBP-13-2, 77 NRC 71 (2013)

party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 71 (2013)

NONPARTIES

Commission did not intend to relieve third-party individuals who are not the subject of an enforcement order, but who nonetheless seek a hearing on the order, from satisfying the requirements for a petition for intervention in section 2.309; LBP-14-4, 79 NRC 319 (2014)

nonparty petitioners may not challenge a confirmatory order embodying a settlement if the order improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

persons who are not parties may file an amicus curiae brief if a matter is taken up by the Commission under 10 C.F.R. 2.341 or sua sponte; CLI-15-1, 81 NRC 1 (2015)

petitioner may act to vindicate its own rights, but it has no standing to assert the rights of others; CLI-12-6, 75 NRC 352 (2012)

representative of a governmental entity that wishes to participate as a nonparty in the proceeding must identify those contentions on which it will participate in advance of any hearing held; LBP-15-11, 81 NRC 401 (2015)

rulemaking petitioner who is not a party to a licensing proceeding has no right under NRC rules to request a stay of that proceeding; CLI-12-6, 75 NRC 352 (2012)

third-party requests for a hearing on an enforcement order have been treated as a petition for intervention under the Commission's generally applicable rules; LBP-14-4, 79 NRC 319 (2014)

too freely allowing third parties to contest enforcement settlements at hearings would undercut NRC's policy favoring enforcement settlements; LBP-14-4, 79 NRC 319 (2014)

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NONSAFETY-RELATED

even though a cooling pond is not a safety-related structure, knowledge of faulting under the pool and the impact this faulting might have on the pool's operation are required; LBP-11-16, 73 NRC 645 (2011)

protection of regulatory treatment of nonsafety systems equipment from external hazards at the site is discussed; CLI-15-13, 81 NRC 555 (2015)

scope of license renewal consists of all nonsafety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any safety functions including control of excessive dose exposures; LBP-13-13, 78 NRC 246 (2013)

NOTICE

Administrative Procedure Act requires no more than a description of the subjects and issues involved in a notice of proposed rulemaking; LBP-15-15, 81 NRC 598 (2015)

advance notice of proposed rulemaking is a formal invitation to participate in shaping the proposed rule; LBP-15-15, 81 NRC 598 (2015)

advance notice of proposed rulemaking was withdrawn due to changes in market demand; LBP-15-15, 81 NRC 598 (2015)

agency can cease a rulemaking all together after a notice of proposed rulemaking has been issued; LBP-15-15, 81 NRC 598 (2015)

agency is generally not required to issue a new notice of proposed rulemaking if it changes its position, as long as the final rule is a logical outgrowth of the proposed rule; LBP-15-15, 81 NRC 598 (2015)

agency need not submit a full draft of a rule in a notice of proposed rulemaking; LBP-15-15, 81 NRC 598 (2015)

boards may not rely on a Federal Register notice to put petitioner on constructive notice of a requirement that the board itself cannot discern in the regulations; LBP-13-3, 77 NRC 82 (2013)

contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)

contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the environmental assessment, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 598 (2015)

even one lacking actual notice may be charged with constructive notice of regulations published in the Federal Register; LBP-13-3, 77 NRC 82 (2013)

if and when applicants file a revision of their application, NRC Staff should renounce the application as to its foreign ownership aspect; CLI-13-4, 77 NRC 101 (2013)

information notice merely summarizes information that has long been publicly available and does not provide new information that would constitute good cause for the late filing; CLI-12-10, 75 NRC 479 (2012)

NRC cannot take advantage of applicant's ignorance of information the agency itself was obligated to provide; LBP-13-3, 77 NRC 82 (2013)

preamble to notice of proposed rulemaking addresses agency's duty to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules; LBP-15-15, 81 NRC 598 (2015)

publication of a regulation in the *Federal Register* constitutes notice to all persons residing in the United States; LBP-13-3, 77 NRC 82 (2013)

requirement for a notice of proposed rulemaking is to sufficiently and fairly apprise interested parties of the issues involved, rather than to specify every precise proposal that the agency may ultimately adopt; LBP-15-15, 81 NRC 598 (2015)

where the basis behind the determination not to proceed with a rulemaking was a final agency ruling allowing for judicial review, the earlier advance notice of proposed rulemaking itself was not held to have any binding effect on the public; LBP-15-15, 81 NRC 598 (2015)

NOTICE AND COMMENT PROCEDURES

legislative history of the Administrative Procedure Act emphasized the notice requirement for proposed rulemaking in order to fairly apprise the public of the agency's potential action; LBP-15-15, 81 NRC 598 (2015)

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many agency statements, including statements sometimes called “rules,” do not have force and effect, and advance notice and public participation are required for rules that carry the force of law; LBP-15-15, 81 NRC 598 (2015)

NRC Staff may determine that exigent circumstances exist such that there is insufficient time for a full 30-day public comment period on a license amendment request; LBP-15-13, 81 NRC 456 (2015)

purpose of notice of proposed rulemaking is not to set binding law or policy, but instead to provide interested members of the public an opportunity to comment in a meaningful way on the agency’s proposal; LBP-15-15, 81 NRC 598 (2015)

NOTICE OF APPEARANCE

although the better practice would be to file a notice of appearance, pursuant to section 2.304(d), the signature of a person signing a pleading is a representation that the document has been subscribed in the capacity specified with full authority; LBP-13-12, 78 NRC 239 (2013)

duly authorized member or officer may represent his or her partnership, corporation, or unincorporated association even if he or she is not an attorney at law, but the representative’s notice of appearance must state the basis of his or her authority to act on behalf of the party; LBP-11-13, 73 NRC 534 (2011)

officer, member, or attorney representing an organization in a proceeding must file a written notice of appearance; LBP-11-13, 73 NRC 534 (2011)

NOTICE OF HEARING

all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-12-3, 75 NRC 164 (2012)

although NRC regulations mandate that a petition contain the name, address, and telephone number of petitioner, the Commission’s hearing notice advises prospective petitioners not to include personal privacy information, such as home addresses or home phone numbers, in their filings; LBP-11-21, 74 NRC 115 (2011)

board finds that it is not necessary for a notice of hearing to be issued before the board can approve a settlement; LBP-15-30, 82 NRC 339 (2015)

contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and directive referring the proceeding to the licensing board; LBP-12-15, 76 NRC 14 (2012)

for an uncontested combined license proceeding, the Notice of Hearing sets the parameters for the Commission’s review; CLI-12-2, 75 NRC 63 (2012)

for proceedings for which a Federal Register notice of agency action is published, the hearing request must be filed not later than the time specified in the notice of proposed action; CLI-14-11, 80 NRC 167 (2014)

hearing notices are the means by which the Commission identifies the subject matter of the hearings and delegates to the boards the authority to conduct proceedings; LBP-11-22, 74 NRC 259 (2011)

if an application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding; CLI-13-10, 78 NRC 563 (2013)

notice of combined license applications must be published in the Federal Register for 4 consecutive weeks; CLI-12-2, 75 NRC 63 (2012)

NRC will hold a hearing under 10 C.F.R. Part 2, Subparts A, C, G, and I, on each application for issuance of a license for construction and operation of a uranium enrichment facility and will publish public notice of the hearing in the Federal Register at least 30 days before the hearing; LBP-12-21, 76 NRC 218 (2012)

NRC’s notice of opportunity for hearing on a confirmatory order provides the public a safety valve because conceivably the order might remove a restriction upon a licensee or otherwise have the effect of worsening the safety situation; LBP-14-4, 79 NRC 319 (2014)

only 10 C.F.R. 2.203 refers to a notice of hearing as part of the settlement procedure; LBP-15-30, 82 NRC 339 (2015)

scope of a proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-12-18, 76 NRC 127 (2012)

scope of an adjudicatory hearing is limited to the notice of hearing, which in licensing matters normally extends only to the application at issue; CLI-14-11, 80 NRC 167 (2014)

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when the board has issued a Notice of Hearing, withdrawal of a license amendment request shall be on such terms as the presiding officer may prescribe; LBP-15-28, 82 NRC 233 (2015)
where the hearing notice does not restrict the hearing to any particular set of issues, the hearing should be understood as encompassing all issues raised by a party to the licensing proceeding that may properly be litigated under Atomic Energy Act § 189a; LBP-11-22, 74 NRC 259 (2011)
withdrawal of an application after issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; LBP-12-20, 76 NRC 215 (2012)

NOTICE OF INTENT

licensee must provide a 30-day notice for all withdrawals other than ordinary administrative expenses to operate the decommissioning fund, but those notices are no longer required once decommissioning has begun and withdrawals are made; LBP-15-24, 82 NRC 68 (2015)
where licensee has not included discovery of unexpected levels of contaminants, and contamination in places not previously expected, in the decommissioning cost estimate, such fund withdrawals would require a 30-day notice; LBP-15-24, 82 NRC 68 (2015)

NOTICE OF VIOLATION

intervenor's reliance on long-available documents regarding leakages and notices of violation made a contention untimely as filed; LBP-15-11, 81 NRC 401 (2015)
NRC Staff may not issue a notice of violation for failure to satisfy Appendix B requirements during the preapplication period, but may deny a combined license for failure to satisfy the standards and requirements of NRC regulations; LBP-14-7, 79 NRC 451 (2014)

NOTICE PLEADING

contention pleading standards require petitioners to plead specific grievances, not simply to provide general notice pleadings; CLI-15-18, 82 NRC 135 (2015)
mere notice pleading is insufficient, but requirement for contention specificity and factual support rather than vague or conclusory statements is not intended to prevent intervention when material and concrete issues exist; LBP-15-20, 81 NRC 829 (2015)
to the extent that the board relied on a precedent that allowed notice pleading under 10 C.F.R. 2.714(b) in making its contention admissibility determination, it erred; CLI-15-23, 82 NRC 321 (2015)

NOTIFICATION

dismissal of license amendment request is conditioned on requirement that licensee provide notice to petitioner of submission of a similar LAR so that petitioner has a fair opportunity to relitigate issues previously found admissible; LBP-15-28, 82 NRC 233 (2015)
enforcement orders must inform licensee or any other person adversely affected by the order of his or her right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)
licensee must notify NRC as soon as practical, and in all cases within 1 hour of the occurrence, of any deviation from a plant's technical specifications; DD-11-6, 74 NRC 420 (2011)
notice of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 48 (2015)
NRC must be notified within 24 hours of failure to resolve an alarm within the approved time period; LBP-14-1, 79 NRC 39 (2014)
publication in the Federal Register is legally sufficient notice to all affected people; LBP-15-5, 81 NRC 249 (2015)
to eliminate the inadmissible issue of tribal notification and to clarify the scope of the subsistence consumption issue, board narrows and reformulates a contention; LBP-15-5, 81 NRC 249 (2015)
when licensee requests an amendment, it must notify the state in which its facility is located of its request by providing that state with a copy of its application; LBP-15-28, 82 NRC 233 (2015)
when preparation of the essential fish habitat assessment is consolidated with other environmental review procedures, the National Marine Fisheries Service is to have timely notification of actions that may adversely affect EFH, and whenever possible, at least 60 days' notice prior to a final decision on an action; LBP-12-10, 75 NRC 633 (2012)

NOZZLES

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)

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NRC GUIDANCE DOCUMENTS

- acceptable methods for designing a radiological monitoring program and submitting required semiannual reports specifying principal radionuclide releases to unrestricted areas for the purpose of estimating maximum potential annual public doses from such releases are outlined; LBP-11-26, 74 NRC 499 (2011)
- although a standard review plan lacks the legal force of regulations, it is to be given special weight as a guidance document that has been approved by the Commission but is nonbinding guidance; LBP-14-3, 79 NRC 267 (2014)
- although boards may give reasonable deference to NRC guidance, such agency guidance does not substitute for regulations, is not binding authority, and does not prescribe NRC requirements; LBP-11-16, 73 NRC 645 (2011)
- although NRC guidance documents are not legally binding, and compliance with them is not required, they describe an acceptable approach to compliance with NRC rules; CLI-11-4, 74 NRC 1 (2011)
- although NUREGs are not legally binding, they are guidance documents and applicant's failure to comply with such documents could give rise to an admissible contention; LBP-11-6, 73 NRC 149 (2011)
- applicability of a guidance document may be challenged in an individual proceeding; LBP-15-20, 81 NRC 829 (2015)
- assertion by applicant that its aging management plan is consistent with the GALL Report does not immunize it against a challenge to the AMP; CLI-12-5, 75 NRC 301 (2012)
- boards should accord special weight to NRC Staff guidance; LBP-15-16, 81 NRC 618 (2015)
- document's unavailability does not render NRC Staff's or applicant's reliance on the NUREG-1150 decontamination cost values altogether unreasonable under NEPA; LBP-13-13, 78 NRC 246 (2013)
- GALL Report and the Standard Review Plan are guidance documents, and therefore not binding, but they do carry special weight; CLI-12-5, 75 NRC 301 (2012)
- GALL Report is a nonbinding guidance document which, in the case of revisions, does not have the force of the law; LBP-13-13, 78 NRC 246 (2013)
- guidance documents do not bind the board, and so applicant's compliance with guidance does not ensure grant of a license; LBP-14-1, 79 NRC 39 (2014)
- guidance documents do not have the force of law, but the Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility has benefited from extensive consideration within the agency, with which the Commission has never expressed disagreement; LBP-12-21, 76 NRC 218 (2012)
- guidance documents set neither minimum nor maximum regulatory requirements; CLI-15-6, 81 NRC 340 (2015)
- guidance documents that are developed to assist in compliance with applicable regulations are entitled to special weight; CLI-15-6, 81 NRC 340 (2015)
- if NRC concludes that an aging management program is consistent with the GALL Report, then it accepts applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance under section 54.29(a); CLI-12-5, 75 NRC 301 (2012); CLI-12-10, 75 NRC 479 (2012)
- in assessing whether applicant satisfies the burden of establishing that NRC Staff's determination of applicant's performance was inappropriate, unjustified, arbitrary, or an abuse of discretion, the board should consult NUREG-1021; LBP-14-2, 79 NRC 131 (2014)
- incorporation by reference of the applicable section of the GALL Report is permissible, but applicant must also provide sufficient plant-specific information to demonstrate that its aging management plan will be designed and implemented consistent with the report; LBP-13-13, 78 NRC 246 (2013)
- information that should be provided in the environmental report and the environmental impact statement regarding a radiological monitoring program and monitoring program acceptance criteria is set forth; LBP-11-26, 74 NRC 499 (2011)
- license renewal applicant's use of an aging management program identified in NUREG-1801, Generic Aging Lessons Learned Report, constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; LBP-13-13, 78 NRC 246 (2013)
- NRC guidance cannot prescribe requirements; LBP-14-9, 80 NRC 15 (2014)
- NRC has addressed pressure suppression containment system vulnerability to early failure under severe accident conditions including overpressurization in NUREG-0474; DD-15-1, 81 NRC 193 (2015)

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NRC is not bound by guidance documents, which do not carry the force of regulations and do not impose legal requirements on licensees; CLI-12-5, 75 NRC 301 (2012)

NRC regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicant's operating test retake; LBP-14-2, 79 NRC 131 (2014)

NRC Staff guidance documents do not have the force of law and boards are not bound to follow them; CLI-15-6, 81 NRC 340 (2015)

NRC Staff guidance is entitled to special weight in a decision on the merits; LBP-15-20, 81 NRC 829 (2015)

NRC Staff's safety review for license renewal applications is guided by NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, and NUREG-1801, Generic Aging Lessons Learned Report; LBP-13-13, 78 NRC 246 (2013)

NRC-endorsed guidance on severe accident mitigation alternatives analysis methodology specifies use of the mean annual offsite dose and economic impact; CLI-12-1, 75 NRC 39 (2012)

NUREG-1021 criteria that apply to the preparation of written reactor operator examinations and operating tests are binding upon NRC Staff; LBP-14-2, 79 NRC 131 (2014)

NUREG-1021 includes conflict of interest provisions that address the assignment of examiners to an examination team; LBP-14-2, 79 NRC 131 (2014)

NUREG-1021 is intended to ensure equitable and consistent administration of examinations for all applicants; LBP-14-2, 79 NRC 131 (2014)

NUREG-1021 provides that NRC's regional offices shall obtain approval from the Office of Nuclear Reactor Regulation operator licensing program office before knowingly deviating from the intent of any of the NUREG-1021 standards; LBP-14-2, 79 NRC 131 (2014)

NUREG-1021 specifies NRC Staff policies, procedures, and practices for administering reactor operator initial and requalification written examinations and operating tests, listing goals and specific procedures for preparation, administration, and grading; LBP-14-2, 79 NRC 131 (2014)

NUREGs and Regulatory Guides are, by nature, only advisory and need not apply in all situations and do not themselves impose legal requirements on licensees; LBP-13-13, 78 NRC 246 (2013)

processes that licensees use to define and deploy strategies to enhance their ability to cope with beyond-design-basis external events, including station blackout are provided; DD-15-5, 81 NRC 877 (2015)

pursuant to 10 C.F.R. 55.40, NRC Staff shall use the criteria in NUREG-1021 in effect 6 months before the examination date to prepare written reactor operator examinations required by sections 55.41 and 55.43 and the operating tests required by section 55.45; LBP-14-2, 79 NRC 131 (2014)

reconsideration of the agency's guidance, as a general matter, should not be resolved in an application-specific proceeding; CLI-13-4, 77 NRC 101 (2013)

reference to an aging management plan in the GALL Report does not insulate that program from challenge in litigation; LBP-13-13, 78 NRC 246 (2013)

standard review plan does not in itself impose requirements on an applicant but provides guidance to NRC Staff in reviewing an application; CLI-14-2, 79 NRC 11 (2014)

such documents are not legally binding, and compliance with them is not required; LBP-15-20, 81 NRC 829 (2015)

such documents describe particular means of satisfying regulatory requirements in ways acceptable to NRC Staff, but do not bind applicants, who remain free to choose different means; LBP-14-1, 79 NRC 39 (2014)

sufficiency of an aging management program that meets the GALL Report's recommendations can be challenged if the contention admissibility requirements are otherwise met; CLI-12-10, 75 NRC 479 (2012)

under 10 C.F.R. 55.40, NRC Staff shall use NUREG-1021 to prepare and evaluate reactor operator licensing examinations; LBP-14-2, 79 NRC 131 (2014)

where no Staff guidance was available for the particular type of facility undergoing license review, the board reasonably selected a standard for a facility most like the facility under review; CLI-15-6, 81 NRC 340 (2015)

where NRC guidance document is not directly applicable to the issue at hand, the presiding officer is afforded greater leeway in its application; CLI-15-6, 81 NRC 340 (2015)

See also Regulatory Guides

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NRC INSPECTION

actions taken to assess the integrity of the North Anna plant following a seismic event that exceeded the operating basis and design basis earthquake are described; DD-12-1, 75 NRC 573 (2012)

during the license renewal period, the regulations of 10 C.F.R. Part 50, Appendix B concerning ongoing inspections and audits apply; LBP-13-13, 78 NRC 246 (2013)

NRC is required to verify through inspection that the facility has been constructed in accordance with the requirements of the license; LBP-12-21, 76 NRC 218 (2012)

written policies, implementing procedures, site-specific analysis, and other supporting technical information developed to implement cyber security plans are subject to periodic inspection by NRC Staff; CLI-12-2, 75 NRC 63 (2012)

NRC POLICY

challenges to NRC rules and regulations are generally prohibited with limited exceptions in view of expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis on rulemaking proceedings as the appropriate forum for settling basic policy issues; CLI-13-7, 78 NRC 199 (2013)

Commission disfavors issuance of advisory opinions; CLI-13-10, 78 NRC 563 (2013)

Commission encourages fair and reasonable settlement and resolution of issues proposed for litigation; LBP-14-4, 79 NRC 319 (2014); LBP-15-30, 82 NRC 339 (2015)

Criterion 25 of NRC's agreement state policy statement does not relate to substantive standards or the regulatory outcome of a pending license application, even where a license application has been pending at the NRC for an extended period; CLI-11-12, 74 NRC 460 (2011)

for suspension of licensing proceedings, petitioners must show that continuation of proceedings, pending consideration of a rulemaking petition, would jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge; LBP-11-34, 74 NRC 685 (2011)

intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 512 (2015)

licensing boards should only use sua sponte review in extraordinary circumstances; LBP-14-9, 80 NRC 15 (2014)

NRC generally disfavors the filing of new contentions at the eleventh hour of an adjudication, a policy that is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; CLI-11-2, 73 NRC 333 (2011)

NRC has a strong policy in favor of openness and transparency; LBP-11-5, 73 NRC 131 (2011)

NRC has long preferred concentrating its resources on actual field inspections and related scientific and engineering work, as opposed to the conduct of legal proceedings; LBP-14-4, 79 NRC 319 (2014)

NRC must consider varying interpretations and the wisdom of its policy on a continuing basis; LBP-14-4, 79 NRC 319 (2014)

NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-21, 76 NRC 491 (2012)

NRC's encouragement of settlements specifically recognizes that settlements are not inviolate, and the presiding officer or Commission may order adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding; LBP-14-4, 79 NRC 319 (2014)

piecemeal appeals during ongoing licensing board proceedings are generally disfavored; CLI-11-6, 74 NRC 203 (2011); CLI-13-3, 77 NRC 51 (2013)

purpose of Criterion 25 of NRC's agreement state policy statement is to ensure that licensing records are transferred to and received by the new agreement state in an orderly manner that ensures that no pending licensing actions will be significantly delayed or that no records will be lost or misplaced as a result of the transition of authority; CLI-11-12, 74 NRC 460 (2011)

rationale for NRC's policy of generally disfavoring the filing of new contentions at the eleventh hour of an adjudication is based on the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; LBP-11-20, 74 NRC 65 (2011)

to determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair

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and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes; CLI-14-7, 80 NRC 1 (2014)

too freely allowing third parties to contest enforcement settlements at hearings would undercut NRC's policy favoring enforcement settlements; LBP-14-4, 79 NRC 319 (2014)

See also Policy Statements

NRC PROCEEDINGS

even if a witness's testimony was entirely hearsay, evidence of that character is generally admissible in administrative proceedings; LBP-11-14, 73 NRC 591 (2011)

Federal Rules of Evidence are not directly applicable to NRC proceedings, but NRC adjudicatory boards often look to those rules for guidance; LBP-12-21, 76 NRC 218 (2012); LBP-15-20, 81 NRC 829 (2015)

NRC STAFF

actions by the NRC Staff constitute a de facto license amendment when they authorize a licensee to engage in activities beyond the scope of its original license; LBP-13-7, 77 NRC 307 (2013)

agencies of the government must scrupulously observe its rules, regulations, or procedures; LBP-14-2, 79 NRC 131 (2014)

although NRC Staff is free to carry on internecine warfare, it is not free to wage it in an adjudicatory proceeding where all elements of the NRC Staff appear as a single party; LBP-14-2, 79 NRC 131 (2014)

although Staff is not required to be a party to a license transfer adjudication, the Commission directs Staff to become a party; CLI-14-5, 79 NRC 254 (2014)

applicants may prevail against NRC Staff if they prove that a particular contested assessment of a deficiency was inappropriate, unjustified, arbitrary, or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)

because it relates to Staff's position on the reviewability of the Board's decision, Staff's statement regarding its inclination not to revise the final supplemental environmental impact statement is presented for the first time in Staff's answer; CLI-11-14, 74 NRC 801 (2011)

board refused to let a matter turn on attempts by NRC Staff and applicant to label a controversial matter in a way that would avoid adjudication; LBP-14-1, 79 NRC 39 (2014)

boards lack authority to order NRC Staff to bring licensee employees into settlement negotiations; LBP-14-4, 79 NRC 319 (2014)

burden of fulfilling the National Historic Preservation Act's consultation requirements rests exclusively with the NRC, not with the applicant; LBP-12-23, 76 NRC 445 (2012)

burden of NEPA compliance lies with NRC Staff; LBP-15-2, 81 NRC 48 (2015); LBP-15-16, 81 NRC 618 (2015)

Commission has inherent authority to supervise both NRC Staff's work and adjudicatory proceedings relating to license applications; CLI-14-1, 79 NRC 1 (2014)

Commission justifiably expects that all applicable provisions of the Rules of Practice will be observed in adjudicatory submissions, but it also expects NRC Staff to turn square corners with those with whom it deals, including applicants for senior reactor operator licenses; LBP-13-3, 77 NRC 82 (2013)

contents of licensee's behavioral observation program cannot substitute for the duty of NRC Staff to be reasonably clear as to what is required of workers who are trying to comply with their legal obligation to report on their co-workers; LBP-14-4, 79 NRC 319 (2014)

counsel may file written interrogatories that the target of an enforcement order must answer; LBP-14-11, 80 NRC 125 (2014)

counsel may take the deposition of the target of an enforcement order or any other person; LBP-14-11, 80 NRC 125 (2014)

due weight must be given to Staff's position in an enforcement proceeding; LBP-15-21, 82 NRC 1 (2015)

every 2 years, licensee stages full-participation emergency exercises, which are evaluated by both FEMA and NRC; CLI-12-9, 75 NRC 421 (2012)

for NEPA contentions, the burden of proof shifts to NRC Staff, because NRC, not applicant, bears the ultimate burden of complying with NEPA; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012)

in denying an exemption request, Staff is required to inform applicant of the deadline for seeking a hearing; LBP-11-19, 74 NRC 61 (2011)

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in Subpart L proceedings, Staff is under a special obligation to create, maintain, and update a hearing file; LBP-14-2, 79 NRC 131 (2014)

license denial letter that contained apparent boilerplate that was incomplete and perforce misleading does not accord with concepts of fundamental fairness and might well counter hearing rights granted under the Atomic Energy Act; LBP-13-3, 77 NRC 82 (2013)

NRC cannot take advantage of applicant's ignorance of information the agency itself was obligated to provide; LBP-13-3, 77 NRC 82 (2013)

NRC, not applicant, bears the ultimate burden of establishing compliance with NEPA; LBP-14-7, 79 NRC 451 (2014)

NUREG-1021 criteria that apply to the preparation of written reactor operator examinations and operating tests are binding on NRC Staff; LBP-14-2, 79 NRC 131 (2014)

parties, including NRC Staff, may be sanctioned for noncompliance with the disclosure regulations; LBP-14-2, 79 NRC 131 (2014)

regardless of the issuance of the license, the burden at hearing remains on applicant and, with respect to NEPA compliance, on NRC Staff; CLI-15-17, 82 NRC 33 (2015)

Staff and its counsel, like the board and its staff, are federal government employees and are thus subject to stringent sanctions for the unauthorized disclosure of the protected information or protected documents; LBP-11-5, 73 NRC 131 (2011)

Staff and licensee may file interlocutory appeals on the admission of a contention, but intervenors are prohibited from filing such appeals on the denial of a contention unless all contentions have been denied; LBP-14-4, 79 NRC 319 (2014)

Staff is but one of the parties to a licensing proceeding, and the positions that it may take are in no way binding upon the licensing board; LBP-12-23, 76 NRC 445 (2012)

Staff is not required to be a party to a license transfer adjudication; CLI-14-5, 79 NRC 254 (2014)

Staff is obliged to lay all relevant materials before the board to enable it to adequately dispose of the issues before it; LBP-14-2, 79 NRC 131 (2014)

Staff is required to notify the presiding officer and the parties whether it desires to participate as a party in a license transfer proceeding; CLI-14-5, 79 NRC 254 (2014)

Staff will become a party to cases involving an application denial; CLI-14-5, 79 NRC 254 (2014)

Staff's position in an enforcement proceeding is not itself dispositive of whether an enforcement agreement should be approved, but regulatory instruction to accord that position due weight is dispositive proof of the importance of Staff's views; LBP-15-21, 82 NRC 1 (2015)

there is nothing in the record to suggest that applicant or NRC Staff will not act in good faith to ensure that applicant's regulatory responsibilities, including its license conditions, are honored, and the board cannot assume noncompliance; LBP-15-11, 81 NRC 401 (2015)

violations will be dispositioned by Staff as part of its ongoing reactor oversight process, and evidentiary hearings before NRC at the request of third parties are not a part of this process; DD-12-3, 76 NRC 416 (2012)

when it denied a senior reactor operator license, Staff acted inconsistently with its own guidance and applied that guidance in an inconsistent manner; LBP-14-2, 79 NRC 131 (2014)

See also Discovery Against NRC Staff

NRC STAFF REVIEW

absent a rule waiver, NRC Staff is not expected to revisit the impact determinations made in the Continued Storage GEIS as part of its site-specific NEPA reviews; CLI-15-10, 81 NRC 535 (2015)

absent a valid regulation limiting NRC's NEPA obligations, the consideration of alternative severe accident mitigation measures may not be excluded from the agency's NEPA reviews; LBP-12-18, 76 NRC 127 (2012)

absent compelling circumstances, Staff is expected to accord sufficient priority and devote sufficient resources to meeting its estimated safety and environmental review schedules; CLI-12-4, 75 NRC 154 (2012); LBP-15-2, 81 NRC 48 (2015)

adequacy of NRC Staff's review is not a litigable issue in a licensing case; CLI-15-9, 81 NRC 512 (2015)

adequacy of Staff's review of transmission-corridor impacts might be appropriate for the board's consideration sua sponte; CLI-15-1, 81 NRC 1 (2015)

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after a licensing board in an uncontested proceeding determines that Staff's NEPA review is adequate, it must then independently consider the final balance among conflicting factors that is struck in the Staff's recommendation; LBP-12-21, 76 NRC 218 (2012)

agencies are encouraged to incorporate consultation procedures on endangered/threatened species and essential fish habitat into their NEPA review; LBP-12-10, 75 NRC 633 (2012)

agencies are given broad discretion to keep their NEPA inquiries within appropriate and manageable boundaries; LBP-15-3, 81 NRC 65 (2015)

agency cannot relinquish its NEPA responsibility to evaluate environmental impacts by relying on expected compliance with environmental standards of another agency; LBP-15-23, 82 NRC 55 (2015)

agency conducting a NEPA review shall independently evaluate the information submitted and shall be responsible for its accuracy; LBP-15-11, 81 NRC 401 (2015)

agency responsible for preparing the environmental impact statement must define the scope of the issues it will address; LBP-11-10, 73 NRC 424 (2011)

agency's reliance on mitigation in making a finding of no significant impact is justified if the proposed mitigation is imposed by statute or regulation or has been so integrated into the initial proposal that it is impossible to define the proposal without mitigation; LBP-12-23, 76 NRC 445 (2012)

agency's reliance on mitigation in making a finding of no significant impact must be justified; LBP-12-23, 76 NRC 445 (2012)

aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 11 (2011)

although a draft supplemental environmental impact statement may rely in part on applicant's environmental report, NRC Staff must independently evaluate and be responsible for the reliability of all information used in the DSEIS; LBP-15-3, 81 NRC 65 (2015)

although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 559 (2012)

although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final environmental impact statement stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 742 (2012)

although NRC must take a hard look under NEPA, NEPA itself does not mandate particular results; LBP-13-13, 78 NRC 246 (2013)

although NRC regulations do not require NRC Staff to analyze the environmental impacts of NRC licensing actions on the environment of foreign nations, the Staff extended its outreach to international organizations to inform its analysis of the potential environmental impacts of the project; CLI-15-13, 81 NRC 555 (2015)

although Staff reviews submissions under 10 C.F.R. 50.71(e) for compliance with such administrative requirements as timeliness and content, it does not approve substantive changes, such as to a seismic analysis, as part of the process; LBP-15-27, 82 NRC 184 (2015)

although sufficiency of the application and NRC Staff's environmental review of that application are proper targets of contentions, sufficiency of NRC Staff's safety review of the application is not; LBP-11-29, 74 NRC 612 (2011)

although the Commission found NRC Staff's review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 555 (2015)

any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 253 (2013)

applicant's environmental report is not the vehicle for the NRC Staff's safety review; LBP-11-6, 73 NRC 149 (2011)

as part of its NEPA analysis, NRC must provide information that addresses the purpose and need for the proposed action; LBP-11-26, 74 NRC 499 (2011)

basis of Staff's reasonable assurance finding on combined license applicant's squib valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 63 (2012)

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because agency practice is one indicator of how the agency interprets regulations, a consistently held NRC Staff view on an operator testing policy matter will not be disturbed; LBP-14-2, 79 NRC 131 (2014)

because NEPA is premised on a rule of reason, NRC need only consider reasonable alternatives to a proposed action; LBP-11-26, 74 NRC 499 (2011)

before a final decision approving or disapproving a construction authorization application may be reached, not only must the Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 219 (2013)

blanket reliance by NRC Staff on Clean Water Act permits is not permitted; LBP-14-9, 80 NRC 15 (2014)

board rules in favor of NRC Staff on contention challenging adequacy of the assessment of impacts on the eastern fox snake contained within the final environmental impact statement; LBP-14-7, 79 NRC 451 (2014)

boards conducting mandatory hearings should not second-guess the underlying technical or factual findings by NRC Staff; LBP-12-21, 76 NRC 218 (2012)

boards lack authority to direct NRC Staff's regulatory reviews; LBP-12-19, 76 NRC 184 (2012)

burden of establishing compliance with NEPA falls on NRC Staff, not applicant; LBP-12-17, 76 NRC 71 (2012)

careful consideration of severe accident mitigation design alternatives is required under NEPA, and NRC's failure to consider them is a violation of NEPA; LBP-12-8, 75 NRC 539 (2012)

Commission addresses the sufficiency of Staff's review of a combined license application rather than a making a de novo review; CLI-12-2, 75 NRC 63 (2012)

Commission directs Staff to devote sufficient resources to complete its review in a timely manner; CLI-15-17, 82 NRC 33 (2015)

Commission does not review combined license application de novo, but rather considers the sufficiency of NRC Staff's review of the application; CLI-15-13, 81 NRC 555 (2015)

Commission examines whether Staff's safety review of the combined license application under 10 C.F.R. 52.97(a)(1)(i)-(v) has been adequate to support its findings; CLI-12-9, 75 NRC 421 (2012)

Commission must determine whether NRC Staff review of a combined license application has been adequate to support the findings listed in 10 C.F.R. 52.97 and 51.107(a) for each of the licenses to be issued and in 10 C.F.R. 50.10 and 51.107(d) with respect to the limited work authorizations; CLI-12-2, 75 NRC 63 (2012)

completion of NRC Staff's final environmental review document always must precede the conduct of hearings on environmental issues; LBP-11-30, 74 NRC 627 (2011)

compliance with the Clean Water Act does not negate the requirement for NRC to weigh all environmental effects of a proposed action; LBP-12-16, 76 NRC 44 (2012)

compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality; LBP-15-11, 81 NRC 401 (2015)

compliance with the National Environmental Policy Act is ultimately the responsibility of the NRC; CLI-12-13, 75 NRC 681 (2012)

contention alleging that an Indian tribe had not been consulted concerning cultural resources, in violation of the National Historic Preservation Act, was premature because NRC Staff, not applicant, has the duty to consult with the tribe under the Act, and Staff had not completed its review process; LBP-12-19, 76 NRC 184 (2012)

contention asserting that the NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)

contention claiming that NRC Staff's consultation was inadequate does not ripen until issuance of the Staff's draft environmental review document; CLI-14-2, 79 NRC 11 (2014)

contention fails because it contests NRC Staff's safety review rather than the license renewal application; LBP-15-15, 81 NRC 598 (2015)

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contention that draft environmental impact statement fails to demonstrate adequate technical sufficiency and fails to present information in a clear, concise manner to enable effective public review is inadmissible; LBP-13-9, 78 NRC 37 (2013)

deficiencies in Staff's analysis of a combination alternative is not harmless error; LBP-12-17, 76 NRC 71 (2012)

definition of the scope of the environmental impact statement is the responsibility of the NRC Staff; LBP-14-9, 80 NRC 15 (2014)

determination of minimal environmental impact would make little sense when an agency lacks essential information and has not sought to compile it through independent research; LBP-14-9, 80 NRC 15 (2014)

determination of possible effects on an endangered species is ultimately the acting agency's responsibility; LBP-12-10, 75 NRC 633 (2012)

directing NRC Staff to investigate a safety issue that the board could not reach through the adjudicatory process may put the Commission in a position, after receiving views of applicant if it desired, to assure itself about the significance, or lack thereof, of the shield building cracking issues raised by intervenors, and to direct such followup proceedings, if any, as it might deem appropriate; LBP-15-1, 81 NRC 15 (2015)

duty to exercise independent judgment does not mean that NRC must reinvent every wheel or duplicate competent and professional environmental data and studies that have already been done on a proposed site; LBP-13-4, 77 NRC 107 (2013)

environmental impact statement must be prepared in connection with a license to possess and use source and AEA §11e(2) byproduct material for the purpose of in situ uranium recovery; LBP-15-3, 81 NRC 65 (2015)

environmental impact statements must consider the alternative of no action; LBP-12-8, 75 NRC 539 (2012)

environmental, technical, and other costs and benefits of a proposed action and alternatives are to be considered and weighed, and, to the fullest extent practicable, quantified; LBP-11-7, 73 NRC 254 (2011)

expert, independent agency's forecasts and studies may be accorded great weight and heavy reliance given to those forecasts and studies absent a showing that they contain a fundamental error; LBP-11-7, 73 NRC 254 (2011)

fact that a competent and responsible state authority has approved the environmental acceptability of a site or a project after extensive and thorough environmentally sensitive hearings is properly entitled to substantial weight in the conduct of NRC's own NEPA analysis; LBP-15-11, 81 NRC 401 (2015)

federal agency would be acting arbitrarily and capriciously if it did not look at relevant data and sufficiently explain a rational nexus between the facts found in its review and the choice it makes as a result of that review; LBP-11-17, 74 NRC 11 (2011)

for a proposed nuclear materials-related activity, including uranium enrichment, commencement of construction prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-11, 73 NRC 455 (2011)

for each license renewal application, NRC Staff must prepare a plant-specific supplement to the generic environmental impact statement that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts; LBP-12-8, 75 NRC 539 (2012)

for power plant license renewals, NRC Staff prepares a supplement to its generic environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

for power reactors, NRC developed a Commission-approved standard review plan to assist in evaluating applications for reactor licenses or applications for the transfer of such licenses; LBP-11-11, 73 NRC 455 (2011)

for power reactors, NRC Staff review should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed; LBP-11-26, 74 NRC 499 (2011)

generalized grievances with sufficiency of NRC Staff's analysis or the adequacy of included documentation are not enough to raise a proposed contention to the level of admissibility; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

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- giving appropriate deference to NRC Staff technical expertise, boards are to probe the logic and evidence supporting Staff findings and decide whether those findings are sufficient to support license issuance; LBP-12-21, 76 NRC 218 (2012)
- if after conducting a threshold review, NRC Staff concludes that the applicant may be considered to be foreign owned, controlled, or dominated, or that additional action would be necessary to negate the foreign ownership, control, or domination, applicant shall be promptly advised and requested to submit a negation action plan; LBP-11-11, 73 NRC 455 (2011)
- if applicant did not pursue an early site permit, all relevant site characteristics, including site geology, hydrology, seismology, and man-made hazards, as well as potential environmental impacts of the project, were studied as part of NRC Staff's combined license review and are within the scope of the Commission decision; CLI-15-13, 81 NRC 555 (2015)
- if NRC lacks sufficient information to reach an informed decision, then the agency has a duty to collect further information and conduct further analysis; CLI-13-1, 77 NRC 1 (2013)
- if NRC Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by Staff for its significance, consistent with NEPA requirements; CLI-12-19, 76 NRC 377 (2012)
- if NRC Staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of SAMAs must be provided in license renewal applicant's environmental report; LBP-11-21, 74 NRC 115 (2011)
- if the board's findings after the evidentiary hearing affect Staff's conclusions in the environmental assessment, then those conclusions would have to be revisited; CLI-15-17, 82 NRC 33 (2015)
- if the NRC Staff safety review reveals any new and significant information relating to the environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 404 (2014)
- in a mandatory hearing, a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-26, 74 NRC 499 (2011)
- in analyzing predictions of water availability in a report, NRC Staff consulted with the other government agencies to determine whether data from either of those agencies could be obtained to prepare a new water availability prediction; LBP-13-4, 77 NRC 107 (2013)
- in assessing whether applicant/licensee adequately carries out a licensing directive, boards are to assume that NRC Staff will be fair and judge the matter of applicant/licensee's compliance on the merits; LBP-15-3, 81 NRC 65 (2015)
- in its need-for-power analysis, NRC Staff may rely on studies and forecasts prepared by expert, independent agencies charged with the duty of ensuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands; LBP-11-7, 73 NRC 254 (2011)
- in the area of impacts of combined licenses and limited work authorizations, Staff, in its review of new and significant information, identified a change in impacts associated with terrestrial ecology; CLI-12-2, 75 NRC 63 (2012)
- in the context of license renewal, NRC's Atomic Energy Act safety review under Part 54 does not compromise or limit the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)
- in uncontested hearings, it is NRC's duty to ensure, among other things, that it has adhered to its obligations under the National Environmental Policy Act; CLI-15-1, 81 NRC 1 (2015)
- inasmuch as NRC Staff relies on the benefits of proposed units to satisfy an otherwise unmet need for power, the adequacy of the need-for-power assessment is material to granting the proposed combined license; LBP-11-7, 73 NRC 254 (2011)
- incident to its preparation of the safety evaluation report, NRC Staff is obliged to ensure that applicant's design basis for the new units will protect public health and safety; LBP-11-6, 73 NRC 149 (2011)
- intervenor is not entitled to Staff's review documents as a discovery tool; CLI-12-17, 76 NRC 207 (2012)
- it is appropriate for NRC Staff to give substantial weight to state agency's decision that issuing the NPDES permit would be environmentally acceptable; LBP-15-11, 81 NRC 401 (2015)

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it is not clear that NRC Staff relied upon the generic environmental impact statement when preparing the draft supplemental environmental impact statement because it was not incorporated by reference or mentioned in any other manner; LBP-15-11, 81 NRC 401 (2015)

it is not necessary or appropriate to throw open the full gamut of provisions in a facility's current licensing basis to reanalysis during the license renewal review, because the CLB is effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-12-24, 76 NRC 503 (2012)

it is NRC Staff, not petitioners, that has the burden of complying with NEPA; LBP-15-5, 81 NRC 249 (2015)

it is the duty of NRC Staff, not applicant, to consult with interested tribes concerning the proposed site in the context of a National Historic Preservation Act contention; LBP-15-5, 81 NRC 249 (2015)

it is unnecessary to include in license renewal review all those issues already monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-13-8, 78 NRC 1 (2013)

license applications, not Staff's review, are to be the focus of a licensing adjudication; LBP-13-6, 77 NRC 253 (2013)

licensing boards are not empowered to superintend, to any extent, the conduct of Staff technical reviews; CLI-11-14, 74 NRC 801 (2011); CLI-12-4, 75 NRC 154 (2012); LBP-11-30, 74 NRC 627 (2011); LBP-13-7, 77 NRC 307 (2013); LBP-15-2, 81 NRC 48 (2015)

licensing boards can refer potentially significant safety issues that cannot be addressed through the adjudicatory process to NRC Staff for review; LBP-15-1, 81 NRC 15 (2015)

licensing boards conducting mandatory hearings on uncontested issues are expected to take an independent hard look at Staff safety and environmental findings but are not to replicate Staff work; LBP-12-21, 76 NRC 218 (2012)

licensing boards have authority to adjudicate exemption issues, but Staff serves as an initial reviewer of exemption requests; LBP-12-6, 75 NRC 256 (2012)

mere existence of comments and questions generated by NRC Staff do not, in and of themselves, demonstrate a material deficiency in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011)

NEPA does not impose a substantive obligation for a reviewing agency to require or enforce mitigation measures discussed in an environment assessment; LBP-14-6, 79 NRC 404 (2014)

NEPA does not require NRC Staff to examine every conceivable aspect of federally licensed projects in preparing its environmental impact statement; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

NEPA does not require that the agency wait until inchoate information matures into something that later might affect its review; CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012); CLI-12-15, 75 NRC 704 (2012)

NEPA encourages state participation when appropriate and authorized, but coordination between a federal agency and a state requires active involvement between the two in order for the federal agency to meet its independent review burden; LBP-15-11, 81 NRC 401 (2015)

NEPA imposes on NRC a disclosure obligation that NRC publicly discuss its evaluation of the reasonably foreseeable effects of a proposed action; CLI-15-25, 82 NRC 389 (2015)

NEPA obligates NRC Staff to undertake a full and independent evaluation of the environmental impacts of applicant's proposed action; LBP-12-9, 75 NRC 615 (2012)

NEPA precludes an agency from avoiding the NEPA's requirements by simply relying on another agency's conclusions about a federal action's impact on the environment; LBP-13-4, 77 NRC 107 (2013)

NEPA requires a hard look at the environmental effects of the planned action, not a circular restatement of NRC Staff's own conclusions; LBP-15-11, 81 NRC 401 (2015)

NEPA requires that NRC conduct its environmental review with the best information available at that time; CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012); CLI-12-15, 75 NRC 704 (2012); LBP-12-8, 75 NRC 539 (2012)

NRC does not mandate a specific approach to SAMA analyses, but instead, reviews each severe accident mitigation consideration provided by a license renewal applicant on its merits and determines whether it is reasonable; CLI-13-7, 78 NRC 199 (2013)

NRC hearings on NEPA issues focus entirely on the adequacy of NRC Staff's work; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

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- NRC is required to independently assess the validity of the information that applicant submits in its environmental report; LBP-13-4, 77 NRC 107 (2013)
- NRC is required to prepare a detailed statement discussing the environmental impacts, alternatives, and mitigation measures for any major federal action significantly affecting the quality of the human environment; CLI-13-7, 78 NRC 199 (2013)
- NRC may decline to examine remote and speculative risks or events with inconsequentially small probabilities; LBP-11-26, 74 NRC 499 (2011)
- NRC may not abdicate its duty under NEPA to other agencies to consider environmental impacts, even if those agencies have special expertise relating to environmental impacts; LBP-13-4, 77 NRC 107 (2013)
- NRC must address any purported need for additional power during its environmental review of a combined license application; LBP-11-7, 73 NRC 254 (2011)
- NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 71 (2014)
- NRC must rigorously explore and objectively analyze environmental impacts, so that merely offering general statements about possible effects and some risk does not constitute a hard look absent a justification regarding why more definitive information could not be provided; LBP-11-26, 74 NRC 499 (2011)
- NRC reserves the right to review, as necessary, the rate of accumulation of decommissioning funds and to take additional actions, as appropriate on a case-by-case basis, to ensure an adequate accumulation of decommissioning funds; DD-11-7, 74 NRC 787 (2011)
- NRC Staff cannot defend its decision on a basis inconsistent with its own informal review; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff examined special pathways of exposure that could lead to a higher level of radiation exposure in minority and low-income populations in the area, including subsistence consumption of fish, native vegetation, surface waters, sediments, and local produce; CLI-15-6, 81 NRC 340 (2015)
- NRC Staff improperly discharges its duties with respect to the grading of an operating test if the grading is inappropriate or unjustified or if the grading strays too far afield of the twin goals of equitable and consistent examination administration, thus becoming arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff is directed to review foreign ownership issues outside the adjudicatory context, to consider stakeholder input, and to recommend whether the Commission should consider modifications to agency guidance or practice; CLI-13-4, 77 NRC 101 (2013)
- NRC Staff is required to prepare environmental impact statements for reactor licensing proceedings; CLI-14-7, 80 NRC 1 (2014)
- NRC Staff may not take a position or assert facts before the presiding officer contrary to a matter decided by the appeal board (i.e., the Staff itself) on applicant's informal appeal absent an explicit confession of error; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff may rely on the scientific data and inferences drawn by another government agency but need not slavishly defer to that agency's findings or its conclusions about water quality; LBP-13-4, 77 NRC 107 (2013)
- NRC Staff must assess the relationship between local short-term uses and long-term productivity of the environment, consider alternatives, and describe the unavoidable adverse environmental impacts and the irreversible and irretrievable commitments of resources associated with the proposed action; CLI-15-13, 81 NRC 555 (2015)
- NRC Staff must correctly evaluate basic issues whether or not they were raised by intervenors; LBP-14-9, 80 NRC 15 (2014)
- NRC Staff must have some discretion to draw the line and move forward with decisionmaking; LBP-15-16, 81 NRC 618 (2015)
- NRC Staff must include new and significant information in the supplemental draft environmental impact statement; LBP-11-34, 74 NRC 685 (2011)
- NRC Staff must prepare a summary of determinations and conclusions and provide it to scoping participants; LBP-13-9, 78 NRC 37 (2013)
- NRC Staff must provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of a proposed action; LBP-15-16, 81 NRC 618 (2015)

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NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)

NRC Staff must weigh unavoidable adverse environmental impacts and resource commitments (costs) against the project's benefits; CLI-15-13, 81 NRC 555 (2015)

NRC Staff need not perform a wholly independent analysis from scratch, but may rely on the scientific data and inferences drawn by another federal agency; LBP-13-4, 77 NRC 107 (2013)

NRC Staff uses applicant's environmental report as a starting point for its own environmental review of a license renewal application, the results of which are published as a supplement to the generic environmental impact statement; CLI-15-6, 81 NRC 340 (2015)

NRC Staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement; LBP-13-4, 77 NRC 107 (2013)

NRC Staff's decision at the conclusion of its administrative reviews is the final Staff position and hence the only Staff position open to applicant to challenge before the presiding officer; LBP-14-2, 79 NRC 131 (2014)

NRC Staff's independent finding of license renewal applicant's consistency with the GALL Report does not prevent the board from reviewing the substance of the applicant's commitments, and exploring deficiencies alleged by intervenors in its proceedings; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's reliance in an environmental impact statement on predicted future monitoring and regulatory compliance program to prevent environmental impacts is not permitted; LBP-14-9, 80 NRC 15 (2014)

NRC Staff's responsibilities, parallel to the adjudicatory process, include seeking additional information from applicant after docketing of a pending license application; LBP-12-9, 75 NRC 615 (2012)

NRC's analysis, in its final environmental impact statement, of issues relating to dewatering associated with construction and operation of the proposed plants was adequate and satisfied the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)

NRC's independent technical evaluation of information submitted by licensee to demonstrate that no functional damage occurred as a result of an earthquake is described; DD-15-9, 82 NRC 274 (2015)

NRC's review of a COL application is the type of proposed action obliging the Staff to prepare an environmental impact statement or a supplement thereto; LBP-11-39, 74 NRC 862 (2011)

obligations under Part 51 and NEPA are not limited to only those severe accident mitigation alternatives that address aging management; LBP-11-17, 74 NRC 11 (2011)

once NRC completes its environmental review, its record of decision must state whether NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted, and summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-11-17, 74 NRC 11 (2011)

petitioner should not wait for the Staff to perform its responsibilities under the National Historic Preservation Act before it raises a claim that information is lacking; CLI-14-2, 79 NRC 11 (2014)

petitioner's issue of NRC Staff's compliance with its NEPA obligation to undertake a full evaluation of the environmental impacts associated with a proposed federal action is within the scope of an operating license amendment proceeding and material to the findings NRC must make; LBP-15-13, 81 NRC 456 (2015)

presiding officer must take into consideration NRC Staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact Staff's ability to complete its reviews in a timely manner; LBP-13-13, 78 NRC 246 (2013)

procedures used to evaluate applications for issuance or transfer of control of a production or utilization facility license in light of the prohibitions in Atomic Energy Act §§103d and 104d and in 10 C.F.R. 50.38 against foreign ownership or control are described; LBP-12-19, 76 NRC 184 (2012)

process for making the no significant hazards consideration determination is discussed; LBP-15-26, 82 NRC 163 (2015)

purpose of a mandatory hearing is to determine whether NRC Staff's review of the application has been adequate to support the required regulatory findings; CLI-12-11, 75 NRC 523 (2012)

regardless of whether a hearing request is granted, NRC Staff performs a full safety review of every license amendment request and no request is approved until all necessary public health and safety findings have been made; CLI-15-22, 82 NRC 310 (2015)

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regardless of whether NRC itself conducts the need-for-power assessment or relies on another agency's forecasts and studies, that assessment need only be reasonable; LBP-11-7, 73 NRC 254 (2011)

relative to factual matters, to carry burden of proof, NRC Staff and/or applicant must establish that its position is supported by a preponderance of the evidence; LBP-15-3, 81 NRC 65 (2015)

release of Staff's environmental review document may be the first opportunity for petitioner to question accuracy of Staff's environmental analysis; CLI-15-17, 82 NRC 33 (2015)

review method chosen by NRC in creating its models with the best information available when it began its analysis and then checking the assumptions of those models as new information becomes available is a reasonable means of balancing competing considerations, particularly given the many months required to conduct full modeling with new data; CLI-12-7, 75 NRC 379 (2012)

review of combined license application relative to regulatory actions that the NRC has taken in response to lessons learned from the Fukushima Dai-ichi accident is discussed; CLI-15-13, 81 NRC 555 (2015)

rulemaking petitioners assert that NRC Staff's review of the expedited-transfer issue generated new and significant information regarding the environmental impacts of spent fuel storage; CLI-14-7, 80 NRC 1 (2014)

safety review for license renewal applications is guided by NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, and NUREG-1801, Generic Aging Lessons Learned Report; LBP-13-13, 78 NRC 246 (2013)

significant delays in Staff's review potentially deprive an Indian tribe of its hearing rights; CLI-12-4, 75 NRC 154 (2012)

Staff considers FEMA's findings on emergency plans in making its necessary finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; CLI-12-9, 75 NRC 421 (2012)

Staff ensures that applicant's design basis for the new units will protect public health and safety by verifying that the design basis will withstand maximum flooding events; LBP-11-6, 73 NRC 149 (2011)

Staff evaluated and approved exemption from regulatory requirements for special nuclear material control and accounting program description; CLI-12-2, 75 NRC 63 (2012)

Staff has conducted cumulative impact analyses of covered actions that were not interdependent with the proposed action; LBP-14-6, 79 NRC 404 (2014)

Staff is authorized to issue a license when it has completed its review during the pendency of a hearing as long as it provides the board and parties notice and an explanation why the public health and safety are protected and why the action is in accord with the common defense and security despite the pendency of the contested matter; CLI-15-17, 82 NRC 33 (2015)

Staff is empowered to issue requests for additional information relevant to an applicant's environmental report; LBP-11-32, 74 NRC 654 (2011); LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

Staff is required to consult with interested parties, including Indian tribes, to identify historic properties, evaluate the potential effects of the project on those properties, and consider mitigation measures; CLI-14-2, 79 NRC 11 (2014)

Staff must draw its own independent conclusion as to whether applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

Staff must make a recommendation of the environmental acceptability of the license renewal action, and the Commission shall determine whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; CLI-12-8, 75 NRC 393 (2012)

Staff must prepare a final environmental impact statement in accordance with the requirements of 10 C.F.R. 51.71 for a draft environmental impact statement; LBP-12-18, 76 NRC 127 (2012)

Staff relies heavily on applicant's environmental report in preparing its final environmental impact statement; LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)

Staff's environmental review was conducted in cooperation with the U.S. Army Corps of Engineers, with NRC acting as lead agency and ACE as cooperating agency under a memorandum of understanding, because applicants also needed permits from ACE to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

Staff's NEPA responsibilities for preparing an environmental impact statement are described; LBP-11-6, 73 NRC 149 (2011)

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Staff's steps in the geographic and demographic review in the final safety evaluation report to determine whether the COL applicant has proposed an acceptable site, including acceptable site boundaries, with appropriate consideration of nearby populations and natural and manmade features, are described; CLI-12-9, 75 NRC 421 (2012)

Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 499 (2011)

standard review plan does not in itself impose requirements on an applicant but provides guidance to NRC Staff in reviewing an application; CLI-14-2, 79 NRC 11 (2014)

statutory obligation of complying with NEPA rests with NRC Staff; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

sufficiency of the NRC's hard look at the benefits of severe accident mitigation alternatives in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 11 (2011)

supplemental environmental review documents must be prepared when there are substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-12-18, 76 NRC 127 (2012)

taking a hard look at environmental impacts fosters both informed decisionmaking and informed public participation, and thus ensures that NRC does not act on incomplete information, only to regret its decision after it is too late to correct it; LBP-11-26, 74 NRC 499 (2011)

that NRC Staff will develop additional information relevant to cultural resources, as part of its National Historic Preservation Act review, does not preclude a challenge to the application's cultural resources discussion; CLI-14-2, 79 NRC 11 (2014)

to evaluate a power reactor license renewal application, NRC reviews management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components and environmental impacts and alternatives to the proposed action in accordance; LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)

to issue an early site permit, NRC must comply with the National Environmental Policy Act by including in an environmental impact statement a detailed statement on the environmental impact of the proposed action, any unavoidable adverse environmental effects that cannot be avoided, and alternatives to the proposed action; LBP-11-10, 73 NRC 424 (2011)

to meet its environmental review burden in license renewal cases, NRC Staff developed the generic environmental impact statement, which contains findings that apply to all nuclear power plants and are codified in Appendix B of Subpart A of 10 C.F.R. Part 51; LBP-13-13, 78 NRC 246 (2013)

to satisfy the hard look requirement, NRC must provide detailed analysis of new information and a reasonable explanation of the agency's decision concerning supplementation, not merely a conclusory assertion that the agency has reviewed the new information and concluded that no supplement is required; LBP-12-18, 76 NRC 127 (2012)

under NEPA, NRC is required to take a hard look at the environmental impacts of a proposed action; LBP-14-7, 79 NRC 451 (2014)

waiver of a rule pertaining to the agency's environmental responsibilities is possible; CLI-13-7, 78 NRC 199 (2013)

whatever the ground for the agency's departure from prior norms, it must be clearly set forth so that the reviewing court may understand the basis of the agency's action; LBP-14-2, 79 NRC 131 (2014)

when conducting a NEPA-required environmental review, an agency may consider the ameliorative effects of mitigation in determining the environmental impacts of an activity; LBP-12-23, 76 NRC 445 (2012); LBP-14-7, 79 NRC 451 (2014)

when considering continued storage in licensing reviews with previously completed final environmental impact statements, NRC Staff is expected to use a consistent and transparent process to ensure that all stakeholders are aware of how the environmental impacts of continued storage are considered in each licensing action affected by this regulation; CLI-15-10, 81 NRC 535 (2015)

whether and how NRC Staff fulfills its consultation obligations are issues that could form the basis for a new contention that might appropriately be made in a timely fashion after Staff issues its draft environmental impact statement; CLI-15-18, 82 NRC 135 (2015)

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with respect to the environmental impacts of a combined license, the Commission determines whether the requirements of NEPA § 102(2)(A), (C), and (E), and 10 C.F.R. 51.107(a)(1)-(4) have been met; CLI-12-9, 75 NRC 421 (2012)

NUCLEAR NON-PROLIFERATION

issues are dependent upon the actions and decisions of the President, Congress, international organizations, and officials of other nations, and constitute issues of international policy unrelated to NRC's licensing criteria; LBP-12-21, 76 NRC 218 (2012)

issues span a host of factors far removed from and far afield from the NRC's decision whether to license a uranium enrichment facility; LBP-12-21, 76 NRC 218 (2012)

NUCLEAR POWER PLANT OPERATIONS

holder of a combined license for a newly built reactor may not load fuel or operate except as provided in accordance with Part 50, Appendix E; LBP-15-4, 81 NRC 156 (2015)

"permanent cessation of operations" for a nuclear power reactor facility is defined as a certification by a licensee to NRC that it has permanently ceased or will permanently cease reactor operations; LBP-15-4, 81 NRC 156 (2015)

when licensees certify permanent cessation of operations and permanent removal of fuel from the reactor vessel, the license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, and physically the reactor can't be operated; LBP-15-4, 81 NRC 156 (2015)

NUCLEAR POWER PLANTS

all operational nuclear power plants except Big Rock Point must participate in the ERDS program by providing onsite hardware at each unit to interface with the NRC receiving station; LBP-15-4, 81 NRC 156 (2015)

any facility with an operating reactor unit is required to provide ERDS for that unit, regardless of the status of other reactors at the facility; LBP-15-4, 81 NRC 156 (2015)

Congress expressly recognized and impliedly approved NRC's regulatory scheme and practice under which the safety of interim storage of high-level wastes at commercial nuclear power reactor sites has been determined separately from the safety of government-owned permanent storage facilities that have not yet been established; CLI-15-4, 81 NRC 221 (2015)

facility arguably exists until final decommissioning, which may take up to 60 years, or longer if approved by the Commission; LBP-15-4, 81 NRC 156 (2015)

section 50.72(a)(4) directing licensees to activate ERDS during exigent circumstances applies only to operating nuclear power reactors; LBP-15-4, 81 NRC 156 (2015)

utilization facilities include commercial nuclear power reactors; LBP-13-7, 77 NRC 307 (2013)

NUCLEAR REGULATORY COMMISSION

NRC violated the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-12-16, 76 NRC 63 (2012)

NUCLEAR REGULATORY COMMISSION, AUTHORITY

adjudicatory hearings can be closed if the Commission orders it; LBP-11-5, 73 NRC 131 (2011)

administrative agencies are allowed to address issues of general applicability through rulemaking instead of individual adjudications, and the choice made between proceeding by general rule or by individual, ad hoc, litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-14-16, 80 NRC 183 (2014)

admissibility of contention questioning whether a confirmatory order imposes overly broad reporting obligations on licensee employees, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 319 (2014)

agencies are permitted to impose requirements or thresholds for parties seeking to reopen a record; CLI-15-19, 82 NRC 151 (2015)

agencies cannot unilaterally determine that an action will not jeopardize species listed under the Endangered Species Act; LBP-12-10, 75 NRC 633 (2012)

agencies have discretion on the manner in which they determine whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

agencies must abide by their own regulations; LBP-14-4, 79 NRC 319 (2014); LBP-15-17, 81 NRC 753 (2015)

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agency has discretion to choose between rulemaking and adjudication; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

agency NEPA responsibilities in situations where an agency has no ability because of lack of statutory authority to address the impact is distinguished from situations where an agency is only constrained by its own regulations from considering impacts; LBP-14-9, 80 NRC 15 (2014)

agency's narrowed construction of its statutory authority, as distinct from an express prohibition by Congress, may not be used to limit the agency's obligations under NEPA; LBP-14-9, 80 NRC 15 (2014)

although contention ultimately was resolved in NRC Staff's favor, Commission takes review as a matter of discretion because the board's ruling raises substantial questions of precedential importance; CLI-15-6, 81 NRC 340 (2015)

although NRC does not license construction or operation of a transmission corridor, it has the authority to deny the license for a proposed nuclear plant if, for example, the total environmental costs of the new reactor and connected actions exceed the benefits; LBP-12-12, 75 NRC 742 (2012)

although NRC rules do not provide for filing of amicus curiae briefs on motions filed pursuant to 10 C.F.R. 2.323, as a matter of discretion, the Commission has reviewed both the brief and NRC Staff's opposition; CLI-13-9, 78 NRC 551 (2013); CLI-14-11, 80 NRC 167 (2014); CLI-15-5, 81 NRC 329 (2015)

although NRC Staff is not required to be a party to a license transfer adjudication, the Commission directs Staff to become a party; CLI-14-5, 79 NRC 254 (2014)

although NRC takes the position that it lacks authority to impose environmental restrictions on transmission corridors, those impacts should have been analyzed as a direct effect of the NRC action even under NRC's new interpretation; LBP-14-9, 80 NRC 15 (2014)

although rules do not provide for filing of reply briefs, as a matter of discretion the Commission reviews a reply brief; CLI-15-7, 81 NRC 481 (2015)

although the Commission has authority to undertake a de novo factual review, where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-13-1, 77 NRC 1 (2013)

although the Commission retains broad authority to define standards and thresholds for determining when new information raises a material issue of a plant's conformity with the Atomic Energy Act, if such information is presented, it must provide a hearing upon request; LBP-11-22, 74 NRC 259 (2011)

amicus curiae filings are allowed at the Commission's discretion or sua sponte; CLI-15-1, 81 NRC 1 (2015); CLI-15-4, 81 NRC 221 (2015); CLI-15-10, 81 NRC 535 (2015)

as an exercise of its inherent supervisory authority over adjudications, the Commission directed that waste confidence contentions and any related contentions that may be filed in the near term be held in abeyance pending further order; LBP-12-24, 76 NRC 503 (2012); LBP-13-1, 77 NRC 57 (2013); LBP-13-8, 78 NRC 1 (2013); LBP-14-6, 79 NRC 404 (2014)

as an exercise of the Commission's inherent supervisory authority over agency proceedings, it need not address procedural issues that would merit further consideration in adjudications; CLI-12-16, 76 NRC 63 (2012)

at its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review; CLI-12-12, 75 NRC 603 (2012)

Atomic Energy Act does not grant NRC the discretion to eliminate from the hearing, material issues in its licensing decision; LBP-11-22, 74 NRC 259 (2011)

basis for NRC authority to regulate the use of special nuclear material in facilities like nuclear power reactors is established; CLI-15-4, 81 NRC 221 (2015)

because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petition and motions itself; CLI-14-9, 80 NRC 147 (2014)

because the Commission finds that the suspension petition and new contention fail on the merits, and it considers and takes action on the petition and motions in its supervisory capacity, it need not address procedural issues; CLI-15-4, 81 NRC 221 (2015)

boards must request Commission approval to undertake sua sponte review; CLI-15-1, 81 NRC 1 (2015)

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choice between rulemaking and adjudication (i.e., issuing orders or other license revisions) is within the agency's discretion; LBP-11-11, 73 NRC 455 (2011)

Commission authority to reconsider or clarify a decision, if needed, is inherent in its authority to render the decision in the first instance; CLI-14-1, 79 NRC 1 (2014)

Commission considers amicus views as a matter of discretion; CLI-15-23, 82 NRC 321 (2015)

Commission directs NRC Staff to devote sufficient resources to complete its review in a timely manner; CLI-15-17, 82 NRC 33 (2015)

Commission exercised its inherent supervisory authority over agency adjudications to review motion and petition addressing the spent fuel storage issue; CLI-15-13, 81 NRC 555 (2015); LBP-14-16, 80 NRC 183 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-9, 81 NRC 396 (2015)

Commission exercises its discretion to consider briefs that were not filed via the agency's E-Filing system; LBP-15-4, 81 NRC 156 (2015)

Commission exercises its discretion to review a board decision that raises a potentially recurring procedural issue of some importance; CLI-12-14, 75 NRC 692 (2012)

Commission exercises its inherent supervisory authority to direct the board to complete all necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding; CLI-11-7, 74 NRC 212 (2011)

Commission has authority to rule that a license transfer case be adjudicated under Subpart L; CLI-14-5, 79 NRC 254 (2014)

Commission has authority to set the scope of its own hearings; LBP-14-4, 79 NRC 319 (2014)

Commission has inherent authority to supervise both NRC Staff's work and adjudicatory proceedings relating to license applications; CLI-14-1, 79 NRC 1 (2014)

Commission may at its discretion grant a party's request for interlocutory review of a board decision; CLI-12-18, 76 NRC 371 (2012)

Commission may consider requests to suspend or hold proceedings in abeyance pursuant to its inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 141 (2011)

Commission may consider the rulemaking request of a nonparty as an exercise of its inherent supervisory powers over proceedings; CLI-11-5, 74 NRC 141 (2011)

Commission may direct further proceedings as it considers appropriate to aid its determination; CLI-11-11, 74 NRC 427 (2011)

Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation, or order, such additional requirements and conditions with respect to licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary in order to protect health or to minimize danger of life or property; LBP-15-16, 81 NRC 618 (2015)

Commission may, as a matter of discretion, grant review of a full or partial initial decision, giving due weight to the existence of a substantial question with respect to any of the considerations outlined in 10 C.F.R. 2.341(b)(4); CLI-15-2, 81 NRC 213 (2015)

Commission on its own motion may review a decision that modifies, suspends, or revokes a license; CLI-15-14, 81 NRC 729 (2015)

Commission temporarily suspended the immediate effectiveness rule following the Three Mile Island accident; CLI-11-5, 74 NRC 141 (2011)

Commission, in deciding an issue, can take into consideration a matter beyond reasonable controversy and one that is capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy; LBP-11-7, 73 NRC 254 (2011)

compliance with NRC requirements presumptively ensures adequate protection, but new information may reveal that additional requirements are warranted, and in such situations, the Commission may act in accordance with its statutory authority to require licensees and construction permit holders to take action in order to protect health and safety and common defense and security; LBP-12-18, 76 NRC 127 (2012)

concerns about how some aspect of a settlement agreement is being implemented or enforced can be brought to Commission, which retains supervisory authority over the parties' agreement; LBP-15-21, 82 NRC 1 (2015)

Congress has severely limited the scope of NRC's inquiry into Clean Water Act § 316(a) determinations; LBP-12-16, 76 NRC 44 (2012)

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Congress has vested NRC with authority to issue subpoenas in conjunction with investigations that the NRC deems necessary to protect public health or to minimize danger to life or property in matters involving nuclear materials; CLI-13-5, 77 NRC 223 (2013)

contention that NRC or licensee has abused or exceeded its lawful discretion with respect to nuclear safety programs is not admissible because it fails to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-14-4, 79 NRC 319 (2014)

Council on Environmental Quality guidance does not bind NRC, but NRC gives it substantial deference; LBP-12-17, 76 NRC 71 (2012)

courts give controlling weight to an agency's interpretation of its own regulation unless it is plainly erroneous or inconsistent with the regulation; LBP-12-19, 76 NRC 184 (2012)

determination of what constitutes adequate protection under the Atomic Energy Act, absent specific guidance from Congress, is just such a situation in which NRC should be permitted to have discretion to make case-by-case judgments; LBP-14-1, 79 NRC 39 (2014)

discretionary hearing may be held on export or import licenses if a hearing would be in the public interest and would assist the Commission in making the statutory determinations required by the Atomic Energy Act; CLI-11-3, 73 NRC 613 (2011)

even absent an express provision authorizing such relief, the Commission has occasionally considered requests to suspend proceedings or hold them in abeyance in the exercise of its inherent supervisory powers over proceedings; CLI-11-1, 73 NRC 1 (2011)

except upon a showing of substantial prejudice to the complaining party, it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it; CLI-13-8, 78 NRC 219 (2013)

existence of a specific appropriation for licensing activities prevents NRC, under well-settled principles of appropriations law, from using its general appropriations for those activities; CLI-13-8, 78 NRC 219 (2013)

general scope of NRC's authority is established in Atomic Energy Act § 161, but it does not discuss spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 11 (2014)

if Congress does not appropriate enough money to meet the needs of a class of beneficiaries prescribed by Congress, and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications; CLI-13-8, 78 NRC 219 (2013)

if the adverse environmental effects of a proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs; LBP-11-7, 73 NRC 254 (2011)

in any enforcement action, especially one that has been settled to NRC's satisfaction without creating a formal record, NRC's choice of sanctions is quintessentially a matter of the Commission's sound discretion; LBP-14-4, 79 NRC 319 (2014)

in parallel with NRC Staff's role under NEPA to assess environmental impacts, the Environmental Protection Agency possesses authority under the Clean Air Act to set numerical standards for air pollutants from emission sources; LBP-11-26, 74 NRC 499 (2011)

interpretation of statutes at issue and the regulations governing their implementation falls within the Commission's province; LBP-15-5, 81 NRC 249 (2015)

it is for the Commission, not licensing boards, to revise its rulings; LBP-15-18, 81 NRC 793 (2015)

it is the role of the Commission to review licensing board decisions, and not the role of licensing boards to review and to reconsider the wisdom of the Commission's regulations; LBP-12-6, 75 NRC 256 (2012)

it is well within NRC's discretion to impose specific requirements that clarify or go beyond those already established by regulations; LBP-14-4, 79 NRC 319 (2014)

it would be inconsistent with NRC's statutorily mandated responsibilities to spend time and resources on matters that are of no substantive regulatory significance; CLI-13-7, 78 NRC 199 (2013)

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licensee's concerns about NRC's administration of FOIA cannot overcome the agency's duty to investigate alleged violations; CLI-13-5, 77 NRC 223 (2013)

limited grounds for creation of exemptions are inherent in the administrative process, and agencies may use equitable discretion to afford case-by-case treatment, taking into account circumstances peculiar to individual parties in the application of a general rule or even in appropriate cases to grant dispensation from the rule's operation; CLI-13-1, 77 NRC 1 (2013)

NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-11-2, 73 NRC 28 (2011)

NEPA neither requires nor authorizes NRC to order implementation of mitigation measures analyzed in an environmental analysis; CLI-12-10, 75 NRC 479 (2012)

NEPA requires NRC to construe its existing statutory authority consistently with NEPA's goals; LBP-14-9, 80 NRC 15 (2014)

NEPA's legislative history reflects Congress's concern that agencies might attempt to avoid any compliance with NEPA by narrowly construing other statutory directives to create a conflict with NEPA; LBP-14-9, 80 NRC 15 (2014)

NRC addresses agreement-state performance concerns through its Integrated Materials Performance Evaluation Program process or through an independent agreement-state performance concern evaluation, depending on the performance concern raised; CLI-11-12, 74 NRC 460 (2011)

NRC authority to review offsite impacts of transmission lines goes beyond merely factoring them into a final cost-benefit balance and includes as well the authority where necessary to impose license conditions to minimize those impacts; LBP-11-6, 73 NRC 149 (2011)

NRC can issue an order suspending an individual from working anywhere in the nuclear industry who fails to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC can issue nuclear power reactor licenses to applicants only upon a finding that utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public; CLI-15-4, 81 NRC 221 (2015)

NRC can, as a condition of licensure, insist that offsite transmission lines built solely to serve a nuclear facility be designed to minimize environmental disturbance; LBP-14-9, 80 NRC 15 (2014)

NRC cannot delegate its NEPA responsibilities to a private party; LBP-11-32, 74 NRC 654 (2011)

NRC defers to other agencies with greater expertise on an issue; CLI-11-4, 74 NRC 1 (2011)

NRC has authority to conduct any investigations it deems necessary and proper to the administration or enforcement of its authority, which includes any regulations or orders issued pursuant to the Atomic Energy Act; CLI-13-5, 77 NRC 223 (2013)

NRC has authority to define the scope of its proceedings, which, in enforcement proceedings, is to permit challenges solely on whether an order should be sustained; LBP-12-14, 76 NRC 1 (2012)

NRC has authority to determine, and to prescribe by rule or regulation, what additional information should be included in technical specifications to ensure public health and safety; LBP-12-25, 76 NRC 540 (2012)

NRC has authority to impose environmental restrictions on new transmission lines intended to serve new nuclear power plants; LBP-14-9, 80 NRC 15 (2014); LBP-13-7, 77 NRC 307 (2013)

NRC has authority to request that an established or newly formed entity submit additional or more detailed information respecting its financial arrangements and status of funds; DD-15-8, 82 NRC 107 (2015)

NRC has clear statutory authority to regulate the construction and operation of a uranium enrichment facility; LBP-11-26, 74 NRC 499 (2011)

NRC has discretion to resolve issues generically by rulemaking; CLI-11-11, 74 NRC 427 (2011)

NRC has discretion to transact its business broadly, through rulemaking, or case-by-case, through adjudication; CLI-13-7, 78 NRC 199 (2013)

NRC has latitude to define who is an "affected person" within the meaning of Atomic Energy Act § 189a, 42 U.S.C. § 2239(a); LBP-12-3, 75 NRC 164 (2012)

NRC has long interpreted its statutory authority under the Atomic Energy Act to include conditioning approval of nuclear power plant licenses on environmentally acceptable routing of transmission lines; LBP-14-9, 80 NRC 15 (2014)

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- NRC has substantial discretion in determining the threshold percentage at which foreign ownership becomes too great, but that threshold must at a minimum include 100% foreign ownership or the prohibition in the Act would be rendered superfluous; LBP-12-19, 76 NRC 184 (2012)
- NRC has the authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-8, 74 NRC 214 (2011); CLI-11-10, 74 NRC 251 (2011)
- NRC has the ongoing responsibility to oversee the safety and security of operating nuclear reactors and maintains an aggressive and ongoing program to oversee plant operation and to maintain compliance with the current licensing basis; LBP-13-8, 78 NRC 1 (2013)
- NRC has the right to prepare an independent environmental impact statement whenever NRC has regulatory authority over an activity; LBP-13-9, 78 NRC 37 (2013)
- NRC is authorized to enter into an agreement with the governor of any state if it finds that the state's regulatory program is adequate to protect the public health and safety with respect to the materials the state seeks to regulate and is compatible with NRC's program for regulation of such materials; CLI-13-6, 78 NRC 155 (2013)
- NRC is authorized to impose environmental conditions on a license to prevent or mitigate adverse environmental impacts that might otherwise be caused by the construction or operation of a nuclear power plant; LBP-14-9, 80 NRC 15 (2014)
- NRC is authorized to issue any necessary subpoenas; CLI-13-5, 77 NRC 223 (2013)
- NRC is bound by the unambiguous language of its own regulations; LBP-11-22, 74 NRC 259 (2011)
- NRC is clearly authorized to require licensees to protect the environment and to prevent them from causing adverse environmental impacts; LBP-13-4, 77 NRC 107 (2013)
- NRC is empowered to issue an order amending any license as it deems necessary to effectuate the provisions of the Act to promote the common defense and security or to protect health or to minimize danger to life or property; LBP-13-7, 77 NRC 307 (2013)
- NRC is not required, as a precondition to issuing or renewing operating licenses for nuclear power plants, to make definitive findings concerning technical feasibility of a repository for the disposal of spent nuclear fuel; CLI-15-4, 81 NRC 221 (2015)
- NRC is prohibited from issuing a license for a production and utilization facility to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-13-4, 77 NRC 101 (2013)
- NRC may at any time before expiration of a license, require further written statements from licensee to determine whether a license should be modified; LBP-13-7, 77 NRC 307 (2013)
- NRC may enter into agreements with the governor of any state providing for transfer of regulatory authority to the state over specified categories of nuclear material; CLI-11-12, 74 NRC 460 (2011)
- NRC may hold an informal hearing in which it requests and considers written materials without providing for traditional trial-type procedures such as oral testimony and cross-examination; LBP-11-4, 73 NRC 91 (2011)
- NRC may impose reasonable requirements on new contentions when those requirements are related to legitimate agency goals such as avoiding needless duplication and delay; LBP-11-22, 74 NRC 259 (2011)
- NRC may impose such additional conditions, requirements, and limitations on a license as may be necessary to effectuate the purposes of the Atomic Energy Act and the agency's regulations; LBP-11-11, 73 NRC 455 (2011)
- NRC may not, over the objections of a state desiring jurisdiction and for reasons other than health and safety or compatibility, retain regulatory authority over pending applications involving a nuclear materials category otherwise transferred to a state; CLI-11-12, 74 NRC 460 (2011)
- NRC may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest; LBP-12-21, 76 NRC 218 (2012)
- NRC possesses the authority to change its procedures on a case-by-case basis; CLI-13-8, 78 NRC 219 (2013)

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NRC regional office has discretion to grant a waiver for retesting on a passed test for a senior reactor operator applicant who has failed only one part of the test if it determines that sufficient justification is presented; LBP-14-2, 79 NRC 131 (2014)

NRC reserves the right to review, as necessary, the rate of accumulation of decommissioning funds and to take additional actions, as appropriate on a case-by-case basis, to ensure an adequate accumulation of decommissioning funds; DD-11-7, 74 NRC 787 (2011)

NRC retains power under AEA § 274j to revoke agreements with states and to restore NRC regulatory authority; CLI-11-12, 74 NRC 460 (2011)

NRC rules enable it to supplement an EIS if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts; CLI-12-7, 75 NRC 379 (2012)

NRC Staff has authority to require implementation of non-aging-management severe accident mitigation alternatives through its current licensing basis backfit review under Part 50 or through setting conditions of the license renewal; LBP-11-17, 74 NRC 11 (2011)

NRC, as an independent regulatory agency, is not bound by those portions of Council on Environmental Quality NEPA regulations that have a substantive impact on the way in which the Commission performs its regulatory functions; LBP-11-35, 74 NRC 701 (2011)

NRC, in its capacity as the federal agency charged with regulating the nuclear industry in a manner that protects public health and safety, monitors nuclear emergencies; LBP-11-15, 73 NRC 629 (2011)

NRC's ability to issue orders to unlicensed persons is limited; LBP-14-4, 79 NRC 319 (2014)

NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-11-5, 74 NRC 141 (2011)

NRC's policy of encouraging settlements specifically recognizes that settlements are not inviolate, and the presiding officer or Commission may order adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding; LBP-14-4, 79 NRC 319 (2014)

NRC's standard for motion to reopen has been upheld and court deferred to the NRC's application of its rules as long as it is reasonable; CLI-15-19, 82 NRC 151 (2015)

NRC's statutory authority to adopt rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances; CLI-13-1, 77 NRC 1 (2013)

NRC's use of rulemaking to address generic issues has been approved by the Supreme Court; CLI-15-6, 81 NRC 340 (2015)

ordinarily, the Commission itself presides over license transfer hearings, but NRC rules allow the Commission to designate one or more Commissioners or any other person permitted by law to preside; CLI-14-5, 79 NRC 254 (2014)

parties should not seek interlocutory review by invoking the grounds under which the Commission might exercise its supervisory authority; CLI-11-14, 74 NRC 801 (2011)

permissive "may" language of 40 C.F.R. 1508.25(a)(3) affords an agency more discretion in making a choice about whether a single EIS is the best way to assess similar actions; LBP-13-10, 78 NRC 117 (2013)

promulgation of state regulations falls within the broad reach of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-7, 73 NRC 254 (2011)

regulation of offsite transmission lines is within NRC's authority under section 101 of the Atomic Energy Act and nothing in the AEA precludes NRC from implementing, through issuance of conditional licenses, NEPA's environmental mandate; LBP-14-9, 80 NRC 15 (2014)

requirements and exemptions under FOIA reflect a balancing of public disclosure with confidentiality, but this balancing does not affect the NRC's authority to obtain requested information; CLI-13-5, 77 NRC 223 (2013)

to the extent NRC's review of the Fukushima accident leads to new rules applicable to any pending application, the Commission has sufficient authority and time to apply them to any new license that may be issued; CLI-11-5, 74 NRC 141 (2011)

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when a matter is not strictly adjudicatory in nature or otherwise does not fit cleanly within the procedures described in NRC rules of practice, the Commission undertakes a decision as an exercise of its inherent supervisory authority over agency proceedings; CLI-13-8, 78 NRC 219 (2013)

where petition fails on the merits, the Commission need not address procedural issues; CLI-15-10, 81 NRC 535 (2015)

with respect to new reactor licenses, the Commission has authority to ensure that certified designs and combined licenses include appropriate Commission-directed changes before operation; CLI-11-6, 74 NRC 203 (2011)

written consent from NRC is required for all direct or indirect license transfers; CLI-15-8, 81 NRC 500 (2015)

NUCLEAR REGULATORY COMMISSION, JURISDICTION

after a petition to review a final order has been filed with the Commission, the board no longer has jurisdiction to consider a motion to reopen and the motion is properly filed with the Commission; CLI-12-14, 75 NRC 692 (2012)

agency's interpretation of what is properly within its jurisdictional scope is entitled to great deference, and will not be overturned if reasonably related to the language and purposes of the statute; LBP-14-9, 80 NRC 15 (2014)

although NRC has no specific rule governing stays of agency action pending judicial review, federal law requires parties seeking such stays in court to come to the agency first; CLI-12-11, 75 NRC 523 (2012)

byproduct material category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites; LBP-12-3, 75 NRC 164 (2012)

Commission has considered whether to exercise pendent jurisdiction of otherwise nonappealable issues, such as where those issues are inextricably intertwined with a related legal question properly before it, or where consideration of the issues together has the potential to resolve the entire litigation; CLI-12-12, 75 NRC 603 (2012)

Commission retained authority to provide ultimate direction on the waste confidence contentions being held in abeyance; LBP-14-8, 79 NRC 519 (2014)

contention that NRC has failed to engage other relevant federal, state, and local agencies and has not analyzed impacts subject to jurisdiction and control of these other agencies, and has thus failed to comply with NEPA's action-forcing mandate and general purpose is inadmissible; LBP-13-9, 78 NRC 37 (2013)

degree to which pendency of a new contention at the time of the board's ruling on an initial hearing petition tolled the time for filing any appeals from that decision regarding the admissibility of the contentions would be a matter for Commission determination; LBP-14-12, 80 NRC 138 (2014)

even if the transmission corridor is a preconstruction activity and outside the NRC's regulatory jurisdiction, the construction and maintenance of the transmission corridor likely qualifies as a connected action under governing NRC and Council on Environmental Quality regulations, and therefore must be analyzed in the FEIS; LBP-12-12, 75 NRC 742 (2012)

generally, once there has been an appeal or petition to review a board order, jurisdiction passes to the Commission; CLI-12-14, 75 NRC 692 (2012)

in ruling that NRC had appropriately interpreted the Atomic Energy Act to include regulatory authority over attendant transmission lines, the court did not decide whether NEPA is an independent source of substantive jurisdiction; LBP-14-9, 80 NRC 15 (2014)

it is not the province of NRC and thus the board to enforce another agency's regulations; LBP-12-12, 75 NRC 742 (2012)

labor-related disputes are within the exclusive competence of the National Labor Relations Board; LBP-14-4, 79 NRC 319 (2014)

NRC does not have authority to rule on challenges to Fish and Wildlife's compliance with the Endangered Species Act; CLI-12-21, 76 NRC 491 (2012)

NRC is not permitted to retain jurisdiction over a site at a licensee's request where the state seeks to assume regulatory authority over the site and meets the "adequacy" and "compatibility" criteria; CLI-13-6, 78 NRC 155 (2013)

NRC is precluded from second-guessing the conclusions in NPDES permits; LBP-12-16, 76 NRC 44 (2012)

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NRC's adjudicatory process is not the proper forum for investigating alleged violations that are primarily the responsibility of other federal, state, or local agencies; LBP-11-6, 73 NRC 149 (2011)
petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of the NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 149 (2011)
where state and local governmental bodies that have jurisdiction over the area in which adverse effects need to be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that a federal agency has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary; LBP-13-4, 77 NRC 107 (2013)
where the agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant cause of the effect; LBP-12-12, 75 NRC 742 (2012)

NUCLEAR WASTE POLICY ACT

NRC is directed to adopt the Department of Energy environmental impact statement to the extent practicable; CLI-13-8, 78 NRC 219 (2013)

OBJECTIONS

evidentiary objections made for the first time after briefing has been completed unfairly deprive the petitioners of the opportunity to file the response expressly provided in the NRC's procedural rules; LBP-15-20, 81 NRC 829 (2015)
in absence of objection, hearsay evidence is treated as being properly admitted and may be given such probative effect and value to which it is entitled; LBP-15-20, 81 NRC 829 (2015)
petitioners would have no opportunity to be heard regarding a sua sponte objection by the board because they would only learn of it when they received the board's ruling and thus would be deprived of the opportunity to file the response expressly provided in procedural rules; LBP-15-5, 81 NRC 249 (2015)

OFFICIAL NOTICE

although 10 C.F.R. 2.337(f), by its terms, applies to evidence at hearings, the bounds this rule places on official notice is also appropriate for the contention admissibility stage of a proceeding; LBP-11-7, 73 NRC 254 (2011)
because NRC's decision to grant the exemptions is a matter of public record, the board takes notice that the exemptions have now been approved; LBP-15-24, 82 NRC 68 (2015)
board takes official notice of the contents of a document that was discussed at the hearing, but was not submitted as an exhibit by any party; LBP-13-13, 78 NRC 246 (2013)
boards may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-20, 74 NRC 65 (2011)
Commission, in deciding an issue, can take into consideration a matter beyond reasonable controversy and one that is capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy; LBP-11-7, 73 NRC 254 (2011)
judicial notice may be taken at any stage of the proceeding; LBP-11-7, 73 NRC 254 (2011)
judicial notice may be taken of any fact not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; LBP-11-20, 74 NRC 65 (2011)
licensing board takes official notice of NRC regulatory guide; LBP-15-3, 81 NRC 65 (2015)
promulgation of state regulations falls within the broad reach of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-7, 73 NRC 254 (2011)

OFFSITE POWER

consequences of loss of offsite power to uranium enrichment facility are discussed; LBP-11-11, 73 NRC 455 (2011)
for purposes of the license renewal rule, NRC Staff has determined that the plant system portion of the offsite power system that is used to connect the plant to the offsite power source should be included within the scope of the station blackout rule; CLI-12-5, 75 NRC 301 (2012)
inspections of electrical systems and components following an earthquake that resulted in loss of offsite power are described; DD-12-1, 75 NRC 573 (2012)

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under its certified design, the Economic Simplified Boiling Water Reactor could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 249 (2015)

OPERATING BASIS EARTHQUAKE

following an earthquake exceeding the design basis, the plant must remain shut down until licensee demonstrates to NRC that no functional damage occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-2, 76 NRC 391 (2012)

licensee is required to shut down a nuclear power plant when the vibratory ground motion exceeds that of the operating basis earthquake; DD-12-2, 76 NRC 391 (2012)

request that NRC suspend the operating licenses until completion of a set of activities related to the effects of an earthquake that exceeded the plant's operating basis earthquake is granted in part and denied in part; DD-12-2, 76 NRC 391 (2012)

request that, following an earthquake that exceeded the operating basis, NRC suspend the operating licenses until completion of a set of activities described in the petition, is addressed; DD-15-9, 82 NRC 274 (2015)

there is no requirement for licensee to submit a license amendment request following an earthquake that exceeds its design basis; DD-12-2, 76 NRC 391 (2012)

walkdowns and inspections performed by licensee, industry, and NRC personnel following an earthquake that exceeded the plant's design basis are described; DD-12-2, 76 NRC 391 (2012)

when an earthquake results in ground accelerations greater than those assumed in the design of the nuclear power plant, the plant is required to be shut down and to remain shut down until licensee demonstrates to NRC that no functional damage occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 573 (2012)

OPERATING LICENSE AMENDMENT APPLICATIONS

applicant is exempt from including in its environmental report a site-specific severe accident mitigation alternatives analysis because NRC Staff previously considered severe accident mitigation design alternatives in its final environmental impact statement; CLI-13-7, 78 NRC 199 (2013)

applicants must include in their environmental report any new and significant information regarding the environmental impacts of license renewal of which applicant is aware; LBP-11-29, 74 NRC 612 (2011)

application to use alternate pressurized thermal shock rule must contain an assessment of flaws in the reactor pressure vessel; LBP-15-17, 81 NRC 753 (2015)

application to use alternate pressurized thermal shock rule must contain the projected embrittlement reference temperatures along various portions of the reactor pressure vessel, from the present to a future point, compared to the alternate screening criteria; LBP-15-17, 81 NRC 753 (2015)

because changes to technical specifications require a license amendment, technical specifications should be limited to those plant conditions most important to safety; LBP-13-7, 77 NRC 307 (2013)

if petitioner can provide a sound basis to dispute compliance-related statements in a license amendment request, then the contention is within the scope of the proceeding; LBP-15-24, 82 NRC 68 (2015)

information that license amendment request must contain to use updated embrittlement model is described; CLI-15-22, 82 NRC 310 (2015)

license amendment request is not categorically exempt from environmental review if it involves a significant hazards consideration that excludes it from categorical exemption pursuant to the criteria in section 51.22(c)(9)(i); LBP-15-26, 82 NRC 163 (2015)

license amendment request must be complete and accurate in all material respects; LBP-15-24, 82 NRC 68 (2015)

license amendment request must provide sufficient documentation and analysis to show that licensee has complied with relevant requirements, thereby demonstrating that the amended license will continue to provide reasonable assurance of adequate protection of public health and safety; CLI-15-22, 82 NRC 310 (2015)

licensee must request an amendment if the proposed action requires that existing technical specifications be changed; LBP-13-7, 77 NRC 307 (2013)

standards are provided for a licensee to request a license amendment before it may make changes in the facility as described in the updated final safety analysis report; LBP-13-7, 77 NRC 307 (2013)

to amend a license, including technical specifications in the license, an application for amendment must be filed, fully describing the changes desired; CLI-15-22, 82 NRC 310 (2015)

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- upon receipt of a motion to withdraw an application, the board may place terms and conditions on the withdrawal, deny the application, or dismiss the application with prejudice; CLI-13-10, 78 NRC 563 (2013)
- when licensee requests an exemption in a related license amendment application, hearing rights on the amendment application are considered to encompass the exemption request as well; LBP-15-18, 81 NRC 793 (2015); LBP-15-24, 82 NRC 68 (2015)
- when licensee submits its license amendment application to NRC, it must provide the agency its analysis about the issue of no significant hazards consideration using the standards in 10 C.F.R. 50.92; LBP-15-17, 81 NRC 753 (2015)
- when the board has issued a Notice of Hearing, withdrawal of a license amendment request shall be on such terms as the presiding officer may prescribe; LBP-15-28, 82 NRC 233 (2015)
- whether a potential future license amendment request shares those same alleged deficiencies as a previously withdrawn one would require a new analysis; LBP-15-28, 82 NRC 233 (2015)
- with licensee's withdrawal of license amendment request, the proceeding is now moot; CLI-13-10, 78 NRC 563 (2013)
- OPERATING LICENSE AMENDMENT PROCEEDINGS**
- admissible contention must meet the six requirements of 10 C.F.R. 2.309(f)(1); LBP-15-24, 82 NRC 68 (2015)
- challenges based on 10 C.F.R. 50.61a and the question of whether applicant demonstrated substantial advantage under 10 C.F.R. Part 50, Appendix H as a reason to not test capsules are beyond the scope of a license amendment proceeding, which concerns compliance with Appendix G of 10 C.F.R. Part 50; LBP-15-20, 81 NRC 829 (2015)
- contention is inadmissible for failure to show that a genuine dispute exists with license amendment request; LBP-15-26, 82 NRC 163 (2015)
- contention that challenges the entire steam generator replacement project, rather than any aspect of the proposed changes to four technical specifications identified in the license amendment request is outside the scope of this proceeding; LBP-13-11, 78 NRC 177 (2013)
- contention that does not focus at all on the technical specifications that are the subject of its request raises no issues that are material to any findings the NRC must make to approve the license amendment request; LBP-13-11, 78 NRC 177 (2013)
- contentions that attack provisions of the current license that are not being changed and that are not fairly related to the license amendment request are outside the scope; LBP-12-25, 76 NRC 540 (2012)
- de facto license amendment proceeding is not initiated merely because licensee takes an action that requires some type of NRC approval; LBP-15-27, 82 NRC 184 (2015)
- determinations on whether to grant an applied-for license amendment are to be guided by the considerations that govern the issuance of initial licenses or construction permits to the extent applicable and appropriate; CLI-15-22, 82 NRC 310 (2015)
- dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the license amendment request; LBP-15-28, 82 NRC 233 (2015)
- exemptions are the sort of directly related and dependent exemption-related issues that are within the scope of a license amendment proceeding; LBP-15-24, 82 NRC 68 (2015)
- generic analyses of environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 221 (2015)
- intervention petition was not sufficiently specific when it merely repeated the contents of petitioner's earlier petition concerning a prior license amendment; LBP-15-17, 81 NRC 753 (2015)
- license amendments related to reactor pressure vessel embrittlement present an obvious potential for offsite public health and safety consequences; LBP-15-17, 81 NRC 753 (2015)
- opportunity for a hearing on license amendments is provided; CLI-12-20, 76 NRC 437 (2012)
- petitioner must explain, with specificity, particular safety or legal reasons why moving a requirement from the license into a licensee-controlled document would be improper; LBP-12-25, 76 NRC 540 (2012)
- petitioners may not claim standing simply upon a residence or visits near the plant, unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-11-29, 74 NRC 612 (2011)

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- petitioners' contention challenges the sufficiency of the equivalent margins analysis to provide reasonable assurance of reactor safety and is therefore within the scope of the proceeding; LBP-15-20, 81 NRC 829 (2015)
- portion of a contention asserting that applicant failed to consider the results of a particular study in its SAMA analysis is admissible; CLI-11-11, 74 NRC 427 (2011)
- prior to license issuance, NRC must find reasonable assurance that activities authorized by the amendment can be conducted without endangering the health and safety of the public and are in compliance with NRC regulations; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applied where petitioners' contention concerned a license amendment to move the schedule for the withdrawal of reactor vessel material specimens from the technical specifications to the updated safety analysis report; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applies in more limited license amendment proceedings only if the proposed amendment obviously entails an increased potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption was applied in a license amendment proceeding where management's lack of the required character and competence was alleged; LBP-15-17, 81 NRC 753 (2015)
- radiological claims that represent a direct challenge to prior license amendments authorizing extended power uprates are outside the scope of a license amendment proceeding; LBP-15-13, 81 NRC 456 (2015)
- request that board impose additional discovery activities as a requirement of withdrawal of license amendment request is too broad because it goes beyond the scope of the admitted contentions and discovery is peculiarly related to particular proceedings and particular contentions; LBP-15-28, 82 NRC 233 (2015)
- scope of any hearing should include the proposed license amendments, and any health, safety, or environmental issues fairly raised by them; LBP-12-25, 76 NRC 540 (2012)
- scope of proceeding is limited to the license amendment request, and petitioners typically cannot challenge a Commission regulation; LBP-15-24, 82 NRC 68 (2015)
- section 50.40 requires that NRC be persuaded that applicant will comply with all applicable regulations, that health and safety of the public will not be endangered, and that issuance of the amendment will not be inimical to the health and safety of the public; LBP-15-20, 81 NRC 829 (2015)
- state's claim that licensee's amendment request contains incomplete and incorrect statements concerning its use of the trust fund is within the scope of a license amendment proceeding as defined in the notice of opportunity to request a hearing; LBP-15-24, 82 NRC 68 (2015)
- when an adjudicatory proceeding has been initiated with respect to a license amendment issued with a no significant hazards determination, once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision; LBP-15-13, 81 NRC 456 (2015)
- where the Commission finds that exigent circumstances exist and it also determines that an amendment involves no significant hazards considerations, it will provide a hearing after issuance, if one has been requested by a person who satisfies the intervention requirements of 10 C.F.R. 2.309; CLI-15-25, 82 NRC 389 (2015)
- OPERATING LICENSE AMENDMENTS**
- actions by NRC Staff constitute a de facto license amendment when they authorize a licensee to engage in activities beyond the scope of its original license; LBP-13-7, 77 NRC 307 (2013)
- activities the licensee may pursue without submitting a license amendment request, including certain tests or experiments, are defined in 10 C.F.R. 50.59(c)(1); LBP-15-17, 81 NRC 753 (2015)
- adjudicatory proceeding on license amendment is not terminated by issuance of the amendment; CLI-15-17, 82 NRC 33 (2015)
- admissibility of contention that a license amendment will be required for licensee to update and maintain accurate design basis documents is decided; CLI-15-5, 81 NRC 329 (2015)
- admissibility of contention that licensee is undertaking modifications for protection against severe flooding in the event of upstream dam failures that will require a license amendment is decided; CLI-15-5, 81 NRC 329 (2015)

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agency actions not formally labeled as license amendments nevertheless can constitute de facto license amendments and accordingly trigger hearing rights for the public under Atomic Energy Act § 189a; CLI-15-5, 81 NRC 329 (2015)

agency approval or authorization is a necessary component of NRC action that affords a hearing opportunity under Atomic Energy Act § 189a, but not all agency approvals granted to licensees constitute de facto license amendments; CLI-14-11, 80 NRC 167 (2014)

analytic framework for assessing whether a confirmatory action letter process constitutes a de facto license amendment proceeding is provided; LBP-13-7, 77 NRC 307 (2013)

any amendment to an existing license as a result of NRC review of licensee seismic hazard reevaluations that leads to changes in the current licensing basis would be subject to a hearing opportunity; CLI-15-21, 82 NRC 295 (2015)

any changes to the material specimen withdrawal schedule that conform to the ASTM standard referenced in Appendix H will not alter the plant's license; LBP-15-20, 81 NRC 829 (2015)

any operation of that might result in in-plane vibrations due to fluid elastic instability is inconsistent with the analyses or descriptions in the UFSAR is the type of test or experiment that triggers the obligation to seek a license amendment; LBP-13-7, 77 NRC 307 (2013)

applicant requests an operating license amendment to implement alternate fracture toughness requirements for protection against pressurized thermal shock events; LBP-15-17, 81 NRC 753 (2015)

applicant seeks to replace 30-day notice requirement and other plant-specific license conditions with the decommissioning fund requirements; LBP-15-28, 82 NRC 233 (2015)

because current levels of emergency planning are required by regulation, licensee cannot make changes contemplated in its license amendment request without first receiving certain regulatory exemptions; LBP-15-18, 81 NRC 793 (2015)

because technical specifications are an integral part of an operating license, changes to technical specifications require a license amendment; LBP-13-7, 77 NRC 307 (2013)

board is directed to consider whether a confirmatory action letter issued to licensee constitutes a de facto license amendment that would be subject to a hearing opportunity under AEA § 189a, and, if so, whether the petition meets the standing and contention admissibility requirements; CLI-12-20, 76 NRC 437 (2012)

change to a facility that is allowed under 10 C.F.R. 50.59 without prior NRC approval is not a license amendment triggering hearing rights; LBP-15-27, 82 NRC 184 (2015)

changes with respect to components (i.e., steam generators) are permitted without a license amendment under prescribed conditions that assure that the replacement components are sufficiently similar to the original so that safety requirements are maintained or improved; LBP-13-7, 77 NRC 307 (2013)

circumstances under which licensee may make changes to the facility and procedures as described in its Updated Final Safety Analysis Report or conduct tests or experiments not otherwise described in the UFSAR without obtaining a license amendment under 10 C.F.R. 50.90 are described; CLI-12-20, 76 NRC 437 (2012); CLI-14-11, 80 NRC 167 (2014)

circumstances under which licensee may or may not make changes in a facility without obtaining a license amendment are set forth; LBP-13-11, 78 NRC 177 (2013)

claims of inadequacies in licensee's technical evaluations or noncompliance with its license, standing alone, do not identify an activity that may constitute a license amendment; CLI-15-14, 81 NRC 729 (2015)

commitments in the updated final safety analysis report and aging management plan are legally binding as part of the current licensing basis throughout the period of extended operation and can only be changed through the section 50.59 process; LBP-13-13, 78 NRC 246 (2013)

conditions under which licensee must seek a license amendment are specified in 10 C.F.R. 50.59(c)(2); LBP-13-7, 77 NRC 307 (2013)

correctness of assurance that the license conditions will be replaced by sections 50.75(h) and 50.82(a)(8) is a genuine concern relative to the appropriateness of the license amendment request, and therefore the petitioner has shown materiality of its contention; LBP-15-24, 82 NRC 68 (2015)

court recognized the long-term nature of the concerns associated with spent fuel storage and disposal when it declined to vacate the license amendments that were the subject of the case, noting that doing so would effectively shut down the plants; CLI-15-4, 81 NRC 221 (2015)

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criteria of 10 C.F.R. 50.59 were used as an analytical tool to address the question of whether a confirmatory action letter issued to the licensee by the NRC Staff constituted a de facto license amendment that would be subject to a hearing opportunity; LBP-13-11, 78 NRC 177 (2013)

de facto license amendment would exist, and hearing rights would be triggered, if NRC were to grant licensee greater operating authority or otherwise alter terms of the license or permit licensee to go beyond its existing license authority; LBP-15-27, 82 NRC 184 (2015)

eligibility conditions for a no significant hazards consideration determination on a proposed amendment are discussed; LBP-15-26, 82 NRC 163 (2015)

factors material to determining whether NRC actions constitute a de facto license amendment are described; LBP-13-7, 77 NRC 307 (2013)

final safety analysis report updates must reflect changes that licensee has made through a license amendment request and certain changes that do not require a license amendment; LBP-15-27, 82 NRC 184 (2015)

if a procedure is not specifically called out in the updated final safety analysis report, licensee may change it without using the license amendment process described in 10 C.F.R. 50.59(c)(1); LBP-13-13, 78 NRC 246 (2013)

if AEA § 189a is to serve its intended purpose, parties in interest must be afforded a meaningful opportunity to request a hearing before the Commission retroactively reinvents the terms of an extant license by voiding its implicit limitations on the licensee's conduct; LBP-13-7, 77 NRC 307 (2013)

if license amendment request is approved, licensee will no longer have to provide 30-day notice to the Commission once it begins decommissioning and starts making withdrawals from the decommissioning fund; LBP-15-28, 82 NRC 233 (2015)

if licensee amends any license conditions related to the decommissioning trust fund, from that point forward it will have to comply with all requirements of 10 C.F.R. 50.75(h); LBP-15-28, 82 NRC 233 (2015)

if licensee endeavors to use MOX fuel during the license renewal term, it will need to seek a license amendment; LBP-13-8, 78 NRC 1 (2013)

if licensee is unable to operate a reactor in strict accordance with its license, it must seek authorization from the NRC for a license amendment; LBP-13-7, 77 NRC 307 (2013)

if licensee sought to make a change to a surveillance frequency that did not conform to the NEI 04-10 standard, then it would need to request a license amendment; CLI-13-10, 78 NRC 563 (2013)

if licensee sought to relocate its surveillance frequencies from its operating license to a licensee-controlled document, then it would need to request a license amendment, which would trigger an opportunity for a member of the public to request a hearing; CLI-13-10, 78 NRC 563 (2013)

if licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of 10 C.F.R. 50.75(h); LBP-15-24, 82 NRC 68 (2015)

in determining whether a license amendment, construction permit, or early site permit will be issued to applicant, the Commission is guided by the considerations that govern issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate; LBP-15-20, 81 NRC 829 (2015)

issuance of power uprate license amendment in advance of hearing did not deprive intervenor of hearing rights because the license amendment may be revoked or conditioned after hearing; CLI-15-17, 82 NRC 33 (2015)

key factors to consider when determining whether agency action constitutes a de facto license amendment are whether the agency action granted licensee any greater authority or otherwise altered the original terms of the license; CLI-15-5, 81 NRC 329 (2015)

license amendment to eliminate numerous detailed procedures for monitoring routine radioactive releases from the technical specifications and transfer them to a licensee-controlled document would allow licensee to make future changes to the radiation monitoring procedures without going through another license amendment; LBP-12-25, 76 NRC 540 (2012)

license amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention has filed a request for a hearing; LBP-15-17, 81 NRC 753 (2015)

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license amendments are not contingent upon any additional safety determination regarding spent fuel storage under the Atomic Energy Act; CLI-15-4, 81 NRC 221 (2015)

license amendments are subject to a hearing opportunity; CLI-13-9, 78 NRC 551 (2013)

licensee cannot amend the terms of its license unilaterally, but rather must request and obtain agency approval; CLI-14-11, 80 NRC 167 (2014); CLI-15-5, 81 NRC 329 (2015); LBP-15-27, 82 NRC 184 (2015)

licensee cannot be exempted from license conditions without a license amendment modifying such conditions; LBP-15-28, 82 NRC 233 (2015)

licensee must obtain a license amendment from the NRC if a change to its facility triggers the safety standards described in 10 C.F.R. 50.59; LBP-13-7, 77 NRC 307 (2013)

licensee must seek a license amendment before implementing a test or experiment that will result in a departure from a method of evaluation described in the updated final safety analysis report used in establishing the design basis or in the safety analysis; LBP-13-7, 77 NRC 307 (2013)

licensees are allowed to make changes to a facility without obtaining a license amendment if certain criteria are satisfied; CLI-14-11, 80 NRC 167 (2014)

licensees may make changes in the procedures described in the updated final safety analysis report and conduct tests or experiments not otherwise described in the UFSAR, without obtaining a license amendment; CLI-14-4, 79 NRC 249 (2014)

licensees must maintain records of changes in the facility made pursuant to section 50.59(c)(1) that include a written evaluation that provides the bases for the determination that the change does not require a license amendment pursuant to section 50.59(c)(2); CLI-14-11, 80 NRC 167 (2014)

licensees must obtain NRC approval before implementing changes to the facility or facility procedures that do not meet certain criteria; DD-13-3, 78 NRC 571 (2013)

licensees seeking to use the updated methodology in 10 C.F.R. 50.61a must submit a license amendment request; CLI-15-22, 82 NRC 310 (2015)

mere possibility of a future license amendment does not trigger a hearing opportunity today; LBP-15-27, 82 NRC 184 (2015)

no significant hazards consideration determination permits NRC to make an authorized license amendment effective immediately rather than awaiting the outcome of an adjudicatory challenge; LBP-15-26, 82 NRC 163 (2015)

NRC authorization to restart a plant following NRC Staff's review of forty-seven ordered modifications is not a license amendment; LBP-15-27, 82 NRC 184 (2015)

NRC inspection reports, even those documenting violations, are not de facto license amendments; LBP-15-27, 82 NRC 184 (2015)

NRC licensees require a license amendment to modify license conditions; LBP-15-24, 82 NRC 68 (2015)

NRC must grant a hearing upon the request of any person whose interest may be affected by the proceeding and admit any such person as a party to such proceeding; CLI-15-21, 82 NRC 295 (2015); LBP-11-29, 74 NRC 612 (2011)

NRC regulations appropriately require a hearing before the proposed license amendment becomes effective whenever the amendment creates the possibility of a new or different kind of accident; LBP-15-20, 81 NRC 829 (2015)

NRC Staff may determine that exigent circumstances exist such that there is insufficient time for a full 30-day public comment period on a license amendment request; LBP-15-13, 81 NRC 456 (2015)

NRC Staff's inspection and oversight of licensee's actions are part of an ongoing de facto license amendment; CLI-14-11, 80 NRC 167 (2014)

NRC's actions constitute de facto license amendment when they authorize licensee to engage in activities beyond the ambit of its original license; LBP-13-7, 77 NRC 307 (2013)

NRC's lifting of license suspension and authorizing restart under stipulated restrictions was not a license amendment because nothing in the record indicates that license amendments are necessary to permit the licensee to operate in accordance with the restrictions that have been imposed; LBP-13-7, 77 NRC 307 (2013)

petitioners challenged NRC's approval of operating license amendments to allow for the use of higher-density spent-fuel-storage racks in the reactors' spent fuel pools; CLI-15-4, 81 NRC 221 (2015)

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prior to license issuance NRC must find reasonable assurance that activities authorized by the amendment can be conducted without endangering the health and safety of the public, and in compliance with Commission regulations; LBP-15-20, 81 NRC 829 (2015)

regardless of whether a hearing request is granted, NRC Staff performs a full safety review of every license amendment request and no request is approved until all necessary public health and safety findings have been made; CLI-15-22, 82 NRC 310 (2015)

request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise technical specifications for spent fuel pool instrumentation is denied; DD-13-3, 78 NRC 571 (2013)

request that NRC order licensee to submit a license amendment application for the design and installation of replacement steam generators and for additional enforcement action is moot; DD-15-7, 82 NRC 257 (2015)

revisions to technical specifications that are necessary to allow licensee to operate safely with the replacement steam generators after they have been installed require a license amendment; LBP-13-11, 78 NRC 177 (2013)

section 51.53(c)(3)(iv) does not apply to license amendment applicants requesting a power uprate; LBP-11-29, 74 NRC 612 (2011)

there can be no actual license amendment until (and unless) it is issued by the NRC Staff; LBP-13-7, 77 NRC 307 (2013)

there is no requirement for licensee to submit a license amendment request following an earthquake that exceeds its design basis; DD-12-2, 76 NRC 391 (2012)

there is no time limit on when a licensee can seek an amendment to the license conditions relating to its decommissioning trust fund; LBP-15-24, 82 NRC 68 (2015)

there must be reasonable assurance that the activities at issue will not endanger the health and safety of the public; CLI-15-22, 82 NRC 310 (2015)

there must be some significant link between the claimed deficiency and the agency's ultimate determination whether granting the LAR will adequately protect the health and safety of the public and the environment; LBP-15-24, 82 NRC 68 (2015)

to determine whether a CAL process constitutes a de facto license amendment proceeding, a licensing board must look beyond the confirmatory action letter itself and consider the entire process, including the documents generated incident to that process; LBP-13-7, 77 NRC 307 (2013)

to determine whether an approval constitutes a de facto license amendment, NRC must consider whether the approval granted the licensee any greater operating authority or otherwise altered the original terms of a license; CLI-14-11, 80 NRC 167 (2014)

to determine whether an ongoing CAL process constitutes a de facto license amendment proceeding, the board must determine whether the requested change in operating authority sought by licensee is strictly in accordance with the terms and technical specifications in its existing license; LBP-13-7, 77 NRC 307 (2013)

to take advantage of the alternate pressurized thermal shock rule, licensee must request approval from the Office of Nuclear Reactor Regulation, in accordance with the procedures for submitting a license amendment; LBP-15-17, 81 NRC 753 (2015)

types of changes, tests, or experiments that may be undertaken without prior NRC approval as well as those that would require a license amendment are outlined in 10 C.F.R. 50.59(c); CLI-15-14, 81 NRC 729 (2015)

unilateral licensee activities can constitute de facto license amendments; CLI-14-11, 80 NRC 167 (2014)

updated final safety analysis reports can be modified without a license amendment as long as the modifications do not involve a change to the technical specifications or an unreviewed safety question; LBP-13-7, 77 NRC 307 (2013)

when licensee requests an amendment, it must notify the state in which its facility is located of its request by providing that state with a copy of its application; LBP-15-28, 82 NRC 233 (2015)

where NRC approval does not permit a licensee to operate in any greater capacity than originally authorized and all relevant safety regulations and license terms remain applicable, NRC approval does not amend the license; LBP-15-27, 82 NRC 184 (2015)

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where NRC has temporarily exempted the licensee, on the basis of an existing rule, from one of many rules made generally applicable by the license does not amount to a license amendment; CLI-14-11, 80 NRC 167 (2014)

where NRC Staff takes action pursuant to a determination of no significant hazards consideration and issues a license amendment prior to a presiding officer's initial decision, the Staff will thereafter take appropriate action (if necessary) in accordance with the presiding officer's decision; CLI-15-25, 82 NRC 389 (2015)

where there was no reasonable likelihood that a change in the method of evaluation would have required a license amendment, the change was a minor violation; DD-15-7, 82 NRC 257 (2015)

OPERATING LICENSE APPLICATIONS

applicant must present the design bases of the facility and safety analyses of the facility as a whole in the final SAR; DD-15-11, 82 NRC 361 (2015)

applicant must submit information that demonstrates that it possesses, or has reasonable assurance of obtaining, funds necessary to cover estimated operating costs for the period of the license; DD-15-8, 82 NRC 107 (2015)

applicants for nuclear power plant operating licenses must include technical specifications as part of the license; DD-13-3, 78 NRC 571 (2013)

application may incorporate any pertinent information submitted with application for construction permit; LBP-12-24, 76 NRC 503 (2012)

electric utility applicant for an operating license is exempt from financial qualifications review; DD-15-8, 82 NRC 107 (2015)

information is specified in Atomic Energy Act § 182 that must be provided by applicant for a license and it has no reference to spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

OPERATING LICENSE PROCEEDINGS

claims in a contention that did not genuinely stem from the specific amendments to the aging management plan or from particular information in the revised GALL Report were untimely under standards for admission of new or amended contentions; CLI-12-10, 75 NRC 479 (2012)

environmental justice is a Category 2 issue, within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

in an uncontested proceeding, the Commission would informally review the Staff recommendations, and the license would issue only after Commission action; CLI-11-5, 74 NRC 141 (2011)

OPERATING LICENSE RENEWAL

active components are not subject to an aging management review because existing regulatory programs, including required maintenance programs, can be expected to directly detect the effects of aging on active functions; CLI-15-6, 81 NRC 340 (2015); LBP-11-2, 73 NRC 28 (2011)

adjudicating Category 1 issues site by site based merely on a claim of new and significant information would defeat the purpose of resolving generic issues in a generic environmental impact statement; LBP-12-8, 75 NRC 539 (2012)

aging management review consists of identifying the aging effects, and the aging management plans will manage aging effects and demonstrate that passive, long-lived structures, systems, and components will perform their intended functions during the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

aging management review is required only for equipment that performs its intended function without moving parts or without a change in configuration or property; CLI-15-6, 81 NRC 340 (2015); LBP-13-13, 78 NRC 246 (2013); LBP-15-6, 81 NRC 314 (2015)

aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 11 (2011)

all information that applicant uses to support its license renewal application has to be maintained in an auditable and retrievable form; LBP-13-13, 78 NRC 246 (2013)

alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives; LBP-11-2, 73 NRC 28 (2011)

although commitment to implement an aging management plan consistent with the GALL Report is an acceptable method for compliance with 10 C.F.R. 54.21(c)(1)(iii), such a commitment does not absolve the applicant from demonstrating, prior to issuance of a renewed license, that plan is indeed consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

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although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 559 (2012)

although potential severe accident mitigation alternatives must be considered for license renewal, no site-specific severe accident impacts analysis needs to be done; CLI-12-15, 75 NRC 704 (2012)

although the current licensing basis is not evaluated in the license renewal process, its provisions and protections remain in effect, complementing and supplementing any additional measures added due to aging management requirements; LBP-13-13, 78 NRC 246 (2013)

applicant can adopt findings of the generic environmental impact statement, designated as Category 1 issues in Table B-1 of Appendix B to Subpart A of Part 51; LBP-13-13, 78 NRC 246 (2013)

applicant for a federal discharge permit must provide a certification from the state that the proposed activity will not violate state water pollution control standards; LBP-12-16, 76 NRC 44 (2012)

applicant for a renewed license must first identify all structures, systems, and components that serve a function relating directly or indirectly to safety, as defined by this regulation; CLI-15-6, 81 NRC 340 (2015)

applicant has the burden of providing reasonable assurance that the current licensing basis will be maintained throughout the renewal period; LBP-15-5, 81 NRC 249 (2015)

applicant is compelled to implement safety-related severe accident mitigation alternatives that deal with aging management; LBP-11-17, 74 NRC 11 (2011)

applicant is required to show that safety features will fulfill their intended function, not that every structure will maintain its current licensing basis throughout the renewal period; LBP-15-5, 81 NRC 249 (2015)

applicant may seek license renewal as early as 20 years prior to expiration; LBP-11-2, 73 NRC 28 (2011)

applicant must perform an integrated plant assessment to identify structures and components that are subject to aging management review; CLI-15-6, 81 NRC 340 (2015)

applicant must present an aging management plan with sufficient information that NRC will be able to draw its own independent conclusion as to whether the applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

applicant must provide a general description of the corporate-wide and plant-specific procedures sufficient to show that the ten elemental attributes of GALL have been addressed so as to demonstrate that the effects of aging on buried pipes will be adequately managed throughout the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

applicant need not include analyses of the environmental impacts of Category 1 issues in its environmental report because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 377 (2012)

applicant need not provide an analysis of severe accident mitigation alternatives in its environmental report if NRC Staff has already considered SAMAs for applicant's plant in an environmental impact statement or related supplement or in an environmental assessment; LBP-12-8, 75 NRC 539 (2012)

applicant's environmental report is required to consider any new and significant information that might alter previous environmental conclusions; LBP-12-8, 75 NRC 539 (2012)

applicant's environmental report may adopt the generic findings of the generic environmental impact statement, but must also include site-specific analyses of Category 2 issues; CLI-15-6, 81 NRC 340 (2015)

applicant's environmental report must address environmental impacts of the proposed action and compare them to impacts of alternative actions; CLI-12-5, 75 NRC 301 (2012); LBP-12-8, 75 NRC 539 (2012)

applicant's environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in Appendix B; LBP-11-21, 74 NRC 115 (2011)

applicant's environmental report must include a consideration of alternatives to mitigate severe accidents if NRC Staff has not previously considered them for applicant's plant in an environmental impact statement or related supplement or in an environmental assessment; CLI-12-19, 76 NRC 377 (2012)

applicant's use of an aging management program identified in NUREG-1801, Generic Aging Lessons Learned Report, constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; LBP-13-13, 78 NRC 246 (2013)

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applicants are not required to base their severe accident mitigation alternatives analysis on consequence values at the 95th percentile consequence level; LBP-11-2, 73 NRC 28 (2011)

applicants are required to reassess any time-limited aging analyses that were based upon a particular time period, such as an assumed service life of a specific number of years or some period of operation defined by the original 40-year license term; LBP-13-13, 78 NRC 246 (2013)

applicants must assess the impact of the proposed action on threatened or endangered species in accordance with the Endangered Species Act as part of their environmental report; LBP-12-10, 75 NRC 633 (2012)

applicants must conduct aging management reviews of any structure, system, or component that performs one of these intended functions if the SSC is passive (performs its intended function(s) without moving parts or without a change in configuration or properties); CLI-12-5, 75 NRC 301 (2012)

applicants must demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation, at a detailed component and structure level, rather than at a more generalized 'system level; LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015)

applicants must demonstrate reasonable assurance that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation; CLI-12-5, 75 NRC 301 (2012)

applicants must demonstrate that they have programs in place that will effectively manage the effects of aging for specific types of structures and components during the period of extended operation; LBP-13-13, 78 NRC 246 (2013)

applicants must include in their environmental reports any new and significant information of which they are aware; CLI-12-19, 76 NRC 377 (2012); CLI-13-7, 78 NRC 199 (2013)

applicants must provide a severe accident mitigation alternatives analysis in their application if NRC Staff has not previously considered SAMAs for the applicant's plant in its environmental documents; CLI-12-5, 75 NRC 301 (2012); CLI-15-18, 82 NRC 135 (2015)

applicants must reassess any time-limited aging analyses to show either that the analyses will remain valid throughout the period of extended operation or that the effects of aging on the subject component will be managed during that time period; CLI-15-6, 81 NRC 340 (2015)

applicants must submit documentation of compliance with sections 316(a) and (b) of the Clean Water Act concerning thermal discharges; LBP-12-16, 76 NRC 44 (2012)

applicants need not include a need-for-power discussion in their environmental reports; CLI-14-6, 79 NRC 445 (2014); LBP-11-2, 73 NRC 28 (2011)

applicants need not submit an analysis of Category 1 issues in their site-specific environmental reports; LBP-11-2, 73 NRC 28 (2011)

applicants should rely on the generic environmental impact statement for terrorism-related issues in a license renewal application; CLI-11-11, 74 NRC 427 (2011)

applicants' use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; CLI-12-10, 75 NRC 479 (2012)

application must demonstrate that licensee will adequately manage effects of aging on passive, long-lived components so that their intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 340 (2015)

applications are subject to an environmental review; CLI-12-5, 75 NRC 301 (2012)

applications must contain any significant new information relevant to environmental impacts of license renewal of which applicant is aware, and new information generally may be challenged in individual adjudications; CLI-12-19, 76 NRC 377 (2012)

applications must include an environmental report to assist NRC Staff in preparing its environmental impact statement; CLI-12-13, 75 NRC 681 (2012); LBP-12-8, 75 NRC 539 (2012)

applications must include an integrated plant assessment demonstrating that effects of aging on plant systems, structures, and components will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-13-8, 78 NRC 1 (2013)

backfitting includes the modification of or addition to systems, structures, components, or designs of a facility; LBP-11-17, 74 NRC 11 (2011)

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because all aspects of licensee's current licensing basis will remain in effect during the period of extended operation, in the event that renewed licenses are issued, the corrective action requirements of 10 C.F.R. Part 50, Appendix B will apply; LBP-13-13, 78 NRC 246 (2013)

because it is a Category 1 issue, license renewal applicants need not address bird collisions in their environmental reports unless they are aware of relevant new and significant information; CLI-13-7, 78 NRC 199 (2013)

because SAMA analysis is site-specific, NEPA demands no fully developed plan or detailed examination of specific measures that will be used to mitigate adverse environmental effects; LBP-11-18, 74 NRC 29 (2011)

bird collisions have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term; CLI-13-7, 78 NRC 199 (2013)

Category 1 issues are those resolved generically by the generic environmental impact statement and need not be addressed as part of license renewal; LBP-12-8, 75 NRC 539 (2012)

Category 2 issues are reviewed on a site-specific basis because they have not been determined to be essentially similar for all plants; LBP-15-5, 81 NRC 249 (2015)

Category 2 issues focus on severe accident mitigation, to further reduce severe accident risk (probability or consequences); CLI-12-19, 76 NRC 377 (2012)

Category 2 issues require plant-specific review; LBP-12-8, 75 NRC 539 (2012)

challenges to section 50.54(hh)(2) are neither germane to age-related degradation nor unique to the license renewal period; LBP-11-21, 74 NRC 115 (2011)

commitment to implement an aging management plan consistent with the GALL Report is an acceptable method for compliance with 10 C.F.R. 54.21(c)(1)(iii); LBP-13-13, 78 NRC 246 (2013)

commitment to implement an aging management plan that NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance, but does not insulate such an approach from challenge by an intervenor, and is not binding on a licensing board in an adjudication; LBP-11-2, 73 NRC 28 (2011); LBP-11-20, 74 NRC 65 (2011)

commitments in the updated final safety analysis report and aging management plan are legally binding as part of the current licensing basis throughout the period of extended operation and can only be changed through the section 50.59 process; LBP-13-13, 78 NRC 246 (2013)

consultation with appropriate agencies is needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected; LBP-12-10, 75 NRC 633 (2012)

contention asserting that a license renewal environmental report must include a discussion of need for power is inadmissible; LBP-11-13, 73 NRC 534 (2011)

contention that it is premature to relicense nuclear facilities with existing permits that will not expire for 11 to 14 years because relicensing more than 10 years in advance of the expiration of the existing licenses will result in environmental impact statements that will be stale by the time the existing licenses expire is inadmissible; LBP-13-12, 78 NRC 239 (2013)

contents of an application are set forth in 10 C.F.R. 54.21; CLI-15-21, 82 NRC 295 (2015)

contradiction between paragraphs (ii)(L) and (iv) of 10 C.F.R. 51.53(c)(3) is discussed; LBP-13-1, 77 NRC 57 (2013)

current licensing basis of an operating license shall continue during the license renewal period, but these conditions may be supplemented or amended as necessary to protect the environment during the term of the renewed license and will be derived from information contained in the supplement to the environmental report, as analyzed and evaluated in the NRC record of decision; LBP-11-17, 74 NRC 11 (2011)

depending on NRC Staff's resolution of Fukushima-related rulemaking petitions, Staff could seek Commission permission to suspend one or more of the generic determinations in the license renewal environmental rules and include a new analysis in pending, plant-specific environmental impact statements; LBP-12-1, 75 NRC 1 (2012)

direct consultation obligation is imposed on NRC if NRC determines that approval of a requested license renewal may adversely affect any essential fish habitat; LBP-12-10, 75 NRC 633 (2012)

during the license renewal period, the regulations of 10 C.F.R. Part 50, Appendix B concerning ongoing inspections and audits apply; LBP-13-13, 78 NRC 246 (2013)

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each application must contain an integrated plant assessment that is a detailed assessment, conducted at a component and structure level, rather than at a more generalized system level; LBP-13-13, 78 NRC 246 (2013)

each reactor license renewal application must contain a list of structures and components subject to aging management review; LBP-13-13, 78 NRC 246 (2013)

earliest that a license renewal application may be submitted is 20 years before the expiration date of the operating license in effect; CLI-13-7, 78 NRC 199 (2013)

effects of aging must be adequately managed so that intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-15-6, 81 NRC 314 (2015)

endangered/threatened species is a Category 2 issue that requires site-specific analysis in the supplemental environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

environmental impact statement is required for license renewal of a power reactor; LBP-12-1, 75 NRC 1 (2012)

environmental impacts of license renewal are classified as either Category 1, which are generically addressed by the NRC's generic environmental impact statement for license renewal, or Category 2, which are analyzed on a site-specific basis; LBP-11-17, 74 NRC 11 (2011)

environmental implications of new and significant information must be considered under NEPA before NRC may grant renewed operating licenses; LBP-11-32, 74 NRC 654 (2011)

environmental justice is a Category 2 issue that must be considered in each license renewal review; CLI-15-6, 81 NRC 340 (2015); LBP-13-13, 78 NRC 246 (2013)

environmental report for license renewal must consider alternatives to mitigate severe accidents for all plants that have not considered such alternatives; LBP-15-5, 81 NRC 249 (2015)

environmental report for this stage need not contain environmental analysis of Category 1 issues identified in Appendix B to Subpart A of 10 C.F.R. Part 51; LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015)

environmental report must analyze environmental impacts of a license renewal on matters identified as Category 2 issues in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-15-5, 81 NRC 249 (2015)

environmental reports for license renewal must address environmental impacts of the proposed action and compare those impacts to the impacts of alternative actions, but need only consider those alternatives that are reasonable; CLI-12-8, 75 NRC 393 (2012); LBP-12-15, 76 NRC 14 (2012)

environmental reports must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware; LBP-13-1, 77 NRC 57 (2013)

environmental reports must discuss new SAMAs addressed in more recent reports for other nuclear power plants of the same or similar boiling water reactor Mark II design; LBP-14-15, 80 NRC 151 (2014)

essential fish habitat assessment must describe the action, its potential effects on EFH, and proposed mitigation activities, if any; LBP-12-10, 75 NRC 633 (2012)

existing license will not be deemed to have expired until the license renewal application has been finally determined; CLI-15-6, 81 NRC 340 (2015)

existing regulatory programs can be expected to directly detect the effects of aging on active functions; CLI-12-5, 75 NRC 301 (2012)

findings that NRC must make for issuance of a renewed license are set forth in 10 C.F.R. 54.29; CLI-15-21, 82 NRC 295 (2015); LBP-13-13, 78 NRC 246 (2013)

focus of license renewal regulations in 10 C.F.R. Part 54 is to ensure that licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; CLI-15-6, 81 NRC 340 (2015)

focus of license renewal safety review is described in 10 C.F.R. 54.4(a); CLI-12-5, 75 NRC 301 (2012)

for a license renewal to be issued, the Commission must determine that the applicable requirements of 10 C.F.R. Part 51, Subpart A have been satisfied; LBP-11-18, 74 NRC 29 (2011)

for active structures, systems, and components, NRC chose to exempt from license renewal, challenges to a plant's operational activities covered by its current licensing basis; LBP-13-13, 78 NRC 246 (2013)

for all plants, onsite dry or pool storage can safely accommodate spent fuel accumulated from a 20-year license extension with small environmental effects; LBP-11-13, 73 NRC 534 (2011)

for an alternative energy source to be considered reasonable for an operating license renewal proceeding, the alternative should be commercially viable and technically capable of producing an equal amount of

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- baseload power now or in the near future, but no later than the expiration date of the current operating license; CLI-12-8, 75 NRC 393 (2012)
- for an electrical generation alternative to qualify for in-depth review, the alternative must be able to provide baseload power during the license renewal term; LBP-12-15, 76 NRC 14 (2012)
- for Category 2 environmental issues, applicants must include a site-specific environmental analysis in their license renewal applications; CLI-12-19, 76 NRC 377 (2012)
- for license renewal safety review, it is not clear at this point whether any enhancements or changes considered by the Fukushima Task Force will bear on license renewal regulations, which are focused more narrowly on the proper management of aging; CLI-12-10, 75 NRC 479 (2012)
- for purposes of the license renewal rule, NRC Staff has determined that the plant system portion of the offsite power system that is used to connect the plant to the offsite power source should be included within the scope of the station blackout rule; CLI-12-5, 75 NRC 301 (2012)
- forty-year operating licenses can be renewed for an additional 20 years; LBP-13-13, 78 NRC 246 (2013)
- goal of NRC's license renewal safety review is to ensure that licensee can successfully manage the detrimental effects of aging; CLI-15-6, 81 NRC 340 (2015)
- if applicant uses a method other than that identified in NUREG-1801, Generic Aging Lessons Learned Report, for managing effects of aging at its plant, then applicant should demonstrate to NRC Staff reviewers that its program includes the ten elements cited in the GALL Report and will likewise be effective; LBP-13-13, 78 NRC 246 (2013)
- if NRC concludes that an aging management program is consistent with the GALL Report, then it accepts applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance under section 54.29(a); CLI-12-5, 75 NRC 301 (2012)
- if NRC Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by Staff for its significance, consistent with NEPA requirements; CLI-12-19, 76 NRC 377 (2012)
- if NRC Staff has not already considered site-specific severe accident mitigation alternatives for a facility, they must be considered as part of applicant's environmental report and ultimately as part of NRC Staff's supplemental environmental impact statement; LBP-11-17, 74 NRC 11 (2011); LBP-11-18, 74 NRC 29 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-13-1, 77 NRC 57 (2013)
- if renewed license is set aside on appeal, the previous operating license would be reinstated; LBP-12-16, 76 NRC 44 (2012)
- if, as intervenors allege, applicant's enhanced monitoring program is inadequate, then applicant's unenhanced monitoring program embodied in its license renewal application was *a fortiori* inadequate, and intervenors had a regulatory obligation to challenge it in their original petition to intervene; LBP-15-1, 81 NRC 15 (2015)
- illustrative list of structures and components that are subject to an aging management review is provided in 10 C.F.R. 54.21(a)(1)(i); CLI-12-5, 75 NRC 301 (2012)
- impact determinations in the Continued Storage generic environmental impact statement shall be deemed incorporated into the environmental impact statements associated with the applications; CLI-15-10, 81 NRC 535 (2015)
- implication that any agency prerequisite with which applicant must comply to operate a plant during an extended term constitutes an "approval" under 10 C.F.R. 51.45(d) would entail an unreasonably strained definition of "approval"; LBP-12-15, 76 NRC 14 (2012)
- in establishing its license renewal process, NRC did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to reanalysis because those are effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-13-13, 78 NRC 246 (2013)
- integrated plant assessment must demonstrate that effects of aging for each structure and component will be managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 340 (2015); LBP-13-13, 78 NRC 246 (2013)
- intervenors fail to specify what other alternatives to the license renewal application should be discussed in the draft supplemental environmental impact statement, much less show that any proposed alternative would satisfy the purpose of applicant's proposed action; LBP-15-1, 81 NRC 15 (2015)
- intervenors opposed renewal of the nuclear power plant license, and proposed new contentions for increased ultrasonic testing of sand bed epoxy coating integrity; LBP-15-1, 81 NRC 15 (2015)

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issuance of a renewed operating license for a nuclear power reactor is a major federal action under NEPA; LBP-12-8, 75 NRC 539 (2012)

issues and concerns involved in an extended 20 years of operation are not identical to the issues reviewed when a reactor facility is first built and licensed; LBP-13-13, 78 NRC 246 (2013)

issues that applicant must address in its environmental report, as well as those that it need not address, are listed in 10 C.F.R. 51.53(c)(3); LBP-12-8, 75 NRC 539 (2012)

it is unnecessary to include in license renewal review all those issues already monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight; LBP-13-8, 78 NRC 1 (2013)

key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 28 (2011)

later revisions to license renewal application that bring the plant into compliance with the GALL-2 have generally been deemed acceptable; LBP-13-13, 78 NRC 246 (2013)

license renewal applicant is not required to perform a new severe accident mitigation alternatives analysis; LBP-14-15, 80 NRC 151 (2014)

license renewal applicant is required to list structures and components subject to an aging management review; LBP-13-8, 78 NRC 1 (2013)

license renewal applicant must file an environmental report that includes an alternatives analysis that considers and balances the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-11-13, 73 NRC 534 (2011)

license renewal applicants must provide a plant-specific analysis of issues designated as Category 2; CLI-11-11, 74 NRC 427 (2011)

license renewal applicants need not provide a site-specific analysis of the environmental impacts of spent fuel storage in their environmental report; CLI-11-11, 74 NRC 427 (2011)

license renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues; CLI-13-7, 78 NRC 199 (2013)

license renewal environmental report is not required to include discussion of need for power; LBP-11-21, 74 NRC 115 (2011)

license renewal regulations serve exactly their intended purpose by focusing the proceeding on future-oriented aging issues; CLI-15-21, 82 NRC 295 (2015)

license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors; CLI-15-6, 81 NRC 340 (2015)

license renewal safety reviews are generally limited to aging-related issues because NRC recognizes that it has the ongoing responsibility to oversee the safety and security of operating nuclear reactors, and maintains an aggressive and ongoing program to oversee plant operation; LBP-13-13, 78 NRC 246 (2013)

licensee commitment to develop a program by the time the 20-year extension begins does not demonstrate that the effects of aging will be adequately managed; LBP-15-1, 81 NRC 15 (2015)

licensee is not required to list an enforcement order and its compliance with the order's terms in the environmental report supporting its application; LBP-12-15, 76 NRC 14 (2012)

licensees are required to establish a program for qualifying certain defined electrical equipment; LBP-11-20, 74 NRC 65 (2011)

licensee's integrated plant assessment must demonstrate that the effects of aging will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation; LBP-13-8, 78 NRC 1 (2013)

limited scope of the intended functions of structures, systems, and components subject to aging management review is described in 10 C.F.R. 54.4(b); CLI-12-5, 75 NRC 301 (2012)

many safety questions that relate to plant aging become important during the extended renewal term since the design of some components may have been based upon a service lifetime of only 40 years; LBP-11-21, 74 NRC 115 (2011)

mere fact that the intended function of transformers is being monitored in accordance with the current licensing basis does not exempt them from needing to be included in an aging management review program for license renewal; LBP-13-13, 78 NRC 246 (2013)

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NEPA imposes no legal duty on NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

NEPA mitigation alternatives analysis need not reflect the most conservative, or worst-case, analysis; CLI-12-10, 75 NRC 479 (2012)

NEPA requires consideration of reasonable alternatives; CLI-12-8, 75 NRC 393 (2012)

NEPA requires NRC to reevaluate any prior analysis if it is presented with any new and significant information that would cast doubt on a previous environmental analysis; LBP-12-8, 75 NRC 539 (2012)

NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-11-17, 74 NRC 11 (2011)

no finding of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency is necessary for issuance of a renewed nuclear power reactor operating license; LBP-13-13, 78 NRC 246 (2013)

none of the post-Fukushima orders or information requests can be characterized as approvals that must be obtained in connection with license renewal; LBP-12-15, 76 NRC 14 (2012)

nonpower reactors, including research and test reactors, differ as a class from nuclear power plants and are not covered by 10 C.F.R. Part 54; CLI-11-11, 74 NRC 427 (2011)

NRC does not mandate a specific approach to SAMA analyses, but instead, reviews each severe accident mitigation consideration provided by a license renewal applicant on its merits and determines whether it constitutes a reasonable consideration of SAMAs; CLI-13-7, 78 NRC 199 (2013)

NRC explicitly requires an emergency plan for initial reactor operating licenses but does not require them for license renewal; LBP-11-29, 74 NRC 612 (2011)

NRC has analyzed terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release expected from internally initiated events; LBP-11-2, 73 NRC 28 (2011)

NRC has resolved many environmental impacts for license renewal through a generic environmental impact statement and these issues need not be revisited in site-specific environmental impact statements; CLI-14-7, 80 NRC 1 (2014)

NRC is not required, as a precondition to issuing or renewing operating licenses for nuclear power plants, to make definitive findings concerning technical feasibility of a repository for the disposal of spent nuclear fuel; CLI-15-4, 81 NRC 221 (2015)

NRC reviews management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components and environmental impacts and alternatives to the proposed action in accordance; LBP-15-5, 81 NRC 249 (2015)

NRC Staff is not required to analyze need for power; LBP-13-13, 78 NRC 246 (2013)

NRC Staff must draw its own independent conclusion as to whether applicant's programs are in fact consistent with the GALL Report; LBP-13-13, 78 NRC 246 (2013)

NRC Staff must make a recommendation of the environmental acceptability of the license renewal action, and the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable; CLI-12-8, 75 NRC 393 (2012)

NRC Staff must prepare a plant-specific supplement to the generic environmental impact statement that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts; LBP-12-8, 75 NRC 539 (2012)

NRC Staff prepares a supplement to its generic environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

NRC Staff's safety review for license renewal applications is guided by NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, and NUREG-1801, Generic Aging Lessons Learned Report; LBP-13-13, 78 NRC 246 (2013)

NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the D.C. Circuit's remand is appropriately addressed; LBP-13-13, 78 NRC 246 (2013)

NRC's Atomic Energy Act safety review under Part 54 does not compromise or limit the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013); LBP-13-13, 78 NRC 246 (2013)

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NRC's license renewal process concerns a particularized and limited inquiry into the potential impacts of an additional 20 years of nuclear power plant operation, not day-to-day operational issues; LBP-11-21, 74 NRC 115 (2011)

NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding or even in parallel with the ongoing license renewal review; CLI-11-5, 74 NRC 141 (2011); CLI-12-5, 75 NRC 301 (2012)

once NRC completes its environmental review, its record of decision must state whether NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted, and summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-11-17, 74 NRC 11 (2011)

operating license renewal applicants must make a detailed assessment, conducted on passive, safety-related physical systems, structures, and components of the plant; LBP-11-21, 74 NRC 115 (2011)

operating license renewal applicants must reassess time-limited aging analyses made during the original license term and based upon the length of the original license term; LBP-11-21, 74 NRC 115 (2011)

Part 51 license renewal provisions cover environmental issues relating to onsite spent fuel storage generically and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-11-13, 73 NRC 534 (2011)

Part 51 process for environmental review associated with license renewal, focusing upon the potential impacts of an additional 20 years of plant operation, is described; CLI-12-5, 75 NRC 301 (2012)

Part 54 governs issuance of renewed operating licenses and renewed combined licenses for nuclear power plants licensed pursuant to sections 103 or 104b of the Atomic Energy Act and Title II of the Energy Reorganization Act; CLI-11-11, 74 NRC 427 (2011)

particular requirements for the environmental qualification of electric components important to safety for nuclear power plants are set forth in 10 C.F.R. 50.49; CLI-12-10, 75 NRC 479 (2012)

passive systems, structures, and components are subject to an aging management review only if they are long-lived, that is, not subject to replacement based on a qualified life or specified time period; LBP-13-13, 78 NRC 246 (2013)

past or current performance could inform the review of a license renewal application; CLI-11-11, 74 NRC 427 (2011)

plant systems, structures, and components within the scope of license renewal are all non-safety-related systems, structures, and components whose failure could prevent the capability to shut down the reactor and maintain it in a safe shutdown condition; LBP-15-6, 81 NRC 314 (2015)

plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face general criticism that the passage of time between original licensing and renewal has rendered their SAMA analysis out of date upon application for a subsequent renewal term; CLI-13-7, 78 NRC 199 (2013)

plants may continue to operate until the operating license renewal adjudication is completed; LBP-13-13, 78 NRC 246 (2013)

possibility that new SAMA candidates may become available cannot be the basis for a successful petition to waive 10 C.F.R. 51.53(c)(3)(ii)(L), because the Commission knew that SAMA technology would change, but was confident that processes, other than the SAMA analysis process, would adequately address any such developments; LBP-13-1, 77 NRC 57 (2013)

power reactor licensee may preserve its license by filing a renewal application at least 5 years before its license is set to expire, affording the Staff ample time to complete the required environmental and safety reviews; LBP-11-30, 74 NRC 627 (2011)

purpose of 10 C.F.R. 51.53(c)(3)(ii)(L) is to limit the analysis during relicensing to exclude consideration of SAMAs regarding plant operation that were previously considered; LBP-13-1, 77 NRC 57 (2013)

purpose of the exemption from 10 C.F.R. 51.53(c)(3)(ii)(L) is to reflect NRC's view that one severe accident mitigation alternatives analysis, as a general matter, satisfies NRC obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; LBP-14-15, 80 NRC 151 (2014)

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reasonable assurance is not quantified as equivalent to a 95% (or any other percent) confidence level, but is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-13-13, 78 NRC 246 (2013)

“reasonable assurance” standard for aging management programs does not require a 95% confidence level of compliance; LBP-11-18, 74 NRC 29 (2011)

reassessment of time-limited aging analyses must show that the earlier analysis will remain valid for the extended operation period or modify and extend the analysis to apply to a longer term, such as 60 years, or otherwise demonstrate that the effects of aging will be adequately managed in the renewal term; LBP-13-13, 78 NRC 246 (2013)

reissuance of a reactor license is a major federal action requiring an environmental review; LBP-13-13, 78 NRC 246 (2013)

relay switches and snubbers are not subject to an aging management review; LBP-15-6, 81 NRC 314 (2015)

request that NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute new and significant information under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions is premature; LBP-12-18, 76 NRC 127 (2012)

requirement for license renewal applicants to consider severe accident mitigation alternatives stems from 10 C.F.R. 51.53(c)(3)(ii)(L); CLI-12-10, 75 NRC 479 (2012)

safety review is limited to matters specified in 10 C.F.R. Part 54, which focus on the management of aging for certain systems, structures, and components, and the review of time-limited aging analyses; LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015); LBP-15-6, 81 NRC 314 (2015)

safety significance of a structure, system, or component is defined in terms of its safety-related functions, and within the scope of license renewal are included those SSCs whose failure could prevent satisfactory accomplishment of the safety-related function; CLI-15-6, 81 NRC 340 (2015)

scope of license renewal consists of all nonsafety-related structures, systems, and components whose failure could prevent satisfactory accomplishment of any safety functions including control of excessive dose exposures; LBP-13-13, 78 NRC 246 (2013)

scope of license renewal is defined in 10 C.F.R. 54.4; CLI-15-21, 82 NRC 295 (2015)

scope of license renewal, including buried piping, addresses all safety-related structures, systems, and components that are relied upon to remain functional to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down and maintain the safe shutdown of the reactor, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite radiation exposures; LBP-13-13, 78 NRC 246 (2013)

severe accident mitigation alternative need not be implemented during a particular plant’s license renewal review if the Commission is concurrently resolving the safety improvement achieved by that SAMA through a generic process attached to the agency’s review of all plants’ current licensing bases; LBP-11-17, 74 NRC 11 (2011)

severe accident mitigation alternatives analysis for license renewal is a cost-benefit analysis, weighing a particular mitigation measure’s estimated degree of risk reduction against its estimated cost of implementation; CLI-12-8, 75 NRC 393 (2012)

severe accident mitigation alternatives analysis is a Category 2 issue and SAMAs must be considered for all plants that have not considered such alternatives; LBP-12-8, 75 NRC 539 (2012)

severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis, and the agency’s obligations under NEPA are tempered by a practical rule of reason; LBP-11-18, 74 NRC 29 (2011)

severe accident mitigation alternatives analysis is not part of the agency’s safety review for license renewal under the Atomic Energy Act, but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)

severe accident mitigation alternatives analysis is required to discuss a recently discovered fault located near the plant; LBP-15-29, 82 NRC 246 (2015)

severe accident mitigation alternatives analysis must be considered as part of the environmental report and, ultimately, as part of NRC Staff’s supplemental environmental impact statement for a power reactor license renewal; LBP-15-5, 81 NRC 249 (2015)

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- severe accident mitigation alternatives fall within Category 2 under 10 C.F.R. Part 51, Subpart A, App. B and must therefore be addressed on a site-specific basis; LBP-12-15, 76 NRC 14 (2012); LBP-15-5, 81 NRC 249 (2015)
- severe accident mitigation alternatives review identifies and assesses possible plant changes such as improvements in hardware, training, or procedures that could cost-effectively mitigate the environmental impacts that would otherwise flow from a potential severe accident; LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)
- site-specific consideration of severe accident mitigation alternatives is required at the time of license renewal unless a previous consideration of such alternatives regarding plant operation has been included in a final environmental impact statement, final environmental assessment, or a related supplement; CLI-11-5, 74 NRC 141 (2011)
- Staff's ability to satisfy its NEPA obligations will be undermined if applicant either fails to include seismic information in its SAMA analysis, or, in omitting the information, fails to explain its absence and justify that the overall costs of obtaining it are exorbitant; CLI-11-11, 74 NRC 427 (2011)
- statements in the application promising to develop and implement an aging management plan that would be consistent with the NRC guidance document applicable at the time the application was submitted is insufficient; LBP-13-13, 78 NRC 246 (2013)
- structures and components are subject to aging management review if they are not subject to routine replacement; CLI-15-6, 81 NRC 340 (2015)
- structures and components are subject to aging management review if they perform an intended function without moving parts or without a change in configuration or properties; CLI-15-6, 81 NRC 340 (2015); LBP-11-2, 73 NRC 28 (2011)
- structures and components associated only with active functions can be generically excluded from a license renewal aging management review; CLI-12-5, 75 NRC 301 (2012)
- supplemental environmental impact statements for license renewal are not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 246 (2013)
- there must be reasonable assurance that applicant will manage the effects of aging on certain structures and components during extended operation; LBP-11-2, 73 NRC 28 (2011)
- time frame for SAMA analysis is inherent in NRC's regulatory scheme, which provides for a 40-year license term, with the possibility of license renewal for an additional 20-year period; CLI-13-7, 78 NRC 199 (2013)
- to evaluate an application, NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011)
- to grant a license renewal, NRC Staff must find that there is reasonable assurance that the effects of aging on relevant systems, structures, and components will be managed during the period of extended operation, that time-limited aging analyses have been identified for review, and that applicable environmental requirements have been met; LBP-15-6, 81 NRC 314 (2015)
- to meet its environmental review burden in license renewal cases, NRC Staff developed the generic environmental impact statement, which contains findings that apply to all nuclear power plants and are codified in Appendix B of Subpart A of 10 C.F.R. Part 51; LBP-13-13, 78 NRC 246 (2013)
- transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded from an aging management review; CLI-12-5, 75 NRC 301 (2012); CLI-15-6, 81 NRC 340 (2015)
- variety of electrical and instrumentation and control components are excluded from an aging management review for license renewal; CLI-12-5, 75 NRC 301 (2012)
- waste confidence undergirds certain agency licensing decisions, in particular new reactor licensing and reactor license renewal; CLI-12-16, 76 NRC 63 (2012); CLI-14-8, 80 NRC 71 (2014)
- whether petitioners have adequately raised an issue as to whether transformers constitute active or passive components survived a motion for summary disposition; LBP-11-2, 73 NRC 28 (2011)
- OPERATING LICENSE RENEWAL PROCEEDINGS**
- absent demonstration that petitioner's alleged special circumstances are unique to the facility rather than common to a large class of facilities, the request for waiver of regulations excluding spent fuel pool

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issues from license renewal proceedings is denied; LBP-11-35, 74 NRC 701 (2011)

adjudicatory hearings in individual proceedings will share the same scope of issues as NRC Staff review, for NRC's hearing process, like NRC Staff's review, necessarily examines only the questions NRC safety rules make pertinent; LBP-15-5, 81 NRC 249 (2015)

adjudicatory proceeding is terminated following Commission reversal of board's decision admitting three contentions; LBP-15-25, 82 NRC 161 (2015)

adjudicatory proceedings are not environmental impact statement editing sessions; CLI-12-6, 75 NRC 352 (2012)

admissibility of contention that common-mode failures and/or mutually exacerbating catastrophes are entitled to severe accident mitigation alternatives analysis is decided; LBP-15-5, 81 NRC 249 (2015)

admissibility of contention that environmental report lacks site-specific safety and environmental findings regarding storage and disposal of spent fuel is decided; LBP-15-5, 81 NRC 249 (2015)

admission of a management integrity contention relied on references to a serious incident involving shutdown of the reactor, management responsible for the incident remaining in place, and a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert witness in support of the contention; CLI-11-11, 74 NRC 427 (2011)

allegations of noncompliance with already-issued, existing, and open Commission orders are part of the current licensing basis and therefore cannot be challenged in a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

alternatives for reducing adverse environmental impacts, including impacts of severe accidents, are among the limited issues within the scope of a license renewal proceeding; LBP-11-13, 73 NRC 534 (2011)

although a consideration of alternatives to mitigate severe accidents must be provided if not previously performed, applicant must provide this analysis only for those issues identified as Category 2 issues in Appendix B to Subpart A of Part 51; LBP-11-2, 73 NRC 28 (2011)

any person whose interests may be affected by the license renewal proceeding, and who wishes to participate as a party, must file a petition for leave to intervene within 60 days of the notice of hearing in accordance with 10 C.F.R. 2.309; LBP-12-8, 75 NRC 539 (2012)

any rule or policy changes NRC may make as a result of its post-Fukushima review may be made irrespective of whether a license renewal application is pending, or whether final action on an application has been taken; CLI-12-6, 75 NRC 352 (2012)

applicant has the burden of proof on safety issues in a licensing proceeding; LBP-13-13, 78 NRC 246 (2013)

applicant is not required to identify safety-related incidents that have occurred during the current licensing term; LBP-13-8, 78 NRC 1 (2013)

assertion by applicant that its aging management plan is consistent with the GALL Report does not immunize it against a challenge to the AMP; CLI-12-5, 75 NRC 301 (2012)

assertions of a need to implement filtered vented containment are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions as defined by 10 C.F.R. 54.4(a)(1)-(3), the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 28 (2011)

because the probability of a spent fuel pool accident causing significant harm is remote, there is no need for applicants to assess mitigation alternatives as part of license renewal; LBP-15-5, 81 NRC 249 (2015)

because the shield building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts and thus petitioner's contention concerns a subject matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 15 (2015)

bird collisions with cooling towers have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term; LBP-13-1, 77 NRC 57 (2013)

board erred in admitting a contention pertaining to a plant's safety culture; CLI-11-11, 74 NRC 427 (2011)

board permitted any person who was not a party to the proceeding to submit written limited appearance statements concerning the issues in the proceeding; LBP-13-13, 78 NRC 246 (2013)

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boards are required to consider alternatives as they exist and are likely to exist; CLI-12-5, 75 NRC 301 (2012)

boards do not sit to “flyspeck” environmental documents or to add details or nuances, but the environmental report or environmental impact statement must come to grips with all important considerations; LBP-15-5, 81 NRC 249 (2015)

broad-based issues akin to safety culture such as operational history, quality assurance, quality control, management competence, and human factors are outside the scope of license renewal because they raise issues that are relevant to current plant operation; LBP-12-27, 76 NRC 583 (2012)

Category 1 impacts are those that NRC has determined are common across plants and are outside the scope of individual proceedings

Category 1 issues are environmental issues that NRC has resolved generically and therefore need not consider in specific license renewal proceedings; CLI-15-18, 82 NRC 135 (2015)

Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver, because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-11-13, 73 NRC 534 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-13-13, 78 NRC 246 (2013); LBP-15-5, 81 NRC 249 (2015)

Category 2 issues must be reviewed on a site-specific basis because they have not been determined to be essentially similar for all plants and thus can be the subject of a contention; LBP-11-13, 73 NRC 534 (2011)

challenge that applicant’s environmental report omits material that petitioner alleges is required to be there is within the scope of the proceeding; LBP-12-8, 75 NRC 539 (2012)

challenges to Category 1 findings based on new and significant information require a waiver of 10 C.F.R. Part 51, Subpart A, Appendix B, in order to be litigated in a license renewal adjudication; CLI-13-7, 78 NRC 199 (2013)

challenges to emergency planning fall outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

challenges to extensive damage mitigation guidelines are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to NRC’s assumptions about operators’ capability to mitigate an accident are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to NRC’s previous rejection of the petitioner’s concerns regarding environmental impacts of high-density pool storage of spent fuel are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to the generic environmental impact statement’s determinations amount to attacks on NRC regulations and are not within the scope of license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)

claims of past and current mismanagement are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

Commission denies a request for a protective stay of the proceeding; CLI-14-6, 79 NRC 445 (2014)

Commission has codified generic determinations for certain environmental issues, identified as Category 1 issues, for license renewal proceedings; LBP-11-13, 73 NRC 534 (2011)

Commission remands license renewal proceeding to the board for the limited purpose of considering a rule waiver petition; CLI-12-19, 76 NRC 377 (2012)

compliance with orders issued as part of NRC’s ongoing oversight program are enforcement issues that are not within the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

compliance with the current licensing basis is not within the scope of a license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)

contention alleging that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant’s use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 456 (2015)

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- contention alleging that license renewal application fails to consider plutonium fuel use, which would place it outside the current licensing basis, is inadmissible; LBP-13-8, 78 NRC 1 (2013)
- contention alleging that licensee had a repeated pattern of violations which could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)
- contention asserting that applicant's integrated plant assessment for the license renewal application fails to identify and assess safety-related incidents at the plant in its required time-limited aging analysis is a safety contention, and thus is not admissible; LBP-13-8, 78 NRC 1 (2013)
- contention asserting that the NRC's environmental review of the license renewal application has not met the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act fails to satisfy the requirements for reopening the record; LBP-12-10, 75 NRC 633 (2012)
- contention based on applicant's failure to consider alleged new and significant information arising from NRC's Fukushima Task Force Report was rejected; LBP-12-8, 75 NRC 539 (2012)
- contention bases that do not pertain specifically to the license renewal application do not provide sufficient information to demonstrate a genuine dispute with the applicant on a material issue and is thus inadmissible; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)
- contention challenging applicant's consideration of new and significant information regarding cleanup costs is inadmissible; LBP-12-8, 75 NRC 539 (2012)
- contention charging that a licensee's poor safety culture could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)
- contention is within the scope of license renewal proceeding because NRC regulations require that the environmental report include a severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 249 (2015)
- contention must explain what specific deficiencies exist and why they materially impact the license renewal application or environmental impact statement; LBP-15-1, 81 NRC 15 (2015)
- contention regarding mitigation alternatives is effectively a collateral attack on this regulation, which exempts applicants from having to reanalyze severe accident mitigation alternatives during the renewal process; LBP-14-15, 80 NRC 151 (2014)
- contention seeking full impacts analysis of the power supply alternative of wind, either alone or in combination with solar and storage, is inadmissible because it fails to adequately demonstrate the capacity to produce baseload power; LBP-12-15, 76 NRC 14 (2012)
- contention that applicant fails to include need-for-power analyses in its environmental reports for operating license renewal is inadmissible; LBP-13-12, 78 NRC 239 (2013)
- contention that applicant has failed to establish in its aging management plan that the effects of aging will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 314 (2015)
- contention that applicant's SAMA analysis improperly ignored radioactive waste disposal is outside the scope of the proceeding because it directly challenges the generic determinations in Table B-1 of Appendix B to Part 51; LBP-11-2, 73 NRC 28 (2011)
- contention that application has failed to establish that the effects of aging on relay switches and snubbers will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 314 (2015)
- contention that challenges lack of severe accident mitigation alternatives analysis in applicant's environmental report is inadmissible; CLI-13-7, 78 NRC 199 (2013)
- contention that does not actually challenge any specific part of the integrated plant assessment or time-limited aging analyses fails to demonstrate the existence of a genuine dispute with applicant; LBP-15-6, 81 NRC 314 (2015)
- contention that environmental report does not satisfy NEPA because it does not consider a range of measures to mitigate the risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 249 (2015)
- contention that environmental report is inadequate insofar as it does not consider the risk of spent fuel pool fires is inadmissible; LBP-15-5, 81 NRC 249 (2015)

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contention that ice condenser containments lack acceptable aging management plans to adequately maintain critical components of the containment for 20 years of additional operation is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that license renewal application fails to adequately address the risks of flooding from failure of upstream dams is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that license renewal application lacks supporting documentation providing analysis detailing licensee's assumptions that the ice condenser containment can withstand severe accidents without leaking is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that licensee's history of managing whistleblower complaints regarding safety issues demonstrates that the plant will not be operated safely during the license renewal term is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that offers no explanation how its assertions are directly relevant to applicant's ability to manage the effects of aging during the renewal term is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that operating license should not be renewed unless and until applicant establishes that the plant can withstand and be safely shut down following an earthquake is not within the scope of license renewal proceedings; LBP-15-6, 81 NRC 314 (2015)

contention that severe accident mitigation alternatives analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is within the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

contention was inadmissible because petitioner offered nothing to link the outcome of the Fukushima events to either the nuclear power plant or the license renewal application and thus failed to show any dispute with the application; CLI-12-13, 75 NRC 681 (2012)

contentions alleging that applicants' handling of past safety issues at the plants demonstrated that the applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term are inadmissible; LBP-13-8, 78 NRC 1 (2013)

contentions are limited to aging-related issues, not issues already monitored and reviewed in the ongoing regulatory oversight processes; CLI-11-2, 73 NRC 333 (2011)

contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible; LBP-12-8, 75 NRC 539 (2012)

contentions could show a genuine dispute with respect to a technology that, although not commercially viable at the time of the application, is under development for large-scale use and is likely to be available during the period of extended operation; CLI-12-5, 75 NRC 301 (2012)

contentions on Category 1 issues amount to a challenge to the regulation barring challenges to generic environmental findings; CLI-12-19, 76 NRC 377 (2012)

contentions that challenge applicant's compliance with the loss-of-large-areas requirements of 10 C.F.R. 50.54(hh)(2) are not admissible because they are not within the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

contentions that relate to current operations at a plant, as opposed to how it might operate during the period of extended operation, are inadmissible; LBP-13-8, 78 NRC 1 (2013)

current operating issues are, by their very nature, beyond the scope of a license renewal proceeding; CLI-11-2, 73 NRC 333 (2011); LBP-15-5, 81 NRC 249 (2015)

current safety issues are beyond the scope of the proceeding; LBP-12-27, 76 NRC 583 (2012)

determination that, for any license renewal of a nuclear power plant, the probability-weighted consequences of a severe accident are small cannot be challenged; LBP-11-2, 73 NRC 28 (2011)

discussion necessary to support a NEPA alternatives contention in a reactor license renewal proceeding is compared with that for a Part 52 combined license proceeding; LBP-12-15, 76 NRC 14 (2012)

during pendency of remand, intervenors are free to submit a motion to reopen the record pursuant to 10 C.F.R. 2.326 should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; LBP-11-20, 74 NRC 65 (2011)

emergency planning is neither germane to age-related degradation nor unique to the period covered by a license renewal application; LBP-11-35, 74 NRC 701 (2011)

enforcement orders are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

entertaining contentions in a license renewal proceeding that challenge the current licensing basis would be both unnecessary and wasteful given ongoing agency oversight, review, and enforcement; LBP-11-21, 74 NRC 115 (2011)

SUBJECT INDEX

environmental analysis of severe accidents is designated as a Category 2 site-specific issue for license renewal, and therefore the SAMA analysis normally is subject to challenge in a license renewal adjudicatory proceeding; CLI-13-7, 78 NRC 199 (2013)

exception in 10 C.F.R. 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in certain license renewal adjudications; CLI-13-7, 78 NRC 199 (2013)

for pending license renewal applications, where the period of extended operation will not begin for at least a year, there is no imminent threat to public health and safety that requires suspension of licensing proceedings or decisions; LBP-11-35, 74 NRC 701 (2011)

GEIS findings with respect to severe accident consequences are not subject to challenge in individual license renewal proceedings; CLI-15-6, 81 NRC 340 (2015)

generalized economic cost arguments, unsupported by asserted facts or expert opinion, are insufficient to show a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)

generic analysis remains appropriate for spent fuel pool accidents in license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 340 (2015)

geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet traditional standing requirements; LBP-12-8, 75 NRC 539 (2012)

groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue; LBP-12-8, 75 NRC 539 (2012)

if compliance with the current licensing basis cannot be fully achieved during the current licensing term and must be consummated during the period of extended operation, then a contention raising issues about such CLB compliance is within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)

impacts to subsistence consumption must be evaluated as part of the site-specific environmental justice analysis; LBP-15-5, 81 NRC 249 (2015)

in the absence of any assertion that Subpart G procedures should be used to resolve any of the admitted contentions, the Subpart L hearing procedures will be used to adjudicate each admitted contention; LBP-11-2, 73 NRC 28 (2011)

in theory, Commission approval of a rule waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist; CLI-15-6, 81 NRC 340 (2015)

inquiry into future, inchoate plans of licensee would generally invite petitioners in license renewal cases to raise safety issues involving a myriad of possible future license amendments; LBP-13-8, 78 NRC 1 (2013)

inspection reports could be seen as objective evidence that applicant may not adequately manage aging in the future; CLI-11-11, 74 NRC 427 (2011)

interested governmental entities who failed to raise admissible contentions were eligible to participate in the license renewal proceeding; LBP-13-13, 78 NRC 246 (2013)

intervenor must do more than point to issues with the shield building, but must also indicate what is wrong with applicant's response and its amended inspection program and why intervenor believes the particular inspection program makes the license renewal application unacceptable; LBP-15-1, 81 NRC 15 (2015)

intervenor must point to the specific ways in which the shield building monitoring aging management plan is wrong or inadequate to raise a genuine dispute with applicant's license renewal application; LBP-12-27, 76 NRC 583 (2012)

intervenor's challenge to the aging management plan must consist of more than allegations that the AMP is deficient, but rather must point to specific ways the AMP is inadequate or wrong; LBP-12-27, 76 NRC 583 (2012)

intervenor's requests for more testing, more methods of testing, and more information, without an explanation of why the current program is inadequate, do not create a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)

it is in the public interest for adjudications to proceed, except for contentions associated with waste confidence issues; CLI-12-16, 76 NRC 63 (2012)

SUBJECT INDEX

it makes no sense to spend valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging; CLI-15-21, 82 NRC 295 (2015)

license renewal contention alleging higher cancer death rates in local counties than the state average is inadmissible because it is based on unsupported speculation; LBP-13-8, 78 NRC 1 (2013)

license renewal provisions cover environmental issues relating to onsite spent fuel storage generically, and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

license renewal review is a limited one, focused on aging management issues; CLI-11-5, 74 NRC 141 (2011)

license renewal safety review and any associated license renewal adjudicatory proceeding focus on the detrimental effects of aging posed by long-term reactor operation; CLI-12-5, 75 NRC 301 (2012)

license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to ongoing compliance oversight activity; CLI-11-11, 74 NRC 427 (2011); LBP-13-8, 78 NRC 1 (2013)

licensee generally bears the ultimate burden of proof, but intervenors must give some basis for further inquiry; LBP-15-5, 81 NRC 249 (2015)

licensing actions that could increase reactor vessel embrittlement, such as license renewals, hold the potential for offsite consequences that are obvious; LBP-15-17, 81 NRC 753 (2015)

litigability of the adequacy of applicant's efforts to address current operational issues is excluded from a license renewal proceeding; CLI-11-11, 74 NRC 427 (2011)

management integrity contentions are admissible in license renewal proceedings only if they rely on specific supporting information, including references to a serious incident involving shutdown where management responsible for the incident remained in place, a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert in support of the contention; LBP-13-8, 78 NRC 1 (2013)

matters relating to reasonable assurance of safety during the current license term are to be addressed under the current license and are outside the scope of a license renewal review; CLI-15-21, 82 NRC 295 (2015)

motion to admit a new contention arguing that applicant's environmental report fails to satisfy NEPA because it does not address findings and recommendations raised by Task Force Report on the Fukushima Dai-ichi accident is denied as premature and insufficiently focused on the application; LBP-11-28, 74 NRC 604 (2011)

narrow and specific contention that alleges facts, with supporting documentation, of a longstanding and continuing pattern of noncompliance or management difficulties that are reasonably linked to whether licensee will actually be able to adequately manage aging in accordance with the current licensing basis during the period of extended operation can be an admissible contention; CLI-11-11, 74 NRC 427 (2011)

NEPA imposes a procedural requirement on an agency's decisionmaking process by mandating that an agency consider the environmental impacts of a proposed action and inform the public that it has taken those impacts into account in making its decision; LBP-11-17, 74 NRC 11 (2011)

NEPA review in license renewal proceedings is not limited to aging management-related issues; LBP-15-5, 81 NRC 249 (2015)

"new and significant information" requirement does not override, for purposes of litigating the issues in an adjudicatory proceeding, the exclusion of Category 1 issues in section 51.53(c)(3)(i) from site-specific review; CLI-12-19, 76 NRC 377 (2012)

no finding on emergency planning is necessary for issuance of a renewed nuclear power reactor operating license; CLI-15-6, 81 NRC 340 (2015)

nothing in NRC case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans; LBP-13-8, 78 NRC 1 (2013)

NRC adjudicatory hearings are not environmental impact statement editing sessions wherein the board sits to parse and fine-tune EISs; LBP-13-13, 78 NRC 246 (2013)

NRC shall require backfitting of a facility only when it determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security and that the costs of implementation are justified in view of this increased protection; LBP-11-17, 74 NRC 11 (2011)

SUBJECT INDEX

NRC Staff has authority to require implementation of non-aging-management severe accident mitigation alternatives through its current licensing basis backfit review under Part 50 or through setting conditions of the license renewal; LBP-11-17, 74 NRC 11 (2011)

NRC Staff has the overall burden of complying with NEPA; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's independent finding of license renewal applicant's consistency with GALL does not prevent the board from reviewing the substance of the applicant's commitments and exploring deficiencies alleged by intervenors in its proceedings; LBP-13-13, 78 NRC 246 (2013)

NRC's ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding (perhaps even in parallel with the ongoing license renewal review); CLI-12-8, 75 NRC 393 (2012)

offsite land use is a Category 2 impact because land-use changes may be perceived by some community members as adverse and by others as beneficial, and so, NRC Staff is unable to assess generically the potential significance of site-specific offsite land use impacts; LBP-13-13, 78 NRC 246 (2013)

only role for a court is to ensure that the agency has taken a hard look at environmental consequences; LBP-11-17, 74 NRC 11 (2011)

operating license may be renewed if NRC finds, among other things, that actions have been identified and have been or will be taken to manage the effects of aging during the period of extended operation on the functionality of certain identified structures and components; CLI-11-11, 74 NRC 427 (2011)

petitioner has provided adequate support for its claim that there are numerous new severe accident mitigation alternatives candidates that should be evaluated for their significance; LBP-12-8, 75 NRC 539 (2012)

petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the nuclear power facility; LBP-11-21, 74 NRC 115 (2011)

petitioner must challenge the environmental report, which acts as a surrogate for the environmental impact statement during the early stages of a relicensing proceeding; LBP-12-8, 75 NRC 539 (2012)

petitioner's assertion that severe accidents from spent fuel pools must be considered in applicant's SAMA analysis is in direct conflict with NRC regulations; LBP-11-2, 73 NRC 28 (2011)

petitioner's challenge to applicant's use of Three Mile Island data constitutes a genuine dispute on a material issue and is within the scope of the proceeding because it challenges the adequacy of the environmental report; LBP-12-8, 75 NRC 539 (2012)

petitioner's request to hold the proceeding in abeyance until the Commission resolves petitioner's request to suspend the proceeding pending evaluation of the Fukushima accident is denied; LBP-11-35, 74 NRC 701 (2011)

petitioners can raise compliance issues only under 10 C.F.R. 2.206, which would allow them to petition NRC to take an enforcement action; LBP-15-5, 81 NRC 249 (2015)

petitioners have the burden of going forward, which requires them to provide factual allegations or expert testimony to show a potential deficiency in applicant's aging management plan; LBP-15-5, 81 NRC 249 (2015)

petitioners must provide site-specific support to show that the severe accident mitigation alternatives analysis is unreasonable; LBP-15-5, 81 NRC 249 (2015)

petitioners question applicant's failure to consider the qualitative benefits of installing engineered filters; LBP-15-5, 81 NRC 249 (2015)

petitioners' assertions that the MACCS2 code was not subjected to quality assurance requirements is deficient because a SAMA analysis is not subject to such requirements; LBP-11-2, 73 NRC 28 (2011)

placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage is inadmissible; CLI-15-27, 82 NRC 414 (2015)

probability-weighted consequences of a severe accident (risk) are small in the context of a license renewal proceeding; LBP-11-13, 73 NRC 534 (2011)

proximity presumption applies in reactor operating license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

SUBJECT INDEX

proximity presumption of standing has not been explicitly endorsed by the Commission, but has been cited favorably for renewals in the context of a combined license hearing; LBP-12-15, 76 NRC 14 (2012)

proximity presumption, respecting standing for an individual who resides within a 50-mile radius of a nuclear power plant, is recognized; LBP-12-10, 75 NRC 633 (2012)

proximity-based standing is allowed because license renewal allows operation of a reactor over an additional period of time during which the reactor could be subject to the same equipment failures and personnel errors as during operations over the original period of the license; LBP-12-8, 75 NRC 539 (2012)

referencing an aging management program described in the GALL Report does not insulate a program from an adequately supported challenge at a hearing; LBP-11-2, 73 NRC 28 (2011); LBP-13-13, 78 NRC 246 (2013)

relatively formal procedures in Subpart G of Part 2 govern where the credibility of an eyewitness may reasonably be expected to be at issue and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter; LBP-11-2, 73 NRC 28 (2011)

relevant issues for an additional 20 years of reactor plant operation differ from those when a reactor plant is first built and licensed; LBP-11-21, 74 NRC 115 (2011)

representational standing associated with causation in power reactor license renewal proceedings is deemed fulfilled if a member of the organization resides or has significant contacts in an area within a 50-mile radius of the facility; LBP-12-15, 76 NRC 14 (2012)

safety culture issues are outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

safety culture, operational history, quality assurance, quality control, management competence, human factors, and emergency planning issues are beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

safety issue that does not involve aging management is outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

safety issues that are routinely addressed through the agency's ongoing regulatory oversight are outside the scope of license renewal proceedings because considering them in that context would be unnecessary and wasteful; LBP-11-2, 73 NRC 28 (2011)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

scope of the license renewal proceeding on safety-related issues, is limited to plant structures and components that will require an aging management review for the period of extended operation under the renewed license and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; CLI-15-21, 82 NRC 295 (2015)

section 52.80(d) mandates compliance with the agency's loss-of-large-areas requirements in 10 C.F.R. 50.54(hh)(2), but does not apply to a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

severe accident mitigation alternatives are listed as Category 2 issues, and NRC must treat them as such; LBP-12-8, 75 NRC 539 (2012)

severe accident mitigation alternatives contentions are admissible only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-11-2, 73 NRC 28 (2011)

severe accidents in spent fuel pools are Category 1 issues that do not need to be included in the severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 249 (2015)

site-specific environmental issues are Category 2 issues and thus admissible; LBP-12-8, 75 NRC 539 (2012)

standing based on the proximity presumption has been found if petitioner or a representative of a petitioner organization resides within approximately 50 miles of the facility in question; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

subsection (L) of 10 C.F.R. 51.53(c)(3)(ii) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in case-by-case license renewal adjudications; LBP-13-1, 77 NRC 57 (2013)

sufficiency of an aging management program that meets the GALL Report's recommendations can be challenged if the contention admissibility requirements are otherwise met; CLI-12-10, 75 NRC 479 (2012)

SUBJECT INDEX

- sufficiency of the NRC's hard look at the benefits of severe accident mitigation alternatives in comparison to their costs is subject to litigation; LBP-11-17, 74 NRC 11 (2011)
- suppositions/speculation regarding effectiveness of hydrogen control mechanisms are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)
- there is no legal requirement that applicant consider population projections to the end of the license term, but petitioner could succeed in raising such a contention if it demonstrated that considering such data would be material to the proceeding; LBP-12-8, 75 NRC 539 (2012)
- to challenge an energy alternatives analysis, petitioner ordinarily must provide alleged facts or expert opinion sufficient to raise a genuine dispute as to whether the best information available today suggests that a commercially viable alternative technology (or combination of technologies) is available now, or will become so in the near future, to supply baseload power; CLI-12-8, 75 NRC 393 (2012)
- to demonstrate the admissibility of a NEPA contention that an applicant failed to consider a viable alternative to its proposed action, petitioner must show that its contention presents a genuine dispute; CLI-12-5, 75 NRC 301 (2012)
- to the extent petitioner is challenging the adequacy of computer modeling of plume variability, petitioner bears the burden of providing evidence specific to the license renewal applicant; LBP-15-5, 81 NRC 249 (2015)
- to waive generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in a license renewal proceeding, the Commission must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 427 (2011)
- under the proximity presumption, an individual who resides within a 50-mile radius of a nuclear power plant is not required to specifically plead injury, causation, and redressability to establish his or her standing to intervene; LBP-12-10, 75 NRC 633 (2012)
- unless petitioner sets forth a supported contention pointing to an apparent error or deficiency that may have significantly skewed the environmental conclusions, there is no genuine material dispute for hearing; LBP-15-5, 81 NRC 249 (2015)
- untimely motion to reopen the proceeding and admit a new contention concerning licensee's impacts on the roseate tern, a federally listed endangered species, is denied; LBP-12-11, 75 NRC 731 (2012)
- when an application is alleged to be deficient, petitioner must identify the deficiencies and provide supporting reasons for its position that such information is required; LBP-15-1, 81 NRC 15 (2015)
- OPERATING LICENSES**
- Atomic Energy Act does not, as a prerequisite to licensing, require a finding of reasonable assurance that highly hazardous and long-lived radioactive materials can be disposed of safely; CLI-15-4, 81 NRC 221 (2015)
- Commission has authority to determine, and prescribe by rule or regulation, what additional information should be included in technical specifications to ensure public health and safety and the common defense and security; LBP-13-7, 77 NRC 307 (2013)
- Congress did not intend in enacting the Atomic Energy Act to require a demonstration that nuclear wastes could be safely disposed of before licensing of nuclear plants was permitted; CLI-15-4, 81 NRC 221 (2015)
- current reactor licensees comply with the requirements of section 50.54(hh)(2) through conditions on their operating licenses; LBP-11-21, 74 NRC 115 (2011)
- every license to operate a nuclear power reactor must contain a list of technical specifications necessary for adequate protection of public health and safety; LBP-12-25, 76 NRC 540 (2012)
- holder of a license under Part 50, or a combined license under Part 52, shall follow and maintain the effectiveness of an emergency plan that meets the requirements in Part 50, Appendix E; LBP-15-4, 81 NRC 156 (2015)
- it is imperative that terms of a reactor operating license be clear and unambiguous and that licensee scrupulously adhere to those terms, because it is unlawful for any person within the United States to use any utilization facility except under and in accordance with a license issued by NRC; LBP-13-7, 77 NRC 307 (2013)
- licensees may not, under penalty of law, deviate from the terms of their reactor operating licenses; LBP-13-7, 77 NRC 307 (2013)

SUBJECT INDEX

NEPA regulations require consideration of severe accident mitigation alternatives in its environmental impact statements and supplements thereto at the operating license stage; LBP-12-15, 76 NRC 14 (2012)

NRC is not required, as a precondition to issuing or renewing operating licenses for nuclear power plants, to make definitive findings concerning technical feasibility of a repository for the disposal of spent nuclear fuel; CLI-15-4, 81 NRC 221 (2015)

NRC's long-continued regulatory practice of issuing operating licenses, with an implied finding of reasonable assurance that safe permanent disposal of spent nuclear fuel can be available when needed, is in accord with the intent of Congress underlying the Atomic Energy Act and Energy Reorganization Act; CLI-15-4, 81 NRC 221 (2015)

reactor operating licenses must include technical specifications that include specific characteristics of the facility and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization of special nuclear material will provide adequate protection to the health and safety of the public; LBP-13-7, 77 NRC 307 (2013)

section 50.54(hh)(2) applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52; LBP-11-21, 74 NRC 115 (2011)

unless the safety findings prescribed by the Atomic Energy Act and the regulations can be made, the reactor does not obtain a license, no matter how badly it is needed; CLI-15-4, 81 NRC 221 (2015)

OPERATIONS

docketing of certifications of shutdown and defueling means that licensee's Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel; DD-14-3, 79 NRC 500 (2014)

licensee may continue to operate reactor under an expired license if a license renew application is timely submitted; CLI-14-5, 79 NRC 254 (2014)

timing of source materials license renewal application enables licensee to operate under NRC's timely renewal provision until the agency renews the license; LBP-15-2, 81 NRC 48 (2015)

See also Nuclear Power Plant Operations

OPINIONS

concurring opinions, by their nature, do not carry the force of law, except in very narrow circumstances; CLI-15-4, 81 NRC 221 (2015)

"dicta" is a court's opinion that goes beyond the facts before court and therefore represents individual views of the author of the opinion and is not binding in subsequent cases as legal precedent; LBP-14-4, 79 NRC 319 (2014)

holding that "petitioner does not have standing is dispositive of this case and the board need not decide this issue" is dicta; LBP-14-4, 79 NRC 319 (2014)

upon completion of a license transfer hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision; CLI-14-5, 79 NRC 254 (2014)

OPPORTUNITY FOR HEARING

whether licensee or other person consents to an enforcement order, other persons adversely affected by an order issued under section 2.202 will be offered an opportunity for a hearing consistent with current practice and the authority of the Commission to define the scope of the proceeding on an enforcement order; LBP-14-4, 79 NRC 319 (2014)

OPPORTUNITY TO COMMENT

although NRC must respond to the significant views of other agencies, particularly if they are critical of NRC's analysis, that duty applies at the final environmental impact statement stage after the draft EIS has been circulated to interested federal and state agencies for their review and comment; LBP-12-12, 75 NRC 742 (2012)

ORAL ARGUMENT

appellants seeking oral argument must show how oral argument will assist the Commission in reaching a decision; CLI-11-8, 74 NRC 214 (2011)

argument is untimely when it is raised for the first time at oral argument; LBP-15-23, 82 NRC 55 (2015) at its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review; CLI-12-12, 75 NRC 603 (2012)

SUBJECT INDEX

board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 218 (2012)

Commission generally declines to hold oral argument on appeals, absent a specific showing that oral argument will assist it in reaching a decision; CLI-12-12, 75 NRC 603 (2012)

court cannot defer to interpretive proposals offered by counsel at oral argument and affirm on the basis of that reading when the statute does not plainly compel the reading being proposed; CLI-11-12, 74 NRC 460 (2011)

in its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative; CLI-11-8, 74 NRC 214 (2011)

license transfer hearings are to be oral in nature unless the parties unanimously move for a hearing consisting of written comments; CLI-14-5, 79 NRC 254 (2014)

service of a filing is not complete until accompanied by a certificate of service and a request for oral argument; LBP-11-21, 74 NRC 115 (2011)

where the Commission has a thorough written record containing adequate information on which to base a decision, there is no need for oral argument; CLI-11-8, 74 NRC 214 (2011)

written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in most common types of hearings, licensing boards themselves, not the parties, orally examine the witnesses; LBP-12-21, 76 NRC 218 (2012)

ORDERS

initial scheduling orders set forth issues or matters in controversy to be determined in the proceeding; LBP-14-11, 80 NRC 125 (2014)

NRC's ability to issue orders to unlicensed persons is limited; LBP-14-4, 79 NRC 319 (2014)

See also Confirmatory Order; Enforcement Orders; Executive Order 12898; Licensing Board Orders; Modification Order; Protective Orders

OVERPRESSURIZATION

NRC has addressed pressure suppression containment system vulnerability to early failure under severe accident conditions including overpressurization in NUREG-0474; DD-15-1, 81 NRC 193 (2015)

OVERSIGHT

See Regulatory Oversight Process

PAGE LIMITS

intervenor's motion for an enlargement of the page limit for their petition for review is granted; CLI-14-10, 80 NRC 157 (2014)

PARTIAL INITIAL DECISIONS

basis for allowing immediate appellate review of PIDs rests on prior appeal board decisions permitting review of a licensing board ruling that disposes of a major segment of the case or terminates a party's right to participate; CLI-11-14, 74 NRC 801 (2011)

Commission may, as a matter of discretion, grant review of a full or partial initial decision, giving due weight to the existence of a substantial question with respect to any of the considerations outlined in 10 C.F.R. 2.341(b)(4); CLI-15-2, 81 NRC 213 (2015)

decision constitutes a final decision of the Commission 40 days from the date of issuance or the first agency business day following that date if it is a Saturday, Sunday, or federal holiday unless a petition for review is filed in accordance with section 2.1212; LBP-12-5, 75 NRC 227 (2012)

decisions will be reviewed as a matter of discretion if petitions raise a substantial question in regard to any of the paragraphs of 10 C.F.R. 2.341(b)(4); CLI-12-1, 75 NRC 39 (2012)

parties may file a petition for review of licensing board full or partial initial decisions, both of which are considered to be final; CLI-11-14, 74 NRC 801 (2011)

petitions for review of PIDs and any answer shall conform to the requirements of 10 C.F.R. 2.341(b)(2)-(3); LBP-12-5, 75 NRC 227 (2012)

PID is one rendered following an evidentiary hearing on one or more contentions, but which does not dispose of the entire matter; CLI-11-6, 74 NRC 203 (2011); CLI-11-10, 74 NRC 251 (2011)

questions proposed by all parties will be publicly released by order of this board 30 days after issuance of its partial initial decision; LBP-14-3, 79 NRC 267 (2014)

SUBJECT INDEX

where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-12-1, 75 NRC 39 (2012)

PARTIES

although NRC Staff is not required to be a party to a license transfer adjudication, the Commission directs the Staff to become a party; CLI-14-5, 79 NRC 254 (2014)

any other party to the proceeding may file an answer supporting or opposing Commission review; CLI-15-6, 81 NRC 340 (2015)

NRC Staff is but one of the parties to a licensing proceeding, and the positions that it may take are in no way binding upon the licensing board; LBP-12-23, 76 NRC 445 (2012)

NRC Staff is not required to be a party to a license transfer adjudication; CLI-14-5, 79 NRC 254 (2014)

NRC Staff is required to notify the presiding officer and the parties whether it desires to participate as a party in a license transfer proceeding; CLI-14-5, 79 NRC 254 (2014)

NRC Staff will become a party to cases involving an application denial; CLI-14-5, 79 NRC 254 (2014)

ordinary burden on parties in pursuing litigation pending rulemaking does not justify disrupting ongoing license review; CLI-11-1, 73 NRC 1 (2011)

parties' duty to report material significant developments in a matter under adjudication arises immediately upon discovery of that information; CLI-15-16, 81 NRC 810 (2015)

petitioners, not just parties, may request a rule waiver in NRC adjudicatory proceedings; CLI-12-19, 76 NRC 377 (2012)

rulemaking petitioner may request that NRC suspend all or any part of any licensing proceeding to which petitioner is a party pending disposition of the petition for rulemaking; CLI-12-6, 75 NRC 352 (2012)

rules governing access to SUNSI apply only to potential parties, whereas party access to SUNSI is governed by protective orders and nondisclosure agreements; LBP-11-9, 73 NRC 391 (2011)

there are places in NRC rules where "party" is used not as a term of art, but rather as a substitute for "participant"; CLI-12-19, 76 NRC 377 (2012)

to the extent that petitioner's counsel is blameworthy, petitioner may be held accountable; LBP-13-2, 77 NRC 71 (2013)

See also Conduct of Parties

PASSIVE COMPONENTS

aging management review is required for components that function without moving parts and without a change in configuration or properties, and includes a non-exhaustive list of components that either do or do not fit this description; CLI-15-6, 81 NRC 340 (2015)

board examined how a transformer performs its intended function to determine whether it undergoes a change in configuration or properties; CLI-15-6, 81 NRC 340 (2015)

license renewal application must demonstrate that licensee will adequately manage effects of aging on passive, long-lived components so that their intended functions will be maintained consistent with the current licensing basis for the period of extended operation; CLI-15-6, 81 NRC 340 (2015)

static components such as transistors and battery chargers are specifically excluded from aging management review; CLI-15-6, 81 NRC 340 (2015)

PERFORMANCE ASSESSMENT

Commission placed no historical-event restriction on reactors electing to comply with Appendix J through performance-based testing; LBP-15-26, 82 NRC 163 (2015)

intervenors litigated whether the performance-based licensing complies with the Atomic Energy Act and National Environmental Policy Act, and whether undue discretion was accorded to licensee; LBP-15-16, 81 NRC 618 (2015)

NRC addresses agreement-state performance concerns through its Integrated Materials Performance Evaluation Program process or through an independent agreement-state performance concern evaluation, depending on the performance concern raised; CLI-11-12, 74 NRC 460 (2011)

PERMITS

another permitting regime for discharges does not foreclose the department from developing compatible methods of regulating water intakes at cooling water intake structures; LBP-12-16, 76 NRC 44 (2012)

any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 253 (2013)

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applications for water use permits are evaluated by local governmental agencies; LBP-13-4, 77 NRC 107 (2013)

before being granted a Clean Water Act section 404 permit, applicant must demonstrate to the Corps of Engineers that it has taken all appropriate and practicable steps to avoid and minimize adverse impacts; LBP-15-23, 82 NRC 55 (2015)

blanket reliance by NRC Staff on Clean Water Act permits is not permitted; LBP-14-9, 80 NRC 15 (2014)

board denies as untimely a motion to reopen and admit a new contention alleging that the licensee lacks certain required environmental permits and approvals from state and federal agencies; LBP-12-16, 76 NRC 44 (2012)

Clean Water Act section 404 permit process is discussed; LBP-15-23, 82 NRC 61 (2015); LBP-15-23, 82 NRC 55 (2015)

Clean Water Act section 404 permit review can be conducted after issuance of a final environmental impact statement; LBP-15-23, 82 NRC 55 (2015)

combined license applicants must obtain permits from the U.S. Army Corps of Engineers in order to complete construction activities that may potentially affect wetlands; CLI-12-9, 75 NRC 421 (2012)

contention asserting that draft environmental impact statement must include the Corps of Engineers CWA 404 permit analysis in order to satisfy NEPA fails to raise a material issue; LBP-15-23, 82 NRC 55 (2015)

Corps of Engineers may not issue a 404 permit if there exists a practicable alternative that would have less adverse impact on the aquatic system, the permit would cause significant degradation of the water of the United States, or appropriate and practicable mitigation has not been undertaken; LBP-14-9, 80 NRC 15 (2014)

deference can be given to a state permit's findings as to the acceptability of environmental impacts; LBP-15-11, 81 NRC 401 (2015)

EPA-approved state permitting authority for Class I injection wells is the regulatory entity from which applicant must seek and obtain the permit necessary to allow it to operate a deep injection well at the site; LBP-13-6, 77 NRC 253 (2013)

if a federal or state environmental agency issues a permit to the operator of a nuclear power plant that imposes numerical limits on the amount of pollution that the plant may emit, then NRC's final environmental impact statement may reasonably assume that the company's emissions will comply with those numerical limits; LBP-13-4, 77 NRC 107 (2013)

in determining whether a license or permit amendment will be issued to applicant, the Commission is to be guided by the considerations that govern issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate; LBP-15-17, 81 NRC 753 (2015)

intervenor's challenge concerning the draft environmental impact statement's alleged failure to discuss the Great Lakes Compact's process for regional review of its application for a consumptive water use permit is inadmissible; LBP-12-12, 75 NRC 742 (2012)

NEPA is not violated when an agency issues a supplemental environmental impact statement before the Corps of Engineers completes a Clean Water Act section 404 permit review; LBP-15-23, 82 NRC 55 (2015)

non-NRC permits are interdependent parts of applicant's proposed action and thus are connected actions; LBP-15-16, 81 NRC 618 (2015)

NRC Staff's draft environmental impact statement is required to list required federal permits and approvals and the current status of compliance with those requirements; LBP-12-12, 75 NRC 742 (2012)

NRC Staff's environmental review was conducted in cooperation with the U.S. Army Corps of Engineers, with NRC acting as lead agency and ACE as cooperating agency under a memorandum of understanding because applicants also needed permits from ACE to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

proposed plant will impact at least 668 acres of wetlands and therefore its construction and operation will require a permit from U.S. Army Corps of Engineers; LBP-13-4, 77 NRC 107 (2013)

reliance on a state permit, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 401 (2015)

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- source permit is an operating permit that the Clean Air Act requires major stationary sources of air pollution to obtain; LBP-11-13, 73 NRC 534 (2011)
- state water use permit is required for construction and operation of the nuclear units, associated facilities, and transmission lines and corridor; LBP-13-4, 77 NRC 107 (2013)
- when a proposed project would cause discharge of dredged or fill material into wetlands, applicant must seek a permit from the Corps of Engineers; LBP-15-23, 82 NRC 55 (2015)
- when an agency otherwise complies with NEPA's requirement of a reasonably thorough mitigation analysis, there is no error in the agency's reliance on the Clean Water Act section 404's substantive requirements as mitigation measures even though the section 404 permit review is not yet complete; LBP-15-23, 82 NRC 55 (2015)
- when reviewing an application for a 404 permit under the Clean Water Act, the Corps of Engineers evaluates whether issuance of the permit is in the public interest, weighing all relevant factors, including economic, environmental, and aesthetic concerns; LBP-14-9, 80 NRC 15 (2014)
- whether non-NRC permits are required is the responsibility of bodies that issue such permits; LBP-12-16, 76 NRC 44 (2012)
- See also Construction Permits; Early Site Permits; National Pollutant Discharge Elimination System Permit
- PETITIONERS**
- only the petitioning party may file reply briefs; CLI-15-7, 81 NRC 481 (2015)
- PHYSICAL SECURITY**
- applicant has demonstrated that its program of automated equipment, computer systems (and their verification), and the use of secured and tamper-safed item storage area boundaries, satisfactorily demonstrates the ability to verify the presence and integrity of all strategic special nuclear material items in storage; LBP-14-1, 79 NRC 39 (2014)
- "controlled access area" includes a permanently established place that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; LBP-14-1, 79 NRC 39 (2014)
- "material access area" is any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which constitute a physical barrier; CLI-15-9, 81 NRC 512 (2015)
- petition challenging an immediately effective enforcement order asking that licensee take certain physical security measures in addition to those already required by NRC regulations, to protect the spent fuel it planned to store at its power plant site, was rejected; LBP-12-14, 76 NRC 1 (2012)
- relative to the issue of foreign ownership or control, NRC imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information; LBP-11-11, 73 NRC 455 (2011)
- "tamper-safing" refers to use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault; CLI-15-9, 81 NRC 512 (2015)
- PIPING**
- because petitioner has not shown how a proposed plan would fail to ensure that buried pipes continue to fulfill their intended safety purposes, the contention is inadmissible; LBP-15-5, 81 NRC 249 (2015)
- PIPING**
- because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions as defined by 10 C.F.R. 54.4(a)(1)-(3), the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 28 (2011)
- critical aspects of an aging management plan such as a commitment for buried pipes can be captured in the updated final safety analysis report supplement; LBP-13-13, 78 NRC 246 (2013)
- key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 28 (2011)
- liquid released from a leaky pipe where the pressure boundary is maintained would not be sufficient to exceed the dose limits specified in 10 C.F.R. Part 54; LBP-13-13, 78 NRC 246 (2013)

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PLEADINGS

although a totally deficient pleading may not be justified on the basis that it was prepared without the assistance of counsel, pro se petitioners should not be held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-15-13, 81 NRC 456 (2015)

any other party to the proceeding may file an answer supporting or opposing Commission review; CLI-15-6, 81 NRC 340 (2015)

boards are not expected to search the pleadings for information that would satisfy reopening requirements; CLI-12-3, 75 NRC 132 (2012)

boards must afford latitude to pro se petitioners in considering their pleadings; LBP-12-3, 75 NRC 164 (2012)

boards should not have to hunt for information that the agency's procedural rules require be explicitly identified and fully explained; LBP-12-10, 75 NRC 633 (2012)

both the content of the draft environmental impact statement and the additional material submitted by the parties form part of the adjudicatory record; LBP-12-23, 76 NRC 445 (2012)

burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 389 (2015)

Commission discourages incorporating pleadings or arguments by reference; LBP-15-5, 81 NRC 249 (2015)

Commission will not accept the filing of a vague, unparticularized issue; CLI-11-2, 73 NRC 333 (2011)

filings not otherwise authorized by NRC rules are permitted only where necessity or fairness dictates; CLI-14-3, 79 NRC 31 (2014)

in NRC proceedings, pro se litigants are generally not held to the same high standards of pleading and practice as parties with counsel; LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011)

it is not up to boards to search through pleadings or other materials to uncover arguments and support never advanced by intervenors; LBP-11-34, 74 NRC 685 (2011)

judges are not like pigs, hunting for truffles buried in briefs; LBP-11-6, 73 NRC 149 (2011)

leniency is afforded to pro se petitioners, but parties to NRC proceedings are expected to fulfill the obligations imposed by NRC rules; CLI-15-25, 82 NRC 389 (2015)

petitions, answers, and replies are allowed unless otherwise specified by the Commission or the presiding officer, but no other written answers or replies will be entertained; LBP-11-2, 73 NRC 28 (2011)

pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers, but it is not the proper function of the court to assume the role of advocate for litigant; CLI-15-18, 82 NRC 135 (2015)

submitted documents must be signed; LBP-11-2, 73 NRC 28 (2011)

when a party requests action from the presiding officer in an NRC adjudicatory proceeding, the request must come in the form of a motion; CLI-15-13, 81 NRC 555 (2015)

wholesale incorporation by reference does not serve the purposes of a pleading; LBP-15-5, 81 NRC 249 (2015)

See also Amicus Pleadings; Briefs; Electronic Filing; Filings; Reply Briefs

PLUTONIUM

ability to detect the loss of plutonium in a timely manner, to allow for an effective response, is a crucial security requirement; LBP-11-9, 73 NRC 391 (2011)

contention alleging that license renewal application fails to consider plutonium fuel use, which would place it outside the current licensing basis, is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that applicant's revised material control and accounting plan fails to show how confirmation and verification of theft of plutonium will be carried out in the specified timelines is inadmissible; CLI-15-9, 81 NRC 512 (2015)

POLICY

Environmental Protection Agency is recognized as an expert in environmental protection, and its final policy determinations deserve consideration; LBP-15-15, 81 NRC 598 (2015)

party's policy arguments that are advanced during the adjudicatory process before a licensing board cannot trump directives issued by the Commission; LBP-13-7, 77 NRC 307 (2013)

See also NRC Policy

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POLICY STATEMENTS

agencies cannot escape their responsibility to present evidence and reasoning supporting their substantive rules by announcing binding precedent in the form of a general statement of policy; LBP-13-13, 78 NRC 246 (2013)

Criterion 25 of NRC's agreement state policy statement does not relate to substantive standards or the regulatory outcome of a pending license application, even where a license application has been pending at the NRC for an extended period; CLI-11-12, 74 NRC 460 (2011)

NRC policy statements are not a sufficient vehicle to preclude consideration of severe accident mitigation design alternatives, and NRC must take the requisite hard look at SAMDAs, giving them the careful consideration and disclosure required by the National Environmental Policy Act; CLI-12-19, 76 NRC 377 (2012)

public comment will be afforded in advance on any generic waste confidence document that NRC issues on remand, be it a fresh rule, a policy statement, an environmental assessment, or an environmental impact statement; CLI-12-16, 76 NRC 63 (2012)

purpose of Criterion 25 of NRC's agreement state policy statement is to ensure that licensing records are transferred to and received by the new agreement state in an orderly manner that ensures that no pending licensing actions will be significantly delayed or that no records will be lost or misplaced as a result of the transition of authority; CLI-11-12, 74 NRC 460 (2011)

See also NRC Policy

POPULATION DENSITY

applicant's estimate and NRC Staff's approval of projected population estimate for severe accident mitigation alternatives analysis are reasonable and satisfy the requirements under NEPA and 10 C.F.R. 51.53(c)(3)(ii)(L); LBP-13-13, 78 NRC 246 (2013)

contention that applicant's severe accident mitigation alternatives analysis is significantly flawed because of the use of inaccurate factual assumptions about population is admissible; LBP-15-5, 81 NRC 249 (2015)

there is no legal requirement that an applicant consider population projections to the end of the license term, but petitioner could succeed in raising such a contention if it demonstrated that considering such data would be material to the proceeding; LBP-12-8, 75 NRC 539 (2012)

POST-HEARING RESOLUTION

post-hearing resolution must not be employed to obviate the basic findings prerequisite to a license; LBP-15-3, 81 NRC 65 (2015)

POWER

"baseload power" generates energy intended to continuously produce electricity at or near full capacity, with high availability; CLI-12-5, 75 NRC 301 (2012)

because a single wind turbine cannot provide continuous production of electricity at or near full capacity, it does not constitute a source of baseload power; CLI-12-5, 75 NRC 301 (2012)

See also Offsite Power

POWER UPRATE

extended power uprate proceedings necessarily trigger application of the 50-mile proximity presumption given that such license applications entail an obvious increase in the potential for offsite consequences; LBP-11-29, 74 NRC 612 (2011)

other than hypothesizing that there will be a failure of the nuclear reactor vessel because of increased stress brought by the proposed license amendment request, the contention does not provide sufficient information to show that a genuine dispute exists; LBP-11-29, 74 NRC 612 (2011)

radiological claims that represent a direct challenge to prior license amendments authorizing extended power uprates are outside the scope of a license amendment proceeding; LBP-15-13, 81 NRC 456 (2015)

section 51.53(c)(3)(iv) does not apply to license amendment applicants requesting a power uprate; LBP-11-29, 74 NRC 612 (2011)

PRECEDENTIAL EFFECT

agencies act arbitrarily and capriciously when they ignore their own relevant precedent; CLI-13-7, 78 NRC 199 (2013)

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although contention ultimately was resolved in NRC Staff's favor, Commission takes review as a matter of discretion because the board's ruling raises substantial questions of precedential importance; CLI-15-6, 81 NRC 340 (2015)

although the Atomic Safety and Licensing Appeal Panel is no longer in existence, the decisions of its appeals boards continue to be binding to the degree they concern a regulation or regulatory matter that has not been revised or otherwise materially altered; LBP-11-8, 73 NRC 349 (2011); LBP-11-34, 74 NRC 685 (2011)

concurring opinions, by their nature, do not carry the force of law, except in very narrow circumstances; CLI-15-4, 81 NRC 221 (2015)

"dicta" is a court's opinion that goes beyond the facts before the court and therefore represents individual views of the author of the opinion and is not binding in subsequent cases as legal precedent; LBP-14-4, 79 NRC 319 (2014)

dicta ought not to control the judgment in a subsequent suit when the very point is presented for decision; LBP-14-4, 79 NRC 319 (2014)

in vacating decisions of the Licensing and Appeal Boards, the Commission observed that the decisions also should not be used for guidance; CLI-13-9, 78 NRC 551 (2013)

licensing boards may not disregard binding Commission case law; CLI-13-7, 78 NRC 199 (2013)

party may seek reconsideration of an earlier ruling whereby the party was not actually prejudiced, where the ruling could well have an impact upon the course of many licensing hearings; CLI-15-6, 81 NRC 340 (2015)

stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 551 (2013)

unreviewed board rulings do not constitute precedent or binding law; CLI-12-13, 75 NRC 681 (2012); LBP-13-7, 77 NRC 307 (2013); CLI-13-9, 78 NRC 551 (2013); CLI-13-10, 78 NRC 563 (2013)

PRECONSTRUCTION ACTIVITIES

activities that are allowed under Part 50 are also allowed for materials licenses; LBP-11-26, 74 NRC 499 (2011)

although NRC may regard preconstruction activities as outside the scope of a combined license application, these activities are within the scope of the NEPA review because they are all connected actions; LBP-14-9, 80 NRC 15 (2014)

applicant's monitoring program for establishing existing site characterization baseline values for certain site groundwater constituents prior to issuance of a source materials license for ISR facility construction and operation need not be conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 65 (2015)

construction of a transmission line is defined as a preconstruction activity; LBP-12-12, 75 NRC 742 (2012)

even if the transmission corridor is a preconstruction activity and outside the NRC's regulatory jurisdiction, the construction and maintenance of the transmission corridor likely qualifies as a connected action under governing NRC and Council on Environmental Quality regulations, and therefore must be analyzed in the FEIS; LBP-12-12, 75 NRC 742 (2012)

fugitive dust generation is discussed; LBP-11-26, 74 NRC 499 (2011)

NRC limits the scope of environmental analysis of preconstruction activities to activities falling within the scope of its regulatory authority; CLI-12-9, 75 NRC 421 (2012)

there is no NRC requirement that applicant submit a redress plan relative to preconstruction activities or, absent state or local requirements, take any remedial action regarding preconstruction activities if it decides not to complete the project or is denied agency authorization to construct and operate the facility; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

uranium enrichment facility applicant seeks an exemption from regulations to permit it to begin certain preconstruction activities at the site before completion of NRC's environmental review under Part 51; LBP-11-11, 73 NRC 455 (2011)

See also Limited Work Authorization

PREJUDICE

any consolidation of multiple parties' presentations of evidence that would prejudice the rights of any party may not be ordered; LBP-11-4, 73 NRC 91 (2011)

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balancing test for nontimely filings does not encompass prejudice; LBP-11-13, 73 NRC 534 (2011)

burden of proving prejudicial error by a federal agency rests with the party challenging the agency's action, but this is not a particularly onerous requirement; LBP-14-2, 79 NRC 131 (2014)

dismissal of an appeal with prejudice, similar to termination of a proceeding with prejudice, generally implies that the Commission has ruled on the merits of the appeal and such ruling is reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general; CLI-13-10, 78 NRC 563 (2013)

dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the license amendment request; LBP-15-28, 82 NRC 233 (2015)

except upon a showing of substantial prejudice to the complaining party, it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it; CLI-13-8, 78 NRC 219 (2013)

if the agency error did not affect the outcome, it did not prejudice the petitioner; LBP-14-2, 79 NRC 131 (2014)

in proving prejudicial error by a federal agency, it is sufficient that the agency's error may have affected the outcome; LBP-14-2, 79 NRC 131 (2014)

lack of prejudice, standing alone, does not excuse an untimely filing, but it is a factor the Commission has considered in determining whether good cause exists; LBP-15-4, 81 NRC 156 (2015)

no prejudice to either the intervenors or the public occurred where intervenors would have been in precisely the same position in any subsequent proceeding as if they had prevailed not only on their instant appeal but also on the subsequent merits portion of the proceeding; CLI-13-10, 78 NRC 563 (2013)

opposing party's litigation expenses do not provide a basis for departing from the usual rule that a dismissal should be without prejudice; CLI-13-10, 78 NRC 563 (2013)

standard for dismissal with prejudice is not met because the prospect of future litigation is not unusual, being inherent in any dismissal without prejudice; LBP-15-28, 82 NRC 233 (2015)

termination with prejudice bars relitigation of similar issues; LBP-15-21, 82 NRC 1 (2015)

there was no prejudice to intervenor where the board considered licensee's supplement to the application, which contained the updated aging management plan, because intervenor could have sought to amend its contention to respond to the supplement; CLI-12-10, 75 NRC 479 (2012)

upon receipt of a motion to withdraw an application, the board may place terms and conditions on the withdrawal, deny the application, or dismiss the application with prejudice; CLI-13-10, 78 NRC 563 (2013)

when the board has issued a Notice of Hearing, withdrawal of a license amendment request shall be on such terms as the presiding officer may prescribe; LBP-15-28, 82 NRC 233 (2015)

PRESIDING OFFICER

ordinarily, the Commission itself presides over license transfer hearings, but NRC rules allow the Commission to designate one or more Commissioners or any other person permitted by law to preside; CLI-14-5, 79 NRC 254 (2014)

where the Commission does not preside over a license transfer proceeding, the Presiding Officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented; CLI-14-5, 79 NRC 254 (2014)

PRESIDING OFFICER, AUTHORITY

exceptionally grave issues may be considered in the discretion of the presiding officer even if untimely presented; LBP-11-20, 74 NRC 65 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-1, 75 NRC 1 (2012)

if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 11 (2014)

NRC's policy of encouraging settlements specifically recognizes that settlements are not inviolate, and the presiding officer or Commission may order adjudication of the issues that the presiding officer or

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- Commission finds is required in the public interest to dispose of the proceeding; LBP-14-4, 79 NRC 319 (2014)
- presiding officer in the adjudication will determine the extent to which adoption by the NRC of DOE's repository EIS and its supplements is practicable, which in turn will satisfy NRC's NEPA obligations; CLI-13-8, 78 NRC 219 (2013)
- presiding officer may certify questions or refer rulings to the Commission for decision; CLI-14-5, 79 NRC 254 (2014)
- presiding officers have the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to avoid delay and to maintain order, and they have all the powers necessary to those ends; CLI-14-10, 80 NRC 157 (2014); LBP-11-22, 74 NRC 259 (2011)
- presiding officers may make a determination about the validity of a deliberative process privilege claim without reviewing a document *in camera* if the affidavit outlining the reasons for nondisclosure is sufficiently detailed; LBP-13-5, 77 NRC 233 (2013)
- public interest inquiry for approval of settlement agreement is described; LBP-15-21, 82 NRC 1 (2015)
- sanctions may be imposed on a party that fails to provide any document required to be disclosed, unless the party demonstrates good cause for its failure to make the disclosure; LBP-14-2, 79 NRC 131 (2014)
- sua sponte authority of presiding officer is compared under predecessor rule 10 C.F.R. 2.760a; LBP-14-9, 80 NRC 15 (2014)
- withdrawal of an application after issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; LBP-12-20, 76 NRC 215 (2012)
- PRESIDING OFFICER, JURISDICTION**
- jurisdiction terminates when the time period for the Commission to direct certification expires, when the Commission renders a final decision, and when the presiding officer withdraws from the case upon disqualifying himself; CLI-12-17, 76 NRC 207 (2012)
- three occasions that could trigger termination of the presiding officer's jurisdiction are delineated in 10 C.F.R. 2.318(a); LBP-11-22, 74 NRC 259 (2011)
- PRESSURIZED THERMAL SHOCK**
- alternate PTS rule changes how licensees derive projected reference temperatures for the components of their reactor pressure vessels; LBP-15-17, 81 NRC 753 (2015)
- alternate PTS rule is designed to enable all commercial pressurized water reactor licensees to assess the state of their reactor pressure vessels relative to a new criterion without the need to make new material property measurements, instead using only information that is currently available; LBP-15-17, 81 NRC 753 (2015)
- alternate PTS rule provides measures for ongoing reporting; LBP-15-17, 81 NRC 753 (2015)
- alternate PTS rule specifies mitigation processes for licensees if they project they will exceed (or they do exceed) the rules' screening criteria; LBP-15-17, 81 NRC 753 (2015)
- applicant requests an operating license amendment to implement alternate fracture toughness requirements for protection against PTS events; LBP-15-17, 81 NRC 753 (2015)
- application to use alternate PTS rule must contain an assessment of flaws in the reactor pressure vessel; LBP-15-17, 81 NRC 753 (2015)
- application to use alternate PTS rule must contain the projected embrittlement reference temperatures along various portions of the reactor pressure vessel, from the present to a future point, compared to the alternate screening criteria; LBP-15-17, 81 NRC 753 (2015)
- if NRC does not approve continued operation based on licensee's safety analysis, licensee must request an opportunity to modify the reactor pressure vessel or related reactor systems to reduce the potential for failure of the reactor vessel due to PTS events; LBP-15-17, 81 NRC 753 (2015)
- PTS rule and embrittlement screening program are discussed; LBP-15-17, 81 NRC (2015); LBP-15-17, 81 NRC 753 (2015)
- reactor vessel material surveillance programs provide material property data necessary to implement a regulatory scheme to protect reactor pressure vessels from failure due to withstand a pressurized thermal shock event; CLI-15-22, 82 NRC 310 (2015)
- screening criterion is given for plates, forgings, and axial and circumferential weld materials; LBP-15-17, 81 NRC 753 (2015)

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to take advantage of the alternate PTS rule, licensee must request approval from the Office of Nuclear Reactor Regulation, in accordance with the procedures for submitting a license amendment; LBP-15-17, 81 NRC 753 (2015)

when the reference temperature of a reactor pressure vessel is above the screening limit, the RPV is considered to have an unreasonably high risk of fracture from a PTS event; LBP-15-17, 81 NRC 753 (2015)

PRESSURIZED-WATER REACTOR

surveillance program to monitor pressurized water reactor pressure vessel is described; LBP-15-17, 81 NRC 753 (2015)

PRESUMPTION OF LEGITIMACY

adjudicative bodies are to accord government records and official conduct a presumption of legitimacy; LBP-12-14, 76 NRC 1 (2012)

record falls far short of rebutting the presumption that a petition for license modification, suspension, or revocation is a meaningful avenue for seeking administrative relief; LBP-12-14, 76 NRC 1 (2012)

PRESUMPTION OF REGULARITY

although public officials are afforded the presumption in the discharge of their duties, if facts before the board do not appear regular, then the presumption does not attach; LBP-14-2, 79 NRC 131 (2014)

boards cannot assume that applicants will not comply with its regulatory responsibilities, including its license conditions; LBP-15-3, 81 NRC 65 (2015)

Commission has long declined to assume that licensees will refuse to meet their obligations under their licenses or NRC regulations; CLI-14-11, 80 NRC 167 (2014); LBP-15-4, 81 NRC 156 (2015)

governmental officials, acting in their official capacities, are presumed to have properly discharged their duties and, to rebut this presumption, petitioner's burden of proof involves presentation of clear evidence to the contrary; LBP-14-2, 79 NRC 131 (2014)

presumption attaches to the actions of government agencies; CLI-11-4, 74 NRC 1 (2011)

presumption does not help to sustain an action that on its face appears irregular, and if it appears irregular, it is irregular, and the burden shifts to the proponent to show the contrary; LBP-14-2, 79 NRC 131 (2014)

Staff's deference to the expertise of other federal and state agencies to set and monitor the financial soundness of institutions issuing letters of credit is reasonable; CLI-11-4, 74 NRC 1 (2011)

PRIMA FACIE SHOWING

if a contention makes a prima facie allegation that the application omits information required by law, it necessarily presents a genuine dispute with applicant on a material issue and raises an issue plainly material to an essential finding of regulatory compliance needed for license issuance; LBP-15-5, 81 NRC 249 (2015)

if on the basis of the petition, affidavit, and any response provided for in 2.758(b), the presiding officer determines that a prima facie showing has been made, the presiding officer shall, before ruling thereon, certify the matter directly to the Commission; CLI-11-11, 74 NRC 427 (2011)

licensing board initially determines, based on the record, whether a prima facie showing has been made by the petitioner for its rule waiver request, and then the board must certify the matter directly to the Commission for a final determination; LBP-14-16, 80 NRC 183 (2014)

presiding officers must dismiss any petition for waiver that does not make a prima facie showing of special circumstances with respect to the subject matter of the particular proceeding; LBP-11-35, 74 NRC 701 (2011)

prima facie showing on a rule waiver request is not a final determination on the merits, but merely requires presentation of enough information to allow the board to infer (absent disproof) that special circumstances exist; LBP-14-16, 80 NRC 183 (2014)

prima facie showing within the meaning of 10 C.F.R. 2.758(d) is one that is legally sufficient to establish a fact or case unless disproved; LBP-14-16, 80 NRC 183 (2014)

role of the board when a rule waiver request is filed is limited to determining whether petitioner has made a prima facie showing that it has satisfied 10 C.F.R. 2.335(b), and if not, the board may not further consider the matter; LBP-13-1, 77 NRC 57 (2013)

special circumstances required to obtain a rule waiver have been described as a prima facie showing that application of a rule in a particular way would not serve the purposes for which the rule was adopted; LBP-15-5, 81 NRC 249 (2015)

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term is not defined in NRC regulations, but is interpreted to mean a substantial showing; LBP-14-16, 80 NRC 183 (2014)

PRIVILEGE LOG

adequacy of the privilege log with respect to the sufficiency of the information contained therein is particularly important with respect to Subpart L proceedings because without sufficient information as to what allegedly makes the document deliberative, the challenger is forced to shoot in the dark and face a substantive answer by the document withholder, without the right to reply; LBP-13-5, 77 NRC 233 (2013)

cursory statements are inadequate to permit a court to decide whether the privilege was properly claimed; LBP-13-5, 77 NRC 233 (2013)

NRC Staff is required to disclose or provide to the extent available a list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents; LBP-13-5, 77 NRC 233 (2013)

parties must list documents claimed to be privileged or protected on a privilege log; LBP-11-5, 73 NRC 131 (2011)

PRIVILEGED INFORMATION

claims and identification of privileged materials must occur within the time provided for disclosing withheld materials; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

each party to a proceeding must disclose all documents relevant to the admitted contentions, except those documents for which a claim of privilege or protected status is made; LBP-11-5, 73 NRC 131 (2011)

PRO SE LITIGANTS

although a totally deficient pleading may not be justified on the basis that it was prepared without the assistance of counsel, pro se petitioners should not be held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-15-13, 81 NRC 456 (2015)

boards must afford latitude to pro se petitioners in considering their pleadings; LBP-12-3, 75 NRC 164 (2012)

burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 389 (2015)

Commission directive to treat pro se litigants more leniently than litigants with counsel allows a board to take into account complex procedural hurdles presented to intervenors and to structure its rulings accordingly; LBP-11-9, 73 NRC 391 (2011)

counsel has an ethical duty of candor to disclose to a tribunal any relevant information and/or legal authority that is adverse to the director's position, especially when the target of the government's enforcement action is not represented by counsel; LBP-14-11, 80 NRC 125 (2014)

even if intervenors are appearing pro se, adherence to board directives is expected; CLI-14-10, 80 NRC 157 (2014)

forcing a pro se intervenor to file monthly disclosures and closely follow a proceeding indefinitely solely to obtain a ruling on the merits of its claim would constitute significant unfairness and hardship; LBP-12-19, 76 NRC 184 (2012)

in NRC proceedings, pro se litigants are generally not held to the same high standards of pleading and practice as parties with counsel; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-11-23, 74 NRC 287 (2011)

leniency is afforded to *pro se* petitioners, but parties to NRC proceedings are expected to fulfill the obligations imposed by NRC rules; CLI-15-25, 82 NRC 389 (2015)

lenient treatment generally accorded to pro se litigants has limits; CLI-15-18, 82 NRC 135 (2015)

NRC is lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-11-13, 73 NRC 534 (2011)

petitioner was allowed to clarify standing declarations by submitting revised declarations with its reply; LBP-11-13, 73 NRC 534 (2011)

petitioners who are proceeding without counsel should be shown greater leeway on the question of whether they have demonstrated good cause for lateness than petitioners represented by counsel; LBP-11-13, 73 NRC 534 (2011)

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pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers, but it is not the proper function of the court to assume the role of advocate for the litigant; CLI-15-18, 82 NRC 135 (2015)

pleadings submitted by pro se petitioners are afforded greater leniency than petitions drafted with the assistance of counsel; LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015)

representatives in licensing board proceedings, like all other representatives and/or lawyers, are required to be accurate and truthful and are subject to reprimand, censure, or suspension for failing in these duties; LBP-13-8, 78 NRC 1 (2013)

PROBABILISTIC RISK ASSESSMENT

accident sequence with a probability conservatively estimated at 2.0×10^{-7} per reactor year is remote and speculative for the purposes of NEPA; LBP-11-38, 74 NRC 817 (2011)

agency conducting a NEPA analysis must examine both the probability of a given harm occurring and the consequences of that harm if it does occur; CLI-15-6, 81 NRC 340 (2015)

although a contention might have been more detailed or otherwise better supported, petitioners have done enough to raise a question about the adequacy of the probability figures used in applicant's SAMA analysis, namely, whether they should have incorporated or otherwise acknowledged information from a Sandia study; LBP-12-18, 76 NRC 127 (2012)

analysis of potential volcanic hazard at proposed uranium enrichment facility site raises the question whether the probability of such an event is sufficiently low to be considered "highly unlikely"; LBP-11-11, 73 NRC 455 (2011)

applications for certified reactor designs include a probabilistic risk assessment for severe accidents; LBP-11-38, 74 NRC 817 (2011)

determination that, for any license renewal of a nuclear power plant, the probability-weighted consequences of a severe accident are small cannot be challenged; LBP-11-2, 73 NRC 28 (2011)

embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data in a process called the consistency check; LBP-15-17, 81 NRC 753 (2015)

highly site-specific seismic hazard analysis reflects consideration not only of the location and magnitude of historic earthquakes, but also the nature of the bedrock and the style of faulting in the surrounding region; LBP-11-11, 73 NRC 455 (2011)

only if the probability of a severe accident is so small as to be effectively zero could NRC Staff dispense with the consequences portion of the analysis; CLI-15-6, 81 NRC 340 (2015)

probability-weighted consequences of severe accidents (risk) are small in the context of a license renewal proceeding; LBP-11-13, 73 NRC 534 (2011)

probability-weighted environmental consequences of severe accidents are small; CLI-15-6, 81 NRC 340 (2015)

SAMA analysis is an analysis of a class of SAMA candidates using probabilistic risk assessment techniques to determine whether any of the SAMA candidates would be cost-beneficial; LBP-13-1, 77 NRC 57 (2013)

to evaluate the impact of a fault on current operations, a probabilistic risk assessment rather than a deterministic analysis is the accepted and standard practice in SAMA analyses; CLI-11-11, 74 NRC 427 (2011)

unlike plume modeling for an actual severe accident, the severe accident mitigation alternatives analysis is not focused on predicting the precise trajectory of a real-time plume but rather is a probabilistic analysis involving statistical averaging over many hundreds of randomly selected hourly weather sequences obtained from a year of hourly weather data; CLI-12-8, 75 NRC 393 (2012)

PROBABLE CAUSE

standard that must be met before NRC Staff can issue an immediately effective enforcement order is one of adequate evidence, which is akin to the test for probable cause; LBP-11-8, 73 NRC 349 (2011)

PROCEDURE COMPLIANCE

although NEPA's requirements are procedural, federal agencies are held to a strict standard of compliance with the act's requirements; LBP-12-18, 76 NRC 127 (2012)

although pro se litigants are expected to comply with procedural rules, they are generally extended some latitude; LBP-11-2, 73 NRC 28 (2011)

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as an exercise of the Commission's inherent supervisory authority over agency proceedings, it need not address procedural issues that would merit further consideration in adjudications; CLI-12-16, 76 NRC 63 (2012)

even if licensee chooses to satisfy a license condition by incorporating the condition into its inservice testing program, it still must comply with 10 C.F.R. 50.55a(f)(4) throughout the life of the plant; CLI-12-9, 75 NRC 421 (2012)

PROOF

See Burden of Proof; Standard of Proof

PROPERTY INTERESTS

Atomic Energy Act authorizes NRC to accord protection from radiological injury to both health and property interests, and thus a genuine property interest is sufficient to accord petitioner proximity-based standing; LBP-15-17, 81 NRC 753 (2015)

proximity presumption applies to persons who have a significant property interest in the area near a nuclear power plant; LBP-15-17, 81 NRC 753 (2015)

PROPERTY VALUES

preponderance of the evidence supports conclusion that NRC Staff's reasoned, qualitative approach to weighing the costs and benefits of plant shutdown on property values and the local community is reasonable and satisfies regulatory requirements; LBP-13-13, 78 NRC 246 (2013)

PROPRIETARY INFORMATION

petitioners have an affirmative obligation to request confidential and proprietary information that has not been made publicly available in order to support a proposed contention; LBP-11-9, 73 NRC 391 (2011)

PROTECTIVE ACTION RECOMMENDATIONS

combined license application must include an emergency plan that contains, in the event of a reactor emergency resulting in a radiological release, a range of protective actions for the public located within about a 10-mile radius from the plant; LBP-11-15, 73 NRC 629 (2011)

contention that, in the event of a core-melt accident, applicant's emergency plan should order an evacuation of persons within a 10-mile radius of the facility attacks NRC's emergency planning regulation; LBP-11-15, 73 NRC 629 (2011)

emergency plans are to have a range of protective actions for persons within about a 10-mile radius, and guidelines for the choice of protective actions during an emergency, consistent with federal guidance, must be developed and in place; LBP-11-15, 73 NRC 629 (2011)

in developing the range of protective actions, consideration will be given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide, as appropriate; LBP-11-15, 73 NRC 629 (2011)

PROTECTIVE ORDERS

although petitioner's inadvertent publication of protected information was a serious offense that exposed movant to potential economic harm and undermined integrity of the adjudicative proceeding, the significance of petitioner's misconduct is alleviated to some degree by the immediate corrective action taken by petitioner; LBP-13-2, 77 NRC 71 (2013)

board declines to issue a proposed protective order jointly submitted by all of the parties where it failed to require the privilege claimant to identify the legal basis for the claim that the document should be protected; LBP-11-5, 73 NRC 131 (2011)

board denies a motion seeking sanctions against petitioner for violating the governing protective order and nondisclosure agreement, but imposes a document review requirement upon petitioner in light of its misconduct and to enhance future compliance with the proceeding's protective order; LBP-13-2, 77 NRC 71 (2013)

board issues a protective order and nondisclosure agreement that it considers to be clear and legally sound; LBP-11-5, 73 NRC 131 (2011)

confidential commercial information, release of which likely would lead to substantial competitive harm, is entitled to protection; CLI-15-24, 82 NRC 331 (2015)

"disclosing party" means the party required to make mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)

disclosure to intervenors of the names of power plant employees who provided NRC with information during the course of its investigation would be inappropriate, even with a protective order in place; CLI-13-5, 77 NRC 223 (2013)

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“document” means any medium (electronic, paper, or any other kind) that contains or stores any information, including text, data, audio, video, computer software, or computer modeling information; LBP-11-5, 73 NRC 131 (2011)

if the Commission determines on appeal that information withheld under a protective order should have been publicly disclosed, it will direct that such information and the transcript of the related *in camera* session be made publicly available; CLI-15-24, 82 NRC 331 (2015)

NRC has a strong policy in favor of openness and transparency; LBP-11-5, 73 NRC 131 (2011)

NRC Staff is exempted from the obligations of the protective order, even though Staff might hold many documents that are subject to the mandatory disclosure requirements; LBP-11-5, 73 NRC 131 (2011)

party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 71 (2013)

protective order, and the good-faith representation and designation of documents as protected documents, serves in lieu of the requirement for marking and for an affidavit; LBP-11-5, 73 NRC 131 (2011)

“receiving party” means the party to whom the mandatory disclosure must be made; LBP-11-5, 73 NRC 131 (2011)

“representative” means the attorney or other authorized representative of a party who has entered a notice of appearance; LBP-11-5, 73 NRC 131 (2011)

rules governing access to SUNSI apply only to potential parties, whereas party access to SUNSI is governed by protective orders and nondisclosure agreements; LBP-11-9, 73 NRC 391 (2011)

SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)

when considering whether a disclosure of proprietary information was an isolated incident or part of a pattern of behavior, licensing boards may consider the circumstances underlying the disclosure, the corrective action taken, and petitioner’s representation that no disclosure will occur in the future; LBP-13-2, 77 NRC 71 (2013)

PROXIMITY PRESUMPTION

Atomic Energy Act authorizes NRC to accord protection from radiological injury to both health and property interests, and thus a genuine property interest is sufficient to accord petitioner proximity-based standing; LBP-15-17, 81 NRC 753 (2015)

Commission affirmed board ruling on standing and upheld the validity of the proximity presumption; CLI-15-13, 81 NRC 555 (2015)

distance of 3 miles in a license transfer proceeding between facility and organization’s offices does not qualify for organizational standing; LBP-13-6, 77 NRC 253 (2013)

extended power uprate proceedings necessarily trigger application of the 50-mile proximity presumption given that such license applications entail an obvious increase in the potential for offsite consequences; LBP-11-29, 74 NRC 612 (2011)

for reactor operating license renewal proceedings, standing is presumed for an individual who resides within a 50-mile radius of a nuclear power plant, is recognized; LBP-12-10, 75 NRC 633 (2012)

geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet traditional standing requirements in certain types of proceedings, including operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

Google Maps and Mapquest searches of distance from petitioner’s address may be used to establish proximity to a proposed facility; LBP-12-3, 75 NRC 164 (2012)

governmental body within close proximity of a proposed nuclear reactor has standing under the proximity presumption, effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability; LBP-15-19, 81 NRC 815 (2015)

if proximity-based standing cannot be not demonstrated, then standing must be established according to traditional principles of redressability, injury, and causation; LBP-12-3, 75 NRC 164 (2012)

in license amendment proceedings, petitioners may not claim standing simply upon a residence or visits near the plant, unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-11-29, 74 NRC 612 (2011)

in lieu of the injury and causation showings for standing, petitioner has been able to establish proximity-plus by showing that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; LBP-12-3, 75 NRC 164 (2012)

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in materials licensing matters, there is no predefined distance marking the area of potential offsite consequences on which to establish standing and thus this must be judged on a case-by-case basis; LBP-12-24, 76 NRC 503 (2012)

in most licensing proceedings, petitioners are presumed to have standing if they live or have frequent contacts within 50 miles of the facility that is the subject of the proceeding; LBP-11-29, 74 NRC 612 (2011)

in reactor license renewal proceedings, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the nuclear power facility; LBP-11-21, 74 NRC 115 (2011)

in reactor proceedings, the Commission applies a proximity presumption, whereby an individual's or organization's location within 50 miles of a reactor is sufficient to demonstrate the requisite threat of injury; LBP-12-24, 76 NRC 503 (2012)

interveners have standing based upon their proximity to the proposed facility; LBP-12-12, 75 NRC 742 (2012)

license amendments related to reactor pressure vessel embrittlement present an obvious potential for offsite public health and safety consequences; LBP-15-17, 81 NRC 753 (2015)

licensing actions that could increase reactor vessel embrittlement, such as license renewals, hold the potential for offsite consequences that are obvious; LBP-15-17, 81 NRC 753 (2015)

living within 50 miles of a nuclear power reactor is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto; LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-20, 81 NRC 829 (2015)

mother was denied standing based on her son's residence within 50 miles of a power plant, because she herself lived more than 50 miles away; LBP-15-17, 81 NRC 753 (2015)

no proximity presumption applies in an import/export licensing case because petitioners have not shown that the import or export involves a significant source of radioactivity producing an obvious potential for offsite consequences; CLI-11-3, 73 NRC 613 (2011)

NRC could consider adopting, at least for the initial construction/operation authorization of in situ recovery facilities, a standing regime by which persons living or having substantial contacts within a 50-mile radius of the facility are afforded standing; LBP-12-3, 75 NRC 164 (2012)

NRC's 50-mile proximity presumption is an example of NRC's great liberality in the arena of standing; LBP-14-4, 79 NRC 319 (2014)

organization members living within 50 miles of a reactor are presumed to have standing; LBP-15-5, 81 NRC 249 (2015)

petitioner could not rely on caretakers maintaining and farming the property in petitioner's absence as grounds for proximity-based standing; LBP-15-17, 81 NRC 753 (2015)

petitioner in materials licensing actions is entitled to a presumption of standing if petitioner resides in the zone of reasonably foreseeable harm from the source of radioactivity and the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-12-24, 76 NRC 503 (2012)

petitioner is deemed to have standing in reactor licensing proceedings by showing that he or she, or an individual authorizing an organization to represent his or her interests, resides in, or frequents the area within, a 50-mile radius of the facility; LBP-11-2, 73 NRC 28 (2011); LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-13-8, 78 NRC 1 (2013)

petitioner who lives, has frequent contacts, or has significant property interest in within 50 miles of a nuclear power reactor has standing without the need to make an individualized showing of injury, causation, and redressability; LBP-15-17, 81 NRC 753 (2015)

petitioners had proximity-based standing even though they did not provide a reactor vessel failure scenario; LBP-15-17, 81 NRC 753 (2015)

petitioning member's affidavit must be sufficiently specific to show frequent contact within 50 miles of the plant; LBP-15-17, 81 NRC 753 (2015)

presumption applies across the board to all proceedings regardless of type because the rationale underlying it is not based on the type of proceeding per se but on whether the proposed action involves

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- a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- presumption applies in more limited license amendment proceedings only if the proposed amendment obviously entails an increased potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- presumption applies in reactor operating license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)
- presumption applies to persons who have a significant property interest in the area near a nuclear power plant; LBP-15-17, 81 NRC 753 (2015)
- presumption applies to persons who have frequent contacts in the area near a nuclear power plant; LBP-15-17, 81 NRC 753 (2015)
- presumption applies when there are clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- presumption applies where petitioners' contention concerns a license amendment to move the schedule for the withdrawal of reactor vessel material specimens from the technical specifications to the updated safety analysis report; LBP-15-17, 81 NRC 753 (2015)
- presumption is limited to reactor licensing proceedings and to other cases where there is an obvious potential for offsite radiological consequences; LBP-14-4, 79 NRC 319 (2014)
- presumption was applied in a license amendment proceeding where management's lack of the required character and competence was alleged; LBP-15-17, 81 NRC 753 (2015)
- proximity-based standing is allowed because license renewal allows operation of a reactor over an additional period of time during which the reactor could be subject to the same equipment failures and personnel errors as during operations over the original period of the license; LBP-12-8, 75 NRC 539 (2012)
- radius for the proximity presumption has to be at least as large as the range where obvious offsite consequences can occur; LBP-15-17, 81 NRC 753 (2015)
- rationale for proximity-based standing is that in construction permit and operating license cases, persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)
- representational standing associated with causation in power reactor license renewal proceedings is deemed fulfilled if a member of the organization resides or has significant contacts in an area within a 50-mile radius of the facility; LBP-12-15, 76 NRC 14 (2012)
- standing based on frequent contacts is a determination to be made by a licensing board after weighing all the information provided; LBP-15-17, 81 NRC 753 (2015)
- standing can be based on the finding that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-14-4, 79 NRC 319 (2014)
- standing criteria for federally recognized Indian tribes are less stringent, but only where the facility at issue is within the tribe's boundaries; LBP-12-24, 76 NRC 503 (2012)
- statement that petitioner lives, recreates, and conducts business within the vicinity of the plant is too vague to demonstrate a substantial or regular presence within 50 miles of the plant; LBP-15-17, 81 NRC 753 (2015)
- to demonstrate frequent contacts within the 50-mile site radius under the proximity presumption, petitioner must show that her contacts are substantial and regular, and must describe them with specificity; LBP-15-17, 81 NRC 753 (2015)
- under the presumption, an individual who resides within a 50-mile radius of a nuclear power plant is not required to specifically plead injury, causation, and redressability to establish his or her standing to intervene; LBP-12-10, 75 NRC 633 (2012)
- when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its jurisdictional boundaries, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual or nongovernmental organization, whether via a proximity presumption or otherwise; LBP-13-6, 77 NRC 253 (2013)
- when a radiological health or safety impact is asserted to provide the basis for a petitioner's injury in fact, in lieu of the usual injury and causation showings, petitioner can attempt to establish its standing

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based on the proximity plus protocol by showing that the proposed licensing action involves a significant source of radiation, which has an obvious potential for offsite consequences; LBP-13-6, 77 NRC 253 (2013)

where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality's boundaries, it can, for purposes of establishing standing, rely on the 50-mile proximity presumption to the same extent as an individual or an organization; LBP-11-6, 73 NRC 149 (2011)

where petitioner has made no effort to establish that any proximity plus presumption should be applicable in determining standing relative to the challenged licensing action, boards must look to traditional standing precepts of injury and causation, as well as redressibility, to determine whether a sufficient factual and legal demonstration of standing has been made; LBP-13-6, 77 NRC 253 (2013)

whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source; LBP-13-6, 77 NRC 253 (2013)

PSYCHOLOGICAL EFFECTS

petitioner's assertion that continued operation of an independent spent fuel storage installation causes fear and anxiety among its members is not a valid claim under NEPA; LBP-12-24, 76 NRC 503 (2012)

psychological fears or stigma effects are not cognizable NEPA claims; CLI-12-5, 75 NRC 301 (2012)

PUBLIC COMMENTS

agency officials must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input; LBP-12-23, 76 NRC 445 (2012)

boards may entertain oral and written limited appearance statements from members of the public in connection with a mandatory uncontested proceeding; LBP-11-26, 74 NRC 499 (2011)

environmental impact statements cannot fulfill their role of providing a springboard for public comment if they fail to evaluate significant issues such as measures that the agency's experts recommend to mitigate the consequences of a severe accident; LBP-12-18, 76 NRC 127 (2012)

final environmental impact statement will include responses to any comments on the draft EIS; LBP-13-13, 78 NRC 246 (2013)

if modification of the final environmental impact statement by NRC Staff testimony or the board's decision is too substantial, recirculation of the FEIS would be required; LBP-13-13, 78 NRC 246 (2013)

licensing board's hearing arguably allows for additional and a more rigorous public scrutiny of the final environmental impact statement than does the usual circulation for comment; LBP-14-9, 80 NRC 15 (2014)

members of the public had the opportunity to fully participate in the Continued Storage rulemaking proceeding; CLI-15-10, 81 NRC 535 (2015)

NEPA affords agencies considerable discretion to decide the extent to which public involvement is practicable; CLI-15-17, 82 NRC 33 (2015)

NEPA does not require circulation of a draft environmental assessment in all cases; CLI-15-17, 82 NRC 33 (2015)

NRC Staff is not obligated to fully adopt, or agree with, all comments to the draft supplemental environmental impact statement regarding the no-action alternative; LBP-13-13, 78 NRC 246 (2013)

NRC Staff may publish a draft finding of no significant impact for public comment, but it is not required to do in all cases; CLI-15-17, 82 NRC 33 (2015)

NRC will consider all comments on the draft supplemental EIS regardless of whether the comment is directed to impacts in Category 1 or 2; CLI-13-7, 78 NRC 199 (2013)

NRC's NEPA regulations require a request for public comment on a draft environmental impact statement and a supplement to a DEIS distributed in accordance with 10 C.F.R. 51.74 and on any supplement to the FEIS prepared pursuant to 10 C.F.R. 51.92(a) or (b); LBP-14-9, 80 NRC 15 (2014)

petitioner may submit to NRC Staff any information that it believes to be new and significant by participating in NRC's parallel NEPA process wherein an opportunity for public comment on the draft supplemental EIS is provided; CLI-13-7, 78 NRC 199 (2013)

petitioner's rule waiver petition is referred to NRC Staff as additional comments on the draft supplemental EIS for the Staff's consideration and response; CLI-13-7, 78 NRC 199 (2013)

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public comment period is required for draft and supplemental environmental impact statements;

CLI-12-16, 76 NRC 63 (2012)

public comment periods are beneficial only to the extent the public has meaningful information on which to comment; LBP-12-17, 76 NRC 71 (2012)

public comment will be afforded in advance on any generic waste confidence document that NRC issues on remand, be it a fresh rule, a policy statement, an environmental assessment, or an environmental impact statement; CLI-12-16, 76 NRC 63 (2012)

to the extent that intervenors' proposed contention is based on asserted deficiencies in NRC Staff's process for soliciting public participation pursuant to the National Historic Preservation Act, the contention fails to demonstrate a genuine dispute on a material issue of fact or law; LBP-12-23, 76 NRC 445 (2012)

PUBLIC DOCUMENT ROOMS

transcript of Atomic Safety and Licensing Board hearings will be available for inspection in the agency's public records system; LBP-11-5, 73 NRC 131 (2011)

PUBLIC HEARINGS

all hearings will be public; LBP-11-5, 73 NRC 131 (2011)

principle that justice cannot survive behind walls of silence has long been reflected in the

Anglo-American distrust for secret trials; LBP-11-5, 73 NRC 131 (2011)

PUBLIC INTEREST

exemption from decommissioning funding requirements to allow applicant to act as a self-guarantor without satisfying the financial test for self-guarantors must be in the public interest or otherwise satisfy the requirements of 10 C.F.R. 40.14; LBP-12-6, 75 NRC 256 (2012)

it is in the public interest for adjudications to proceed, except for contentions associated with waste confidence issues; CLI-12-16, 76 NRC 63 (2012)

presiding officer's approval of settlement is a matter that must give due consideration to the public interest; LBP-15-21, 82 NRC 1 (2015)

presiding officer's public interest inquiry for approval of settlement agreement is described; LBP-15-21, 82 NRC 1 (2015)

principal goals of a final environmental impact statement are to force agencies to take a hard look at the environmental consequences of a proposed project, and, by making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process; LBP-14-9, 80 NRC 15 (2014)

public interest can well be served by revisions to an application that end up "getting it right" and by the Staff's expected thorough analysis of such revisions; LBP-11-9, 73 NRC 391 (2011)

standard for settlement agreement review concerns whether the approval process deprives interested parties of meaningful participation; LBP-15-21, 82 NRC 1 (2015)

when reviewing an application for a 404 permit under the Clean Water Act, the Corps of Engineers evaluates whether issuance of the permit is in the public interest, weighing all relevant factors, including economic, environmental, and aesthetic concerns; LBP-14-9, 80 NRC 15 (2014)

where a licensed and operating plant has been found unsafe, where the Commission has ordered some remedial amendment, and where the licensee has accepted that amendment, there is no public interest in the proceeding; LBP-14-4, 79 NRC 319 (2014)

PUBLIC MEETINGS

agencies shall plan for involving the public in the National Historic Preservation Act § 106 process but may use the agency's procedures for public involvement under NEPA if they provide adequate opportunities for public involvement; LBP-12-23, 76 NRC 445 (2012)

PUBLIC PARTICIPATION

NRC must make a diligent effort to involve the public in implementation of NEPA procedures;

LBP-15-16, 81 NRC 618 (2015)

PUMPS

request for immediate action to prevent restart because a piece of primary coolant pump impeller was lodged between the reactor vessel and the flow skirt is denied; DD-15-3, 81 NRC 713 (2015)

request for licensee to replace the primary coolant pumps with others designed for their intended duty is denied; DD-15-3, 81 NRC 713 (2015)

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QUALIFICATIONS

- adequacy of nuclear criticality safety manager qualifications for uranium enrichment facility is discussed and a license condition is imposed; LBP-11-11, 73 NRC 455 (2011)
- based on his education and experience, intervenors' witness was found qualified to testify but not specifically on issues related to nuclear engineering, such as events at the Fukushima Dai-ichi plant, core damage frequency calculations, and effectiveness of SAMDAs; LBP-11-38, 74 NRC 817 (2011)
- combined license applicant's status as a current power reactor licensee generally provides the necessary support for NRC Staff's finding that applicant is technically qualified for a new license; CLI-12-2, 75 NRC 63 (2012)
- deliberative process privilege must be asserted by an individual who holds a sufficiently senior position such that he or she has control over the requested information and possesses a balanced perspective that enables him or her to discern the nature of the material at issue; LBP-13-5, 77 NRC 233 (2013)
- evidence in affidavits supporting a motion to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)
- expert witnesses must have the requisite education, training, skill, or experience in operation of a nuclear power plant or in probabilistic risk assessment to support a contention; LBP-11-35, 74 NRC 701 (2011)
- license transfer applicant must demonstrate that the proposed transferee is qualified to hold the license; CLI-15-26, 82 NRC 408 (2015)
- person qualified to assert deliberative process privilege must be involved in the initial assertion of privilege; LBP-13-5, 77 NRC 233 (2013)
- qualified persons, such as head of a department or division, having both expertise and an overview-type perspective concerning the balance between the agency's duty of disclosure versus its need to conduct frank internal debate must sign an affidavit asserting deliberative process privilege; LBP-13-5, 77 NRC 233 (2013)
- request that NRC shut down or prohibit restart of nuclear power plants until a criminal investigation of a licensee contractor is complete and everything has been verified safe is denied; DD-14-1, 79 NRC 7 (2014)

QUALIFIED PRIVILEGE

- although deliberative process privilege is a qualified privilege and the agency claiming the privilege bears the initial burden of demonstrating that it is applicable, once this demonstration is made, the moving party can only defeat the privilege by a demonstration of an overriding need for the material; LBP-13-5, 77 NRC 233 (2013)
- deliberative process privilege is qualified, requiring the court to balance the interests of the parties for and against disclosures; LBP-13-5, 77 NRC 233 (2013)

QUALITATIVE ANALYSIS

- although license requirements and other environmental quality standards are to be considered in assessing environmental impacts, they do not negate NRC Staff's responsibility to consider all environmental effects; LBP-15-3, 81 NRC 65 (2015)
- important qualitative considerations or factors that cannot be quantified in the environmental impact statement will be discussed in qualitative terms; LBP-15-3, 81 NRC 65 (2015)
- petitioners question applicant's failure to consider the qualitative benefits of installing engineered filters; LBP-15-5, 81 NRC 249 (2015)
- to the extent there are important NEPA qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms; LBP-15-5, 81 NRC 249 (2015)

QUALITY ASSURANCE

- combined license applicant's final safety analysis report must describe the quality assurance program applied to the design and to be applied to the fabrication, construction, and testing, of the structures, systems, and components of the facility; LBP-14-7, 79 NRC 451 (2014)
- conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)
- during the license renewal period, the regulations of 10 C.F.R. Part 50, Appendix B concerning ongoing inspections and audits apply; LBP-13-13, 78 NRC 246 (2013)

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effect of a pattern of quality assurance violations is not necessarily to show that particular safety-related information is false, but to erode confidence that NRC can reasonably have in, and create substantial uncertainty about the quality of, the work that is tainted by the alleged QA violations; LBP-12-23, 76 NRC 445 (2012)

petitioners did not demonstrate that the issue of whether the MACCS2 was subject to quality assurance is material to the findings the NRC must make under NEPA to support the requested license extension; LBP-11-13, 73 NRC 534 (2011)

petitioners' assertions that the MACCS2 code was not subjected to quality assurance requirements is deficient because a SAMA analysis is not subject to such requirements; LBP-11-2, 73 NRC 28 (2011)

petitioners' concerns about tube leaks, unplanned power changes, and potential primary coolant contamination did not constitute any violations that were more than minor; DD-15-2, 81 NRC 205 (2015)

requirements under 10 C.F.R. Part 50, App. B apply to design of the safety-related functions of the structures, systems, and components that prevent or mitigate the consequences of postulated accidents; LBP-14-7, 79 NRC 451 (2014)

this issue is beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

use of the past tense when referring to "quality assurance applied to the design" in 10 C.F.R. Part 50, App. B shows that safety-related design activities must have been performed under an acceptable QA program even though those activities were performed prior to the date on which the combined license application (which includes the FSAR) was filed with NRC; LBP-14-7, 79 NRC 451 (2014)

QUALITY ASSURANCE PROGRAMS

applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility for the program; CLI-14-10, 80 NRC 157 (2014)

applicant must establish and implement its own QA program when it enters into a contract for the conduct of safety-related combined license application activities and to retain overall control of safety-related activities performed by the contractor; CLI-14-10, 80 NRC 157 (2014)

board rules in favor of applicant on contention challenging adequacy of quality assurance program developed and implemented by the applicant; LBP-14-7, 79 NRC 451 (2014)

comprehensive system of planned and periodic audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine effectiveness of the program; LBP-14-7, 79 NRC 451 (2014)

license applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but applicant retains responsibility for the program; LBP-12-23, 76 NRC 445 (2012)

licensee must implement managerial and administrative controls to ensure safe operation through implementation of the facility's quality assurance program; DD-13-3, 78 NRC 571 (2013)

licensees must establish measures to ensure that conditions adverse to quality are promptly identified and corrected; LBP-12-23, 76 NRC 445 (2012)

NRC Staff may not issue a notice of violation for failure to satisfy Appendix B requirements during the preapplication period, but it may deny a combined license for failure to satisfy the standards and requirements of the Commission's regulations; LBP-14-7, 79 NRC 451 (2014)

requirements relate to testing, calibration, or inspection to ensure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met for certain structures, systems, and components; CLI-13-10, 78 NRC 563 (2013)

to demonstrate a significant safety issue, petitioners must establish either that uncorrected errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely; LBP-11-35, 74 NRC 701 (2011)

QUANTITATIVE DATA

agency's failure to adequately validate a quantitative model on which it relies may lead the reviewing court to conclude that the agency's decision is arbitrary, capricious, or contrary to law; LBP-15-20, 81 NRC 829 (2015)

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- applicant's strategic special nuclear material item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 39 (2014)
- quantitative accuracy of the MMIS/PLC computer system data must be considered in determining whether requirements of 10 C.F.R. 74.55(b)(1) are satisfied by applicant's plans; LBP-14-1, 79 NRC 39 (2014)
- relative to an individual ISR facility, when NRC Staff formulates its draft and final supplemental environmental impact statement conclusions regarding the environmental impacts of a proposed action or alternative actions, it uses as guidance a standard scheme to categorize or quantify the impacts; LBP-15-3, 81 NRC 65 (2015)
- to the extent there are important NEPA qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms; LBP-15-5, 81 NRC 249 (2015)
- where environmental impacts are practically quantifiable, NRC has a duty to discuss them in those terms in the final supplemental environmental impact statement; LBP-15-3, 81 NRC 65 (2015)
- RADIATION CONTROL PROGRAM**
- combined license applications must include kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-12-4, 75 NRC 213 (2012)
- combined license applications must provide a level of information on plans to manage and store low-level radioactive waste onsite sufficient to enable the Commission to conclude that the application will comply with 10 C.F.R. Part 20; CLI-11-10, 74 NRC 251 (2011)
- RADIATION EXPOSURE**
- See Radiological Exposure
- RADIATION PROTECTION PROGRAM**
- combined license applications contain information pertaining to how applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 213 (2012)
- combined license applications include operational procedures to minimize contamination of the facility and environment, facilitate eventual decommissioning, and minimize generation of radioactive waste; CLI-12-2, 75 NRC 63 (2012)
- RADIATION PROTECTION STANDARDS**
- ALARA principle as used in NRC regulations does not mean as low as achievable as a comparison between achievable doses, but rather as low as reasonably achievable below the dose limits; CLI-11-12, 74 NRC 460 (2011)
- public doses for all Part 20 radiation protection programs must be as low as reasonably achievable and a basic radiation protection public dose standard of 100 mrem per year is required; CLI-11-12, 74 NRC 460 (2011)
- radiation protection requirements with which licensees must comply, such as procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable, are outlined in 10 C.F.R. 20.1101(b); LBP-12-4, 75 NRC 213 (2012)
- RADIOACTIVE EFFLUENTS**
- because petitioner's issue of the inadvertent release of radioactivity does not specifically relate to the ability of buried structures to perform their intended functions as defined by 10 C.F.R. 54.4(a)(1)-(3), the contention is not within the scope of a license renewal proceeding; LBP-11-2, 73 NRC 28 (2011)
- combined license application must identify the means for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable; LBP-11-6, 73 NRC 149 (2011)
- combined license application must include kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-12-4, 75 NRC 213 (2012)
- even with the additional conservatism, concentrations at potential receptor locations resulting from bounding accidental effluent release scenarios remain within applicable regulatory limits; CLI-12-9, 75 NRC 421 (2012)
- final safety analysis report must include information regarding the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting

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- radioactive effluents and radiation exposures within the limits set forth in Part 20; LBP-11-6, 73 NRC 149 (2011)
- it is permissible for the final safety analysis report to give applicant several options for controlling and limiting radioactive effluents and radiation exposures, provided that each option is described with a level of information sufficient to enable the Commission to reach a final conclusion; LBP-11-31, 74 NRC 643 (2011)
- key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 28 (2011)
- minimum detectable concentrations for gaseous effluent and evaporator condensate must be 5% or less of the concentrations listed in Part 20, App. B, tbl. 2; LBP-11-26, 74 NRC 499 (2011)
- Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 499 (2011)
- uranium enrichment facility licensee must survey radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in section 20.1301; LBP-12-21, 76 NRC 218 (2012)
- RADIOACTIVE EMISSIONS**
- keeping radionuclides below the EPA limit is necessary to maintain public safety at a decommissioning facility; LBP-15-24, 82 NRC 68 (2015)
- RADIOACTIVE MATERIALS**
- applicant has described the kinds and quantities of radioactive materials expected to be produced in the operation to the extent its combined license application references a standardized design; LBP-11-6, 73 NRC 149 (2011)
- final safety analysis report must include information regarding the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in Part 20; LBP-11-6, 73 NRC 149 (2011)
- RADIOACTIVE PLUME**
- to the extent petitioner is challenging the adequacy of computer modeling of plume variability, petitioner bears the burden of providing evidence specific to the license renewal applicant; LBP-15-5, 81 NRC 249 (2015)
- RADIOACTIVE RELEASES**
- buried structures, systems, and components must also control inadvertent radiological releases to ensure that dose exposures are below the regulatory limits; LBP-13-13, 78 NRC 246 (2013)
- contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)
- independent spent fuel storage installation licensees must limit releases of radioactive materials to as low as is reasonably achievable, and establish operational limits to prevent doses to the public that exceed the limits of 10 C.F.R. 72.104(a)-(c); LBP-12-24, 76 NRC 503 (2012)
- license amendment to eliminate numerous detailed procedures for monitoring routine radioactive releases from the technical specifications and transfer them to a licensee-controlled document would allow licensee to make future changes to the radiation monitoring procedures without going through another license amendment; LBP-12-25, 76 NRC 540 (2012)
- liquid released from a leaky pipe where the pressure boundary is maintained would not be sufficient to exceed the dose limits specified in 10 C.F.R. Part 54; LBP-13-13, 78 NRC 246 (2013)
- loss of spent fuel confinement would produce a dose of 0.15 rem at the nearest site boundary, which is less than the 5-rem limit; LBP-12-24, 76 NRC 503 (2012)
- NRC has analyzed terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release expected from internally initiated events; LBP-11-2, 73 NRC 28 (2011)
- petitioners do not provide any alleged facts or expert support indicating that the river valley is within the geographic area for which applicant was required to model atmospheric dispersion; LBP-11-13, 73 NRC 534 (2011)

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Staff guidance documents outline acceptable methods for designing a radiological monitoring program and submitting required semiannual reports specifying principal radionuclide releases to unrestricted areas for the purpose of estimating maximum potential annual public doses from such releases; LBP-11-26, 74 NRC 499 (2011)

to the extent that intervenors challenge all radiological releases from nuclear power plants, the contention presents an impermissible challenge to the NRC's regulations; LBP-12-12, 75 NRC 742 (2012)

uranium enrichment facility licensee must provide semiannual radiological release reports to NRC; LBP-12-21, 76 NRC 218 (2012)

RADIOACTIVE WASTE DISPOSAL

Commission sensibly has chosen to address high-level waste disposal generically rather than unnecessarily to revisit the same waste disposal questions, license by license, when reviewing individual applications; LBP-14-16, 80 NRC 183 (2014)

Congress did not intend in enacting the Atomic Energy Act to require a demonstration that nuclear wastes could safely be disposed of before licensing of nuclear plants was permitted; CLI-15-4, 81 NRC 221 (2015)

contention that applicant's SAMA analysis improperly ignored radioactive waste disposal is outside the scope of the proceeding because it directly challenges the generic determinations in Table B-1 of Appendix B to Part 51; LBP-11-2, 73 NRC 28 (2011)

contention that draft environmental impact statement fails to include a reviewable plan for disposal of 11e(2) byproduct material is inadmissible; LBP-13-9, 78 NRC 37 (2013)

decommissioning funding requirements encompass costs of low-level waste burial; CLI-15-8, 81 NRC 500 (2015)

environmental report for application for land disposal may incorporate by reference information contained in the application or in any previous application, statement, or report filed with the Commission provided that such references are clear and specific; LBP-12-24, 76 NRC 503 (2012)

final environmental impact statement as amplified by both board and Commission decisions, provides adequate consideration of environmental impacts of near-surface waste disposal; CLI-15-6, 81 NRC 340 (2015)

generic approach to high-level waste disposal has been endorsed by higher courts; LBP-14-16, 80 NRC 183 (2014)

licensee must provide for ready retrieval of spent fuel from storage for further processing or disposal; LBP-12-24, 76 NRC 503 (2012)

motion for summary disposition is granted because there is no genuine issue or dispute as to any material fact and applicant's low-level radioactive waste plan satisfies the requirements of 10 C.F.R. 52.79(a); LBP-11-31, 74 NRC 643 (2011)

NRC is not required to conduct a rulemaking proceeding or to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely; CLI-15-4, 81 NRC 221 (2015)

NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 71 (2014)

NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the District of Columbia Circuit's remand is appropriately addressed; LBP-14-3, 79 NRC 267 (2014)

policies set forth by NEPA prevent NRC Staff from segmenting the disposal issues from the inquiry into whether applicant will be allowed to create 11e(2) byproduct material in the first instance; LBP-13-9, 78 NRC 37 (2013)

statutory findings required by AEA § 103 do not apply to disposal activities that might result from the operation of a licensed facility; CLI-15-4, 81 NRC 221 (2015)

waste disposal contentions are to be held in abeyance pending further order of the Commission; LBP-14-3, 79 NRC 267 (2014)

RADIOACTIVE WASTE MANAGEMENT

all uranium fuel cycle and waste management issues, including low-level waste storage and disposal, mixed waste storage and disposal, onsite spent fuel storage, and transportation, are Category I issues with a small impact; LBP-11-2, 73 NRC 28 (2011)

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- applicant's FSAR must identify particular plans pertaining to design, operational organization, and procedures that demonstrate how it intends to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 213 (2012)
- because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the environmental report as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, this argument is nontimely; LBP-12-7, 75 NRC 503 (2012)
- combined license applications include operational procedures to minimize contamination of the facility and environment, facilitate eventual decommissioning, and minimize generation of radioactive waste; CLI-12-2, 75 NRC 63 (2012)
- if case-specific challenges to the waste confidence rule are appropriate for consideration, normal procedural rules will apply; CLI-12-16, 76 NRC 63 (2012)
- postponing choice between several options for radioactive waste management, each of which is concretely stated and compliant with 10 C.F.R. 52.79(a), does not violate the regulation; LBP-11-31, 74 NRC 643 (2011)
- should the Commission determine at a future time that case-specific waste confidence challenges are appropriate for consideration, normal procedural rules will apply; LBP-13-1, 77 NRC 57 (2013)
- to the extent NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-12-16, 76 NRC 63 (2012)
- ### RADIOACTIVE WASTE STORAGE
- absent a licensed low-level radioactive waste disposal facility that will accept waste from the proposed facility, it is reasonably foreseeable that low-level radioactive waste generated by normal operations will be stored at the site for a longer term than is currently envisioned in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011); LBP-12-4, 75 NRC 213 (2012)
- as an exercise of the Commission's inherent supervisory authority over NRC adjudications, it directs that waste storage and any related contentions be held in abeyance pending further order; LBP-13-8, 78 NRC 1 (2013); LBP-13-13, 78 NRC 246 (2013); LBP-14-6, 79 NRC 404 (2014)
- Atomic Energy Act does not, as a prerequisite to licensing, require a finding of reasonable assurance that highly hazardous and long-lived radioactive materials can be disposed of safely; CLI-15-4, 81 NRC 221 (2015)
- challenges to a combined license applicant's failure to provide information on long-term storage of Greater-Than-Class-C radioactive waste are outside the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)
- combined license applications contain information pertaining to how applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 213 (2012)
- combined license applications must provide a level of information on plans to manage and store low-level radioactive waste onsite sufficient to enable the Commission to conclude that the application will comply with 10 C.F.R. Part 20; CLI-11-10, 74 NRC 251 (2011)
- contention concerning temporary storage and ultimate disposal of nuclear waste was held in abeyance pending further order from the Commission; LBP-14-7, 79 NRC 451 (2014)
- contentions challenging the ability of combined license applicants to handle onsite storage of Classes B and C low-level radioactive waste, as well as the attendant potential environmental impacts of such storage in the wake of the closure of the Barnwell facility in South Carolina to states outside of the Atlantic Compact are admissible; LBP-11-6, 73 NRC 149 (2011)
- level of low-level radioactive waste storage information required by 10 C.F.R. 52.79(a)(3) is tied to the combined license applicant's particular plans for compliance through design, operational organization, and procedures; LBP-12-4, 75 NRC 213 (2012)
- mere existence of a letter of intent to ship low-level radioactive waste to a disposal facility does not answer questions as to whether such a plan will ultimately result in a transfer of LLRW title and permanent offsite disposition of the LLRW and whether nontransfer of title will result in environmental impacts; LBP-11-6, 73 NRC 149 (2011)

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NRC failed to comply with the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-14-8, 80 NRC 71 (2014)

NRC will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the D.C. Circuit's remand is appropriately addressed; LBP-13-13, 78 NRC 246 (2013)

questions of safety impacts of onsite low-level waste storage are largely site- and design-specific, and appropriately decided in an individual licensing proceeding; LBP-12-4, 75 NRC 213 (2012)

regarding waste confidence, NRC failed to comply with the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-14-3, 79 NRC 31 (2014)

rule concerning storage and disposal of high-level waste is vacated and the issue remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to support the Commission's conclusions or a site-specific environmental impact statement in all relevant proceedings; LBP-13-13, 78 NRC 246 (2013)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)

scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that is tied to applicant's particular plans for compliance through, but not necessarily the details of, design, operational organization, and procedures associated with any contingent long-term LLRW facility; LBP-12-4, 75 NRC 213 (2012)

section 52.79(a)(3) specifies no quantity or time restrictions relative to onsite storage of LLRW; LBP-12-4, 75 NRC 213 (2012)

should the Commission determine at a future time that case-specific challenges to waste confidence are appropriate for consideration, normal procedural rules will apply; LBP-14-6, 79 NRC 404 (2014)

there is a longstanding agency recognition of the availability of the mechanisms under 10 C.F.R. 50.59 or 50.90 for obtaining authorization to construct additional onsite LLRW storage facilities; LBP-12-4, 75 NRC 213 (2012)

waste confidence undergirds new reactor licensing and power reactor license renewal; CLI-14-8, 80 NRC 71 (2014)

whether offsite low-level radioactive waste storage and disposal facilities will ultimately be available is not material to summary disposition because applicant's FSAR provides an adequate contingency plan for long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available; LBP-12-4, 75 NRC 213 (2012)

See also Continued Storage Rule

RADIOACTIVE WASTE, HIGH-LEVEL

Atomic Energy Act does not, as a prerequisite to licensing, require a finding of reasonable assurance that highly hazardous and long-lived radioactive materials can be disposed of safely; CLI-15-4, 81 NRC 221 (2015)

challenges to a combined license applicant's failure to provide information on long-term storage of Greater-Than-Class-C radioactive waste are outside the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)

Commission sensibly has chosen to address high-level waste disposal generically rather than unnecessarily to revisit the same waste disposal questions, license by license, when reviewing individual applications; LBP-14-16, 80 NRC 183 (2014)

generic approach to high-level waste disposal has been endorsed by higher courts; LBP-14-16, 80 NRC 183 (2014)

NRC is not required to conduct a rulemaking proceeding or to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely; CLI-15-4, 81 NRC 221 (2015)

NRC's current rule concerning the storage and disposal of high-level waste was remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to support the Commission's conclusions or site-specific environmental impact statements in all relevant proceedings; LBP-12-21, 76 NRC 218 (2012)

relationship between the uranium enrichment facility's product and production of high-level waste is too attenuated to show the requirement of a reasonably close causal relationship required by NEPA; LBP-12-21, 76 NRC 218 (2012)

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rule concerning storage and disposal of high-level waste is vacated and the issue remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to support the Commission's conclusions or a site-specific environmental impact statement in all relevant proceedings; LBP-13-13, 78 NRC 246 (2013)

RADIOACTIVE WASTE, LOW-LEVEL

absent a licensed LLRW disposal facility that will accept waste from the proposed facility, it is reasonably foreseeable that low-level radioactive waste generated by normal operations will be stored at the site for a longer term than is currently envisioned in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011); LBP-12-4, 75 NRC 213 (2012)

applicant's FSAR must identify particular plans pertaining to design, operational organization, and procedures that demonstrate how it intends to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 including, but not limited to, LLRW handling and storage; LBP-12-4, 75 NRC 213 (2012)

because petitioner fails to show that the possibility of site inundation is based on new and materially different information added to the environmental report as part of applicant's revised low-level radioactive waste management plan or identify any new and materially different information on which its site-inundation argument is based, its argument is not timely; LBP-12-7, 75 NRC 503 (2012)

categorical exclusion from the NEPA requirement to prepare an environmental assessment or environmental impact statement for the issuance of import licenses involving low-level radioactive waste is provided; CLI-11-3, 73 NRC 613 (2011)

combined license applications must provide a level of information on plans to manage and store LLRW onsite sufficient to enable the Commission to conclude that the application will comply with 10 C.F.R. Part 20; CLI-11-10, 74 NRC 251 (2011)

contentions challenging the ability of combined license applicants to handle onsite storage of Classes B and C LLRW, as well as the attendant potential environmental impacts of such storage in the wake of the closure of the Barnwell facility in South Carolina to states outside of the Atlantic Compact are admissible; LBP-11-6, 73 NRC 149 (2011)

decommissioning funding requirements encompass costs of low-level waste burial; CLI-15-8, 81 NRC 500 (2015)

depleted uranium and the other waste generated by uranium enrichment facilities are not spent fuel, transuranic waste, or 11e(2) byproduct material or specific kinds of wastes such as irradiated fuel and the liquid and solid wastes resulting from the processing of irradiated fuel, and thus are classified as low-level waste; LBP-12-21, 76 NRC 218 (2012)

discretionary hearing to discuss policy issues related to import of foreign low-level radioactive waste and domestic incineration and transportation issues is not warranted because these issues are either challenges to the Commission's regulations or are outside the scope of the proceeding; CLI-11-3, 73 NRC 613 (2011)

key action that will allow incineration of imported low-level-radioactive waste material is the domestic license authorizing such processing, not NRC's grant of an import license; CLI-11-3, 73 NRC 613 (2011)

level of LLRW storage information required by 10 C.F.R. 52.79(a)(3) is tied to the combined license applicant's particular plans for compliance through design, operational organization, and procedures; LBP-12-4, 75 NRC 213 (2012)

LLRW is defined as radioactive material that is not high-level radioactive waste, spent nuclear fuel, or byproduct material and that NRC classifies as LLRW; LBP-12-4, 75 NRC 213 (2012); LBP-12-21, 76 NRC 218 (2012)

mere existence of a letter of intent to ship low-level radioactive waste to a disposal facility does not answer questions as to whether such a plan will ultimately result in a transfer of LLRW title and permanent offsite disposition of the LLRW and whether nontransfer of title will result in environmental impacts; LBP-11-6, 73 NRC 149 (2011)

motion for summary disposition is granted because there is no genuine issue or dispute as to any material fact and applicant's low-level radioactive waste plan satisfies the requirements of 10 C.F.R. 52.79(a); LBP-11-31, 74 NRC 643 (2011)

NRC divides LLRW into three classes, A, B, and C, based on the concentration and types of long-lived and short-lived radionuclides; LBP-12-4, 75 NRC 213 (2012); LBP-12-7, 75 NRC 503 (2012)

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questions of safety impacts of onsite low-level waste storage are largely site- and design-specific, and appropriately decided in an individual licensing proceeding; LBP-12-4, 75 NRC 213 (2012)

scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that is tied to applicant's particular plans for compliance through, but not necessarily the details of, design, operational organization, and procedures associated with any contingent long-term LLRW facility; LBP-12-4, 75 NRC 213 (2012)

section 52.79(a)(3) specifies no quantity or time restrictions relative to onsite storage of LLRW; LBP-12-4, 75 NRC 213 (2012)

state reviewed the applications and the authorizations and found no technical reason to prohibit processing of imported waste; CLI-11-3, 73 NRC 613 (2011)

there is a longstanding agency recognition of the availability of the mechanisms under 10 C.F.R. 50.59 or 50.90 for obtaining authorization to construct additional onsite LLRW storage facilities; LBP-12-4, 75 NRC 213 (2012)

whether offsite LLRW storage and disposal facilities will ultimately be available is not material to summary disposition because applicant's FSAR provides an adequate contingency plan for long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available; LBP-12-4, 75 NRC 213 (2012)

RADIOACTIVITY

determination expressly required by the text "further reductions in residual radioactivity . . . were not being made because the residual levels associated with restricted conditions are ALARA" in 10 C.F.R. 20.1403 is an inquiry that focuses on how far it is possible, on a cost-effective basis, to further reduce the "residual levels"; CLI-13-6, 78 NRC 155 (2013)

"further reductions" in 10 C.F.R. 20.1403(a) necessarily refers to further reductions from the level of residual radioactivity that a licensee proposes to leave in place under its proposed restricted-release decommissioning plan; CLI-13-6, 78 NRC 155 (2013)

licensees, in determining whether levels are ALARA, are to consider detriments, such as traffic accidents; CLI-13-6, 78 NRC 155 (2013)

one of the benefits of removing enough radioactivity to cross the 25-mrem threshold is that the value of the affected property is likely to increase, and it is in this sense that NRC guidelines contemplate, as part of the ALARA analysis, a comparison between restricted release and unrestricted release; CLI-13-6, 78 NRC 155 (2013)

"reductions in residual radioactivity" refers only to dose reductions to the public that can be accomplished solely through the steps associated with unrestricted-release decommissioning, i.e., removal of contaminated material or decontamination; CLI-13-6, 78 NRC 155 (2013)

"residual levels," as used in the phrase "were not being made because the residual levels . . . are ALARA," in 10 C.F.R. 20.1403(a) refers back to, and is shorthand for, the term "residual radioactivity" used earlier in the introductory language; CLI-13-6, 78 NRC 155 (2013)

"residual radioactivity" is defined as radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control; CLI-13-6, 78 NRC 155 (2013)

RADIOGRAPHER

licensee is banned from engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations and must complete a formal radiation safety officer training course; LBP-15-21, 82 NRC 1 (2015)

"radiographer's assistant," is defined in 10 C.F.R. 34.3; LBP-15-21, 82 NRC 1 (2015)

RADIOGRAPHIC DEVICE STORAGE

choosing to store a radiographic exposure device at a facility that did not comply with NRC security requirements and was not an authorized storage location under the license is considered deliberate misconduct; LBP-14-11, 80 NRC 125 (2014)

RADIOGRAPHY

except for ownership of NRC-licensed materials outlined in the settlement agreement, licensee will refrain from engaging in conducting radiography or a radiographer's duties, or assisting, directing, or supervising such activities in an NRC jurisdiction under an NRC license or an agreement state license; LBP-11-3, 73 NRC 81 (2011)

licensee is required to submit a license transfer application to NRC; CLI-14-5, 79 NRC 254 (2014)

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RADIOLOGICAL CONTAMINATION

- areas of minor radioactive contamination are evaluated and remediated as needed during plant decommissioning; DD-11-1, 73 NRC 7 (2011)
- dose limits from tritium in groundwater for individual members of the public were never approached; DD-11-1, 73 NRC 7 (2011)
- NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the ALARA dose objectives; DD-11-1, 73 NRC 7 (2011)
- objective of decommissioning is to reduce residual radioactivity in structures, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that nuclide; CLI-13-1, 77 NRC 1 (2013)
- petition requesting that the NRC not allow restart after scheduled refueling outage until completion of all environmental remediation work and relevant reports on leaking tritium at the plant is denied; DD-11-1, 73 NRC 7 (2011)
- petitioner fails to demonstrate that the issue of radiation dispersal due to site inundation is material to the findings the NRC must make to support approving a combined license application; LBP-12-7, 75 NRC 503 (2012)
- “unrestricted use” means that, from a radiological standpoint, no hazards exist at the site, the license can be terminated, and the site can be considered an unrestricted area; CLI-13-1, 77 NRC 1 (2013)

RADIOLOGICAL EXPOSURE

- ALARA is defined as every reasonable effort to maintain exposures to radiation as far below the dose limits in Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken; CLI-11-12, 74 NRC 460 (2011)
- combined license applications must include kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20; LBP-12-4, 75 NRC 213 (2012)
- dose limits for individual members of the public are 100 millirem in a year the As Low As Is Reasonably Achievable (ALARA) dose objectives specified in 10 C.F.R. 50, Appendix I; DD-11-3, 73 NRC 375 (2011)
- dose limits from tritium in groundwater for individual members of the public were never approached; DD-11-1, 73 NRC 7 (2011)
- final safety analysis report must include information regarding the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in Part 20; LBP-11-6, 73 NRC 149 (2011)
- if institutional controls fail and engineered barriers have degraded over a period of time, the dose to a member of the public will not exceed 100 mrem per year, or 500 mrem per year under certain circumstances, and is as low as reasonably achievable; CLI-11-12, 74 NRC 460 (2011)
- it is permissible for the final safety analysis report to give applicant several options for controlling and limiting radioactive effluents and radiation exposures, provided that each option is described with a level of information sufficient to enable the Commission to reach a final conclusion; LBP-11-31, 74 NRC 643 (2011)
- limit for individual members of the public from a licensed activity is a total effective dose equivalent of 100 millirem per year; CLI-11-12, 74 NRC 460 (2011)
- mere potential exposure to minute doses of radiation within regulatory limits does not constitute a distinct and palpable injury on which standing can be founded; CLI-11-3, 73 NRC 613 (2011)
- NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the ALARA dose objectives; DD-11-1, 73 NRC 7 (2011)
- small doses of radiation below dose limits, while safe and acceptable, may have some associated risk and should be reduced below limits when reasonable; CLI-11-12, 74 NRC 460 (2011)

RADIOLOGICAL MONITORING

- applicant's measurements and monitoring program is subject to scrutiny; LBP-11-26, 74 NRC 499 (2011)
- license amendment to eliminate numerous detailed procedures for monitoring routine radioactive releases from the technical specifications and transfer them to a licensee-controlled document would allow

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licensee to make future changes to the radiation monitoring procedures without going through another license amendment; LBP-12-25, 76 NRC 540 (2012)

Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 499 (2011)

petitioners' reliance on loss of future opportunities to challenge by adjudicatory intervention licensee-initiated changes in the low-level effluent monitoring details fell short of an admissible contention; LBP-12-25, 76 NRC 540 (2012)

Staff guidance documents outline acceptable methods for designing a radiological monitoring program and submitting required semiannual reports specifying principal radionuclide releases to unrestricted areas for the purpose of estimating maximum potential annual public doses from such releases; LBP-11-26, 74 NRC 499 (2011)

Staff guidance documents set forth information that should be provided in the environmental report and the environmental impact statement regarding a radiological monitoring program and monitoring program acceptance criteria; LBP-11-26, 74 NRC 499 (2011)

through the regulatory process, which includes plant inspections, notice and guidance to licensees, and enforcement actions, NRC takes a host of measures to improve the ability to timely detect and correct inadvertent leaks to assure compliance with public dose limits; LBP-11-2, 73 NRC 28 (2011)

uranium enrichment facility licensee must survey radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits in section 20.1301 for individual members of the public; LBP-12-21, 76 NRC 218 (2012)

uranium enrichment facility licensee's radiological surveys must be as necessary and reasonable for compliance, and must include magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiological hazards; LBP-12-21, 76 NRC 218 (2012)

RADON EMISSIONS

Environmental Protection Agency regulates radon; LBP-15-16, 81 NRC 618 (2015)

REACTOR CONTROL RODS

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)

request for immediate action on flaws in the control rod drive mechanisms did not meet the criteria for review; DD-15-3, 81 NRC 713 (2015)

REACTOR COOLING SYSTEMS

wear of steam generator tubes is of critical importance to evaluations performed in the final safety analysis report, because the tubes are part of the reactor coolant pressure boundary, and assurance of their integrity is required; LBP-13-7, 77 NRC 307 (2013)

REACTOR DESIGN

all environmental issues concerning severe accident mitigation design alternatives associated with the information in NRC's final environmental assessment for certified reactor design are deemed resolved for plants whose site parameters are within those specified in the technical support document; LBP-11-7, 73 NRC 254 (2011)

applicant has described the kinds and quantities of radioactive materials expected to be produced in the operation to the extent its combined license application references a standardized design; LBP-11-6, 73 NRC 149 (2011)

applicants may incorporate a certified reactor design in a combined license application; LBP-11-10, 73 NRC 424 (2011)

challenging features of the API1000 standard design is a matter for a design certification rulemaking, not a combined license proceeding; CLI-11-8, 74 NRC 214 (2011)

combined license applicant may reference a docketed-but-not-yet-certified design in its application, but does so at its own risk; CLI-12-9, 75 NRC 421 (2012); LBP-11-10, 73 NRC 424 (2011)

combined license applicant will have to demonstrate that the site-specific parameters are bounded by the parameters developed for the certified design; LBP-11-10, 73 NRC 424 (2011)

each combined license applicant will have to determine whether it will adopt in toto the certified design, or whether it will take exemptions thereto and/or departures therefrom; LBP-11-10, 73 NRC 424 (2011)

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- exemption from any part of a referenced design certification rule may be granted if NRC determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with 10 C.F.R. 52.63 if there are no applicable exemption provisions in the referenced design certification rule; LBP-11-10, 73 NRC 424 (2011)
- exemption requests are subject to the same level of litigation as other issues that could be admissible in a combined license proceeding; LBP-11-10, 73 NRC 424 (2011)
- General Design Criteria require that the reactor exhibit a negative void coefficient in the power operating range; LBP-12-12, 75 NRC 742 (2012)
- grants of exemptions from referenced design certification rules are conditioned on the Commission's finding that the request complies with section 52.7 and that the special circumstances provided for section 52.7 outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; LBP-11-10, 73 NRC 424 (2011)
- See also Design Certification
- REACTOR OPERATION**
- upon docketing of certifications of permanent shutdown and fuel removal, licensee's licenses no longer authorize operation of the reactors or placement or retention of fuel into the reactor vessels and licensee is prohibited from restarting or loading fuel; DD-15-7, 82 NRC 257 (2015)
- REACTOR OPERATOR EXAMINATIONS**
- applicant must pass both the written examination and the operating test and meet the other requirements specified in 10 C.F.R. Part 55; LBP-13-3, 77 NRC 82 (2013)
- applicant who passes both a written examination and operating test and meets the other requirements specified in 10 C.F.R. Part 55 will be eligible to receive senior reactor operator license; LBP-13-5, 77 NRC 233 (2013)
- because agency practice is one indicator of how the agency interprets regulations, a consistently held NRC Staff view on an operator testing policy matter will not be disturbed; LBP-14-2, 79 NRC 131 (2014)
- goal of senior reactor operator tests is to determine whether applicant's level of knowledge and understanding meet the minimum requirements to safely operate the facility for which the license is sought; LBP-14-2, 79 NRC 131 (2014)
- if an examiner is assigned to a reactor operator examination that might appear to present a conflict of interest, the examiner shall inform his or her immediate supervisor of the potential conflict; LBP-14-2, 79 NRC 131 (2014)
- licensing boards have limited their review of NRC Staff reactor operator licensing decisions to those issues that were resolved against the license applicant in the Staff's informal review; LBP-14-2, 79 NRC 131 (2014)
- NRC regional office has the discretion to grant a waiver for retesting on a passed test for a senior reactor operator applicant who has failed only one part of the test if it determines that sufficient justification is presented; LBP-14-2, 79 NRC 131 (2014)
- NRC regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicant's retake operating test; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff acted inconsistently with its own guidance and applied that guidance in an inconsistent manner when it denied a senior reactor operator license; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff cannot defend its decision on a basis inconsistent with its own informal review; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff improperly discharges its duties with respect to the grading of an operating test if the grading is inappropriate or unjustified or if the grading strays too far afield of the twin goals of equitable and consistent examination administration, thus becoming arbitrary or an abuse of discretion; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff may not take a position or assert facts before the presiding officer contrary to a matter decided by the appeal board (i.e., the Staff itself) on applicant's informal appeal absent an explicit confession of error; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff's decision at the conclusion of its administrative reviews is the final Staff position and hence the only Staff position open to applicant to challenge before the presiding officer; LBP-14-2, 79 NRC 131 (2014)

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- NUREG-1021 criteria that apply to the preparation of written reactor operator examinations and operating tests are binding upon NRC Staff; LBP-14-2, 79 NRC 131 (2014)
- NUREG-1021 includes conflict of interest provisions that address the assignment of examiners to an examination team; LBP-14-2, 79 NRC 131 (2014)
- NUREG-1021 is intended to ensure equitable and consistent administration of examinations for all applicants; LBP-14-2, 79 NRC 131 (2014)
- NUREG-1021 provides that NRC's regional offices shall obtain approval from the Office of Nuclear Reactor Regulation operator licensing program office before knowingly deviating from the intent of any of the NUREG-1021 standards; LBP-14-2, 79 NRC 131 (2014)
- NUREG-1021 specifies NRC Staff policies, procedures, and practices for administering reactor operator initial and requalification written examinations and operating tests, listing goals and specific procedures for preparation, administration, and grading; LBP-14-2, 79 NRC 131 (2014)
- pursuant to 10 C.F.R. 55.40, NRC Staff shall use the criteria in NUREG-1021 in effect 6 months before the examination date to prepare written reactor operator examinations required by sections 55.41 and 55.43 and the operating tests required by section 55.45; LBP-14-2, 79 NRC 131 (2014)
- senior reactor operator license applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused from reexamination on the portions of the examination or test that applicant has passed; LBP-13-3, 77 NRC 82 (2013); LBP-14-2, 79 NRC 131 (2014)
- senior reactor operator license applicant who was denied a license after the first examination may elect to retake the tests; LBP-14-2, 79 NRC 131 (2014)
- to obtain a senior reactor operator license, applicant must pass both a written test and an operating test and meet the other requirements specified in Part 55; LBP-14-2, 79 NRC 131 (2014)
- under 10 C.F.R. 55.40, NRC Staff shall use NUREG-1021 to prepare and evaluate reactor operator licensing examinations; LBP-14-2, 79 NRC 131 (2014)
- when informed of a potential conflict, the supervisor of a reactor operator test examiner must apply sound judgment to the facts of each case and, if any doubt exists, consult with regional management and/or the NRR operator licensing program office to resolve the issue; LBP-14-2, 79 NRC 131 (2014)
- REACTOR OPERATOR LICENSE PROCEEDING**
- in the interest of expediting the further proceedings, hearing on senior operator license denial will be conducted under the provisions of Subpart L of the Commission's Rules of Practice; LBP-13-3, 77 NRC 82 (2013)
- proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to Part 55 may be conducted under the procedures of Subpart L; LBP-13-3, 77 NRC 82 (2013)
- section 2.309(f)(1) has no application to reactor operator licensee proceedings; LBP-13-3, 77 NRC 82 (2013)
- REACTOR OPERATOR LICENSING**
- applicant who passes both a written examination and operating test and meets the other requirements specified in 10 C.F.R. Part 55 will be eligible to receive senior reactor operator license; LBP-13-5, 77 NRC 233 (2013)
- applicants are subject to the satisfaction of other licensing requirements not considered in this special proceeding, such as health, that NRC Staff must assess before issuing a license; LBP-14-2, 79 NRC 131 (2014)
- in assessing whether applicant satisfies the burden of establishing that NRC Staff's determination of applicant's performance was inappropriate, unjustified, arbitrary, or an abuse of discretion, the board should consult NUREG-1021; LBP-14-2, 79 NRC 131 (2014)
- See also Senior Reactor Operator License
- REACTOR OPERATORS**
- any individual who manipulates the controls of any facility licensed under Parts 50, 52, or 54 of NRC's regulations is required to have an operator's license; LBP-14-2, 79 NRC 131 (2014)
- See also Senior Reactor Operator
- REACTOR PRESSURE VESSEL**
- alternate pressurized thermal shock rule is designed to enable all commercial PWR licensees to assess the state of their reactor pressure vessels relative to a new criterion without the need to make new material

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- property measurements, instead using only information that is currently available; LBP-15-17, 81 NRC 753 (2015)
- alternate screening criteria consist of eighteen different reference temperature limits that depend on RPV wall thickness and the part of the RPV under consideration; LBP-15-17, 81 NRC 753 (2015)
- application to use alternate pressurized thermal shock rule must contain an assessment of flaws in the RPV; LBP-15-17, 81 NRC 753 (2015)
- ASTM Standard E 185 anticipates that during the course of a nuclear power plant's life the surveillance capsule withdrawal schedule may need to be revised and allows and provides for such changes; LBP-15-20, 81 NRC 829 (2015)
- board has ample authority to ensure that evidence offered concerning microcracking is limited to that specific material issue and does not stray into issues outside the scope of the license amendment proceeding; LBP-15-20, 81 NRC 829 (2015)
- equivalent margins analysis must demonstrate that the calculated energy will provide margins of safety against fracture that are equivalent to those required by Appendix G of Section XI of the ASME Code; CLI-15-23, 82 NRC 321 (2015)
- if NRC does not approve continued operation based on licensee's safety analysis, licensee must request an opportunity to modify the RPV or related reactor systems to reduce the potential for failure of the reactor vessel due to pressurized thermal shock events; LBP-15-17, 81 NRC 753 (2015)
- if part of an RPV is expected to fall below the 50 ft-lb standard, licensee must demonstrate that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by the ASME Boiler and Pressure Vessel Code; LBP-15-20, 81 NRC 829 (2015)
- if the reference values projected at specific areas of the RPV for the end of life of the plant surpass the current screening criteria, licensee must submit a safety analysis and obtain NRC approval to continue to operate; LBP-15-17, 81 NRC 753 (2015)
- in calculating embrittlement reference temperatures, licensee must calculate neutron flux through the RPV using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases; LBP-15-17, 81 NRC 753 (2015)
- licensee is not required to collect additional surveillance data from the subject plant, but rather licensee must use any data that demonstrate the embrittlement trends for the materials, including surveillance programs at other plants with or without a surveillance program integrated under Part 50, Appendix H; CLI-15-22, 82 NRC 310 (2015)
- licensee must establish the nil-ductility reference temperature for the RPV material in the annealed state, before the reactor was operational for various key points along the RPV; LBP-15-17, 81 NRC 753 (2015)
- licensees have the option of demonstrating that values of Charpy upper-shelf energy below 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME BPV Code; LBP-15-20, 81 NRC 829 (2015)
- licensees must attach a particular number of surveillance capsules to specified areas within the reactor vessel, typically near the inside vessel wall at the beltline; LBP-15-20, 81 NRC 829 (2015)
- licensees seeking to use the updated methodology in 10 C.F.R. 50.61a must submit a license amendment request; CLI-15-22, 82 NRC 310 (2015)
- licensing actions that could increase reactor vessel embrittlement, such as license renewals, hold the potential for offsite consequences that are obvious; LBP-15-17, 81 NRC 753 (2015)
- long-term exposure to neutron radiation and elevated temperatures in a reactor vessel decrease the vessel materials' fracture toughness, or resistance to fracture; LBP-15-20, 81 NRC 829 (2015)
- material condition of a plant's reactor vessel obviously bears on the health and safety of those members of the public who reside in the plant's vicinity; LBP-15-20, 81 NRC 829 (2015)
- material surveillance programs provide material property data necessary to implement a regulatory scheme to protect reactor pressure vessels from failure due to withstand a pressurized thermal shock event; CLI-15-22, 82 NRC 310 (2015)
- materials in a reactor vessel must maintain a minimum level of 50 ft-lb of Charpy upper-shelf energy, which is a measurement of the amount of energy the material can absorb at high temperatures before it fractures and fails; LBP-15-20, 81 NRC 829 (2015)
- minimum frequency with which surveillance capsules must be tested is set by ASTM Standard E 185 (1982 version), which is incorporated into Appendix H; LBP-15-20, 81 NRC 829 (2015)

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- neutron radiation embrittlement of reactor pressure vessel walls, decreasing their fracture toughness, is discussed; LBP-15-17, 81 NRC 753 (2015)
- NRC must preapprove the schedule for removing material samples from the reactor vessel; LBP-15-17, 81 NRC 753 (2015)
- petitioners are not barred from contending that additional testing is necessary to show margins of safety equivalent to those of the ASME BPV Code, Section XI, Appendix G because the petitioners allege noncompliance with 10 C.F.R. Part 50, Appendix G and not Appendix H; LBP-15-20, 81 NRC 829 (2015)
- physical specimens must come from near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface; LBP-15-17, 81 NRC 753 (2015)
- pressurized water reactor pressure vessel surveillance program relies on physical material samples, also known as specimens, capsules, or coupons; LBP-15-17, 81 NRC 753 (2015)
- probabilistic embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data in a process called the consistency check; LBP-15-17, 81 NRC 753 (2015)
- reference temperature values are compared to the alternate screening criteria to determine whether the reactor pressure vessel is safe to operate; LBP-15-17, 81 NRC 753 (2015)
- request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)
- requirements of 10 C.F.R. 50.61 are compared with new rule in section 50.61a to predict future reference temperatures across the reactor pressure vessel; CLI-15-22, 82 NRC 310 (2015)
- surveillance data need not be obtained from the same reactor pressure vessel that is the subject of the license amendment; LBP-15-17, 81 NRC 753 (2015)
- surveillance data used in the consistency check need not come from the same reactor pressure vessel that is the subject of the license amendment request; CLI-15-22, 82 NRC 310 (2015)
- surveillance program to monitor pressurized water reactor pressure vessel is described; LBP-15-17, 81 NRC 753 (2015)
- temperature data from other plants are included, and licensees must consider these data under certain circumstances; CLI-15-22, 82 NRC 310 (2015)
- under normal plant conditions, materials at the beltline of the reactor pressure vessel must maintain Charpy upper-shelf energy of no less than 50 ft-lb (68 joules); CLI-15-23, 82 NRC 321 (2015)
- updated embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data; CLI-15-22, 82 NRC 310 (2015)
- when the reference temperature of an RPV is above the screening limit, the RPV is considered to have an unreasonably high risk of fracture from a pressurized thermal shock event; LBP-15-17, 81 NRC 753 (2015)
- REACTOR TRIP**
- root-cause determination following Virginia earthquake is described; DD-12-1, 75 NRC 573 (2012)
- REACTOR VESSEL**
- other than hypothesizing that there will be a failure of the nuclear reactor vessel because of increased stress brought by the proposed license amendment request, the contention does not provide sufficient information to show that a genuine dispute exists; LBP-11-29, 74 NRC 612 (2011)
- REACTORS**
- nuclear reactor is an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction; DD-13-3, 78 NRC 571 (2013)
- production and utilization facilities include nuclear power reactors; LBP-11-25, 74 NRC 380 (2011)
- See Boiling-Water Reactors; Economic Simplified Boiling Water Reactor
- REASONABLE ASSURANCE**
- applicant has the burden of providing reasonable assurance that the current licensing basis will be maintained throughout the renewal period; LBP-15-5, 81 NRC 249 (2015)
- applicant is required to show that safety features will fulfill their intended function, not that every structure will maintain its current licensing basis throughout the renewal period; LBP-15-5, 81 NRC 249 (2015)

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applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-14-1, 79 NRC 39 (2014)

applicant's strategic special nuclear material item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 39 (2014)

Atomic Energy Act does not, as a prerequisite to licensing, require a finding of reasonable assurance that highly hazardous and long-lived radioactive materials can be disposed of safely; CLI-15-4, 81 NRC 221 (2015)

basis of NRC Staff's reasonable assurance finding on combined license applicant's squib valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 63 (2012)

court directed NRC to determine whether there is reasonable assurance that an offsite storage solution will be available by the end of a reactor's license term, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates; CLI-15-4, 81 NRC 221 (2015)

given that legally binding monitoring and mitigation measures have been imposed via a certificate of compliance issued by the appropriate state and local agencies, board has reasonable assurance that these measures will be implemented and that these agencies will actively monitor and enforce appropriate compliance with these environmental monitoring and mitigation measures; LBP-13-4, 77 NRC 107 (2013)

if NRC concludes that an aging management program is consistent with the GALL Report, then it accepts applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance under section 54.29(a); CLI-12-5, 75 NRC 301 (2012); CLI-12-10, 75 NRC 479 (2012)

in context of a license renewal application, reasonable assurance is based on sound technical judgment of the particulars of a case and on compliance with NRC regulations; LBP-14-1, 79 NRC 39 (2014)

license renewal applicant's use of an aging management program identified in NUREG-1801, Generic Aging Lessons Learned Report, constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period; LBP-13-13, 78 NRC 246 (2013)

license transfer applicant must show reasonable assurance of sufficient funds to decommission the facility; CLI-15-8, 81 NRC 500 (2015)

licensee must show with reasonable assurance that its proposed methodology for material control and accounting will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public; CLI-15-9, 81 NRC 512 (2015)

NRC's long-continued regulatory practice of issuing operating licenses with an implied finding of reasonable assurance that safe permanent disposal of spent nuclear fuel can be available when needed is in accord with the intent of Congress underlying the Atomic Energy Act and Energy Reorganization Act; CLI-15-4, 81 NRC 221 (2015)

prior to license issuance, NRC must find reasonable assurance that activities authorized by the amendment can be conducted without endangering the health and safety of the public, and in compliance with Commission regulations; LBP-15-17, 81 NRC 753 (2015); LBP-15-20, 81 NRC 829 (2015)

sound technical judgment of the particulars of a case and compliance with NRC regulations are the basis for a finding of reasonable assurance, not quantification as equivalent to a 95% (or any other percent) confidence level; LBP-13-13, 78 NRC 246 (2013)

standard for aging management programs does not require a 95% confidence level of compliance; LBP-11-18, 74 NRC 29 (2011)

suspension of license renewal proceedings in light of the Fukushima accident is unnecessary because current regulatory and oversight processes provide reasonable assurance that each plant continues to comply with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-12-5, 75 NRC 301 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-8, 75 NRC 393 (2012)

there is a general overarching requirement that applicant's strategic special nuclear material item monitoring method be sufficiently accurate to provide reasonable assurance that the specific regulatory requirement is satisfied; LBP-14-1, 79 NRC 39 (2014)

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to authorize issuance of combined licenses, NRC must determine that applicable regulations have been met, there is reasonable assurance that the new reactors will be constructed and will operate in conformity with NRC regulations, and issuance of the licenses will not be inimical to the public health and safety; CLI-12-2, 75 NRC 63 (2012)

to grant a license renewal, NRC Staff must find that there is reasonable assurance that the effects of aging on relevant systems, structures, and components will be managed during the period of extended operation, that time-limited aging analyses have been identified for review, and that applicable environmental requirements have been met; LBP-15-6, 81 NRC 314 (2015)

to meet the reasonable assurance standard, applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-13-13, 78 NRC 246 (2013)

to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to testing program for squib valves; CLI-12-9, 75 NRC 421 (2012)

uranium enrichment facility applicant's commitment to monitoring and the corrective action program provides reasonable assurance that public health and safety will be protected and applicant has a program in compliance with the regulations; LBP-12-21, 76 NRC 218 (2012)

REASONABLENESS STANDARD

determination as to whether requests or petitions are filed in a timely manner shall be subject to a reasonableness standard and are not subject to the 30-day deadline applicable to motions by existing parties to add or amend contentions; LBP-15-6, 81 NRC 314 (2015)

for the purposes of the Equal Access to Justice Act, the government's position should be considered substantially justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact; LBP-11-8, 73 NRC 349 (2011)

government must demonstrate the reasonableness not only of its litigation position, but also of the agency's actions; LBP-11-8, 73 NRC 349 (2011)

justification "in substance or in the main" is equated with the "reasonable basis both in law and fact" standard that has been applied by a majority of federal appellate courts; LBP-11-8, 73 NRC 349 (2011)

legal standard governing the determination of substantial justification is separate and distinct from the legal standard used in assessing the merits phase of a proceeding; LBP-11-8, 73 NRC 349 (2011)

REBUTTABLE PRESUMPTION

in any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation ability of state and local emergency plans; LBP-11-6, 73 NRC 149 (2011); LBP-15-4, 81 NRC 156 (2015)

RECONSIDERATION

as a general matter, agency guidance should not be reconsidered in an application-specific proceeding; CLI-13-4, 77 NRC 101 (2013)

Commission authority to reconsider or clarify a decision, if needed, is inherent in its authority to render the decision in the first instance; CLI-14-1, 79 NRC 1 (2014)

party may seek reconsideration of an earlier ruling whereby the party was not actually prejudiced, where the ruling could well have an impact upon the course of many licensing hearings; CLI-15-6, 81 NRC 340 (2015)

See also Motions for Reconsideration

RECORD

"closed record" refers to a record developed at an evidentiary hearing; LBP-11-22, 74 NRC 259 (2011)

in a proceeding to be conducted under Subpart L, the evidentiary record is opened upon the filing of the first initial written statements of position and written testimony with supporting affidavits on the admitted contentions; LBP-11-22, 74 NRC 259 (2011)

RECORD OF DECISION

adjudicatory record, board decision, and any Commission appellate decisions become, in effect, part of the final environmental impact statement; CLI-11-6, 74 NRC 203 (2011); CLI-12-1, 75 NRC 39 (2012); CLI-15-6, 81 NRC 340 (2015); LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012)

agency's record of decision must include a concise discussion of mitigation measures; LBP-15-16, 81 NRC 618 (2015)

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as part of its environmental review, NRC Staff must prepare a Record of Decision to accompany any Commission decision on any action for which a final EIS has been prepared; LBP-13-13, 78 NRC 246 (2013)

at the time of its decision, each agency shall prepare a concise public record of decision; LBP-15-16, 81 NRC 618 (2015)

board may incorporate material from another agency's environmental impact statement, which was submitted in the hearing record, as part of the record of decision; CLI-15-6, 81 NRC 340 (2015)

board's ultimate NEPA judgments can be made on the basis of the entire adjudicatory record in addition to NRC Staff's final environmental impact statement; LBP-15-3, 81 NRC 65 (2015)

both the content of the draft environmental impact statement and the additional material submitted by the parties form part of the adjudicatory record; LBP-12-23, 76 NRC 445 (2012)

current licensing basis of an operating license shall continue during the license renewal period, but these conditions may be supplemented or amended as necessary to protect the environment during the term of the renewed license and will be derived from information contained in the supplement to the environmental report, as analyzed and evaluated in the ROD; LBP-11-17, 74 NRC 11 (2011)

environmental impact statement may be deemed modified by the hearing record because hearing procedures allow for additional and a more rigorous public scrutiny of the FSEIS than does the usual circulation for comment; CLI-15-6, 81 NRC 340 (2015)

fact-finding administrative body, such as a licensing board, with authority to develop an evidentiary record, is distinguished from reviewing adjudicatory and judicial bodies, generally with a more limited record-creating authority; LBP-15-3, 81 NRC 65 (2015)

federal courts of appeal have approved of the process by which an environmental impact statement is effectively amended through the adjudicatory process; LBP-14-9, 80 NRC 15 (2014)

final supplemental environmental impact statement is supplemented by the board's decision as well as by the hearing record; CLI-15-6, 81 NRC 340 (2015)

in an NRC adjudicatory proceeding, even if a board finds an environmental impact statement prepared by NRC Staff inadequate in certain respects, the board's findings, as well as the adjudicatory record, become, in effect, part of the final EIS; LBP-15-16, 81 NRC 618 (2015)

initial decision of the presiding officer or final decision of the Commissioners acting as a collegial body will constitute the record of decision; CLI-15-6, 81 NRC 340 (2015)

materials license suspension proceeding is not an adversary adjudication for purposes of the Equal Access to Justice Act because the Atomic Energy Act of 1954, as amended, does not require such a hearing to be on the record pursuant to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 349 (2011)

NRC must state whether the Commission has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted; LBP-12-18, 76 NRC 127 (2012)

NRC must summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-12-18, 76 NRC 127 (2012)

NRC Staff typically prepares the record of decision but when a hearing is held, the board's initial decision constitutes the record of decision as to those issues that were litigated during the hearing; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's final environmental impact statement, in conjunction with the adjudicatory record, becomes the relevant record of decision for the environmental portion of the proceeding; LBP-12-17, 76 NRC 71 (2012)

objectives of the NRC adjudicatory procedures and policies include producing an informed adjudicatory record that supports agency decisionmaking on public health and safety, the common defense and security, and the environment; LBP-15-20, 81 NRC 829 (2015)

once NRC completes its environmental review, its ROD must state whether NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted, and summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-11-17, 74 NRC 11 (2011)

overall record for the licensing action includes a complete analysis of the cultural resources; LBP-15-16, 81 NRC 618 (2015)

record of decision is required to summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-13-9, 78 NRC 37 (2013)

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record of licensing board evidentiary hearing on license transfer application must be certified to the Commission; CLI-15-26, 82 NRC 408 (2015)
relevant factors including economic and technical considerations among alternatives must be discussed; LBP-11-7, 73 NRC 254 (2011)
when NRC Staff prepares a final environmental impact statement, then, until a record of decision is issued, no action concerning the proposal may be taken by the Commission that would have an adverse environmental impact or limit the choice of reasonable alternatives; LBP-14-9, 80 NRC 15 (2014)

RECORDKEEPING

Department of Energy has independent records retention obligations regarding creation, management, and disposal of records; CLI-11-13, 74 NRC 635 (2011)
licensing boards lack authority to direct the Secretary's administrative activities regarding the handling of documents; CLI-11-13, 74 NRC 635 (2011)
recordkeeping or administrative procedures are categorically excluded from environmental review; LBP-15-24, 82 NRC 68 (2015)

REDRESSABILITY

both standing (redressability) and contention admissibility (scope) in the context of an NRC enforcement order are addressed; LBP-14-4, 79 NRC 319 (2014)
once parties demonstrate standing, they will then be free to assert any contention, which, if proven, will afford them the relief they seek; LBP-11-21, 74 NRC 115 (2011)
petitioner does not meet the redressability requirement for standing, because vacating the confirmatory orders would not ameliorate the injury of which petitioner complains; CLI-13-2, 77 NRC 39 (2013)
petitioner's averment that proffered environmental contentions will better position NRC to fully review the possible impacts of the proposed project and, based on petitioners and their experts' information, may address concerns and mitigate impacts to water, land, and other resources is sufficient to fulfill the redressability element of the standing requirement; CLI-12-12, 75 NRC 603 (2012); LBP-12-3, 75 NRC 164 (2012)

REDUNDANCY

means to ensure that a redundant train of safe-shutdown cables and equipment is free of fire damage in instances in which redundant trains are located in the same fire area outside of primary containment are described; DD-12-3, 76 NRC 416 (2012)

REFERRAL OF MOTION

Secretary of the Commission refers motions to reopen to the Atomic Safety and Licensing Board Panel pursuant to her authority; CLI-12-14, 75 NRC 692 (2012)

REFERRAL OF PROCEEDINGS

Commission refers a limited portion of the hearing request to the licensing board to determine whether petitioner has identified an NRC activity that requires an opportunity to request an adjudicatory hearing; CLI-15-14, 81 NRC 729 (2015)
referral to licensing board includes threshold issues such as standing, timeliness, and satisfaction of contention admissibility standards; CLI-15-14, 81 NRC 729 (2015)
scope of the referral is limited to whether NRC granted licensee greater authority than that provided by its existing licenses or otherwise altered the terms of its existing licenses thereby entitling petitioner to an opportunity to request a hearing; CLI-15-14, 81 NRC 729 (2015)

REFERRAL OF RULING

board denies petition for rule waiver but refers the decision to the Commission because the legal issue presented by the petition is novel and worthy of the Commission's immediate attention; LBP-13-1, 77 NRC 57 (2013)
boards are authorized to refer a ruling to the Commission if the board determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity; CLI-11-11, 74 NRC 427 (2011); LBP-11-32, 74 NRC 654 (2011)
boards are encouraged to refer rulings that raise significant and novel legal or policy issues, the resolution of which would materially advance the orderly disposition of the proceeding; CLI-12-13, 75 NRC 681 (2012)
boards may make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental,

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or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer; LBP-14-9, 80 NRC 15 (2014)

licensing board refers ruling that applicant has no legal duty to supplement an originally compliant environmental report to incorporate new and significant information that arises after the ER was duly submitted; LBP-11-32, 74 NRC 654 (2011)

licensing boards are the appropriate finders of fact in most circumstances, and referral of a matter for a fact-specific dispute occurs in the ordinary course of business; CLI-13-9, 78 NRC 551 (2013)

piecemeal review of licensing board decisions is disfavored, but boards may refer rulings that, although interlocutory, raise significant and novel legal or policy issues or require Commission resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 199 (2013)

where petitioner has successfully made a prima facie showing for rule waiver, the board shall, before ruling on the petition, certify the matter directly to the Commission, and the Commission shall determine whether to grant or deny the waiver request; LBP-13-1, 77 NRC 57 (2013)

REFERRED RULINGS

Commission decision to decline review of a referred question does not constitute an endorsement of the board's views on the question of an applicant's duty to supplement its environmental report; CLI-12-13, 75 NRC 681 (2012)

prior to its revision, 10 C.F.R. 2.341(f)(1) required that the referred ruling raise a significant and novel legal or policy issue and necessitate resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 199 (2013)

referred rulings or certified questions must raise significant and novel legal or policy issues or issues whose early resolution would materially advance the orderly disposition of the proceeding; CLI-15-1, 81 NRC 1 (2015)

REFUELING OUTAGES

because irradiated fuel is continually present in the spent fuel pool once the reactor discharges the first batch of spent fuel, and conditions are most challenging during reactor shutdown for refueling, maintenance of equipment related to the safe storage of spent fuel is typically addressed as part of shutdown risk management; DD-13-3, 78 NRC 571 (2013)

REGULATIONS

absent a waiver, no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-12-19, 76 NRC 377 (2012); CLI-15-1, 81 NRC 1 (2015); CLI-15-19, 82 NRC 151 (2015); LBP-11-2, 73 NRC 28 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-12-24, 76 NRC 503 (2012); LBP-13-9, 78 NRC 37 (2013); LBP-13-12, 78 NRC 239 (2013); LBP-15-4, 81 NRC 156 (2015); LBP-15-5, 81 NRC 249 (2015); LBP-15-6, 81 NRC 314 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-24, 82 NRC 68 (2015)

agencies must abide by their own regulations; LBP-14-4, 79 NRC 319 (2014); LBP-15-17, 81 NRC 753 (2015)

agencies shall use the criteria for scope in section 1508.25 to determine which proposals shall be the subject of a particular impact statement; LBP-14-6, 79 NRC 404 (2014)

alternate pressurized thermal shock rule provides measures for ongoing reporting; LBP-15-17, 81 NRC 753 (2015)

apparent gaps in 10 C.F.R. 50.54(hh)(2) are outlined; LBP-11-21, 74 NRC 115 (2011)

applicant seeking an exemption should clearly describe any exemptions or authorizations of an unusual nature and adequately justify them for the NRC's consideration; LBP-11-11, 73 NRC 455 (2011)

ASME Code for Operation and Maintenance of Nuclear Power Plants is incorporated by reference; CLI-12-9, 75 NRC 421 (2012)

Atomic Energy Act and National Environmental Policy Act and the regulations promulgated under each must be viewed in pari materia; LBP-14-9, 80 NRC 15 (2014)

authority empowering a licensing board to impose sanctions is found in 10 C.F.R. 2.314(c) and 2.319; LBP-13-2, 77 NRC 71 (2013)

basic regulatory framework that governs the licensing of an entity to construct and operate an enrichment facility is found in 10 C.F.R. Part 70, but Parts 19, 20, 21, 25, 30, 40, 51, 71, 73, 74, 95, 140, 170, 171, are also applicable; LBP-11-11, 73 NRC 455 (2011)

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board is prohibited from imposing restrictions on the use of 10 C.F.R. 50.61a that go beyond the requirements in the regulation; CLI-15-22, 82 NRC 310 (2015)

boards are precluded from hearing rule challenges absent a showing of special circumstances; LBP-14-9, 80 NRC 15 (2014)

boards cannot prohibit what regulations allow except under specific conditions; LBP-15-17, 81 NRC 753 (2015)

challenges to NRC rules and regulations are generally prohibited with limited exceptions in view of expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis on rulemaking proceedings as the appropriate forum for settling basic policy issues; CLI-13-7, 78 NRC 199 (2013)

COL application included a request for a departure from the wet-bulb noncoincident temperature, which is considered Tier 1 information and part of the certified design, and thus a regulatory exemption is required; CLI-12-9, 75 NRC 421 (2012)

collateral challenge to NRC emergency response data system rule is inadmissible; CLI-15-20, 82 NRC 211 (2015)

contention contesting adequacy of licensee's equivalent margins analysis is not a challenge to 10 C.F.R. Part 50, Appendix H; LBP-15-20, 81 NRC 829 (2015)

contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; CLI-15-19, 82 NRC 151 (2015); LBP-13-6, 77 NRC 253 (2013); LBP-15-24, 82 NRC 68 (2015)

contention that regulatory provisions are themselves insufficient to protect the public health and safety constitutes an improper collateral attack upon NRC regulations; LBP-15-4, 81 NRC 156 (2015)

contentions calling for requirements in excess of those imposed by NRC regulations will be rejected as a collateral attack on the regulations; CLI-12-5, 75 NRC 301 (2012); LBP-15-4, 81 NRC 156 (2015)

contentions challenging existing NRC safety regulations are barred from consideration in adjudicatory proceedings; LBP-12-18, 76 NRC 127 (2012)

contentions on Category 1 issues amount to a challenge to the regulation barring challenges to generic environmental findings; CLI-12-19, 76 NRC 377 (2012)

contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking are inadmissible; LBP-13-6, 77 NRC 253 (2013)

Council on Environmental Quality and the Advisory Council on Historic Preservation regulations provide guidance on agency compliance with NEPA and are not binding on NRC when the agency has not expressly adopted them, but are entitled to considerable deference; LBP-15-16, 81 NRC 618 (2015)

Council on Environmental Quality Guidance does not change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable, and some courts have declined to defer to it; LBP-12-23, 76 NRC 445 (2012)

Council on Environmental Quality regulations receive substantial deference from federal courts; LBP-12-17, 76 NRC 71 (2012)

demonstration that application of a regulation is not necessary to achieve its underlying purpose is listed as a special circumstance warranting an exemption; CLI-12-9, 75 NRC 421 (2012)

dissatisfaction with regulatory requirements of 10 C.F.R. 50.75 are outside an enforcement petition; DD-11-4, 73 NRC 713 (2011)

environmental impacts of continued storage have been incorporated into the environmental impact statements at issue in the proceedings by operation of law; CLI-15-10, 81 NRC 535 (2015)

exception to the general rule that NRC regulations are not subject to challenge in adjudicatory proceedings is provided; CLI-11-11, 74 NRC 427 (2011)

exemption from a regulation will be granted if application of the regulation in the particular circumstances conflicts with other NRC rules or requirements, would not serve or is not necessary to achieve the underlying purpose of the rule, would result in undue hardship or other costs, would not be a benefit to public health and safety, would provide only temporary relief, or there is present any other material circumstance not considered when the regulation was adopted; LBP-11-10, 73 NRC 424 (2011)

exemption from a regulation will be granted when the request is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; LBP-11-10, 73 NRC 424 (2011)

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focus of the license renewal regulations in 10 C.F.R. Part 54 is to ensure that licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; CLI-15-6, 81 NRC 340 (2015)

if actions are reasonably foreseeable future actions within the meaning of 40 C.F.R. 1508.7, the CEQ regulations require that they be included in a cumulative impact analysis; LBP-14-6, 79 NRC 404 (2014)

in implementing its NEPA obligations, NRC expressly adopts certain definitions promulgated by the Council on Environmental Quality; LBP-11-7, 73 NRC 254 (2011)

in issuing the suspension of final licensing decisions in proceedings, NRC recognized that it could not move forward without first addressing the D.C. Circuit's remand because the vacatur left a regulatory gap in the Part 51 regulations that undergird licensing reviews in those matters; CLI-14-7, 80 NRC 1 (2014)

intervenor may not impose an additional requirement that is not present in a regulation; CLI-11-9, 74 NRC 233 (2011)

intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 512 (2015)

it is not the role of licensing boards to review and reconsider the wisdom of the Commission's regulations; LBP-13-12, 78 NRC 239 (2013)

latest edition and addenda of the ASME Boiler and Pressure Vessel Code has been incorporated by reference in 10 C.F.R. 50.55a(b)(2); LBP-15-20, 81 NRC 829 (2015)

licensing board lacks authority to hold a hearing on the adequacy of a different agency's regulations; LBP-15-5, 81 NRC 249 (2015)

licensing boards should not accept in individual license proceedings contentions that are, or are about to become, the subject of general rulemaking by the Commission; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

limited grounds for creation of exemptions are inherent in the administrative process, and agencies may use equitable discretion to afford case-by-case treatment, taking into account circumstances peculiar to individual parties in the application of a general rule or even in appropriate cases to grant dispensation from the rule's operation; CLI-13-1, 77 NRC 1 (2013)

NEPA regulations do not apply to any environmental effects that NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations; LBP-12-12, 75 NRC 742 (2012)

nonpower reactors, including research and test reactors, differ as a class from nuclear power plants and are not covered by 10 C.F.R. Part 54; CLI-11-11, 74 NRC 427 (2011)

NRC guidance cannot prescribe requirements; LBP-14-9, 80 NRC 15 (2014)

NRC has expressly adopted, and is therefore bound by, the Council on Environmental Quality definition of cumulative impacts; LBP-14-6, 79 NRC 404 (2014)

NRC has not expressly adopted Council on Environmental Quality regulations, but they are entitled to considerable deference; CLI-11-11, 74 NRC 427 (2011); LBP-15-3, 81 NRC 65 (2015)

NRC is bound by the unambiguous language of its own regulations; LBP-11-22, 74 NRC 259 (2011)

NRC is directed to use the Council on Environmental Quality regulations in defining the scope of its impact statements; LBP-14-6, 79 NRC 404 (2014)

NRC is not bound by guidance documents, which do not carry the force of regulations and do not impose legal requirements on licensees; CLI-12-5, 75 NRC 301 (2012)

NRC may grant exemptions from the regulatory requirements if it determines such an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest; LBP-11-11, 73 NRC 455 (2011)

NRC may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest; LBP-12-21, 76 NRC 218 (2012)

NRC regulations incorporate Council on Environmental Quality regulations that define the scope of an environmental impact statement to include cumulative impacts; LBP-12-3, 75 NRC 164 (2012)

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NRC regulations may not be challenged in an adjudicatory proceeding absent a request for a waiver under section 2.335(b); CLI-12-6, 75 NRC 352 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-12-12, 75 NRC 742 (2012)

NRC Staff granted an exemption from 10 C.F.R. 74.33(c)(5) subject to license conditions that require applicant to submit, for the Staff's prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 218 (2012)

NRC Staff is incorporating the 2012 edition of the ASME code by reference into 10 C.F.R. 50.55a; CLI-15-13, 81 NRC 555 (2015)

NRC's original rule governing technical specifications, 10 C.F.R. 50.36, was promulgated in 1968 and lacked well-defined criteria as to what requirements need to be a technical specification and what provisions need not be in the license; LBP-12-25, 76 NRC 540 (2012)

numerous Council on Environmental Quality regulations require an agency to discuss possible mitigation measures, including 40 C.F.R. §§ 1508.25(b), 1502.14(f), 1502.16(h), and 1508.20; LBP-13-4, 77 NRC 107 (2013)

obvious purpose of the requirement that each agency use the best scientific and commercial data available is to ensure that a statute not be implemented haphazardly, on the basis of speculation or surmise; LBP-14-4, 79 NRC 319 (2014)

Part 51, not NEPA, is the source of the legal requirements applicable to the applicant's environmental report; LBP-11-32, 74 NRC 654 (2011)

Part 54 governs issuance of renewed operating licenses and renewed combined licenses for nuclear power plants licensed pursuant to sections 103 or 104b of the Atomic Energy Act and Title II of the Energy Reorganization Act; CLI-11-11, 74 NRC 427 (2011)

Part 70 establishes the basic regulatory framework that governs the licensing of a uranium enrichment facility; LBP-11-26, 74 NRC 499 (2011)

parties with new and significant information that could undermine the rationale for a Commission regulation must seek a rulemaking instead of challenging the regulation in a particular proceeding unless the information uniquely applies to a given adjudication; LBP-11-35, 74 NRC 701 (2011)

Parts 19, 20, 21, 25, 30, 40, 71, 73, 74, 95, 140, 170, 171, and the agency's NEPA regulations in Part 51 of 10 C.F.R. are applicable to licensing a uranium enrichment facility; LBP-11-26, 74 NRC 499 (2011)

petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of the NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 149 (2011)

petitioner's suggestion that issuance of a license immediately upon completion of NRC Staff's review where a hearing is pending is inappropriate is an attack on the regulation, which is not allowed in an individual adjudication absent of a waiver; CLI-15-17, 82 NRC 33 (2015)

petitioners may not raise in adjudicatory proceedings contentions attacking the agency's rules and regulations or contentions that are the subject of ongoing rulemakings; LBP-11-29, 74 NRC 612 (2011); LBP-13-1, 77 NRC 57 (2013)

plants licensed to operate before January 1, 1979, must meet fire safety regulations; DD-12-3, 76 NRC 416 (2012)

proposed rule or proposed law may not support an admissible contention because its ultimate effect is at best speculative; LBP-15-15, 81 NRC 598 (2015)

proposed rules are not binding upon administrative agencies and are not ripe for review by NRC boards; LBP-15-15, 81 NRC 598 (2015)

provisions of 10 C.F.R. Part 2, Subpart M, together with the generally applicable intervention provisions in 10 C.F.R. Part 2, Subpart C, govern adjudicatory proceedings on license transfer applications; CLI-15-8, 81 NRC 500 (2015)

publication of a regulation in the *Federal Register* constitutes notice to all persons residing in the United States; LBP-13-3, 77 NRC 82 (2013)

regulations can be challenged only under extremely limited circumstances; LBP-15-5, 81 NRC 249 (2015)

rule that excluded certain environmental impacts from NEPA consideration and deferred totally to environmental quality standards devised and administered by other agencies violated NEPA; LBP-15-23, 82 NRC 55 (2015)

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scope of activities requiring permission from NRC in the form of limited work authorization was narrowed by eliminating the concept of commencement of construction formerly described in section 50.10(c) and the authorization formerly described in section 50.10(e)(1); LBP-14-9, 80 NRC 15 (2014)

section 51.102(c) replaced a previous version that expressly permitted licensing boards to modify the content of an environmental impact statement; CLI-15-6, 81 NRC 340 (2015)

sole remedy to challenge lawfulness of a regulation is to file a petition for rulemaking with the Commission; CLI-14-6, 79 NRC 445 (2014)

tentative conclusion articulated in a nonfinal, proposed rule does not command deference from the court nor is it binding on the agency; LBP-15-15, 81 NRC 598 (2015)

there is no enumeration of the required contents of a draft environmental impact statement regarding endangered or threatened species; LBP-12-12, 75 NRC 742 (2012)

to achieve strategic special nuclear material loss-related performance objectives, the material control and accounting system must provide the capabilities described in sections 74.55 and 74.57; LBP-14-1, 79 NRC 39 (2014)

to challenge a Category 1 issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 249 (2015)

to obtain waiver of a rule, the allegation of special circumstances must be set forth with particularity and supported by an affidavit or other proof; LBP-15-5, 81 NRC 249 (2015)

to the extent a contention would require licensee to maintain the ERDS link or to create another ERDS-like system after its reactor is permanently shut down and defueled, it is an impermissible collateral attack on a regulation; LBP-15-4, 81 NRC 156 (2015)

waiver of rule or regulation may be obtained upon a showing that applying provision at issue would not serve the purposes for which the rule or regulation was adopted; LBP-15-3, 81 NRC 65 (2015)

when an NRC regulation permits use of a particular analysis, a contention asserting that a different analysis or technique should be used is inadmissible because it indirectly attacks the Commission's regulations; LBP-15-17, 81 NRC 753 (2015)

where NRC intends to mandate that an originally compliant environmental document be supplemented, it does so explicitly; LBP-11-32, 74 NRC 654 (2011)

whether the safe shutdown earthquake exceedance in applicant's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in this proceeding; LBP-11-10, 73 NRC 424 (2011)

See also Amendment of Regulations; Council on Environmental Quality Guidelines; Rules of Practice; State Regulatory Requirements; Waste Confidence Rule

REGULATIONS, INTERPRETATION

ALARA requirement in section 20.1101(b) applies to the dose criteria for license termination; CLI-11-12, 74 NRC 460 (2011)

although 10 C.F.R. Part 40 applies to ISL mining, some of the specific requirements in Part 40, such as many of those found in Appendix A, address hazards posed only by conventional uranium milling operations, and do not carry over to ISL mining; LBP-15-16, 81 NRC 618 (2015)

although disagreement over proper interpretation of NRC regulations may give rise to an admissible contention, petitioner's proposed interpretation is in direct conflict with the plain meaning of the regulation and its Statement of Considerations; LBP-12-8, 75 NRC 539 (2012)

any alleged ambiguity in the exception provision of 10 C.F.R. Part 50, Appendix E, § VI is eliminated when the regulatory language is examined in light of the regulatory history and framework; LBP-15-4, 81 NRC 156 (2015)

any individual who manipulates the controls of any facility licensed under Parts 50, 52, or 54 of NRC's regulations is required to have an operator's license; LBP-14-2, 79 NRC 131 (2014)

applicability of 10 C.F.R. Part 50, Appendix A, GDC 44 to boiling water reactor spent fuel pools is discussed; DD-15-11, 82 NRC 361 (2015)

application of 10 C.F.R. 40.38(a) and 70.40 is limited to USEC alone and has no relevance to any other enrichment facility applicant; LBP-11-11, 73 NRC 455 (2011)

application of the precept that different language is intended to mean different things may be suspended if the purpose or regulatory history behind the language shows that no difference was intended; LBP-13-3, 77 NRC 82 (2013)

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because 10 C.F.R. 51.23(b) prescribes a specific procedure for incorporating the environmental impacts of continued storage into a site-specific analysis, this procedure, rather than a procedure set forth in the general provisions of Part 51, governs NRC environmental review; CLI-15-10, 81 NRC 535 (2015)

because agency practice is one indicator of how the agency interprets regulations, a consistently held NRC Staff view on an operator testing policy matter will not be disturbed; LBP-14-2, 79 NRC 131 (2014)

because there is no list of site parameters specified in the technical support document, a prerequisite for resolving severe accident mitigation design alternatives issues by 10 C.F.R. Part 52, Appendix A, § VI.B.7 is lacking; LBP-11-7, 73 NRC 254 (2011)

board provides textual analysis and additional clarifying explanation of its interpretation of 10 C.F.R. 20.1403(a); CLI-13-6, 78 NRC 155 (2013)

boards are not empowered to reword the clear language of the Commission's regulations; LBP-13-12, 78 NRC 239 (2013)

capability under 10 C.F.R. 74.51(a)(1) to verify presence is most clearly aimed at ongoing confirmation of the presence of strategic special nuclear material in assigned locations; LBP-14-1, 79 NRC 39 (2014)

capability under 10 C.F.R. 74.51(a)(4) to verify integrity is most clearly aimed at the prompt investigation of anomalies potentially indicative of strategic special nuclear material losses; LBP-14-1, 79 NRC 39 (2014)

challenges to section 50.54(hh)(2) are neither germane to age-related degradation nor unique to the license renewal period; LBP-11-21, 74 NRC 115 (2011)

comparison of the levels of protection afforded by the unrestricted and restricted decommissioning options is neither explicitly nor implicitly required; CLI-11-12, 74 NRC 460 (2011)

contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)

contradiction between paragraphs (ii)(L) and (iv) of 10 C.F.R. 51.53(c)(3) is discussed; LBP-13-1, 77 NRC 57 (2013)

contradictory provisions of subsections (a) and (b) of 10 C.F.R. 2.710 are discussed; LBP-11-23, 74 NRC 287 (2011)

courts give controlling weight to an agency's interpretation of its own regulation unless it is plainly erroneous or inconsistent with the regulation; LBP-12-19, 76 NRC 184 (2012)

crux of the "genuine dispute" prong under 10 C.F.R. 2.309(f)(1)(vi) is the requirement for specificity, that a contention must have more than general allegations; LBP-15-1, 81 NRC 15 (2015)

"deemed incorporated" function of 10 C.F.R. 51.23(b) provides administrative efficiency by adding the environmental impacts of continued storage to site-specific environmental impact statements without additional work by the Staff; CLI-15-10, 81 NRC 535 (2015)

degree to which 10 C.F.R. 50.59 applies is controlled not by how a modification is labeled but by whether the substance of the change brings that revision within the confines of this section; LBP-12-25, 76 NRC 540 (2012)

"design bases" in 10 C.F.R. 50.59(c)(2)(vii) and (viii) means that information that identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for a design; LBP-13-7, 77 NRC 307 (2013)

determination expressly required by the text "further reductions in residual radioactivity . . . were not being made because the residual levels associated with restricted conditions are ALARA" in 10 C.F.R. 20.1403 is an inquiry that focuses on how far it is possible, on a cost-effective basis, to further reduce the "residual levels"; CLI-13-6, 78 NRC 155 (2013)

determination regarding item integrity under 10 C.F.R. 74.55(b)(1) refers to the ability to determine that a container holding strategic special nuclear material items has not been breached and that the amount of SSNM within has not been altered; LBP-14-1, 79 NRC 39 (2014)

distinction is made between the "person to whom the Commission has issued an order" and "any other person adversely affected by the order" in 10 C.F.R. 2.202(a)(2); LBP-14-4, 79 NRC 319 (2014)

effects and impacts as used in 10 C.F.R. 51.14(b) are synonymous with terms in 40 C.F.R. 1508.8; LBP-13-4, 77 NRC 107 (2013)

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environmental qualification of electric equipment important to safety located in an environment that would at no time be significantly more severe than the environment that would occur during normal plant operation is not included within the scope of 10 C.F.R. 50.49(c); LBP-11-20, 74 NRC 65 (2011)

except where the Commission determines that a discretionary hearing is warranted, section 2.206 provides the means to challenge licensee actions under 10 C.F.R. 50.59; CLI-12-20, 76 NRC 437 (2012)

exception in 10 C.F.R. 50.72 is most reasonably interpreted as exempting from the ERDS program all nuclear reactors that have permanently ceased operations and defueled, i.e., that are permanently shut down; LBP-15-4, 81 NRC 156 (2015)

“further reductions” in 10 C.F.R. 20.1403(a) necessarily refers to further reductions from the level of residual radioactivity that a licensee proposes to leave in place under its proposed restricted-release decommissioning plan; CLI-13-6, 78 NRC 155 (2013)

“good cause” in 10 C.F.R. 2.307(a) does not share the same definition that is used for good cause in section 2.309(c); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-15-1, 81 NRC 15 (2015)

if 10 C.F.R. Part 50, Appendix E, § VI were a one-time requirement that applied only to units existing in 1991, that would mean it was not intended to apply prospectively to newly built reactors; LBP-15-4, 81 NRC 156 (2015)

implication that any agency prerequisite with which applicant must comply to operate a plant during an extended term constitutes an “approval” under 10 C.F.R. 51.45(d) would entail an unreasonably strained definition of “approval”; LBP-12-15, 76 NRC 14 (2012)

importance of the phrase “any other person adversely affected” in 10 C.F.R. 2.202(a)(3) is underscored by the fact that it was intentionally added in 1991; LBP-14-4, 79 NRC 319 (2014)

in codifying the reopening requirements, the more neutral “exceptionally grave issue” language was chosen over the case law-based “sufficiently grave threat to public safety” phrasing; CLI-12-21, 76 NRC 491 (2012)

interpretation may not conflict with the plain meaning of the wording used in a regulation, which in the end of course must prevail; LBP-14-7, 79 NRC 451 (2014)

interpretation of regulations, like interpretation of a statute, begins with the language and structure of the provisions, and the entirety of each provision must be given effect; LBP-14-4, 79 NRC 319 (2014); LBP-14-7, 79 NRC 451 (2014)

interpretation of statutes at issue and the regulations governing their implementation falls within the Commission’s province; LBP-15-5, 81 NRC 249 (2015)

licensees must satisfy the regulation’s detection requirements for tamper-safed strategic special nuclear material items in order to achieve the performance objectives set out in section 74.51(a); LBP-14-1, 79 NRC 39 (2014)

licensing boards should not interpret regulatory text in a way that would essentially negate the stated purpose of the regulation or impute to the Commission an intent to create a schizophrenic rule; LBP-14-7, 79 NRC 451 (2014)

meaning of “other person adversely affected by the order” in 10 C.F.R. 2.202(a)(3) is discussed; LBP-14-4, 79 NRC 319 (2014)

Millstone rule waiver decision, which aggregates cases interpreting the waiver standard, is an example of a uniform, permissible interpretation of NRC regulations; CLI-13-7, 78 NRC 199 (2013)

neither “baseline” nor “background” is explicitly defined in 10 C.F.R. Part 40, Appendix A; LBP-15-16, 81 NRC 618 (2015)

neither the plain language of 10 C.F.R. 74.55(b)(1) nor its regulatory history suggests that verifications of item integrity must be in any way physical; LBP-14-1, 79 NRC 39 (2014)

NEPA’s requirement to discuss alternatives to the proposed action does not extend to the construction of transmission line corridors, because it is not “construction” as defined in 10 C.F.R. 50.10; LBP-11-6, 73 NRC 149 (2011)

“new and significant information” requirement does not override, for purposes of litigating the issues in an adjudicatory proceeding, the exclusion of Category 1 issues in section 51.53(c)(3)(i) from site-specific review; CLI-12-19, 76 NRC 377 (2012)

no language is included in 10 C.F.R. 51.45(c) to the effect that a proposed action that is the subject of an agency environmental impact statement must include all connected actions as defined in 40 C.F.R. 1508.25; LBP-14-9, 80 NRC 15 (2014)

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no requirement to quantify the potential for an adversary to take measures to conceal any abnormalities in MMIS and PLC mapping can reasonably be found in (or implied by) the language of 10 C.F.R. 74.55(b)(1); LBP-14-1, 79 NRC 39 (2014)

nothing in the definition of “construction” in 10 C.F.R. 40.4 precludes the installation of wells or the use of monitoring protocols as needed to provide those background data; LBP-15-3, 81 NRC 65 (2015)

NRC case law has given meaning to the “special circumstances” requirement for rule waiver; CLI-13-7, 78 NRC 199 (2013)

NRC often refers to the Statement of Considerations as an aid in interpreting the agency’s regulations; LBP-14-9, 80 NRC 15 (2014)

NRC regulations do not merely establish a standard that applicant is entitled to invoke for its benefit, but that may then be disregarded whenever applicant wants to argue its case on an individual, fact-specific basis; LBP-12-6, 75 NRC 256 (2012)

NRC’s broad definition of “construction” in the pre-2007 version of the regulation was originally added to Part 50 because of the interpretation that enactment of NEPA required NRC to expand its permitting/licensing authority; LBP-14-9, 80 NRC 15 (2014)

nuclear power facility has shut down permanently within the meaning of 10 C.F.R. Part 50, Appendix E, § VI.2 when it has permanently ceased reactor operations, and permanently removed fuel from the reactor vessel, as those terms are defined in 10 C.F.R. 50.2; LBP-15-4, 81 NRC 156 (2015)

one demanding a hearing on a challenge to an enforcement order need not comply with the requirements of 10 C.F.R. 2.309(f)(1); LBP-13-3, 77 NRC 82 (2013)

Part 40, Appendix A, Criteria 4(e) and 5G(2) refer to safety criteria that apply to applicants and licensees and are not relevant to the NEPA review; LBP-13-9, 78 NRC 37 (2013)

Part 55 of 10 C.F.R. establishes procedures and criteria for issuance of reactor operator licenses under the Atomic Energy Act or the Energy Reorganization Act; LBP-14-2, 79 NRC 131 (2014)

permissive “may” language of 40 C.F.R. 1508.25(a)(3) affords an agency more discretion in making a choice about whether a single EIS is the best way to assess similar actions; LBP-13-10, 78 NRC 117 (2013)

pertinent language in 10 C.F.R. 70.31(d) and 40.32(d) tracks the statutory language identically, i.e., “inimical to the common defense and security or the health and safety of the public”; LBP-11-11, 73 NRC 455 (2011)

petitioners’ argument that power reactor is being operated as a test reactor reflects a misreading of 10 C.F.R. 50.59; LBP-15-20, 81 NRC 829 (2015)

phrase “new” in 10 C.F.R. 51.53(c)(3)(iv) requires that the environmental report include environmental information that is new as compared to the original ER for the same facility and new as of the time of submission of the required ER, but does not impose a continuing duty to supplement an ER that was compliant when submitted; LBP-11-32, 74 NRC 654 (2011)

plain language of enacted text is the best indicator of intent; LBP-14-4, 79 NRC 319 (2014)

preamble of a rule, unlike the rule itself, does not have the force of law and may not be used to expand the reach of the regulations; LBP-14-9, 80 NRC 15 (2014)

prima facie showing within the meaning of 10 C.F.R. 2.758(d) is one that is legally sufficient to establish a fact or case unless disproved; LBP-14-16, 80 NRC 183 (2014)

prior to its revision, 10 C.F.R. 2.341(f)(1) required that a referred ruling raise a significant and novel legal or policy issue and necessitate resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 199 (2013)

“prompt” issuance is not defined as an immediate one in 10 C.F.R. 2.1202(a); LBP-15-2, 81 NRC 48 (2015)

purpose of 10 C.F.R. 51.53(c)(3)(ii)(L) is to limit the analysis during relicensing to exclude consideration of SAMAs regarding plant operation that were previously considered; LBP-13-1, 77 NRC 57 (2013)

purpose of the supplemental-SAMA-analysis exception in 10 C.F.R. 51.53(c)(3)(ii)(L) is to reflect NRC’s view that one SAMA analysis, as a general matter, satisfies NRC’s NEPA obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; CLI-13-7, 78 NRC 199 (2013)

pursuant to 10 C.F.R. 55.40, NRC Staff shall use the criteria in NUREG-1021 in effect 6 months before the examination date to prepare written reactor operator examinations required by sections 55.41 and 55.43 and the operating tests required by section 55.45; LBP-14-2, 79 NRC 131 (2014)

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rather than assuming that a rule's purpose is simply to achieve its stated effect, one must look further by examining the underlying purpose of the requirement; CLI-13-7, 78 NRC 199 (2013)

regulation's title can aid in construing regulatory text; LBP-15-4, 81 NRC 156 (2015)

regulatory history, like 10 C.F.R. Part 50, App. E, § VI itself, is focused entirely on implementation and maintenance of the ERDS operations with not one word about decommissioning the system; LBP-15-4, 81 NRC 156 (2015)

requirement in 10 C.F.R. 74.55(b) for 99% power of detection means that there must be a 99% probability that a missing item will be included within the sample chosen for inspection and would thus be detected; LBP-14-1, 79 NRC 39 (2014)

requirements in Part 40, such as many of the provisions in Appendix A, that, by their own terms, apply only to conventional uranium milling activities, cannot sensibly govern in situ leach mining; LBP-15-16, 81 NRC 618 (2015)

requirements of 10 C.F.R. 50.61 are compared with new rule in section 50.61a to predict future reference temperatures across the reactor pressure vessel; CLI-15-22, 82 NRC 310 (2015)

requirements of section XI of the ASME Boiler and Pressure Vessel Code on inservice inspections are incorporated by reference in 10 C.F.R. 50.55a(b) and 50.55a(g)(4); CLI-11-8, 74 NRC 214 (2011)

"residual levels," as used in the phrase "were not being made because the residual levels . . . are ALARA," in 10 C.F.R. 20.1403(a) refers back to, and is shorthand for, the term "residual radioactivity" used earlier in the introductory language; CLI-13-6, 78 NRC 155 (2013)

rules of interpretation applicable to statutes are equally germane in determining a regulation's meaning; LBP-13-3, 77 NRC 82 (2013)

scope of an admitted contention depends in large part on the bases set forth in the brief explanation of the basis for the contention required by 10 C.F.R. 2.309(f)(1)(ii); LBP-12-23, 76 NRC 445 (2012)

scope of the ERDS exception is informed by the regulatory history, which states that ERDS is to be used by licensees of operating reactors; LBP-15-4, 81 NRC 156 (2015)

section 2.309(f)(1) has no application to reactor operator licensee proceedings; LBP-13-3, 77 NRC 82 (2013)

section 2.318(a) does not provide an exhaustive list of every situation where board jurisdiction lapses; CLI-12-14, 75 NRC 692 (2012); CLI-12-17, 76 NRC 207, 210 (2012)

section 2.338 is a new provision that consolidates and amplifies the previous rules pertaining to settlement; LBP-15-30, 82 NRC 339 (2015)

section 2.341(f)(2)(i) is compared to 10 C.F.R. 2.1213(d)(1); CLI-15-17, 82 NRC 33 (2015)

section 40.31(h) applies to uranium mills, but not to in situ recovery facilities; LBP-14-5, 79 NRC 377 (2014)

section 50.54(hh)(2) applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52; LBP-11-21, 74 NRC 115 (2011)

section 50.71(e) is only a reporting requirement; LBP-15-27, 82 NRC 184 (2015)

section 51.52(b) does not establish limits on power or on fuel enrichment, but instead requires applicant to perform an analysis if the conditions of section 51.52(a) are not met; LBP-12-12, 75 NRC 742 (2012)

section 51.53(c)(3)(ii)(L) does not convert the Category 2 (site-specific) issue of severe accident mitigation alternatives into a Category 1 issue; LBP-12-8, 75 NRC 539 (2012)

section 51.53(c)(3)(iv) does not apply to license amendment applicants requesting a power uprate; LBP-11-29, 74 NRC 612 (2011)

section 51.61 applies to an application for an independent spent fuel storage installation; LBP-15-24, 82 NRC 68 (2015)

section 51.92(a)(2) does not apply to the question whether the environmental assessment adequately describes the current environment, but rather applies when considering whether to supplement an environmental analysis for the period between issuance of the final document and before the agency has taken the proposed action; CLI-15-25, 82 NRC 389 (2015)

section 52.80(d) mandates compliance with the agency's loss-of-large-areas requirements in 10 C.F.R. 50.54(hh)(2), but does not apply to a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

section 74.55 is not rendered superfluous by a reading that verifying the integrity of a storage area boundary will suffice to verify the integrity of the items contained therein; LBP-14-1, 79 NRC 39 (2014)

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section 74.55(b)(1) applies only to licensees that are authorized to possess 5 or more formula kilograms of strategic special nuclear material; LBP-14-1, 79 NRC 39 (2014)

“senior reactor operator” is any individual licensed under Part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators; LBP-14-2, 79 NRC 131 (2014)

“special circumstances” language under 10 C.F.R. 2.335 is very similar to the definition of “special circumstances” under 10 C.F.R. 50.12(a)(2)(ii); LBP-12-6, 75 NRC 256 (2012)

specific inclusion of some conditions implies the exclusion of those not mentioned; CLI-12-14, 75 NRC 692 (2012)

specific regulations control over general regulations; CLI-15-10, 81 NRC 535 (2015)

statement of considerations cannot interpret what the regulation itself does not contain; LBP-14-9, 80 NRC 15 (2014)

statistical sampling is to be used to achieve verification of item presence and integrity but 10 C.F.R. 74.55(b) does not prescribe a particular method of sampling, only that statistical sampling must result in at least 99% power of detecting strategic special nuclear material losses that total 5 formula kg or more; LBP-14-1, 79 NRC 39 (2014)

subsection (L) of 10 C.F.R. 51.53(c)(3)(ii) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in case-by-case license renewal adjudications; LBP-13-1, 77 NRC 57 (2013)

term “petition” in section 2.335 refers to the waiver petition, not a petition to intervene; CLI-11-11, 74 NRC 427 (2011)

there are places in NRC rules where “party” is used not as a term of art, but rather as a substitute for “participant”; CLI-12-19, 76 NRC 377 (2012)

under 10 C.F.R. 55.40, NRC Staff shall use NUREG-1021 to prepare and evaluate reactor operator licensing examinations; LBP-14-2, 79 NRC 131 (2014)

under an enforcement order, NRC requires that workers report any observed “illegal, unusual, or aberrant” behavior by their co-workers, words not appearing in 10 C.F.R. 73.56(f); LBP-14-4, 79 NRC 319 (2014)

underlying purpose of 10 C.F.R. Part 50, Appendix R, § III.G is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event; DD-12-3, 76 NRC 416 (2012)

“uniqueness” factor of the rule waiver test is interpreted; LBP-11-35, 74 NRC 701 (2011)

use of “and” in the list of requirements for rule waiver means that all four factors must be met; CLI-11-11, 74 NRC 427 (2011)

use of the past tense when referring to “quality assurance applied to the design” in 10 C.F.R. Part 50, App. B shows that safety-related design activities must have been performed under an acceptable QA program even though those activities were performed prior to the date on which the combined license application (which includes the FSAR) was filed with the NRC; LBP-14-7, 79 NRC 451 (2014)

usual rule of regulatory interpretation is that different language is intended to mean different things, and thus a demand for a hearing is not to be treated as a mere request for a hearing; LBP-13-3, 77 NRC 82 (2013)

where applicant has raised sufficient question as to the appropriate deadline, the board may conclude that it would be unfair to penalize applicant on account of what might be ambiguity in NRC’s own regulations; LBP-11-19, 74 NRC 61 (2011)

where the meaning of a regulation is clear and obvious, the regulatory language is conclusive, and the board may not disregard the letter of the regulation, but rather must enforce the regulation as written; LBP-14-7, 79 NRC 451 (2014)

whether economic concerns relating to job loss qualify as adverse effects within the meaning of 10 C.F.R. 2.202(a)(3) is discussed; LBP-14-4, 79 NRC 319 (2014)

words “further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402” are analyzed; CLI-13-6, 78 NRC 155 (2013)

REGULATORY GUIDES

guidance documents, although not binding, describe an approach to compliance with NRC rules that is acceptable to the NRC, and thus can be informative for that reason; LBP-13-6, 77 NRC 253 (2013)

licensees may follow regulatory guides to determine equivalent safety margins, or may use any other methods, procedures, or selection of materials data and transients to demonstrate compliance with this regulation; LBP-15-20, 81 NRC 829 (2015)

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licensing board takes official notice of NRC regulatory guide; LBP-15-3, 81 NRC 65 (2015)

NUREGs are merely guidance documents and thus not legally binding; LBP-13-6, 77 NRC 253 (2013)

petitioners may challenge a Staff guidance document such as a Regulatory Guide; LBP-15-20, 81 NRC 829 (2015)

such documents describe particular means of satisfying regulatory requirements in ways acceptable to NRC Staff, but do not bind applicants, who remain free to choose different means; LBP-14-1, 79 NRC 39 (2014)

to perform an appropriate integrated safety analysis, NUREG-1520 standard review plan guidance for fuel cycle facilities indicates that applicant should identify the process designs, accident sequences, and items relied upon for safety that are associated with the facility; LBP-11-11, 73 NRC 455 (2011)

See also NRC Guidance Documents

REGULATORY OVERSIGHT PROCESS

actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA, but rather are monitored by NRC Staff's inspections and oversight, which may be challenged only by a petition for enforcement; LBP-15-27, 82 NRC 184 (2015)

although NRC Staff reviews submissions under 10 C.F.R. 50.71(e) for compliance with such administrative requirements as timeliness and content, it does not approve substantive changes, such as to a seismic analysis, as part of the process; LBP-15-27, 82 NRC 184 (2015)

applicant's commitment in the updated final safety analysis report cannot be changed without NRC Staff oversight and, specifically, evaluation of the eight criteria listed in 10 C.F.R. 50.59; LBP-13-13, 78 NRC 246 (2013)

compliance with orders issued as part of NRC's ongoing oversight program are enforcement issues that are not within the scope of a license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

except for the detrimental effects of aging on the functionality of certain plant systems, structures, and components in the period of extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide and maintain an acceptable level of safety; LBP-15-6, 81 NRC 314 (2015)

federal financial regulatory agencies regularly examine banks within their jurisdiction, generally at 12- or 18-month intervals; CLI-11-4, 74 NRC 1 (2011)

if a hearing could be invoked each time NRC engaged in oversight over or inquiry into plant conditions, NRC's administrative process could be brought to a virtual standstill; CLI-14-11, 80 NRC 167 (2014); LBP-15-27, 82 NRC 184 (2015)

license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors; CLI-15-6, 81 NRC 340 (2015)

merely pointing to the compliance program is in no way sufficient to support a scientific finding that spent fuel pools will not cause a significant environmental impact during the extended storage period; LBP-14-9, 80 NRC 15 (2014)

neither licensee activities nor NRC inspection of or inquiry about those activities provides the opportunity for a hearing under the Atomic Energy Act because those activities only concern compliance with the terms of an existing license; CLI-14-11, 80 NRC 167 (2014)

NRC has the ongoing responsibility to oversee the safety and security of operating nuclear reactors and maintains an aggressive and ongoing program to oversee plant operation and to maintain compliance with the current licensing basis; LBP-13-8, 78 NRC 1 (2013)

NRC monitors the status of decommissioning funds and, when necessary, requires additions to funds through parent company guarantees, cash deposits, or other methods permitted by regulation; DD-15-8, 82 NRC 107 (2015)

NRC oversight activities gathering information about and evaluating plant performance, regardless of the findings it makes, do not alter the conditions of a license and therefore cannot form the basis for the right to request a hearing; CLI-14-11, 80 NRC 167 (2014)

NRC Staff inspections and confirmatory action letters are oversight activities normally conducted to ensure that licensees comply with existing NRC requirements and license conditions and therefore do not typically trigger the opportunity for a hearing under the AEA; CLI-15-5, 81 NRC 329 (2015)

NRC Staff will disposition violations as part of its ongoing reactor oversight process, and evidentiary hearings before NRC at the request of third parties are not a part of this process; DD-12-3, 76 NRC 416 (2012)

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NRC Staff's ongoing enforcement of regulations and license conditions does not trigger hearing rights; LBP-15-24, 82 NRC 68 (2015)

NRC Staff's reliance in an environmental impact statement on predicted future monitoring and regulatory compliance program to prevent environmental impacts is not permitted; LBP-14-9, 80 NRC 15 (2014)

NRC's inspection process is separate from its licensing process; LBP-15-27, 82 NRC 184 (2015)

NRC's ongoing regulatory process ensures that the current licensing basis of an operating plant remains acceptably safe; LBP-15-5, 81 NRC 249 (2015)

oversight activities at times involve enforcement actions, including orders and civil penalties, to which a hearing right or opportunity attaches; CLI-15-5, 81 NRC 329 (2015)

petitioners' premise that a series of NRC Staff communications relating to plant oversight should be considered as an element of a single, overarching de facto license amendment was rejected; CLI-15-14, 81 NRC 729 (2015)

Reactor Oversight Process Action Matrix reflects performance issues at plants and integrates NRC's inspection, assessment, and enforcement programs; DD-15-3, 81 NRC 713 (2015)

regulatory approach, of relying on licensees to submit complete and accurate information, and auditing that information as appropriate, is considered to be entirely consistent with sound regulatory practice; LBP-15-24, 82 NRC 68 (2015)

regulatory process continuously reassesses whether there is a need for additional oversight or regulations to protect public health and safety; LBP-15-4, 81 NRC 156 (2015)

REINSTATEMENT OF LICENSE

if renewed license is set aside on appeal, the previous operating license would be reinstated; LBP-12-16, 76 NRC 44 (2012)

NRC's lifting of license suspension and authorizing restart under stipulated restrictions was not a license amendment because nothing in the record indicates that license amendments are necessary to permit the licensee to operate in accordance with the restrictions that have been imposed; LBP-13-7, 77 NRC 307 (2013)

RELAYS

contention that license renewal application has failed to establish that the effects of aging on switches and snubbers will be adequately managed for the period of extended operation is inadmissible; LBP-15-6, 81 NRC 314 (2015)

switches and snubbers do not rely on time-limited assumptions based on the plant's operating term, but rather are subject to ongoing maintenance programs; LBP-15-6, 81 NRC 314 (2015)

RELEVANCE

new information from studies of the Fukushima event as to potential consequences of a severe accident at a U.S. nuclear power plant is irrelevant to any uncertainty that might exist regarding which agency has authority over cleanup after a severe accident; LBP-11-20, 74 NRC 65 (2011)

REMAND

agencies can reach exactly the same result on a remanded issue as long as they rely on the correct view of a law that they previously misinterpreted, or as long as they explain themselves better or develop better evidence for their position; CLI-11-12, 74 NRC 460 (2011)

board, on reconsideration and after remand from Commission, reopened the record with respect to a previously disposed contention, to consider the effect of licensee's losing track of a fuel rod; CLI-12-14, 75 NRC 692 (2012)

Commission remands license renewal proceeding to the board for the limited purpose of considering a rule waiver petition; CLI-12-19, 76 NRC 377 (2012)

during pendency of remand, intervenors are free to submit a motion to reopen the record pursuant to 10 C.F.R. 2.326, should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised; LBP-11-20, 74 NRC 65 (2011)

in issuing the suspension of final licensing decisions in proceedings, NRC recognized that it could not move forward without first addressing the D.C. Circuit's remand because the vacatur left a regulatory gap in the Part 51 regulations that undergird licensing reviews in those matters; CLI-14-7, 80 NRC 1 (2014)

intervenor's failure to address the reopening standards in 10 C.F.R. 2.326 creates a yawning deficiency in its submissions because the evidentiary record has been closed and the board's jurisdiction in the proceeding does not extend beyond the narrow scope of the remand; LBP-11-20, 74 NRC 65 (2011)

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proceeding will remain open during the pendency of a remand; LBP-11-23, 74 NRC 287 (2011)
remand holds the proceeding open, but only for the limited purpose of litigating the remanded contention;
CLI-12-3, 75 NRC 132 (2012)

where the proceeding remains open during the pendency of a remand, but the record remains closed, any
contentions raising genuinely new issues would have to be accompanied by a motion to reopen;
CLI-12-3, 75 NRC 132 (2012)

RENEWABLE ENERGY SOURCES

although there are many possible combinations of wind and solar power, storage, and natural gas, it is
not necessary to examine every possible combination; LBP-11-4, 73 NRC 91 (2011)
because a single wind turbine cannot provide continuous production of electricity at or near full capacity,
it does not constitute a source of baseload power; CLI-12-5, 75 NRC 301 (2012)

contention seeking full impacts analysis of the power supply alternative of wind, either alone or in
combination with solar and storage, is inadmissible because it fails to adequately demonstrate the
capacity to produce baseload power; LBP-12-15, 76 NRC 14 (2012)

demonstration that an alternative energy technology, although not commercially viable at the time of the
application, is under development for large-scale use and is likely to be available during the period of
extended operation has not been made; LBP-12-15, 76 NRC 14 (2012)

failure to provide a direct critique of the analysis in the environmental report discussing the potential for
offshore power and interconnected wind farms is a failure to identify a genuine dispute with applicant;
LBP-15-5, 81 NRC 249 (2015)

failure to reference specific sources showing that wind or other renewables are viable sources of baseload
power within the service area, renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

for an electrical generation alternative to qualify for in-depth review, the alternative must be able to
provide baseload power during the license renewal term; LBP-12-15, 76 NRC 14 (2012)

it is not enough to demonstrate a theoretical possibility that wind farms spread across a wide area could
provide consistent power, but rather petitioners must show concretely that wind could be a reliable,
commercially viable source of baseload power during the license renewal period; LBP-15-5, 81 NRC
249 (2015)

Maryland's renewable energy portfolio standard is discussed in the context of the consideration of
alternatives under NEPA; LBP-12-17, 76 NRC 71 (2012)

See also Solar Power; Wind Power

REOPENING A RECORD

after a record has closed, finality attaches to the hearing process, and after that point, only timely,
significant issues will be considered; CLI-12-6, 75 NRC 352 (2012)

agencies are permitted to impose requirements or thresholds for parties seeking to reopen a closed record;
CLI-15-19, 82 NRC 151 (2015)

as a matter of law and logic, if applicant's enhanced monitoring program is inadequate, then applicant's
unenanced monitoring program was a fortiori inadequate, and intervenor had a regulatory obligation to
challenge it in its original petition to intervene; LBP-11-20, 74 NRC 65 (2011)

because the previous licensing board terminated the adjudicatory proceeding that was convened to
consider challenges to the operating license renewal application, challengers must satisfy the stringent
requirements for reopening; LBP-12-10, 75 NRC 633 (2012)

board, on reconsideration and after remand from Commission, reopened the record with respect to a
previously disposed contention, to consider the effect of licensee's losing track of a fuel rod;
CLI-12-14, 75 NRC 692 (2012)

boards will reopen the record only when new evidence raises an exceptionally grave issue calling into
question the safety of the licensed activity; LBP-12-16, 76 NRC 44 (2012)

burden of satisfying the reopening requirements is a heavy one, and proponents of a reopening motion
bear the burden of meeting all of the requirements; LBP-11-20, 74 NRC 65 (2011)

combined license cannot be issued until the foreign ownership issue is properly corrected and then
applicants may motion to reopen the record; LBP-12-19, 76 NRC 184 (2012)

contention that indicates neither positive nor negative impact from proposed severe accident mitigation
alternative implementation does not paint the required seriously different picture of the environmental
landscape to reopen the record; LBP-11-35, 74 NRC 701 (2011)

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enhancement to a program does not constitute new information sufficient to support a new contention; LBP-11-20, 74 NRC 65 (2011)

environmental issue is “significant” for the purposes of reopening a record if it will paint a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-10, 75 NRC 633 (2012)

exception for situations where parties seek to add previously unlitigated material would effectively render the reopening regulation meaningless; CLI-12-10, 75 NRC 479 (2012)

“exceptionally grave” issues warranting reopening are limited to those affecting public safety; CLI-12-21, 76 NRC 491 (2012)

failure to challenge the existing severe accident mitigation alternatives analysis would be insufficient to establish a material dispute for the purposes of satisfying the general contention admissibility standards, let alone the reopening standards; CLI-12-6, 75 NRC 352 (2012)

for new contentions to be admitted after the record has closed, petitioner must satisfy the Commission’s demanding regulatory requirements for reopening the record; LBP-11-23, 74 NRC 287 (2011)

given the need for finality in adjudications, reopening the record is an extraordinary action imposing a deliberately heavy burden on intervenor; LBP-15-14, 81 NRC 591 (2015)

heavy barrier to reopening applies whenever an adjudication has been closed and not merely after a case has been terminated following a full evidentiary hearing on the merits; LBP-15-14, 81 NRC 591 (2015)

if a petition is rejected or dismissed at the docketing stage (before the evidentiary record has ever been opened), then subsequent petitions, in addition to meeting all of the other requirements, must also show that the evidentiary record should be reopened; LBP-14-4, 79 NRC 319 (2014)

in unusual circumstances, where fairness dictates, the Commission has been willing to soften or waive its reopening requirements; CLI-12-14, 75 NRC 692 (2012)

intervenor’s failure to address the reopening standards in 10 C.F.R. 2.326 creates a yawning deficiency in its submissions because the evidentiary record has been closed and the board’s jurisdiction in the proceeding does not extend beyond the narrow scope of the remand; LBP-11-20, 74 NRC 65 (2011)

intervenors’ speculation that further review of certain issues might change some conclusions in the final safety evaluation report does not justify restarting the hearing process; LBP-11-20, 74 NRC 65 (2011); LBP-11-35, 74 NRC 701 (2011)

litigants seeking to reopen a closed record necessarily face a heavy burden; CLI-12-6, 75 NRC 352 (2012)

motions to reopen the record are governed by 10 C.F.R. 2.326; CLI-12-3, 75 NRC 132 (2012)

movant properly bears the burden of meeting the reopening standards and applicant retains the burden of proof on the question whether the license should be issued; CLI-15-19, 82 NRC 151 (2015)

new contentions filed after the record has closed must satisfy the timeliness requirement of either 10 C.F.R. 2.309(f)(2) or 2.309(c), and the admissibility requirements of section 2.309(f)(1); LBP-11-22, 74 NRC 259 (2011)

newly constituted board applied the reopening standard to new contentions filed after the prior proceeding was terminated for want of pending or admitted contentions; LBP-11-22, 74 NRC 259 (2011)

NRC practice of closing the hearing record after resolution of the last live contention, and of holding new contentions to the higher reopening standard, has been upheld by higher courts; CLI-12-14, 75 NRC 692 (2012)

NRC regulations place an intentionally heavy burden on parties seeking to reopen the record; CLI-15-19, 82 NRC 151 (2015)

parties seeking to reopen a closed record to introduce a new issue must back their claim with enough evidence to withstand summary disposition when measured against their opponent’s contravening evidence; LBP-11-35, 74 NRC 701 (2011)

petitioner has not satisfied reopening standards because it has not raised a significant environmental issue and has not demonstrated that a materially different result would be likely if the contention had been considered initially; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

petitioner who files a new contention after the board has already closed the evidentiary record is obliged to address the reopening standards; CLI-12-6, 75 NRC 352 (2012)

petitioner who satisfies the reopening standard must also show that its proposed new contention meets the standard for new or amended contentions in section 2.309(c) and the underlying admissibility standards of section 2.309(f)(1); LBP-14-8, 79 NRC 519 (2014)

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petitioners have not raised an issue material to findings that NRC must make to support final decisions and they are unable to satisfy contention admissibility standards or meet the criteria to reopen a closed record; CLI-15-4, 81 NRC 221 (2015)

petitioners must reveal a seriously different picture of the environmental impact of a proposed project; LBP-12-16, 76 NRC 44 (2012)

proponents of motions to reopen the record bear a heavy burden because it is an extraordinary action; LBP-11-22, 74 NRC 259 (2011)

purpose of the reopening rule is to make sure that petitioners have an opportunity to raise serious issues after the close of the record; CLI-12-14, 75 NRC 692 (2012)

reopening for any reason is considered to be an extraordinary action; CLI-15-19, 82 NRC 151 (2015)

reopening standard imposes a deliberately heavy burden on parties seeking to supplement the evidentiary record at the 11th hour, after the record has closed; LBP-12-10, 75 NRC 633 (2012)

reopening standard is intended to impose a deliberately heavy burden on parties seeking to supplement the evidentiary record at the 11th hour, after the record has closed; CLI-12-10, 75 NRC 479 (2012)

reopening with respect to a specific issue would not have the effect of reopening the proceeding for adjudication on unrelated matters once a record is closed; CLI-12-17, 76 NRC 207 (2012)

severe accident mitigation alternatives analysis is a cost-benefit analysis, not a direct safety analysis, and thus does not raise any exceptionally grave issue; LBP-11-23, 74 NRC 287 (2011)

should requirements for reopening the record be satisfied, the requirements for untimely contentions must also be satisfied, as well as the contention admissibility criteria of section 2.309(f)(1); LBP-11-35, 74 NRC 701 (2011)

showing merely that changes to the severe accident mitigation alternatives analysis results are possible or likely or probable is not enough to reopen a record; LBP-11-35, 74 NRC 701 (2011)

showing necessary to demonstrate that a materially different result in the outcome of the severe accident mitigation alternatives analysis would be or would have been likely had the newly proffered evidence been considered initially is discussed; LBP-11-35, 74 NRC 701 (2011)

standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-2, 73 NRC 333 (2011); LBP-11-22, 74 NRC 259 (2011)

standards expressly contemplate contentions that raise issues not previously litigated; CLI-12-6, 75 NRC 352 (2012)

standards for reopening apply not only when a party is seeking to introduce new evidence on a previously admitted contention after the evidentiary record is closed, but also when a party is seeking to introduce a new contention after the record is closed; LBP-11-23, 74 NRC 287 (2011)

standards require movant to show that the motion is timely, addresses a significant safety or environmental issue, and demonstrates that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-12-10, 75 NRC 479 (2012)

there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings; CLI-11-2, 73 NRC 333 (2011); LBP-15-14, 81 NRC 591 (2015)

untimely issues may be considered in the discretion of the presiding officer if the issue is exceptionally grave; CLI-12-10, 75 NRC 479 (2012)

where initial decisions have been issued, the record should not be reopened to take evidence on some accident-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision; CLI-11-5, 74 NRC 141 (2011)

where the evidentiary record had been closed, the demanding requirements for reopening must be satisfied; LBP-12-1, 75 NRC 1 (2012)

See also Motions to Reopen

REPLY BRIEFS

allowing new claims in a reply not only would defeat the contention-filing deadline, but would unfairly deprive other participants of an opportunity to rebut the new claims; LBP-15-26, 82 NRC 163 (2015)

although rules do not provide for filing of reply briefs, as a matter of discretion the Commission reviews a reply brief; CLI-15-7, 81 NRC 481 (2015)

because applicant has not shown that it could not have addressed issues in its appeal, nor has presented genuinely new information in its reply, neither necessity nor fairness dictates that its reply should be permitted; CLI-14-3, 79 NRC 31 (2014)

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because it relates to Staff's position on the reviewability of the Board's decision, Staff's statement regarding its inclination not to revise the final supplemental environmental impact statement is presented for the first time in Staff's answer; CLI-11-14, 74 NRC 801 (2011)

board considered a letter written after the original petition was filed and submitted with petitioner's reply; LBP-15-5, 81 NRC 249 (2015)

board refused to consider new bases that were included in an answer to summary disposition motion and were outside the scope of the original contention; LBP-11-4, 73 NRC 91 (2011)

briefs are limited to the scope of the arguments set forth in the original motion or petition; LBP-11-34, 74 NRC 685 (2011)

briefs cannot be used to present entirely new facts or arguments in an attempt to reinvigorate thinly supported contentions; LBP-11-34, 74 NRC 685 (2011)

briefs may not contain new information that was not raised in either the petition or answers, but may provide arguments that respond to the petition or answers, whether they are offered in rebuttal or in support; CLI-11-14, 74 NRC 801 (2011)

briefs must focus narrowly on the legal or factual arguments first presented in the original motion or petition or raised in the answers to it; LBP-11-34, 74 NRC 685 (2011)

failure to read NRC regulations carefully does not constitute good cause for late-filed motions; LBP-11-34, 74 NRC 685 (2011)

if a contention as originally pleaded did not satisfy 10 C.F.R. 2.309(f)(1), a reply cannot remediate the deficiency by introducing, for the first time, references to a genuine dispute with the license application at issue; LBP-11-34, 74 NRC 685 (2011)

intervenor is entitled to cure deficiencies with regard to standing when it files its reply; LBP-14-4, 79 NRC 319 (2014)

issues raised in an intervention petition or answer are within the appropriate scope of a reply brief; LBP-15-5, 81 NRC 249 (2015)

motion to reply is denied because no compelling circumstances are presented; CLI-12-6, 75 NRC 352 (2012)

motion to reply is denied because petitioner should have anticipated the arguments in NRC Staff's and applicant's answers, which were logical responses to petitioner's suspension motion; CLI-12-6, 75 NRC 352 (2012)

new arguments in support of petitioner's contentions cannot be raised for the first time in reply briefs; CLI-15-20, 82 NRC 211 (2015); CLI-15-22, 82 NRC 310 (2015); LBP-11-6, 73 NRC 149 (2011); LBP-13-12, 78 NRC 239 (2013); LBP-15-4, 81 NRC 156 (2015); LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015)

NRC proceedings would prove unmanageable and unfair to other parties if intervenor could freely change admitted contentions at will as litigation progresses; CLI-12-1, 75 NRC 39 (2012)

only the petitioning party may file reply briefs; CLI-15-7, 81 NRC 481 (2015); LBP-15-13, 81 NRC 456 (2015)

parties do not have an automatic right to respond to reply briefs; LBP-11-34, 74 NRC 685 (2011)

parties may not raise new arguments that are outside the scope of their contentions, but may legitimately amplify arguments presented in support of the contention in order to fairly respond to arguments raised by the opposing party; LBP-12-23, 76 NRC 445 (2012)

petitioner cannot expand the scope of the arguments set forth in the original hearing request; LBP-14-4, 79 NRC 319 (2014)

petitioner cannot introduce new issues or expand the scope of arguments advanced in the original petition, but rather must focus on actual or logical arguments presented in the original petition or raised in answers to it; CLI-15-18, 82 NRC 135 (2015); LBP-15-26, 82 NRC 163 (2015)

petitioner has some latitude to supplement or cure a standing showing in its reply pleading, but any additional arguments should be supported by either the declaration that accompanied the original hearing request or a supplemental affidavit; LBP-12-3, 75 NRC 164 (2012)

petitioner is generally afforded 7 days to file its reply; LBP-12-3, 75 NRC 164 (2012)

petitioner may correct or supplement its showing on standing; LBP-11-21, 74 NRC 115 (2011)

petitioner may not include new information that was not raised in either the petition or answers, but arguments that respond to the petition or answers, whether they are offered in rebuttal or in support, are not precluded; LBP-12-8, 75 NRC 539 (2012)

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petitioner may not remediate deficient contentions by introducing, in the reply, documents that were available to it during the time frame for initially filing contentions; LBP-12-7, 75 NRC 503 (2012)

petitioner may not use its reply to introduce new arguments to reinvigorate thinly supported contentions; CLI-12-5, 75 NRC 301 (2012)

petitioner may use its reply as an opportunity to cure potential defects in standing; LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015)

petitioner was allowed to clarify standing declarations by submitting revised declarations with its reply; LBP-11-13, 73 NRC 534 (2011)

petitioner, having failed in its revised petition to challenge applicant's reliance on the generic environmental impact statement, cannot raise that challenge for the first time in its reply; LBP-11-6, 73 NRC 149 (2011)

petitioner's reply must be narrowly focused on the legal or logical arguments presented in the applicant's or NRC Staff's answer; LBP-11-6, 73 NRC 149 (2011)

petitioners have a right to reply to petitions for review subject to 10 C.F.R. 2.341; CLI-12-6, 75 NRC 352 (2012)

petitioners would have no opportunity to be heard regarding a sua sponte objection by the board because they would only learn of it when they received the board's ruling and thus would be deprived of the opportunity to file the response expressly provided in procedural rules; LBP-15-5, 81 NRC 249 (2015)

proper method for raising an issue addressed in a motion to strike is to seek leave to file a reply in support of the summary disposition motion; LBP-11-14, 73 NRC 591 (2011)

purpose of a reply is narrow, to give petitioner an opportunity to address arguments in the opposing parties' answers; LBP-14-4, 79 NRC 319 (2014)

replies to appeals filed pursuant to 10 C.F.R. 2.311 are not permitted; CLI-12-6, 75 NRC 352 (2012)

replies to waiver petitions are allowed; CLI-11-3, 73 NRC 613 (2011)

reply affidavit that did not accompany the motion to reopen will not be considered in determining whether petitioners have satisfied 10 C.F.R. 2.326(b); LBP-12-10, 75 NRC 633 (2012)

reply must be filed within 7 days after the filing of answers to an intervention petition; LBP-11-21, 74 NRC 115 (2011)

right to reply is intended to provide an opportunity to legitimately amplify arguments made in the intervention petition in response to applicant and NRC Staff answers; LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015)

section 2.311 does not provide for the filing of replies; CLI-14-3, 79 NRC 31 (2014)

to be considered under the motions rule, replies must satisfy the compelling circumstances standard; CLI-14-3, 79 NRC 31 (2014)

using reply briefs to provide, for the first time, the necessary threshold support for contentions would effectively bypass and eviscerate NRC rules governing timely filing, contention amendment, and submission of late-filed contentions; LBP-12-7, 75 NRC 503 (2012)

REPLY TO ANSWER TO MOTION

deadline for reply to an answer to a hearing petition is specified; CLI-11-3, 73 NRC 613 (2011)

filings not otherwise authorized by NRC rules are allowed only where necessity or fairness dictates; CLI-11-14, 74 NRC 801 (2011)

movant has no right to reply except as permitted by the presiding officer and only in compelling circumstances; LBP-15-28, 82 NRC 233 (2015)

parties do not have an automatic right to respond to reply briefs; LBP-11-34, 74 NRC 685 (2011)

parties may choose whether to submit a petition for review, an answer in support of the petition, or neither; CLI-11-14, 74 NRC 801 (2011)

petitioning parties may reply separately to each answer, especially considering that the answers may present different views or arguments; CLI-11-14, 74 NRC 801 (2011)

petitions, answers, and replies are allowed unless otherwise specified by the Commission or the presiding officer, but no other written answers or replies will be entertained; LBP-11-2, 73 NRC 28 (2011)

REPORTING REQUIREMENTS

admissibility of contention questioning whether a confirmatory order imposes reporting obligations on the licensee employees that are overly broad, e.g., that exceed NRC's authority under section 73.56(f)(3), is discussed; LBP-14-4, 79 NRC 319 (2014)

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alternate pressurized thermal shock rule provides measures for ongoing reporting; LBP-15-17, 81 NRC 753 (2015)

annual report on recalculations of decommissioning cost estimates and projected available decommissioning funding must be submitted by a licensee for a plant that has closed before the end of its licensed life; DD-11-4, 73 NRC 713 (2011)

applicants shall notify NRC of information identified by the applicant as having, for the regulated activity, a significant implication for public health and safety or common defense and security; LBP-11-32, 74 NRC 654 (2011)

contention alleges errors by NRC Staff in implementation of 10 C.F.R. 73.56(f)(1)-(3) that fall within the zone of interests protected or regulated by those provisions; LBP-14-4, 79 NRC 319 (2014)

contention that a confirmatory order should not be sustained because, without sufficient justification in the record, it imposes obligations on the off-duty employees of licensee not otherwise required by the NRC to observe and report the offsite, off-duty conduct of fellow employees in inadmissible; LBP-14-4, 79 NRC 319 (2014)

contents of licensee's behavioral observation program cannot substitute for the duty of NRC Staff to be reasonably clear as to what is required of workers who are trying to comply with their legal obligation to report on their co-workers; LBP-14-4, 79 NRC 319 (2014)

contracts that licensee is relying on for decommissioning funding must be reported to NRC; DD-11-7, 74 NRC 787 (2011)

evidence that relief valve failure and inoperability may have existed for a period of time greater than allowed by technical specifications is a reportable event; DD-11-6, 74 NRC 420 (2011)

exemptions from decommissioning fund expenditure notification requirements are categorically excluded from environmental review as administrative changes that do not increase the risk of public radiation exposure; LBP-15-28, 82 NRC 233 (2015)

if license amendment request is approved, licensee will no longer have to provide 30-day notice to the Commission once it begins decommissioning and starts making withdrawals from the decommissioning fund; LBP-15-28, 82 NRC 233 (2015)

individuals who are subject to an access authorization program shall at a minimum, report any concerns arising from behavioral observation and are individually liable if they fail to do so; LBP-14-4, 79 NRC 319 (2014)

instead of providing notice before each decommissioning expense, licensee must submit a decommissioning cost estimate and timeline, called a Post Shutdown Decommissioning Activities Report, and annual reports on expenditures; LBP-15-24, 82 NRC 68 (2015)

license amendment request seeks to replace 30-day notice requirement and other plant-specific license conditions with the decommissioning fund requirements; LBP-15-28, 82 NRC 233 (2015)

licensee assessed the structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS-HD dry cask storage systems for an earthquake and reviewed the event for reportability; DD-12-1, 75 NRC 573 (2012)

licensee determined that dry storage cask displacement and damage to the NUHOMS HD 32PTH caused by an earthquake exceeding the design basis were not reportable; DD-12-2, 76 NRC 391 (2012)

licensee is not required to list an enforcement order and its compliance with the order's terms in the environmental report supporting its operating license renewal application; LBP-12-15, 76 NRC 14 (2012)

licensee is obliged to give local union notice and an opportunity to bargain over the effects of its decision to implement changes in the terms and conditions of the employees' employment regarding behavioral observations of security concerns; CLI-15-16, 81 NRC 810 (2015)

licensee must notify NRC as soon as practical and in all cases within 1 hour of the occurrence, of any deviation from a plant's technical specification; DD-11-6, 74 NRC 420 (2011)

licensee must periodically submit an updated FSAR to NRC to report information and analyses submitted to NRC by licensee or prepared by licensee pursuant to NRC requirement since the previous update; LBP-15-27, 82 NRC 184 (2015)

licensee must submit a post-shutdown decommissioning-activities report before or within 2 years following permanent cessation of operations; DD-15-8, 82 NRC 107 (2015)

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licensee seeks regulatory exemptions to allow it to use decommissioning funds to manage spent fuel and eliminate the 30-day notice requirement that would otherwise apply to spent fuel management; LBP-15-28, 82 NRC 233 (2015)

licensees must annually adjust the amount of decommissioning funding assurance; DD-15-8, 82 NRC 107 (2015)

NRC can issue an order suspending an individual from working anywhere in the nuclear industry who fails to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC can order an individual to pay civil penalties of up to \$100,000 for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC can take criminal enforcement action against an individual for failing to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

NRC's enforcement order does not state that any reportable illegal, unusual, or aberrant behavior must have a nexus to public health and safety or the common defense and security in order to be reportable; LBP-14-4, 79 NRC 319 (2014)

Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 499 (2011)

parties' duty to report material significant developments in a matter under adjudication arises immediately upon discovery of that information; CLI-15-16, 81 NRC 810 (2015)

power reactor licensees must report decommissioning funding assurance information to NRC at least once every 2 years; DD-11-7, 74 NRC 787 (2011)

power reactor licensees must report to the NRC at least once every 2 years on the status of their decommissioning funding for each reactor or part of a reactor that they own; DD-11-4, 73 NRC 713 (2011)

relief valve failure and inoperability found during the refueling outage, which potentially affected the ability of the SRVs to satisfy design actuation requirements, meets the requirements for a licensee event report; DD-11-6, 74 NRC 420 (2011)

reporting and recordkeeping rules for decommissioning trusts are government by 10 C.F.R. 50.75(h)(1)-(4); LBP-15-28, 82 NRC 233 (2015)

reporting of observed behavior is the core concept of the behavioral observation program; LBP-14-4, 79 NRC 319 (2014)

reports to the agency regarding unapproved changes made to the material control and accounting program must be filed within no more than 6 months after the changes; LBP-11-11, 73 NRC 455 (2011)

section 50.71(e) is only a reporting requirement; LBP-15-27, 82 NRC 184 (2015)

Staff guidance documents outline acceptable methods for designing a radiological monitoring program and submitting required semiannual reports specifying principal radionuclide releases to unrestricted areas for the purpose of estimating maximum potential annual public doses from such releases; LBP-11-26, 74 NRC 499 (2011)

to consider any or all of NRC Staff documents as "approvals" by reason of the fact that they request information that will be used to assess compliance with agency requirements would impose an unintended reporting encumbrance; LBP-12-15, 76 NRC 14 (2012)

under an enforcement order, NRC requires that workers report any observed "illegal, unusual, or aberrant" behavior by their co-workers, words not appearing in 10 C.F.R. 73.56(f); LBP-14-4, 79 NRC 319 (2014)

uranium enrichment facility licensee must provide semiannual radiological release reports to NRC; LBP-12-21, 76 NRC 218 (2012)

uranium enrichment facility licensee must submit an annual update of the integrated safety analysis summary; LBP-12-21, 76 NRC 218 (2012)

uranium enrichment facility licensee must submit biannual reports to the NRC specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous 6 months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases; LBP-12-21, 76 NRC 218 (2012)

uranium enrichment facility licensee's radiological surveys must be as necessary and reasonable for compliance, and must include magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiological hazards; LBP-12-21, 76 NRC 218 (2012)

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REPRESENTATION

although an allegation that a purported representative is acting without his or her organization's authorization, i.e., is acting *ultra vires*, is distinct from a challenge to the organization's standing, petitioner may cure such a defect in representation as well; LBP-11-13, 73 NRC 534 (2011)

attorney who purports to represent a client without authorization is subject to disciplinary proceedings by the state bar association; LBP-11-13, 73 NRC 534 (2011)

authority of an officer or attorney to sign a petition is distinguished from an authorization addressed to the organization's standing to intervene; LBP-11-13, 73 NRC 534 (2011)

duly authorized member or officer may represent his or her partnership, corporation, or unincorporated association even if he or she is not an attorney at law, but the representative's notice of appearance must state the basis of his or her authority to act on behalf of the party; LBP-11-13, 73 NRC 534 (2011)

individual may not intervene in his or her own right while simultaneously being represented by another petitioner in the same proceeding; LBP-11-13, 73 NRC 534 (2011)

organization's standing can be demonstrated through the interests of its members, but if a member acts or speaks on behalf of the organization, that member must also demonstrate authorization by that organization to represent it; LBP-11-13, 73 NRC 534 (2011)

REQUEST FOR ACTION

2.206 process provides a forum for individuals to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted, and the Commission may then review the NRC Staff's findings on its own motion; CLI-12-20, 76 NRC 437 (2012)

actions taken by licensee under 10 C.F.R. 50.59 do not give rise to hearing rights under the AEA, but rather are monitored by NRC Staff's inspections and oversight, which may be challenged only by a petition for enforcement; LBP-15-27, 82 NRC 184 (2015)

any member of the public may seek enforcement action associated with matters affecting plant operation, including the vitality of component maintenance programs; CLI-15-6, 81 NRC 340 (2015)

any person may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action as may be proper; CLI-12-20, 76 NRC 437 (2012); LBP-11-6, 73 NRC 149 (2011)

appropriate means of challenging licensee actions undertaken in accordance with 10 C.F.R. 50.59 is through a petition under 10 C.F.R. 2.206; CLI-14-11, 80 NRC 167 (2014)

challenges to licensee actions taken under 10 C.F.R. 50.59 may only be taken by means of a petition for enforcement action under 10 C.F.R. 2.206; CLI-15-5, 81 NRC 329 (2015)

Commission denies hearing request, but refers the matters raised to the Executive Director of Operations for consideration as a request for enforcement action; CLI-15-5, 81 NRC 329 (2015)

concerns about current design and operation of a nuclear power plant are more properly addressed through a petition for enforcement action; LBP-15-13, 81 NRC 456 (2015)

concerns about facility's emergency plans may be raised at any time pursuant to 10 C.F.R. 2.206; CLI-15-6, 81 NRC 340 (2015)

concerns about safety, licensee's compliance with regulatory requirements, and adequacy of NRC oversight are appropriately addressed as requests for enforcement action; CLI-15-8, 81 NRC 500 (2015); CLI-15-14, 81 NRC 729 (2015)

contention claiming that modifications to repair or replace inadequate structural beams and columns is more appropriately presented as a request for enforcement action; CLI-15-5, 81 NRC 329 (2015)

director of NRC office with responsibility for the subject matter shall either institute the requested proceeding or advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request and the reason for the decision; DD-15-7, 82 NRC 257 (2015)

except where the Commission determines that a discretionary hearing is warranted, section 2.206 provides the means to challenge licensee actions under 10 C.F.R. 50.59; CLI-12-20, 76 NRC 437 (2012)

for contentions that fall within the facility's current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 115 (2011)

Fukushima-related petitions for suspension of proceeding and rescission of regulations that make generic conclusions about environmental impacts of severe reactor and spent fuel pool accidents and that

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preclude consideration of those issues in individual licensing proceedings are denied; LBP-11-39, 74 NRC 862 (2011)

hearing request on safety concerns over steam generator replacement is referred to the Executive Director for Operations for disposition; CLI-14-11, 80 NRC 167 (2014)

hearing requests were dismissed as untimely and referred to the Executive Director for Operations for consideration under section 2.206; CLI-12-20, 76 NRC 437 (2012)

if a license were amended, the public's only means to participate in future schedule changes would be through a request for action under 10 C.F.R. 2.206; LBP-15-17, 81 NRC 753 (2015)

if a stakeholder is of the view that immediate action is needed to remedy an ailing safety culture at any facility, then that matter should be brought immediately to the attention of the agency via section 2.206; LBP-13-8, 78 NRC 1 (2013)

if evidence subsequently indicates that the design basis of an operating nuclear power plant will not withstand a maximum flooding event, members of the public may file a request to institute a proceeding to modify, suspend, or revoke a license; LBP-11-15, 73 NRC 629 (2011)

if intervenor is of the view that its members face imminent harm from ongoing site operations, then it may, at any time, file a petition for enforcement action; CLI-12-4, 75 NRC 154 (2012)

if petitioner believes that licensee's analysis is incomplete, inaccurate, or otherwise does not satisfy the section 50.54(q)(3) two-part test, petitioner can challenge the analysis through the enforcement process; CLI-15-20, 82 NRC 211 (2015)

if petitioner has a credible basis to question the adequacy of licensee's compliance with 10 C.F.R. 50.54(q)(3), it may petition for enforcement action; LBP-15-4, 81 NRC 156 (2015)

if petitioner is concerned about the sufficiency of the ongoing oversight of a nuclear power plant and its current evacuation plan, it has the option of requesting a modification, suspension, or revocation of its operating license; LBP-11-29, 74 NRC 612 (2011)

licensing boards are not the appropriate vehicles for reviewing 2.206 petitions; CLI-12-20, 76 NRC 437 (2012)

meaningfulness of section 2.206 petitions is discussed; LBP-12-24, 76 NRC 503 (2012)

members of the public may challenge an action taken under 10 C.F.R. 50.59 only by means of a petition under 10 C.F.R. 2.206; LBP-13-7, 77 NRC 307 (2013); LBP-13-11, 78 NRC 177 (2013)

motions and petitions related to the Fukushima events are denied as premature; CLI-12-7, 75 NRC 379 (2012)

NRC's 2.206 process affords a meaningful opportunity to seek review of and action on safety-related concerns; CLI-15-5, 81 NRC 329 (2015); LBP-15-4, 81 NRC 156 (2015); LBP-15-6, 81 NRC 314 (2015)

once a proceeding has closed, the mechanism to raise a new issue no longer would be a contention accompanied by a motion to reopen, but rather a request for action under 10 C.F.R. 2.206 or a petition for rulemaking under 10 C.F.R. 2.802; CLI-12-3, 75 NRC 132 (2012)

petition requesting that NRC not allow restart after scheduled refueling outage until completion of all environmental remediation work and relevant reports on leaking tritium at the plant is denied; DD-11-1, 73 NRC 7 (2011)

petition under 10 C.F.R. 2.206 will be reviewed only where petitioner specifies the bases for taking the requested action; DD-15-6, 81 NRC 884 (2015)

petitioner may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action that may be proper, if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 295 (2015)

petitioner may file at any time a request for action if it wishes to challenge ongoing operations; CLI-15-25, 82 NRC 389 (2015)

petitioner's request that the NRC take escalated enforcement action against licensee concerning flooding protection is being addressed by the NRC's request for information; DD-15-5, 81 NRC 877 (2015)

petitioners request that NRC issue a demand for information to compel boiling-water reactor licensees with Mark I and Mark II containment designs to describe how their individual facilities comply with 10 C.F.R. Part 50, Appendix A, GDC 44 and 10 C.F.R. 50.49; DD-15-11, 82 NRC 361 (2015)

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petitioners who have been denied a hearing for raising an issue outside the scope of a proceeding could still raise the issue through a petition for enforcement under 10 C.F.R. 2.206; LBP-12-14, 76 NRC 1 (2012)

petitioners' request for cold shutdown because of radiological contamination of groundwater from tritium is denied; DD-11-3, 73 NRC 375 (2011)

record before the board falls far short of rebutting the presumption that a petition for license modification, suspension, or revocation is a meaningful avenue for seeking administrative relief; CLI-12-20, 76 NRC 437 (2012); LBP-12-14, 76 NRC 1 (2012)

referrals may be made when a petition does not satisfy the legal requirements for a hearing or intervention and it is determined that referral to the section 2.206 process is appropriate; CLI-12-20, 76 NRC 437 (2012)

request for enforcement action based on support beam deficiencies, flood protection inadequacy, flood risks from upstream dams, and primary reactor containment electrical penetration seals containing Teflon is denied because petitioner's requests have been addressed through other actions; DD-15-4, 81 NRC 869 (2015)

request for enforcement action to address concerns about operability of the submerged and/or wetted non-environmentally qualified inaccessible cables is denied; DD-13-2, 78 NRC 185 (2013)

request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise technical specifications for spent fuel pool instrumentation is denied; DD-13-3, 78 NRC 571 (2013)

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)

request for immediate action on flaws in the control rod drive mechanisms did not meet the criteria for review; DD-15-3, 81 NRC 713 (2015)

request for immediate action on leakage from the safety injection refueling water tank did not meet the criteria for review; DD-15-3, 81 NRC 713 (2015)

request for immediate action to prevent restart because a piece of primary coolant pump impeller was lodged between the reactor vessel and the flow skirt is denied; DD-15-3, 81 NRC 713 (2015)

request for licensee to replace the primary coolant pumps with others designed for their intended duty is denied; DD-15-3, 81 NRC 713 (2015)

request relating to containment structural damage is mooted by licensee's decision to shut down and defuel the facility

request that licensees should be required to maintain Emergency Response Data System capability throughout an accident will be addressed by an advance notice of proposed rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC immediately shut down plants until all turbine building high-energy line break concerns are identified and those important to safety are corrected is granted in part; DD-14-5, 80 NRC 205 (2014)

request that NRC modify the administrative controls section of the standard technical specifications for each operating reactor design to reference the approved EOP technical guidelines for that plant design is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensee to submit a license amendment application for the design and installation of replacement steam generators and for additional enforcement action is moot; DD-15-7, 82 NRC 257 (2015)

request that NRC order licensees to add guidance to emergency plans that documents how to perform a multiunit dose assessment (including releases from spent fuel pools) using licensee's site-specific dose assessment software and approach until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to complete the Emergency Response Data System modernization initiative by June 2012 to ensure multiunit site monitoring capability is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to comply with twelve specific recommendations in the Near-Term Task Force Report is addressed; DD-14-2, 79 NRC 489 (2014)

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- request that NRC order licensees to conduct periodic training and exercises for multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to determine and implement required staff to fill all necessary positions for responding to a multiunit event until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to ensure that emergency planning equipment and facilities are sufficient for dealing with multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to have an installed, seismically qualified means to spray water into the spent fuel pools, including an easily accessible connection to supply the water (e.g., using a portable pump or pumper truck) at grade outside the building is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to include a reliable hardened vent in boiling-water reactor Mark I and Mark II containments is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to modify the technical guidelines to include emergency operations procedures, severe accident mitigation guidelines, and extensive damage mitigation guidelines in an integrated manner, specify clear command and control strategies for their implementation, and stipulate appropriate qualification and training for those who make decisions during emergencies is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to provide means to power communications equipment needed to communicate onsite and offsite during a prolonged station blackout until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to provide reasonable protection for equipment from the effects of design-basis external events and to add equipment as needed to address multiunit events while other requirements are being revised and implemented is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to provide safety-related AC electrical power for the spent fuel pool makeup system is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to reevaluate seismic and flooding hazards at their sites against current NRC requirements and guidance, and if necessary, update the design basis and structures, systems, and components important to safety to protect against the updated hazards is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to revise their technical specifications to address requirements to have one train of onsite emergency electrical power operable for spent fuel pool makeup and spent fuel pool instrumentation when there is irradiated fuel in the spent fuel pool, regardless of the operational mode of the reactor is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)
- request that NRC order the immediate shutdown of all nuclear power reactors that are known to be located on or near an earthquake fault line is denied; DD-15-6, 81 NRC 884 (2015)
- request that NRC order the immediate suspension of the operating licenses of all General Electric boiling-water reactors that use the Mark I primary containment system citing the Fukushima Dai-ichi accident in Japan as its rationale basis is resolved; DD-15-1, 81 NRC 193 (2015)
- request that NRC revoke license for falsification of information is addressed; DD-14-4, 79 NRC 506 (2014)
- request that NRC shut down or prohibit restart of nuclear power plants until a criminal investigation of a licensee contractor is complete and everything has been verified safe is denied; DD-14-1, 79 NRC 7 (2014)
- request that NRC suspend operations at one plant, investigate whether licensee possesses sufficient funds to cease operations and decommission another, and investigate licensee's current financial qualifications

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to determine whether it remains qualified to continue operating another plant is denied; DD-15-8, 82 NRC 107 (2015)

request that NRC suspend the operating licenses until completion of a set of activities related to the effects of an earthquake that exceeded the plant's operating basis earthquake is granted in part and denied in part; DD-12-2, 76 NRC 391 (2012); DD-15-9, 82 NRC 274 (2015)

request that NRC take enforcement action to correct alleged noncompliance with fire protection regulations is granted; DD-12-3, 76 NRC 416 (2012)

request that NRC take enforcement action until the Licensee completes an independent root-cause assessment for the rise in ultimate heat sink temperature is denied; DD-15-10, 82 NRC 201 (2015)

section 2.206 process provides stakeholders a forum to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted; CLI-13-2, 77 NRC 39 (2013); CLI-14-11, 80 NRC 167 (2014)

to the extent petitioner believes there are existing management competence questions that merit immediate action, then its remedy is to direct the Staff's attention to those matters by filing a request for action under 10 C.F.R. 2.206; CLI-11-11, 74 NRC 427 (2011)

to the extent petitioner seeks to have applicant implement safety measures in addition to those ordered, its recourse is to petition for rulemaking or to petition for license modification, suspension, or revocation; LBP-12-14, 76 NRC 1 (2012)

REQUEST FOR ADDITIONAL INFORMATION

although an admissible contention requires no more than some minimal factual and legal foundation in support, the Commission expects that in almost all instances a petitioner must go beyond merely quoting a request for additional information to justify admission; LBP-15-1, 81 NRC 15 (2015)

as part of the NRC post-Fukushima lessons-learned activities, NRC is requiring all licensees to reevaluate seismic hazards at their sites, and to this end, issued a request for information; DD-15-1, 81 NRC 193 (2015)

asking questions and seeking additional information is an essential part of NRC's licensing process, and such questioning does not automatically give rise to an admissible contention; LBP-12-27, 76 NRC 583 (2012)

Commission decision does not foreclose NRC Staff's ability to request additional information on any part of the license transfer application; CLI-15-26, 82 NRC 408 (2015)

if applicant was required to update its environmental report every time NRC issued an RAI, there would need to be dozens, if not hundreds, of such updates; LBP-12-13, 75 NRC 784 (2012)

information request from NRC Staff is not an approval that needs to be listed in applicant's environmental report under 10 C.F.R. 51.45(d); LBP-15-27, 82 NRC 184 (2015)

issuance of an RAI does not alone establish deficiencies in an application or that NRC Staff will go on to find any of applicant's clarifications, justifications, or other responses to be unsatisfactory; CLI-15-8, 81 NRC 500 (2015)

mere general references to NRC Staff's RAIs do not provide the requisite reasonable specificity to support admission of a contention; CLI-12-5, 75 NRC 301 (2012)

none of the post-Fukushima orders or information requests can be characterized as approvals that must be obtained in connection with renewal of an operating license; LBP-12-15, 76 NRC 14 (2012)

NRC may at any time before expiration of a license, require further written statements from licensee to determine whether a license should be modified; LBP-13-7, 77 NRC 307 (2013)

NRC Staff is empowered to issue requests for additional information relevant to an applicant's environmental report; LBP-11-32, 74 NRC 654 (2011); LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

NRC Staff's responsibilities, parallel to the adjudicatory process, include seeking additional information from applicant after docketing of a pending license application; LBP-12-9, 75 NRC 615 (2012)

petitioner may not rely on a document generated by a state agency if that document contains nothing more than a request for information; LBP-11-6, 73 NRC 149 (2011)

petitioners must do more than rest on the mere existence of RAIs as a basis for their contention; CLI-15-8, 81 NRC 500 (2015)

RAIs are a routine means for NRC Staff to ask for clarification or additional corroborating information from an applicant; CLI-15-8, 81 NRC 500 (2015)

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to consider any or all of NRC Staff documents as “approvals” by reason of the fact that they request information that will be used to assess compliance with agency requirements would impose an unintended reporting encumbrance; LBP-12-15, 76 NRC 14 (2012)
to the extent that applicant proposes modifications to the facility in response to a request for information, NEPA also requires the consideration of the effectiveness and relative costs of a range of alternatives for satisfying the NRC’s concerns; LBP-12-15, 76 NRC 14 (2012)

RESEARCH REACTORS

admission of a management integrity contention relied on references to a serious incident involving shutdown of the reactor, management responsible for the incident remaining in place, and a purported climate of reprisals for bringing forward safety issues, and reference to at least one expert witness in support of the contention; CLI-11-11, 74 NRC 427 (2011)
licensee is required to submit a license transfer application to NRC; CLI-14-5, 79 NRC 254 (2014)
licensee may continue to operate reactor under an expired license if a license renewal application is timely submitted; CLI-14-5, 79 NRC 254 (2014)
nonpower reactors, including research and test reactors, differ as a class from nuclear power plants and are not covered by 10 C.F.R. Part 54; CLI-11-11, 74 NRC 427 (2011)

RESOURCE CONSERVATION & RECOVERY ACT

admissibility of contention that environmental assessment fails to adequately describe and analyze the impacts of maintaining post-operational wellfields as long-term hazardous waste facilities is decided; LBP-15-15, 81 NRC 598 (2015)
proper sampling plan for establishing baseline values is described; LBP-15-3, 81 NRC 65 (2015)

RESPONSE TIME

applicant’s preliminary material control and accounting program satisfactorily demonstrates the ability to resolve the nature and cause of any MC&A alarm within approved time periods in each of the four storage areas at issue; LBP-14-1, 79 NRC 39 (2014)
contention that applicant’s revised material control and accounting plan is inadequate to satisfy the alarm resolution requirements is inadmissible; CLI-15-9, 81 NRC 512 (2015)
See also Time Limits

RESPONSES TO PETITIONS

petitions, answers, and replies are allowed unless otherwise specified by the Commission or the presiding officer, but no other written answers or replies will be entertained; LBP-11-2, 73 NRC 28 (2011)

RESTART

before restart, licensee is required to demonstrate to NRC that no functional damage from seismic events has occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 573 (2012)
NRC approvals of plant restart and lifting suspensions did not trigger AEA § 189a hearing rights; CLI-15-14, 81 NRC 729 (2015)
NRC authorization to restart a plant following NRC Staff’s review of forty-seven ordered modifications is not a license amendment; LBP-15-27, 82 NRC 184 (2015)
NRC’s lifting of license suspension and authorizing restart under stipulated restrictions was not a license amendment because nothing in the record indicates that license amendments are necessary to permit the licensee to operate in accordance with the restrictions that have been imposed; LBP-13-7, 77 NRC 307 (2013)
petition requesting that the NRC not allow restart after scheduled refueling outage until completion of all environmental remediation work and relevant reports on leaking tritium at the plant is denied; DD-11-1, 73 NRC 7 (2011)
request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)
request that, following an earthquake that exceeded the operating basis, NRC suspend the operating licenses until completion of a set of activities described in the petition, is addressed; DD-15-9, 82 NRC 274 (2015)
to demonstrate that no functional damage occurred as a result of the earthquake, licensee performed inspections, tests, and analyses to address the requirements of 10 C.F.R. Part 100, Appendix A; DD-15-9, 82 NRC 274 (2015)

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upon docketing of certifications of permanent shutdown and fuel removal, licensee's licenses no longer authorize operation of the reactors or placement or retention of fuel into the reactor vessels and licensee is prohibited from restarting or loading fuel; DD-15-7, 82 NRC 257 (2015)

RESTRICTED DATA

board determined that the oral portion of the proceeding should be closed to the public to allow for the free-ranging and thorough examination of witnesses and to ensure the effective safeguard and prevention from disclosure of restricted data; LBP-12-21, 76 NRC 218 (2012)

relative to the issue of foreign ownership or control, NRC imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information; LBP-11-11, 73 NRC 455 (2011)

RESTRICTED RELEASE

agreement state license termination regulations are not less protective than or incompatible with NRC's in making the terms of restricted release considerably more difficult than those for unrestricted release; CLI-11-12, 74 NRC 460 (2011)

ALARA analysis required under section 20.1403(a) calls for a licensee seeking to use restricted release to analyze whether it would be cost-beneficial to remove enough radioactive contamination from the site that doses to the public are no higher than 25 mrem per year without reliance on restricted-release controls; CLI-13-6, 78 NRC 155 (2013)

ALARA principle has been incorporated into the restricted-use portion of the license termination rule to screen out sites that should be removing contamination to achieve unrestricted use; CLI-11-12, 74 NRC 460 (2011)

ALARA principle, either as a general regulatory principle or as used in NRC's license termination rule, does not incorporate or call for any comparative analysis of doses from restricted and unrestricted release; CLI-11-12, 74 NRC 460 (2011)

benefit-cost analysis is used to determine initial eligibility for restricted release; CLI-11-12, 74 NRC 460 (2011)

board provides textual analysis and additional clarifying explanation of its interpretation of 10 C.F.R. 20.1403(a); CLI-13-6, 78 NRC 155 (2013)

despite having passed the initial eligibility test for restricted release, if licensee cannot satisfy dose criteria, its site will not be considered acceptable for license termination under restricted conditions; CLI-13-6, 78 NRC 155 (2013)

doses yielded by the restricted-release and unrestricted-release decommissioning options are not susceptible to being compared meaningfully because of the significantly different risks and uncertainties associated with each option; CLI-13-6, 78 NRC 155 (2013)

eligibility test in section 20.1403(a) postulates a cost-benefit inquiry that is modeled on a traditional ALARA cost-benefit analysis, but that serves a different regulatory purpose; CLI-13-6, 78 NRC 155 (2013)

for license termination under restricted conditions, licensee must provide legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year; CLI-13-6, 78 NRC 155 (2013)

"further reductions" in 10 C.F.R. 20.1403(a) necessarily refers to further reductions from the level of residual radioactivity that a licensee proposes to leave in place under its proposed restricted-release decommissioning plan; CLI-13-6, 78 NRC 155 (2013)

if licensee demonstrates, through either of the two cost-benefit approaches, that removing radioactive contamination to the unrestricted-use level would not be cost-beneficial, then licensee then must show that, with the addition of engineered barriers and institutional controls, the average annual dose to the public will not exceed 25 mrem per year *and* is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)

licensee must show that, if institutional controls fail, enough residual radioactivity has been removed from the site so that the average annual dose to the public will not exceed 100 mrem per year and is as low as is reasonably achievable; CLI-13-6, 78 NRC 155 (2013)

nothing in NRC license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 155 (2013)

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NRC regulations neither explicitly nor implicitly require a comparison of the levels of protection afforded by the unrestricted and restricted decommissioning options; CLI-11-12, 74 NRC 460 (2011)

one of the benefits of removing enough radioactivity to cross the 25-mrem threshold is that the value of the affected property is likely to increase, and it is in this sense that NRC guidelines contemplate, as part of the ALARA analysis, a comparison between restricted release and unrestricted release; CLI-13-6, 78 NRC 155 (2013)

sites will be considered acceptable for license termination under restricted conditions if licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of section 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; CLI-13-6, 78 NRC 155 (2013)

terminating a license for restricted use relies on legally enforceable institutional controls to achieve the 25-mrem dose limit; CLI-11-12, 74 NRC 460 (2011)

threshold eligibility for restricted release requires that licensees demonstrate that remediation to the level of adequate protection for license termination cannot be achieved cost-beneficially through unrestricted release before allowing them to pursue restricted-release decommissioning; CLI-13-6, 78 NRC 155 (2013)

unrestricted release and restricted release are both available as independent regulatory options that would provide adequate protection to the public health and safety if the applicable dose and other criteria are met; CLI-11-12, 74 NRC 460 (2011)

REVERSAL OF RULING

Commission reviews board's legal rulings de novo and will reverse a board's legal rulings if they are contrary to established law; CLI-15-6, 81 NRC 340 (2015)

deficiency in a final environmental impact statement is not automatic ground for reversal of an order granting a permit although the issue has been opened for full consideration in an agency hearing; CLI-15-6, 81 NRC 340 (2015)

if motions for stay of effectiveness demonstrate neither irreparable injury nor that reversal of the licensing board is a virtual certainty, then the remaining factors need not be considered; CLI-12-11, 75 NRC 523 (2012)

without a showing of irreparable injury, petitioners seeking a stay of effectiveness must demonstrate that reversal of the licensing board is a virtual certainty; CLI-12-11, 75 NRC 523 (2012)

REVIEW

See Appellate Review; Environmental Review; Financial Qualifications Review; NRC Staff Review; Safety Review; Standard of Review; Standard Review Plans

REVIEW, DISCRETIONARY

although contention ultimately was resolved in NRC Staff's favor, Commission takes review as a matter of discretion because the board's ruling raises substantial questions of precedential importance; CLI-15-6, 81 NRC 340 (2015)

although NRC rules do not provide for the filing of amicus curiae briefs on motions filed pursuant to 10 C.F.R. 2.323, as a matter of discretion the Commission has reviewed both an amicus brief and the opposition to it; CLI-14-11, 80 NRC 167 (2014)

apart from discretionary review by the Commission, NRC Staff's no significant hazards consideration determination under section 50.92(c) may not be contested; LBP-15-26, 82 NRC 163 (2015)

appellate review of interlocutory licensing board orders is disfavored and will be undertaken as a discretionary matter only in extraordinary circumstances; CLI-11-10, 74 NRC 251 (2011)

applicant satisfied the regulatory standards for discretionary review by identifying a substantial question as to whether the board decision reaches at least one necessary legal conclusion without governing precedent or addresses at least one substantial and important question of law, policy, or discretion; CLI-13-1, 77 NRC 1 (2013)

Commission exercised its inherent supervisory authority over agency adjudications to review motion and petition addressing the spent fuel storage issue; LBP-15-1, 81 NRC 15 (2015); LBP-15-9, 81 NRC 396 (2015)

Commission exercises its discretion to review a board decision that raises a potentially recurring procedural issue of some importance; CLI-12-14, 75 NRC 692 (2012)

Commission may at its discretion grant a party's request for interlocutory review of a board decision; CLI-12-18, 76 NRC 371 (2012)

SUBJECT INDEX

Commission on its own motion may review a decision that modifies, suspends, or revokes a license; CLI-15-14, 81 NRC 729 (2015)

Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations of 10 C.F.R. 2.341(b)(4); CLI-11-9, 74 NRC 233 (2011); CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-12-21, 76 NRC 491 (2012); CLI-14-10, 80 NRC 157 (2014); CLI-15-1, 81 NRC 1 (2015); CLI-15-9, 81 NRC 512 (2015); CLI-15-19, 82 NRC 151 (2015)

grant of discretionary review must show that a board's ruling was a departure from, or contrary to, established law; CLI-15-7, 81 NRC 481 (2015)

grant of discretionary review requires a showing that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-13-1, 77 NRC 1 (2013)

interlocutory review is discretionary and will be granted only upon a showing that the issue for which review is sought threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-13-3, 77 NRC 51 (2013)

partial initial decisions by presiding officers will be reviewed as a matter of discretion if petitions raise a substantial question in regard to any of the paragraphs of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-12-1, 75 NRC 39 (2012)

review is granted only where the party demonstrates that the issue for which it seeks review threatens it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through an appeal following the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-12-18, 76 NRC 371 (2012)

standard for discretionary review is described; CLI-15-7, 81 NRC 481 (2015)

REVIEW, INTERLOCUTORY

Commission has declined to take interlocutory review with respect to case management decisions; CLI-15-24, 82 NRC 331 (2015)

disfavor of piecemeal appeals leads the Commission to grant interlocutory review only upon a showing of extraordinary circumstances; CLI-11-14, 74 NRC 801 (2011)

expansion of issues for litigation from the board's denial of a motion for summary disposition had neither a pervasive and unusual effect on the litigation nor a serious and irreparable impact on movant; CLI-15-24, 82 NRC 331 (2015)

expense is not irreparable harm; CLI-15-24, 82 NRC 331 (2015)

grant of interlocutory review requires a showing that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-14, 74 NRC 801 (2011); CLI-15-24, 82 NRC 331 (2015)

grant of summary disposition where other contentions are pending is not a final decision, and is appealable only upon a showing that the standards for interlocutory review have been met; CLI-11-14, 74 NRC 801 (2011)

increased litigation burden did not have a pervasive effect on the basic structure of the proceeding; CLI-15-24, 82 NRC 331 (2015)

interlocutory review is generally disfavored and requests for such review are granted only under extraordinary circumstances; CLI-15-24, 82 NRC 331 (2015)

interlocutory review of a board decision that denied reconsideration of a contention admissibility determination was declined; CLI-15-24, 82 NRC 331 (2015)

parties should not seek interlocutory review by invoking the grounds under which the Commission might exercise its supervisory authority; CLI-11-14, 74 NRC 801 (2011)

procedural rulings involving discovery rarely meet the standard for interlocutory review; CLI-15-24, 82 NRC 331 (2015)

REVIEW, SUA SPONTE

2.206 process provides a forum for individuals to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted, and the Commission may then review the NRC Staff's findings on its own motion; CLI-12-20, 76 NRC 437 (2012)

SUBJECT INDEX

adequacy of NRC Staff's review of transmission-corridor impacts might be appropriate for the board's consideration sua sponte; CLI-15-1, 81 NRC 1 (2015)

although Commission approval is required before a board exercises its sua sponte authority, that authority still exists; LBP-14-9, 80 NRC 15 (2014)

amicus curiae briefs may be filed when the Commission has taken up a matter pursuant to section 2.341 or sua sponte; CLI-14-11, 80 NRC 167 (2014); CLI-15-23, 82 NRC 321 (2015); CLI-15-24, 82 NRC 331 (2015)

authority of presiding officer is compared under predecessor rule 10 C.F.R. 2.760a; LBP-14-9, 80 NRC 15 (2014)

authority shall be used only in extraordinary circumstances; CLI-15-1, 81 NRC 1 (2015)

because the final environmental impact statement had been issued and the board had ruled that a contention remained procedurally defective, it was an appropriate point for board consideration of whether the contention merited sua sponte review; LBP-14-9, 80 NRC 15 (2014)

board must request that the Commission approve the board's determination that sua sponte review is warranted; LBP-14-9, 80 NRC 15 (2014)

boards may make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer; LBP-14-9, 80 NRC 15 (2014)

boards must request Commission approval to undertake sua sponte review; CLI-15-1, 81 NRC 1 (2015)

Commission disfavours requests to invoke its inherent supervisory authority over adjudications; CLI-11-13, 74 NRC 635 (2011)

Commission ordered a licensing board not to exercise sua sponte authority because the Commission had already initiated an ongoing investigation to deal with the issues raised; LBP-14-9, 80 NRC 15 (2014)

licensing boards must judiciously exercise sua sponte authority when faced with a serious, and unraised, issue; LBP-14-9, 80 NRC 15 (2014)

licensing boards should only use sua sponte review in extraordinary circumstances; LBP-14-9, 80 NRC 15 (2014)

no board has attempted to invoke sua sponte review in the past 20 years; LBP-14-9, 80 NRC 15 (2014)

persons who are not parties may file an amicus curiae brief if a matter is taken up by the Commission under 10 C.F.R. 2.341 or sua sponte; CLI-15-1, 81 NRC 1 (2015)

untimely filed contention is appropriate for sua sponte board review; LBP-14-9, 80 NRC 15 (2014)

with Commission's express approval, a licensing board may make findings on a serious safety, environmental, or common defense and security matter not put into controversy by the parties; CLI-15-1, 81 NRC 1 (2015)

REVOCACTION OF LICENSES

except for ownership of NRC-licensed materials outlined in the settlement agreement, licensee will refrain from engaging in conducting radiography or a radiographer's duties, or assisting, directing, or supervising such activities in an NRC jurisdiction under an NRC license or an agreement state license; LBP-11-3, 73 NRC 81 (2011)

if a board determines after full adjudication that the license amendment should not have been granted, it may be revoked or conditioned; LBP-15-16, 81 NRC 618 (2015)

issued licenses can be revoked, conditioned, modified, or affirmed based on the evidence reviewed at the evidentiary hearing; LBP-15-16, 81 NRC 618 (2015)

request that NRC revoke license for falsification of information is addressed; DD-14-4, 79 NRC 506 (2014)

request under 10 C.F.R. 50.54(f) is to enable the Commission to determine whether or not the license should be modified, suspended, or revoked; CLI-15-14, 81 NRC 729 (2015)

RIPENESS

courts decline to review tentative agency positions because doing so severely compromises the interests that the ripeness doctrine protects; LBP-15-15, 81 NRC 598 (2015)

nonfinal rulemaking action can be ripe for review; LBP-15-15, 81 NRC 598 (2015)

in determining whether an issue is ripe for judicial decision, a court must evaluate fitness of the issues for judicial decision and hardship to the parties of withholding court consideration; LBP-12-19, 76 NRC 184 (2012)

SUBJECT INDEX

this doctrine is designed to prevent Article III courts from premature judicial review of abstract controversies and to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties; LBP-12-19, 76 NRC 184 (2012)

this doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction; LBP-12-19, 76 NRC 184 (2012)

RISK ASSESSMENT

applicant is required to evaluate and reduce the risk of events that could have significant impacts on workers or the public; LBP-12-21, 76 NRC 218 (2012)

high-consequence events are required to be highly unlikely and intermediate-consequence events to be unlikely; LBP-12-21, 76 NRC 218 (2012)

request for information instructed all licensees to reevaluate seismic hazards at their sites using updated seismic hazard information, present-day guidance and methodologies, and a risk evaluation; DD-15-6, 81 NRC 884 (2015)

risk from groundwater releases at ocean sites would be a small fraction of that from atmospheric releases; CLI-12-15, 75 NRC 704 (2012)

See also Probabilistic Risk Assessment

RISK MANAGEMENT

because irradiated fuel is continually present in the spent fuel pool once the reactor discharges the first batch of spent fuel, and conditions are most challenging during reactor shutdown for refueling, maintenance of equipment related to the safe storage of spent fuel is typically addressed as part of shutdown risk management; DD-13-3, 78 NRC 571 (2013)

guidance for implementation of requirements during shutdown operations is provided in 10 C.F.R. 50.65(a)(4); DD-13-3, 78 NRC 571 (2013)

RISK-INFORMED PERFORMANCE-BASED PROGRAMS

uranium enrichment facility applicants must ensure that each item relied on for safety will be available and reliable to perform its function when needed; LBP-11-11, 73 NRC 455 (2011)

RISKS

as a logical proposition, risk equals the likelihood of an occurrence times the severity of the consequences; LBP-11-2, 73 NRC 28 (2011)

continued operation and licensing activities post-Fukushima do not pose an imminent risk to public health and safety; LBP-12-18, 76 NRC 127 (2012)

“imminent risk” reflects NRC’s determination that, post-Fukushima, continued operation of U.S. nuclear plants and continued licensing activities pose no imminent risk to public health and safety; CLI-15-19, 82 NRC 151 (2015)

NEPA is not intended to encompass every possible impact, and does not encompass potential losses due to individuals’ perception of a risk; LBP-12-24, 76 NRC 503 (2012); CLI-12-15, 75 NRC 704 (2012)

NRC has found, through its individual plant examination and individual plant examination for external events processes and other risk studies, that the severe accident risks are small for all U.S. licensed nuclear power plants; LBP-12-26, 76 NRC 559 (2012)

small doses of radiation below dose limits, while safe and acceptable, may have some associated risk and should be reduced below limits when reasonable; CLI-11-12, 74 NRC 460 (2011)

when the reference temperature of a reactor pressure vessel is above the screening limit, the RPV is considered to have an unreasonably high risk of fracture from a pressurized thermal shock event; LBP-15-17, 81 NRC 753 (2015)

RULE OF REASON

agencies need only address reasonably foreseeable impacts, not those that are remote and speculative or inconsequentially small; LBP-11-33, 74 NRC 675 (2011); LBP-11-38, 74 NRC 817 (2011); LBP-11-39, 74 NRC 862 (2011); LBP-12-17, 76 NRC 71 (2012)

agency decisions regarding the need to supplement an environmental impact statement based on new and significant information are subject to the rule of reason; LBP-11-26, 74 NRC 499 (2011)

although a severe accident mitigation alternatives analysis considers safety issues, it is actually an environmental review that must be judged under NEPA’s rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 246 (2015)

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applicant's alternatives analysis need not discuss every conceivable alternative to the proposed action, but rather only feasible, nonspeculative, and reasonable alternatives; LBP-11-13, 73 NRC 534 (2011)

because NEPA is premised on a rule of reason, NRC need only consider reasonable alternatives to a proposed action; LBP-11-26, 74 NRC 499 (2011)

concept of alternatives under NEPA must be bounded by some notion of feasibility; CLI-12-15, 75 NRC 704 (2012)

consistent with NEPA's rule of reason, applicant and NRC Staff acted on the basis of best available information and analysis in completing the SAMA evaluation; LBP-13-13, 78 NRC 246 (2013)

duty to prepare an environmental impact statement and to identify and consider every significant environmental impact is tempered by the rule of reason; LBP-13-4, 77 NRC 107 (2013)

environmental reports for license renewal must address environmental impacts of the proposed action and compare those impacts to the impacts of alternative actions, but need only consider those alternatives that are reasonable; LBP-12-15, 76 NRC 14 (2012)

extent of the no-action discussion is governed by a rule of reason, and discussion in the environmental documents need not be exhaustive or inordinately detailed; LBP-12-8, 75 NRC 539 (2012)

given the legal responsibility imposed upon a public utility to provide at all times adequate, reliable service, and the severe consequences that may attend upon a failure to discharge that responsibility, the most that can be required is that the forecast be a reasonable one in light of what is ascertainable at the time made; LBP-11-7, 73 NRC 254 (2011)

hard look under NEPA is subject to a rule of reason, and consideration of environmental impacts need not address all theoretical possibilities, but only those that have some reasonable possibility of occurring; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

if an alternative is commercially feasible and capable of bringing about the ends of the proposed project, then Staff may not dismiss it merely because it is inconsistent with the preferences of interested parties, or for other reasons inconsistent with NEPA's rule of reason; LBP-12-17, 76 NRC 71 (2012)

legal adequacy of a final environmental impact statement is assessed under the rule of reason; LBP-13-4, 77 NRC 107 (2013)

NEPA does not exclude consideration of demand-side management as part of an alternatives analysis when applicant is a state-regulated utility; LBP-11-6, 73 NRC 149 (2011)

NEPA does not require a worst-case analysis; LBP-11-38, 74 NRC 817 (2011)

NEPA excludes consideration of remote and speculative impacts or worst-case scenarios; LBP-13-4, 77 NRC 107 (2013)

NEPA only requires that the environmental impact statement address those environmental impacts that are reasonably foreseeable; LBP-13-4, 77 NRC 107 (2013)

NEPA requirements are subject to a rule of reason, and an environmental impact statement need not address remote and highly speculative consequences; LBP-14-9, 80 NRC 15 (2014)

NEPA should be construed in the light of reason if it is not to demand virtually infinite study and resources; LBP-11-38, 74 NRC 817 (2011); LBP-13-4, 77 NRC 107 (2013); LBP-13-13, 78 NRC 246 (2013); LBP-15-3, 81 NRC 65 (2015)

NEPA's hard-look requirement is tempered by a rule of reason that requires agencies to address only impacts that are reasonably foreseeable, not those that are remote and speculative; LBP-11-38, 74 NRC 817 (2011); LBP-12-5, 75 NRC 227 (2012); LBP-12-17, 76 NRC 71 (2012); LBP-14-7, 79 NRC 451 (2014)

NEPA's rule of reason is a judicial device to ensure that common sense and reason are not lost in the rubric of regulation and thus requires only reasonable forecasting; LBP-13-13, 78 NRC 246 (2013)

NRC's environmental analysis need only consider environmental impacts that are reasonably foreseeable, and need not consider remote and speculative scenarios; LBP-13-13, 78 NRC 246 (2013)

project goals determine the alternatives that are considered reasonable; LBP-12-17, 76 NRC 71 (2012)

regardless of whether NRC itself conducts the need-for-power assessment or relies on another agency's forecasts and studies, that assessment need only be reasonable; LBP-11-7, 73 NRC 254 (2011)

rule of reason is inherent in the National Environmental Policy Act and its implementing regulations; LBP-12-5, 75 NRC 227 (2012)

severe accident mitigation alternatives analysis is mandated by NEPA considerations and thus subject to a rule of reason; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

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severe accident mitigation alternatives analysis is neither a worst-case nor a best-case impacts analysis, and the agency's obligations under NEPA are tempered by a practical rule of reason; LBP-11-18, 74 NRC 29 (2011)

there is no NEPA requirement to use the best scientific methodology; LBP-11-38, 74 NRC 817 (2011) ; LBP-15-3, 81 NRC 65 (2015)

there will always be more data that could be gathered, but agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-13-13, 78 NRC 246 (2013)

to make an impact statement something more than an exercise in frivolous boilerplate, the concept of alternatives must be bounded by some notion of feasibility; LBP-13-4, 77 NRC 107 (2013)

with regard to reasonably foreseeable impacts, NEPA does not call for certainty or precision, but an estimate of anticipated (not unduly speculative) impacts; LBP-15-3, 81 NRC 65 (2015)

within the rule of reason, an environmental impact statement must address both the direct and indirect effects or impacts; LBP-13-4, 77 NRC 107 (2013)

RULEMAKING

administrative agencies are allowed to address issues of general applicability through rulemaking instead of individual adjudications, and the choice made between proceeding by general rule or by individual, ad hoc, litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-14-16, 80 NRC 183 (2014)

Administrative Procedure Act requires no more than a description of the subjects and issues involved in a notice of proposed rulemaking; LBP-15-15, 81 NRC 598 (2015)

admission of contentions that NRC may ultimately deal with generically through notice-and-comment rulemaking is precluded; LBP-11-32, 74 NRC 654 (2011)

advance notice of proposed rulemaking is a formal invitation to participate in shaping the proposed rule; LBP-15-15, 81 NRC 598 (2015)

advance notice of proposed rulemaking was withdrawn due to changes in market demand; LBP-15-15, 81 NRC 598 (2015)

agency can cease a rulemaking all together after a notice of proposed rulemaking has been issued; LBP-15-15, 81 NRC 598 (2015)

agency has discretion to choose between rulemaking and adjudication; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

agency is generally not required to issue a new notice of proposed rulemaking if it changes its position, as long as the final rule is a logical outgrowth of the proposed rule; LBP-15-15, 81 NRC 598 (2015)

agency need not submit a full draft of a rule in a notice of proposed rulemaking; LBP-15-15, 81 NRC 598 (2015)

any changes in NRC rules post-9/11 that might bear on license renewal reviews could be addressed via late-filed contentions; CLI-11-5, 74 NRC 141 (2011)

any interested person may petition the Commission to issue, amend, or rescind any regulation; CLI-12-19, 76 NRC 377 (2012); CLI-13-7, 78 NRC 199 (2013); CLI-13-10, 78 NRC 563 (2013)

any rule or policy changes NRC may make as a result of its post-Fukushima review may be made irrespective of whether a license renewal application is pending, or whether final action on an application has been taken; CLI-12-6, 75 NRC 352 (2012)

because generic impact determinations on impacts of continued storage have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings; LBP-14-15, 80 NRC 151 (2014)

because the Commission will have an opportunity to take a fresh look at concerns petitioners have expressed once the particulars of their rulemaking petition have been scrutinized by public comment and agency review, holding up proceedings is not necessary to ensure that the public will realize the full benefit of our ongoing regulatory review; CLI-11-1, 73 NRC 1 (2011)

board does not consider intervenor's petition, which requests rulemaking and suspension of the proceeding, because the discussion in the petition's body specifically directs those requests to the Commission which has already responded to these requests; LBP-11-34, 74 NRC 685 (2011)

board properly rejected state's contention that raised concerns similar to those in its rulemaking petition as an impermissible challenge to NRC regulations; CLI-12-6, 75 NRC 352 (2012)

challenges to NRC rules and regulations are generally prohibited with limited exceptions in view of expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis

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on rulemaking proceedings as the appropriate forum for settling basic policy issues; CLI-13-7, 78 NRC 199 (2013)

challenges to rules are appropriately lodged through a request for rulemaking; CLI-13-1, 77 NRC 1 (2013)

choice between rulemaking and adjudication (i.e., issuing orders or other license revisions) is within the agency's discretion; LBP-11-11, 73 NRC 455 (2011); CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

Commission may consider the rulemaking request of a nonparty as an exercise of its inherent supervisory powers over proceedings; CLI-11-5, 74 NRC 141 (2011)

concerns about licensee's response to a prolonged station blackout are being addressed in a rulemaking; DD-12-2, 76 NRC 391 (2012)

concerns that apply generically to all spent fuel pools at all reactors are more appropriately addressed via rulemaking or other appropriate generic activity; CLI-12-6, 75 NRC 352 (2012)

consideration in adjudicatory proceedings of issues presently to be taken up by the Commission in rulemaking would be a wasteful duplication of effort; LBP-14-1, 79 NRC 39 (2014)

contentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings; CLI-14-8, 80 NRC 71 (2014); LBP-14-15, 80 NRC 151 (2014); LBP-14-16, 80 NRC 183 (2014); LBP-15-4, 81 NRC 156 (2015); LBP-15-17, 81 NRC 753 (2015)

courts have relied on language accompanying proposed rulemakings to determine agency intent; LBP-15-15, 81 NRC 598 (2015)

for contentions that fall within the facility's current licensing basis, petitioner may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. 2.802 or submitting an enforcement petition under 10 C.F.R. 2.206; LBP-11-21, 74 NRC 115 (2011)

for suspension of licensing proceedings, petitioners must show that continuation of proceedings, pending consideration of a rulemaking petition, would jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge from NRC's continued evaluation of the impacts of the Fukushima accident; LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

generically applicable concerns are not appropriate for resolution in an adjudicatory proceeding, a rulemaking petition being the appropriate mechanism for raising those concerns; CLI-12-6, 75 NRC 352 (2012)

given that NRC will have the opportunity to further consider the concerns that rulemaking petitioners have expressed, and as it further considers actions related to the Fukushima events, it declines to suspend any proceeding pending resolution of the rulemaking petition; CLI-14-7, 80 NRC 1 (2014)

if intervenor wishes to effect a substantive change to Part 50, Appendix E, § VI.2, it may petition for rulemaking; LBP-15-4, 81 NRC 156 (2015)

if NRC determines that changes to its current environmental assessment rules are warranted, it can revisit whether an individual licensing review or adjudication should be held in abeyance pending the outcome of a relevant rulemaking; CLI-14-7, 80 NRC 1 (2014)

if petitioner wishes to challenge an NRC regulation, its recourse is to petition for a rule change; LBP-11-15, 73 NRC 629 (2011)

if petitioner wishes to pursue its concerns about the safety of relocating certain surveillance frequencies generically, it may, at any time, file a petition for rulemaking to amend the regulation; CLI-13-10, 78 NRC 563 (2013)

if petitioner's challenge to an agency rule or regulation relates to an issue of broader significance, then filing a petition for rulemaking is the better approach; CLI-13-7, 78 NRC 199 (2013)

it makes more sense for NRC to study whether, as a technical matter, the agency should modify its requirements relating to spent fuel storage for all plants than to litigate the issue in particular adjudications; CLI-12-6, 75 NRC 352 (2012)

legislative history of the Administrative Procedure Act emphasized the notice requirement for proposed rulemaking in order to fairly apprise the public of the agency's potential action; LBP-15-15, 81 NRC 598 (2015)

licensing boards (as opposed to the Commission) are not empowered to grant a request to suspend a licensing proceeding pending disposition of a rulemaking petition; LBP-11-33, 74 NRC 675 (2011)

SUBJECT INDEX

licensing boards should not accept in individual license proceedings contentions which are or are about to become the subject of general rulemaking by the Commission; CLI-12-16, 76 NRC 63 (2012); LBP-12-24, 76 NRC 503 (2012); CLI-15-9, 81 NRC 512 (2015); CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

licensing proceedings are not the appropriate venue for generic issues, especially those that are about to become the subject of rulemaking; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)

many agency statements, including statements sometimes called "rules," do not have force and effect, and advance notice and public participation are required for rules that carry the force of law; LBP-15-15, 81 NRC 598 (2015)

members of the public had the opportunity to fully participate in the Continued Storage rulemaking proceeding; CLI-15-10, 81 NRC 535 (2015)

nonfinal rulemaking action can be ripe for review; LBP-15-15, 81 NRC 598 (2015)

NRC has discretion to resolve issues generically by rulemaking; CLI-11-11, 74 NRC 427 (2011)

NRC has discretion to transact its business broadly, through rulemaking, or case-by-case, through adjudication; CLI-13-7, 78 NRC 199 (2013)

NRC is not required to conduct a rulemaking proceeding or to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely; CLI-15-4, 81 NRC 221 (2015)

NRC regulations provide procedural mechanisms under 10 C.F.R. 2.206 and 2.802 by which petitioner may pursue its concerns about current deficiencies; LBP-15-6, 81 NRC 314 (2015)

NRC, by necessary implication, considered Indian tribe's trust responsibility concerns during its rulemaking; LBP-14-16, 80 NRC 183 (2014)

NRC's longstanding practice of considering environmental issues through general rulemaking in appropriate circumstances has been endorsed by higher courts; CLI-15-6, 81 NRC 340 (2015); LBP-12-18, 76 NRC 127 (2012)

once a proceeding has closed, the mechanism to raise a new issue no longer would be a contention accompanied by a motion to reopen, but rather a request for action under 10 C.F.R. 2.206 or a petition for rulemaking under 10 C.F.R. 2.802; CLI-12-3, 75 NRC 132 (2012)

ordinary burden to parties in pursuing litigation pending rulemaking does not justify disrupting ongoing license review; CLI-11-1, 73 NRC 1 (2011)

parties with new and significant information that could undermine the rationale for a Commission regulation must seek a rulemaking instead of challenging the regulation in a particular proceeding unless the information uniquely applies to a given adjudication; LBP-11-35, 74 NRC 701 (2011)

petitioner may file a petition for rulemaking to expand the scope of NRC license renewal regulations if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 295 (2015)

petitioner may request that the Commission suspend all or any part of any licensing proceeding to which petitioner is a party, pending disposition of the petition for rulemaking; CLI-11-5, 74 NRC 141 (2011); CLI-12-6, 75 NRC 352 (2012)

petitioners assert that NRC Staff's review of the expedited-transfer issue generated new and significant information regarding the environmental impacts of spent fuel storage; CLI-14-7, 80 NRC 1 (2014)

petitioners have not shown compelling circumstances requiring NRC to suspend final licensing decisions pending completion of rulemaking; CLI-14-7, 80 NRC 1 (2014)

petitioners request that NRC amend 10 C.F.R. 54.17(c) to permit a reactor licensee to file a license renewal application no sooner than 10 years before the expiration of the current license; CLI-11-1, 73 NRC 1 (2011)

post-Fukushima spent fuel pool concerns are being addressed through rulemaking on mitigation of beyond-design-basis events; DD-15-1, 81 NRC 193 (2015)

preamble to notice of proposed rulemaking addresses agency's duty to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules; LBP-15-15, 81 NRC 598 (2015)

precedence requires a licensing board to let EPA's rulemaking run its course, allowing intelligent resolution of any remaining claims instead of piecemeal and repetitive litigation; LBP-15-15, 81 NRC 598 (2015)

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purpose of notice of proposed rulemaking is not to set binding law or policy, but instead to provide interested members of the public an opportunity to comment in a meaningful way on the agency's proposal; LBP-15-15, 81 NRC 598 (2015)

regarding waste confidence, NRC failed to comply with the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-14-3, 79 NRC 31 (2014)

request that licensees should be required to maintain Emergency Response Data System capability throughout an accident will be addressed by an advance notice of proposed rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC modify the administrative controls section of the standard technical specifications for each operating reactor design to reference the approved EOP technical guidelines for that plant design is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to modify the technical guidelines to include emergency operations procedures, severe accident mitigation guidelines, and extensive damage mitigation guidelines in an integrated manner, specify clear command and control strategies for their implementation, and stipulate appropriate qualification and training for those who make decisions during emergencies is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to revise their technical specifications to address requirements to have one train of onsite emergency electrical power operable for spent fuel pool makeup and spent fuel pool instrumentation when there is irradiated fuel in the spent fuel pool, regardless of the operational mode of the reactor is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

requirement for a notice of proposed rulemaking is to sufficiently and fairly apprise interested parties of the issues involved, rather than to specify every precise proposal that the agency may ultimately adopt; LBP-15-15, 81 NRC 598 (2015)

rulemaking petitioner may request a suspension of a licensing proceeding in which petitioner is a participant, pending disposition of the rulemaking petition; CLI-14-6, 79 NRC 445 (2014); CLI-14-7, 80 NRC 1 (2014)

section 2.802(d) suspension request is inapplicable where no petition for rulemaking has been filed before the Commission; CLI-14-6, 79 NRC 445 (2014)

sole remedy to challenge lawfulness of a regulation is to file a petition for rulemaking with the Commission; CLI-14-6, 79 NRC 445 (2014)

sole remedy to challenge the wisdom or lawfulness of 10 C.F.R. 51.53(c)(2) is to file a petition for rulemaking with the Commission; LBP-13-12, 78 NRC 239 (2013)

spent fuel storage pool matters will be addressed, if studies of implications from Fukushima warrant, through more generic regulatory reform; LBP-11-35, 74 NRC 701 (2011)

suspension provision provides an opportunity for a participant to ensure that a successful rulemaking petition is applied in an ongoing adjudication; CLI-14-7, 80 NRC 1 (2014)

suspension request that would have halted final licensing decisions pending action on a petition for rulemaking regarding NRC Staff's review of the potential expedited transfer of spent fuel from pools to dry casks was denied; CLI-15-13, 81 NRC 555 (2015)

to the extent petitioner seeks to have applicant implement safety measures in addition to those ordered, its recourse is to petition for rulemaking or to petition for license modification, suspension, or revocation; LBP-12-14, 76 NRC 1 (2012)

to the extent that petitioner challenges the generic environmental impact statement, its remedy is a petition for rulemaking or a petition for a waiver of the rules based on circumstances; CLI-11-11, 74 NRC 427 (2011)

when engaging in rulemaking, the Commission is carving out issues from adjudication for generic resolution; CLI-13-7, 78 NRC 199 (2013)

where the basis behind the determination not to proceed with a rulemaking was a final agency ruling allowing for judicial review, the earlier advance notice of proposed rulemaking itself was not held to have any binding effect on the public; LBP-15-15, 81 NRC 598 (2015)

See also Denial of Rulemaking

RULES

Administrative Procedure Act broadly defines "rule" to include nearly every statement an agency may make; LBP-15-15, 81 NRC 598 (2015)

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contention quotes text from a notice of proposed rulemaking, but it never ties the statements from the NOPR to any specific section of the environmental assessment, and thus fails to raise a genuine dispute with the EA; LBP-15-15, 81 NRC 598 (2015)

examples of the kinds of facts that must be weighed when determining whether to grant an exemption are given; CLI-13-1, 77 NRC 1 (2013)

intervenor was correct to file contentions on a newly adopted rule because, unlike a proposed rule, it now has indisputable legal effect; LBP-15-15, 81 NRC 598 (2015)

request for exemption from a rule, by itself, does not give rise to an opportunity for hearing; CLI-13-1, 77 NRC 1 (2013)

rule exemption decisions should take into account the equities of each situation; CLI-13-1, 77 NRC 1 (2013)

where the reviewing court vacates a rule without reinstating the old rule, failure to reinstate the old rule creates a temporary regulatory vacuum; CLI-14-8, 80 NRC 71 (2014)

See also Continued Storage Rule; Regulations; Temporary Storage Rule; Waiver of Rule; Waste Confidence Rule

RULES OF PRACTICE

absence of a prohibition is not sufficient justification to admit a contention; CLI-15-23, 82 NRC 321 (2015)

absent a waiver or exception from the presiding officer, no NRC rule or regulation, or provision thereof, concerning licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; LBP-11-21, 74 NRC 115 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-15-26, 82 NRC 163 (2015)

absent a waiver, contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; CLI-12-19, 76 NRC 377 (2012); LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)

absent a waiver, contentions that raise a direct or indirect challenge to a Commission regulation are inadmissible; LBP-15-3, 81 NRC 65 (2015); LBP-15-4, 81 NRC 156 (2015); LBP-15-5, 81 NRC 249 (2015)

absent error of law or abuse of discretion, the Commission defers to licensing board rulings on contention admissibility; CLI-11-9, 74 NRC 233 (2011); CLI-12-19, 76 NRC 377 (2012)

absent good cause, there must be a compelling showing on the remaining late-filing factors; CLI-12-10, 75 NRC 479 (2012)

adequacy of NRC Staff's review of transmission-corridor impacts might be appropriate for the board's consideration sua sponte; CLI-15-1, 81 NRC 1 (2015)

adherence to deadlines and procedures in NRC rules is required so that other litigants are not taken by surprise and are accorded an appropriate opportunity to respond to new arguments or new information; CLI-15-18, 82 NRC 135 (2015)

adjudication is not the proper forum for challenging applicable statutory requirements or the basic structure of the agency's regulatory process; LBP-13-6, 77 NRC 253 (2013)

administrative action of issuing a demand for information is described; DD-15-11, 82 NRC 361 (2015)

admissible contention is required for grant of a hearing request; LBP-15-17, 81 NRC 753 (2015)

admissible contention must satisfy all six criteria of 10 C.F.R. 2.309(f)(1); CLI-15-21, 82 NRC 295 (2015); LBP-11-2, 73 NRC 28 (2011); LBP-11-9, 73 NRC 391 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-32, 74 NRC 654 (2011); LBP-11-39, 74 NRC 862 (2011); LBP-12-8, 75 NRC 539 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-12-23, 76 NRC 445 (2012); LBP-12-24, 76 NRC 503 (2012); LBP-13-8, 78 NRC 1 (2013); LBP-14-6, 79 NRC 404 (2014); LBP-15-5, 81 NRC 249 (2015); LBP-15-6, 81 NRC 314 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-18, 81 NRC 793 (2015); LBP-15-20, 81 NRC 829 (2015); LBP-15-24, 82 NRC 68 (2015)

admissible contentions must satisfy the six basic requirements of specificity, brief explanation, scope, materiality, concise statement of alleged facts or expert opinion, and genuine dispute; LBP-12-25, 76 NRC 540 (2012)

admission of late-filed contentions is allowed only upon a showing that information upon which the new contention is based was not previously available and is materially different than information previously available and the new contention has been submitted in a timely fashion based on the availability of the subsequent information; CLI-11-2, 73 NRC 333 (2011)

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- adoption of building code rules by a state presents new and materially different information not previously available, upon which Intervenor may rest their proposed contention; LBP-11-7, 73 NRC 254 (2011)
- affidavits accompanying motions to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; LBP-15-14, 81 NRC 591 (2015)
- affidavits setting forth factual and/or technical bases for the reopening criteria must address each criterion separately and provide a specific explanation of why it has been met; CLI-12-10, 75 NRC 479 (2012); LBP-11-20, 74 NRC 65 (2011)
- after the section 2.309(b) deadline has passed for submitting an initial hearing petition with one or more accompanying contentions, petitioner/intervenor who wishes to amend an already submitted or admitted contention or gain admission of a new contention must file a motion for leave to file such a new or amended contention; LBP-13-10, 78 NRC 117 (2013)
- all contentions must proffer an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application; LBP-12-27, 76 NRC 583 (2012)
- all contentions, regardless of when they are filed, must also satisfy the admissibility requirements; LBP-12-1, 75 NRC 1 (2012)
- all disclosures under section 2.336(c) must be accompanied by a certification (in the form of a sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification; LBP-14-2, 79 NRC 131 (2014)
- all four factors must be met for a rule waiver request to be granted; LBP-14-16, 80 NRC 183 (2014)
- all material facts set forth by summary disposition movant will be considered to be admitted unless controverted by the opposing party; LBP-11-4, 73 NRC 91 (2011); LBP-12-26, 76 NRC 559 (2012)
- all parties are obliged to follow the procedures in 10 C.F.R. Part 2 and board scheduling orders; CLI-14-10, 80 NRC 157 (2014)
- all proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-12-3, 75 NRC 164 (2012)
- all properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-12-3, 75 NRC 164 (2012)
- although 10 C.F.R. 2.337(f), by its terms, applies to evidence at hearings, the bounds that this rule places on official notice is also appropriate for the contention admissibility stage of a proceeding; LBP-11-7, 73 NRC 254 (2011)
- although a board may view petitioner's supporting information in a light favorable to petitioner, petitioner (not the board) is required to supply all of the required elements for a valid intervention petition; LBP-11-16, 73 NRC 645 (2011)
- although an intervention petition itself was timely filed, the board must balance the eight factors to determine whether petitioner's late-filed exhibits are admissible; LBP-11-13, 73 NRC 534 (2011)
- although intervenors may use discovery to develop a case once contentions are admitted, contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact(s) demonstrating a genuine material dispute with the applicant; CLI-12-5, 75 NRC 301 (2012)
- although it is risky for a nonmoving party to fail to proffer evidence in response to the summary judgment movant's showing, such a failure does not automatically mandate granting of the motion; LBP-11-4, 73 NRC 91 (2011)
- although NRC regulations mandate that a petition contain the name, address, and telephone number of petitioner, the Commission's hearing notice advises prospective petitioners not to include personal privacy information, such as home addresses or home phone numbers, in their filings; LBP-11-21, 74 NRC 115 (2011)
- although NRC rules do not provide for the filing of amicus curiae briefs on motions filed pursuant to 10 C.F.R. 2.323, as a matter of discretion the Commission has reviewed both an amicus brief and the opposition to it; CLI-14-11, 80 NRC 167 (2014)

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although NRC Staff is not required to be a party to a license transfer adjudication, the Commission directs the Staff to become a party; CLI-14-5, 79 NRC 254 (2014)

although petitioner proffered a contention within 30 days of events that prompted it, this does not automatically render a newly proffered contention timely; LBP-11-15, 73 NRC 629 (2011)

although pro se litigants are expected to comply with procedural rules, they are generally extended some latitude; LBP-11-2, 73 NRC 28 (2011)

although rules do not provide for filing of reply briefs, as a matter of discretion the Commission reviews a reply brief; CLI-15-7, 81 NRC 481 (2015)

although the better practice would be to file a notice of appearance, pursuant to section 2.304(d), the signature of a person signing a pleading is a representation that the document has been subscribed in the capacity specified with full authority; LBP-13-12, 78 NRC 239 (2013)

although the entire record is considered on appeal, including pleadings that appellants ask to be adopted by reference, the Commission's decision responds to the arguments made explicitly in the appellate brief; CLI-11-8, 74 NRC 214 (2011)

amended contentions filed after the initial filing period has expired may be admitted only with leave of the licensing board if they satisfy the three criteria of 10 C.F.R. 2.309(f)(2)(i)-(iii); LBP-12-9, 75 NRC 615 (2012)

amended contentions must satisfy general contention admissibility criteria and either the timeliness standards of section 2.309(f)(2) or the balancing test in section 2.309(c) for nontimely contentions; LBP-12-9, 75 NRC 615 (2012)

amended regulations apply to obligations and disputes that arise after the effective date of the regulation; LBP-15-1, 81 NRC 15 (2015)

amendment of 10 C.F.R. 2.309 in 2012 was to simplify the rules, not fundamentally change the rationale boards use to admit new/amended contentions; LBP-15-11, 81 NRC 401 (2015)

amendment of contentions and submission of new contentions are allowed when good cause is shown; CLI-12-1, 75 NRC 39 (2012)

amicus curiae briefs may be filed when the Commission has taken up a matter pursuant to section 2.341 or sua sponte; CLI-14-11, 80 NRC 167 (2014); CLI-15-4, 81 NRC 221 (2015); CLI-15-5, 81 NRC 329 (2015); CLI-15-10, 81 NRC 535 (2015); CLI-15-23, 82 NRC 321 (2015)

any contention filed within 30 days of the date when new and material information on which it is based first became available is regarded as timely; LBP-12-9, 75 NRC 615 (2012)

any contention that falls outside the specified scope of the proceeding must be rejected; LBP-12-27, 76 NRC 583 (2012)

any contention, regardless of when it is filed, must meet the requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-11-20, 74 NRC 65 (2011)

any doubt as to the existence of a genuine issue of material fact is resolved against the summary disposition movant; LBP-11-4, 73 NRC 91 (2011)

any person may file a request to institute a proceeding to modify, suspend, or revoke a license; LBP-11-6, 73 NRC 149 (2011)

any person or organization seeking to intervene as a party in an NRC adjudicatory proceeding addressing a proposed licensing action must establish standing and proffer at least one admissible contention; LBP-11-13, 73 NRC 534 (2011)

appeal as of right from a board's ruling on an intervention petition is permitted only upon denial of a petition to intervene and/or request for hearing, on the question as to whether it should have been granted or upon the granting of a petition to intervene and/or request for hearing, on the question as to whether it should have been wholly denied; CLI-14-3, 79 NRC 31 (2014)

appeal as of right is allowed on the question whether a request for hearing should have been wholly denied; CLI-12-19, 76 NRC 377 (2012); CLI-15-18, 82 NRC 135 (2015); CLI-15-25, 82 NRC 389 (2015)

appeal as of right on the question of whether an initial intervention petition should have been wholly denied or, alternatively, was granted improperly are governed by 10 C.F.R. 2.311; CLI-12-7, 75 NRC 379 (2012); CLI-12-12, 75 NRC 603 (2012)

appeal as of right will be granted on the question whether a request for hearing or petition to intervene should have been granted; CLI-15-21, 82 NRC 295 (2015)

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- appeal of an order selecting a hearing procedure is permitted on the question as to whether the selection of the particular hearing procedure was in clear contravention of the criteria set forth in section 2.310; CLI-14-3, 79 NRC 31 (2014)
- appeals from an order ruling on the admission of new or amended contentions is not permitted; LBP-14-5, 79 NRC 377 (2014)
- appeals of board rulings on hearing requests, petitions to intervene, and access to certain nonpublic information are governed by 10 C.F.R. 2.311(a); CLI-12-6, 75 NRC 352 (2012)
- appeals of contention admissibility rulings are available only upon denial of a petition to intervene and/or request for hearing on the question of whether it should have been granted or upon the grant of a petition to intervene and/or request for hearing on the question of whether it should have been wholly denied; CLI-13-3, 77 NRC 51 (2013)
- appellants must clearly identify the errors in the decision below and ensure that their brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for their claims; CLI-11-8, 74 NRC 214 (2011)
- appellate review of interlocutory licensing board orders is disfavored, and will be undertaken as a discretionary matter only in extraordinary circumstances; CLI-11-10, 74 NRC 251 (2011)
- appellate review of the majority of presiding officer decisions is governed by 10 C.F.R. 2.341(a)(1); CLI-12-6, 75 NRC 352 (2012)
- applicant may file an interlocutory appeal of board orders admitting contentions, but only if the appeal challenges the admissibility of all admitted contentions; CLI-12-12, 75 NRC 603 (2012)
- applicant satisfied the regulatory standards for discretionary review by identifying a substantial question as to whether the board decision reaches at least one necessary legal conclusion without governing precedent or addresses at least one substantial and important question of law, policy, or discretion; CLI-13-1, 77 NRC 1 (2013)
- applicant's change of legal position, its claims that such change no longer entails a need for an exemption from the regulations, and its identification of new means/systems to satisfy the regulations are all types of materially different new information that can enable a contention to satisfy the timely new or amended contention requirements of 10 C.F.R. 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)
- appropriate mechanism to challenge individual contention admissibility determinations following a ruling on an initial petition is a request for interlocutory review; CLI-12-12, 75 NRC 603 (2012)
- argument that applying heightened late-filing standards to contentions triggered by the NRC Staff's review documents violates a petitioner's AEA hearing rights has been considered and rejected; CLI-12-14, 75 NRC 692 (2012)
- as a consequence of the Commission ruling that the board should have terminated the proceeding once it resolved all contentions, all of the board's earlier interlocutory orders become ripe for appellate review; CLI-12-14, 75 NRC 692 (2012)
- at issue is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the summary disposition opponent for a reasonable trier of fact to find in favor of that party; LBP-11-4, 73 NRC 91 (2011)
- at the admission stage, petitioners should provide a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate; LBP-11-13, 73 NRC 534 (2011)
- at the contention admissibility stage, a board evaluates whether a petitioner has provided sufficient support to justify admitting the contention for further litigation; CLI-11-8, 74 NRC 214 (2011)
- at the contention admissibility stage, petitioners need not marshal their evidence as though preparing for an evidentiary hearing; LBP-11-21, 74 NRC 115 (2011)
- at the contention admissibility stage, the burden is on intervenors to demonstrate a deficiency in the application; CLI-11-9, 74 NRC 233 (2011)
- at the contention pleading stage, parties must come forward with sufficiently detailed grievances to allow a board to conclude that genuine disputes exist justifying a commitment of adjudicatory resources; LBP-11-21, 74 NRC 115 (2011)
- at the summary disposition stage, the judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; LBP-11-14, 73 NRC 591 (2011)

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attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support admission; LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013)

automatic stay provisions were removed in 2007; CLI-11-5, 74 NRC 141 (2011)

availability of new information may provide good cause for nontimely filing, but the test for good cause is not simply when the intervenor became aware of the material sought to be introduced but when the information became available and when the intervenor reasonably should have become aware of the information; LBP-11-7, 73 NRC 254 (2011)

bald allegations do not suffice to support contention admissibility; LBP-13-8, 78 NRC 1 (2013)

bare assertions and speculation are insufficient to support the heavy burden placed on the proponent of a motion to reopen to demonstrate that the motion should be granted; CLI-11-8, 74 NRC 214 (2011)

bare assertions and speculation do not supply the requisite support for a motion to reopen; CLI-11-2, 73 NRC 333 (2011)

bare assertions are insufficient to support a contention; CLI-11-11, 74 NRC 427 (2011)

bare assertions in a contention run afoul of NRC's intention to focus the hearing process and provide notice to the other parties; LBP-11-21, 74 NRC 115 (2011)

basis for allowing immediate appellate review of partial initial decisions rests on prior appeal board decisions permitting review of a licensing board ruling that disposes of a major segment of the case or terminates a party's right to participate; CLI-11-14, 74 NRC 801 (2011)

because a pro se first-time filer experienced problems with the NRC E-Filing system, the board concludes that petitioners' efforts demonstrate the requisite good cause for acceptance of the nontimely exhibits for consideration with the timely filed petition; LBP-11-13, 73 NRC 534 (2011)

because applicant did not comply with the consultation requirement of 10 C.F.R. 2.323(b), the board does not consider information supplied with applicant's letter in connection with the board's analysis of petitioner's contention; LBP-11-2, 73 NRC 28 (2011)

because parties to a Subpart L proceeding may not seek discovery from the other parties to the proceeding, all such parties must make periodic mandatory disclosures; LBP-14-2, 79 NRC 131 (2014)

because petitioner's claim of likelihood of success on the merits is conclusory, with no attempt to show how they would be likely to prevail, the motion to reopen falls far short of meeting the requirements of section 2.326(a)(3); LBP-12-10, 75 NRC 633 (2012)

because the board granted a hearing request, its decision to reject some contentions may not be appealed until the end of the case; CLI-14-2, 79 NRC 11 (2014)

because the initial burden rests on the summary disposition movant, a licensing board must examine the record in the light most favorable to the nonmoving party and all justifiable inferences must be drawn in favor of the nonmoving party; LBP-11-4, 73 NRC 91 (2011); LBP-11-14, 73 NRC 591 (2011)

because the motion to reopen and contention are based on information that is neither new nor materially different from information that was previously available, the motion and contention are untimely; LBP-12-11, 75 NRC 731 (2012)

"belief" that is not supported by alleged facts or expert opinion renders a contention inadmissible; LBP-15-26, 82 NRC 163 (2015)

board authority under section 2.338(i) is to approve or reject a settlement agreement, and so it cannot amend the agreement without consent of the parties; LBP-15-21, 82 NRC 1 (2015)

board conducted an initial scheduling conference to discuss development of an initial scheduling order that would help achieve just resolution of a dispute as efficiently and expeditiously as possible; LBP-14-11, 80 NRC 125 (2014)

board denies petition for rule waiver but refers the decision to the Commission because the legal issue presented by the petition is novel and worthy of the Commission's immediate attention; LBP-13-1, 77 NRC 57 (2013)

board has discretion to consider an untimely motion to reopen if the motion presents an exceptionally grave issue; LBP-15-14, 81 NRC 591 (2015)

board may grant a timely filed petition to intervene if it concludes that petitioner has established standing and proffered at least one admissible contention; LBP-15-26, 82 NRC 163 (2015)

board must request that the Commission approve the board's determination that sua sponte review is warranted; LBP-14-9, 80 NRC 15 (2014)

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board order is appealable when it disposes of a major segment of the case or terminates a party's right to participate; CLI-11-10, 74 NRC 251 (2011)

board permitted any person who was not a party to the proceeding to submit written limited appearance statements concerning the issues in the proceeding; LBP-13-13, 78 NRC 246 (2013)

board properly rejected state's contention that raised concerns similar to those in its rulemaking petition as an impermissible challenge to NRC regulations; CLI-12-6, 75 NRC 352 (2012)

board refused to consider new bases that were included in an answer to summary disposition motion and were outside the scope of the original contention; LBP-11-4, 73 NRC 91 (2011)

board suspended mandatory disclosure obligations until further notice; CLI-12-14, 75 NRC 692 (2012)

boards admit contentions, not their supporting bases; LBP-11-2, 73 NRC 28 (2011)

boards are precluded from hearing rule challenges absent a showing of special circumstances; LBP-14-9, 80 NRC 15 (2014)

boards are to construe intervention petitions in favor of petitioners in determining whether petitioner has demonstrated standing; LBP-11-2, 73 NRC 28 (2011)

boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 213 (2012)

boards cannot reconstruct intervenor's pleadings to find that they might be interpreted to satisfy the requirements for reopening a record where the intervenor itself has explicitly argued it need not; LBP-11-20, 74 NRC 65 (2011)

boards do not adjudicate disputed facts at the contention admission stage; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-21, 74 NRC 115 (2011)

boards have an independent obligation to determine whether petitioners meet the threshold criterion for intervention even if their standing is uncontested; LBP-12-24, 76 NRC 503 (2012)

boards in individual licensing proceedings are expected to assess contentions against applicable procedural standards; CLI-12-7, 75 NRC 379 (2012)

boards look to judicial concepts of standing and determine whether petitioner is threatened with a concrete injury and the injury is fairly traceable to the licensing action and capable of being redressed by a favorable decision; LBP-12-24, 76 NRC 503 (2012)

boards may afford an interested state, local governmental body, and federally recognized Indian tribe that has not been admitted as a party under section 2.309 a reasonable opportunity to participate in a hearing; LBP-15-19, 81 NRC 815 (2015)

boards may appropriately view petitioner's supporting information in a light favorable to petitioner, but failure to provide such information requires that the contention be rejected; LBP-12-3, 75 NRC 164 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013)

boards may make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer; LBP-14-9, 80 NRC 15 (2014)

boards may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-20, 74 NRC 65 (2011)

boards must balance the eight factors to determine whether petitioner's late-filed petition will be considered and good cause for the failure to file on time is the most important; LBP-11-2, 73 NRC 28 (2011)

boards must request Commission approval to undertake sua sponte review; CLI-15-1, 81 NRC 1 (2015)

boards must view the record in the light most favorable to the summary disposition opponent; LBP-12-19, 76 NRC 184 (2012)

boards should refer rulings that raise novel or legal policy issues that would benefit from Commission review; CLI-11-11, 74 NRC 427 (2011)

boards will not hunt for information that the agency's procedural rules require be explicitly identified and fully explained; CLI-11-8, 74 NRC 214 (2011)

brief explanation of the basis for a contention is required; LBP-11-13, 73 NRC 534 (2011)

brief explanation of the rationale underlying the contention is sufficient to satisfy 10 C.F.R. 2.309(f)(1)(ii); LBP-15-24, 82 NRC 68 (2015)

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briefs on appeal are limited to 30 pages, absent Commission order directing otherwise; CLI-11-8, 74 NRC 214 (2011)

briefs on appeal must conform to the requirements stated in 10 C.F.R. 2.341(c)(2); CLI-11-8, 74 NRC 214 (2011)

burden is on intervenors to demonstrate that a balancing of the factors of 10 C.F.R. 2.309(c)(i)-(viii) weighs in favor of granting a late-filed petition; LBP-12-27, 76 NRC 583 (2012)

burden of satisfying the requirement for reopening a record is a heavy one; CLI-11-2, 73 NRC 333 (2011)

burden of setting forth a clear and coherent argument is on petitioner, and it should not be necessary to speculate about what a pleading is supposed to mean; CLI-11-2, 73 NRC 333 (2011)

by filing proposed new or amended contention within the time specified in the initial scheduling order, petitioner satisfies timeliness requirements but would still have to satisfy the other requirements of section 2.309(f)(2) or section 2.309(c), as well as the contention admissibility requirements of 10 C.F.R. 2.309(f)(1); LBP-11-22, 74 NRC 259 (2011)

case law test for rule waiver establishes an appreciably higher burden for would-be waiver seekers than does 10 C.F.R. 2.335(b); LBP-14-16, 80 NRC 183 (2014)

caution should be exercised in granting summary disposition, which may be denied if there is reason to believe that the better course would be to proceed to a full hearing; LBP-11-7, 73 NRC 254 (2011)

challenges to an agency rule or regulation in an adjudicatory proceeding without a waiver of that rule or regulation are prohibited; CLI-15-21, 82 NRC 295 (2015)

challenges to an enhanced version of an application alone are insufficient to vitiate intervenors' obligation to file any challenges to the original version of that application at the outset of the proceeding; LBP-11-9, 73 NRC 391 (2011)

challenges to board rulings on late-filed contentions normally fall under NRC rules for interlocutory review; CLI-12-7, 75 NRC 379 (2012)

challenges to rules are appropriately lodged through a request for rulemaking; CLI-13-1, 77 NRC 1 (2013)

Commission affirmed the board's standing ruling, but declined to accept review of challenges to the board's admission of two contentions because petitioner had failed to perfect its appeal by challenging the validity of the board's admissibility rulings regarding other contentions; LBP-15-3, 81 NRC 65 (2015)

Commission did not intend to relieve third-party individuals who are not the subject of an enforcement order, but who nonetheless seek a hearing on the order, from satisfying the requirements for a petition for intervention in section 2.309; LBP-14-4, 79 NRC 319 (2014)

Commission discourages piecemeal appeals; CLI-12-12, 75 NRC 603 (2012)

Commission does not consider hearing requests after the deadline in section 2.309(b) has passed absent a determination that petitioner has demonstrated good cause by showing the criteria of this section have been met; CLI-14-11, 80 NRC 167 (2014)

Commission justifiably expects that all applicable provisions of the Rules of Practice will be observed in adjudicatory submissions, but it also expects the Staff to turn square corners with those with whom it deals, including applicants for SRO licenses; LBP-13-3, 77 NRC 82 (2013)

Commission may grant a petition for review at its discretion, giving due weight to whether there exists a substantial question regarding the considerations in 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-11-9, 74 NRC 233 (2011); CLI-12-7, 75 NRC 379 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-15-2, 81 NRC 213 (2015); CLI-15-19, 82 NRC 151 (2015)

Commission toughened its contention admissibility rule in 1989 to ensure that only intervenors with genuine and particularized concerns participate in NRC hearings; LBP-11-6, 73 NRC 149 (2011)

Commission will not accept the filing of a vague, unparticularized issue; CLI-11-2, 73 NRC 333 (2011)

complex, fact-intensive issues are rarely appropriate for summary disposition, much less for resolution on the initial pleadings; LBP-11-2, 73 NRC 28 (2011)

conclusory allegations about potential radiological harm are insufficient to establish standing; CLI-11-3, 73 NRC 613 (2011)

conclusory statement that appellants proved their position is not sufficient to show clear error or abuse of discretion on the part of the board; CLI-11-8, 74 NRC 214 (2011)

conditions necessary for grant of a rule waiver are outlined; LBP-15-6, 81 NRC 314 (2015)

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confidential commercial information, release of which likely would lead to substantial competitive harm, is entitled to protection; CLI-15-24, 82 NRC 331 (2015)

Congress called upon the Commission to make fundamental changes in its public hearing process to ensure that hearings adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; LBP-11-6, 73 NRC 149 (2011)

consolidating proceedings is the exception rather than the rule; CLI-14-5, 79 NRC 254 (2014)

contemporaneous judicial concepts of standing are applied in NRC proceedings; LBP-12-8, 75 NRC 539 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-13-8, 78 NRC 1 (2013)

contemporaneous judicial concepts of standing require a petitioner to allege an injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-11-6, 73 NRC 149 (2011)

content of settlement agreements is set forth in 10 C.F.R. 2.338(h); LBP-15-21, 82 NRC 1 (2015)

contention admissibility requirements are strict by design to help ensure that the NRC hearing process will be appropriately focused upon disputes that can be resolved in the adjudication; LBP-11-29, 74 NRC 612 (2011)

contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)

contention admissibility requirements seek to ensure that NRC hearings serve to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors; CLI-15-8, 81 NRC 500 (2015)

contention admissibility rule serves to ensure that admitted contentions focus on real disputes that can be resolved in an adjudication, establish a sufficient factual and legal foundation to warrant further inquiry, and put other parties on notice of the disputed issues so they will know precisely those claims they must support or oppose; LBP-11-6, 73 NRC 149 (2011)

contention admissibility rule should not serve as a fortress to deny intervention; LBP-11-6, 73 NRC 149 (2011)

contention admissibility rules are strict by design and exist to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-14-4, 79 NRC 319 (2014); LBP-14-5, 79 NRC 377 (2014); LBP-15-15, 81 NRC 598 (2015); LBP-15-20, 81 NRC 829 (2015)

contention admissibility rules do not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; LBP-14-5, 79 NRC 377 (2014)

contention admissibility rules require that a proposed contention be supported by alleged fact or expert opinion; CLI-12-7, 75 NRC 379 (2012)

contention admissibility standards are deliberately strict, and any contention that does not satisfy NRC requirements will be rejected; CLI-11-8, 74 NRC 214 (2011)

contention admissibility test in section 2.309(f)(1) was crafted by the Commission to raise the threshold bar for an admissible contention; LBP-11-6, 73 NRC 149 (2011)

contention alleging deficiencies or errors in an application also must indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment; LBP-12-27, 76 NRC 583 (2012)

contention challenging a Commission rule is beyond the scope of the proceeding; LBP-14-16, 80 NRC 183 (2014)

contention claims must be set forth with particularity; CLI-12-1, 75 NRC 39 (2012)

contention fails to satisfy the good cause requirements of 10 C.F.R. 2.309(c)(i) because its foundational argument does not rest upon new and materially different information and could and should have been filed at the outset of the proceeding; LBP-11-35, 74 NRC 701 (2011)

contention is inadmissible for failing to raise a material issue; LBP-15-26, 82 NRC 163 (2015)

contention is inadmissible for failure to show that a genuine dispute exists with applicant on a material issue of law or fact; LBP-11-33, 74 NRC 675 (2011)

contention must be rejected if it attacks applicable statutory requirements or regulations, challenges the basic structure of the regulatory process, merely expresses petitioner's view of policy, seeks to raise an issue improper for adjudication in the proceeding or not applicable to the facility in question, or raises an issue that is not concrete or is otherwise not litigable; LBP-11-6, 73 NRC 149 (2011)

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contention must provide sufficient information to show a genuine dispute with applicant on a material issue of law or fact; CLI-15-20, 82 NRC 211 (2015); LBP-12-13, 75 NRC 784 (2012)

contention of omission claims that the application fails to contain information on a relevant matter as required by law and provides the supporting reasons for petitioner's belief; LBP-15-5, 81 NRC 249 (2015)

contention or amendment or supplement to a contention is considered timely if filed 60 days of the date when the material information on which it is based first becomes available to the moving party through service, publication, or any other means; LBP-12-27, 76 NRC 583 (2012)

contention pleading rules are designed to ensure that only well-defined issues are admitted for hearing and a board should not add material not raised by a petitioner in order to render a contention admissible; CLI-11-11, 74 NRC 427 (2011)

contention relating to a matter not previously in controversy among the parties must satisfy the requirements of section 2.309(c) and (i); LBP-14-8, 79 NRC 519 (2014)

contention rule is strict by design and does not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support; LBP-13-9, 78 NRC 37 (2013)

contention rule reflects a deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly supported contentions that were admitted for hearing although based on little more than speculation; CLI-12-5, 75 NRC 301 (2012); CLI-15-8, 81 NRC 500 (2015)

contention that attacks a Commission rule, or which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible; LBP-13-6, 77 NRC 253 (2013)

contention that challenges the entire steam generator replacement project, rather than any aspect of the proposed changes to four technical specifications identified in the license amendment request is outside the scope of this proceeding; LBP-13-11, 78 NRC 177 (2013)

contention that challenges the legal sufficiency of the final environmental impact statement for a combined license is within the scope of the proceeding; LBP-12-18, 76 NRC 127 (2012)

contention that fails to raise a material issue is inadmissible; LBP-12-25, 76 NRC 540 (2012)

contention that falls outside the specified scope of the proceeding must be rejected; LBP-12-15, 76 NRC 14 (2012); LBP-12-18, 76 NRC 127 (2012)

contention that final environmental assessment fails to present relevant information in a clear and concise manner that is readily accessible to the public and other reviewers is inadmissible; LBP-15-11, 81 NRC 401 (2015)

contention that license renewal application fails to adequately address the risks from flooding from failure of upstream dams is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contention that provides no reference to any specific portion of the license amendment request that petitioners dispute is inadmissible; LBP-13-11, 78 NRC 177 (2013)

contention that requiring the tribe to formulate contentions before a final EIS is released and failing to follow scoping process violates NEPA is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that seeks to impose a requirement beyond those imposed by a Commission regulation is inadmissible; LBP-15-26, 82 NRC 163 (2015)

contention that simply states petitioner's views about what regulatory policy should be does not present a litigable issue; LBP-13-6, 77 NRC 253 (2013)

contention that was originally admitted as a challenge to the environmental report may be treated as a challenge to the similar section of the draft environmental impact statement; LBP-11-1, 73 NRC 19 (2011)

contentions based on bare assertions and speculation will not be admitted; LBP-13-8, 78 NRC 1 (2013)

contentions based on new information in a document that was not previously available and that is materially different from a document that was previously available are not untimely simply for not being included in an intervenor's initial hearing request filed at the outset of a proceeding; LBP-11-9, 73 NRC 391 (2011)

contentions calling for requirements in excess of those imposed by regulations will be rejected as a collateral attack on regulations; CLI-12-5, 75 NRC 301 (2012)

contentions filed after the deadline for initial intervention petitions also must satisfy the standards for late-filed contentions; CLI-12-15, 75 NRC 704 (2012)

contentions filed after the initial petition are not subject to appeal pursuant to 10 C.F.R. 2.311; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-7, 75 NRC 379 (2012)

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- contentions for adjudicatory hearings must raise a genuine dispute with the applicant/licensee on a material issue of law or fact; CLI-12-10, 75 NRC 479 (2012)
- contentions must be based on a genuine material dispute, not the possibility that petitioners, if they perform their own additional analyses, may ultimately disagree with the application; LBP-14-6, 79 NRC 404 (2014)
- contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner; LBP-11-29, 74 NRC 612 (2011)
- contentions must be raised at the earliest possible opportunity; CLI-15-1, 81 NRC 1 (2015)
- contentions must be raised with sufficient detail to put the parties on notice of the issues to be litigated; CLI-11-11, 74 NRC 427 (2011)
- contentions must be set forth with particularity and must meet all six contention admissibility factors; CLI-15-18, 82 NRC 135 (2015); LBP-15-26, 82 NRC 163 (2015)
- contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and directive referring the proceeding to the licensing board; LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-14-6, 79 NRC 404 (2014)
- contentions must demonstrate that the issue raised is material to the findings NRC must make for the licensing action at issue; CLI-12-15, 75 NRC 704 (2012)
- contentions must focus on the license application, including the safety analysis report/technical report and the environmental report, challenging either specific portions or alleged omissions so as to establish a genuine dispute on a material issue of law or fact; LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013)
- contentions must provide a concise statement of the alleged facts or expert opinions that support petitioner's position on the issue and on which petitioner intends to rely at hearing, together with references to the specific sources and documents on which petitioner intends to rely to support its position fact; CLI-15-8, 81 NRC 500 (2015); LBP-12-24, 76 NRC 503 (2012); LBP-14-6, 79 NRC 404 (2014)
- contentions must raise a genuine dispute with the license application and must have underlying factual or legal support; CLI-12-15, 75 NRC 704 (2012); CLI-14-6, 79 NRC 445 (2014)
- contentions must satisfy the twin precepts of timeliness and admissibility; LBP-13-10, 78 NRC 117 (2013)
- contentions need not be proven at the admissibility stage; LBP-13-8, 78 NRC 1 (2013)
- contentions need to have some reasonably specific factual or legal basis; CLI-15-8, 81 NRC 500 (2015)
- contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement its admission; CLI-12-5, 75 NRC 301 (2012)
- contentions proposed after the filing deadline, which would have been allowable under the previous 10 C.F.R. 2.309(f)(2) requirements, will also be allowable under the current section 2.309(c)(1) requirements; LBP-15-11, 81 NRC 401 (2015)
- contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute with the applicant; LBP-12-8, 75 NRC 539 (2012)
- contentions should refer to portions of the application that petitioner disputes along with supporting reasons for each dispute, if petitioner believes that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for petitioner's belief; CLI-15-8, 81 NRC 500 (2015)
- contentions submitted after the deadline for initial intervention petitions must satisfy the standards for late-filed contentions; CLI-12-10, 75 NRC 479 (2012)
- contentions submitted after the initial filing period for receipt of petitions to intervene must be based on information not previously available and materially different than information previously available and must be submitted in a timely fashion based on availability of the new information; LBP-12-27, 76 NRC 583 (2012)

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contentions that address an important security issue regarding Part 74's strict requirements for the proposed facility, which applicant previously admitted it failed to satisfy, are admissible; LBP-11-9, 73 NRC 391 (2011)

contentions that amount to an attack on applicable statutory requirements or represent a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-11-29, 74 NRC 612 (2011)

contentions that are not accompanied by sufficient factual support to raise a genuine dispute are inadmissible; LBP-13-12, 78 NRC 239 (2013)

contentions that challenge an NRC regulation are inadmissible; LBP-13-12, 78 NRC 239 (2013)

contentions that challenge applicant's compliance with the loss-of-large-areas requirements of 10 C.F.R. 50.54(hh)(2) are not admissible because they are not within the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011)

contentions that fail to directly controvert the application or that mistakenly assert that the application does not address a relevant issue will be dismissed; LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013)

contentions that fail to satisfy timeliness standards in section 2.309(f)(2) may still be admitted pursuant to a balancing test governing nontimely filings that weighs the factors set forth in 10 C.F.R. 2.309(c); LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012)

contentions that neither explain how the application is inadequate nor identify which sections of the application are inadequate are inadmissible; LBP-11-21, 74 NRC 115 (2011)

contentions will be ruled inadmissible if petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation; LBP-14-6, 79 NRC 404 (2014)

contradictory provisions of subsections (a) and (b) of 10 C.F.R. 2.710 are discussed; LBP-11-23, 74 NRC 287 (2011)

criteria that nontimely contentions must address are governed by 10 C.F.R. 2.309(c); LBP-11-9, 73 NRC 391 (2011)

crux of the "genuine dispute" prong under 10 C.F.R. 2.309(f)(1)(vi) is the requirement for specificity, that a contention must have more than general allegations; LBP-15-1, 81 NRC 15 (2015)

current adjudicatory procedures and policies provide latitude to the Commission, its licensing boards, and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings; CLI-14-10, 80 NRC 157 (2014)

degree to which new/amended contentions will be considered timely submitted is generally defined by the presiding officer as a specific period following the triggering event that makes the previously unavailable/materially different information available so as to be the basis for the new/amended contention; LBP-13-10, 78 NRC 117 (2013)

deliberative process privilege applied under 10 C.F.R. 2.390(a)(5) to interagency or intra-agency memorandums or letters is similar to Exemption 5 under the Freedom of Information Act; LBP-13-5, 77 NRC 233 (2013)

demands for a hearing by the subject of an enforcement order are automatic without regard to satisfaction of section 2.309(d) and section 2.309(f)(1); LBP-14-4, 79 NRC 319 (2014)

determination as to whether requests or petitions are filed in a timely manner shall be subject to a reasonableness standard and are not subject to the 30-day deadline applicable to motions by existing parties to add or amend contentions; LBP-15-6, 81 NRC 314 (2015)

director of NRC office with responsibility for the subject matter shall either institute the requested 2.206 proceeding or advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request and the reason for the decision; DD-15-7, 82 NRC 257 (2015)

"disclosing party" means the party required to make mandatory disclosure pursuant to 10 C.F.R. 2.336; LBP-11-5, 73 NRC 131 (2011)

disclosure updates in Subpart L proceedings shall include any documents subject to disclosure that were not included in any previous disclosure update; LBP-14-2, 79 NRC 131 (2014)

discretionary grant of a petition for review gives due weight to the existence of a substantial question with respect to one or more of the considerations under 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-12-6, 75 NRC 352 (2012)

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discretionary intervention may be considered only when at least one requestor/petitioner has established standing and at least one contention has been admitted so that a hearing will be held; LBP-14-4, 79 NRC 319 (2014)

disfavor of piecemeal appeals leads the Commission to grant interlocutory review only upon a showing of extraordinary circumstances; CLI-11-14, 74 NRC 801 (2011)

documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source do not render “new” the summarized or compiled information; CLI-11-2, 73 NRC 333 (2011)

during summary disposition, it is not appropriate for boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-7, 73 NRC 254 (2011)

each of the criteria for a motion to reopen must be separately addressed in an affidavit, with a specific explanation of why it has been met; CLI-11-8, 74 NRC 214 (2011); CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012); LBP-11-35, 74 NRC 701 (2011)

each organization member seeking representation must qualify for standing in his or her own right, the interests that the representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action; LBP-11-29, 74 NRC 612 (2011)

each party to a proceeding must disclose all documents relevant to the admitted contentions, except those documents for which a claim of privilege or protected status is made; LBP-11-5, 73 NRC 131 (2011)

eight-factor balancing test is applied to determine whether nontimely contentions should be admitted; LBP-12-27, 76 NRC 583 (2012)

eight-factor test that allowed a board to consider new or amended contentions that did not meet the three requirements for admissibility of late-filed contentions available under 10 C.F.R. 2.309(f)(2) is no longer available; LBP-15-1, 81 NRC 15 (2015)

entity seeking representational standing must show that it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

essential to establishing standing are findings of injury, causation, and redressability; CLI-11-3, 73 NRC 613 (2011)

evaluation of a contention at the contention admissibility stage should not be confused with evaluation at the merits stage; CLI-11-8, 74 NRC 214 (2011)

even if intervenors are appearing pro se, adherence to board directives is expected; CLI-14-10, 80 NRC 157 (2014)

even if there are no objections to petitioners’ representational standing, boards have an independent obligation to determine whether they have adequately demonstrated standing; LBP-11-2, 73 NRC 28 (2011); LBP-11-16, 73 NRC 645 (2011)

even when a proposed new contention is not found timely, it may be admitted if it meets a balancing of the eight nontimely filing factors; LBP-11-39, 74 NRC 862 (2011)

evidence contained in affidavits accompanying motions to reopen must meet admissibility standards; CLI-12-6, 75 NRC 352 (2012); LBP-15-14, 81 NRC 591 (2015)

evidentiary objections made for the first time after briefing has been completed unfairly deprive the petitioners of the opportunity to file the response expressly provided in the NRC’s procedural rules; LBP-15-20, 81 NRC 829 (2015)

exception for situations where parties seek to add previously unlitigated material would effectively render the reopening regulation meaningless; CLI-12-10, 75 NRC 479 (2012)

exceptionally grave issues may be considered in the discretion of the presiding officer even if untimely presented; CLI-12-21, 76 NRC 491 (2012); LBP-12-1, 75 NRC 1 (2012)

expert’s affidavit supporting a motion to reopen must supply the factual and legal foundation for assertions that the reopening criteria are satisfied; LBP-11-20, 74 NRC 65 (2011)

factors that timely new or amended contentions must satisfy are governed by are 10 C.F.R. 2.309(f)(2); LBP-11-9, 73 NRC 391 (2011)

factual basis requirement for contention admission is intended to preclude contentions from being admitted where an intervenor has no facts to support its position and instead contemplates using discovery or cross-examination as a fishing expedition that might produce relevant supporting facts; LBP-14-6, 79 NRC 404 (2014)

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factual support required at the contention admission stage is only a minimal showing that material facts are in dispute; LBP-11-2, 73 NRC 28 (2011); LBP-11-14, 73 NRC 591 (2011)

factual support required for an admissible contention need not be of the quality necessary to withstand a summary disposition motion, but need only demonstrate that material facts are in dispute; LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)

failure of petitioner to cite even a single specific deficiency in the application precludes satisfaction of the specificity requirement of 10 C.F.R. 2.309(f)(1)(vi); LBP-11-29, 74 NRC 612 (2011)

failure to comply with any of the admissibility criteria in section 2.309(f)(1) warrants rejection of a contention; LBP-11-7, 73 NRC 254 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-12-3, 75 NRC 164 (2012); LBP-12-7, 75 NRC 503 (2012); LBP-12-9, 75 NRC 615 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-12-24, 76 NRC 503 (2012); LBP-12-25, 76 NRC 540 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-14-6, 79 NRC 404 (2014); LBP-14-8, 79 NRC 519 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-4, 81 NRC 156 (2015); LBP-15-16, 81 NRC 618 (2015); LBP-15-19, 81 NRC 815 (2015)

failure to comply with NRC's e-filing requirements without good cause or without obtaining an exemption from the requirements under 10 C.F.R. 2.302(g) can result in rejection of a pleading; LBP-15-4, 81 NRC 156 (2015)

failure to comply with pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests; LBP-11-7, 73 NRC 254 (2011)

failure to demonstrate good cause for a late-filed contention requires a compelling showing on the remaining factors; CLI-12-15, 75 NRC 704 (2012)

failure to provide sufficient factual or expert support for claims in a contention in contravention of section 2.309(f)(1)(v) also may have failed to show a genuine dispute with the application as required under section 2.309(f)(1)(vi); LBP-12-15, 76 NRC 14 (2012)

fair and reasonable settlement of issues proposed for litigation is encouraged; LBP-15-21, 82 NRC 1 (2015)

filing deadlines may be extended or shortened by either the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer; LBP-13-9, 78 NRC 37 (2013)

filing of amicus briefs is permitted if a matter is taken up by the Commission under section 2.341 or sua sponte; CLI-15-24, 82 NRC 331 (2015)

filing of new contentions based on the SER and Staff NEPA documents is expressly contemplated by the Model Milestones; LBP-11-22, 74 NRC 259 (2011)

filings not otherwise authorized by NRC rules are allowed only where necessity or fairness dictates; CLI-11-14, 74 NRC 801 (2011); CLI-14-3, 79 NRC 31 (2014)

for a contention to be admissible, petitioner must, among other things, provide a concise statement of the alleged facts or expert opinions that support its position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents that support its position; CLI-12-5, 75 NRC 301 (2012)

for a motion to reopen to be granted and a new contention admitted after termination of a proceeding, the motion must meet all of the requirements of 10 C.F.R. 2.326 for reopening a record, and the new contention must have been submitted in a timely fashion and demonstrate admissibility as required at 10 C.F.R. 2.309; LBP-12-11, 75 NRC 731 (2012)

for a newly proffered contention to be timely, it must be based on information that was not previously available; LBP-11-15, 73 NRC 629 (2011)

for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-11-21, 74 NRC 115 (2011)

for a rule waiver request to be granted, all four factors must be met; LBP-11-35, 74 NRC 701 (2011)

for a timely filed contention to be admissible, it must satisfy six pleading requirements; LBP-11-6, 73 NRC 149 (2011)

for an individual or organization to be deemed a "person whose interest may be affected by the proceeding," so as to have standing as of right such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must comply with 10 C.F.R. 2.309(d)(1)(i)-(iv); LBP-12-15, 76 NRC 14 (2012)

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for any contention to be admissible, regardless of when it is filed, it must satisfy each of the six criteria of 10 C.F.R. 2.309(f)(1); LBP-12-10, 75 NRC 633 (2012)

for new contentions to be admitted after the record has closed, petitioner must satisfy the Commission's demanding regulatory requirements for reopening the record; LBP-11-23, 74 NRC 287 (2011)

for proceedings for which a Federal Register notice of agency action is published, the hearing request must be filed not later than the time specified in the notice of proposed action; CLI-14-11, 80 NRC 167 (2014)

for proceedings in which a Federal Register notice is not published, the hearing request shall be filed by the later of 60 days after publication of notice on the NRC website or 60 days after the requestor receives actual notice of a pending application, but not more than 60 days after agency action on the application; CLI-14-11, 80 NRC 167 (2014)

for reactor operating license renewal proceedings, a proximity presumption, respecting standing for an individual who resides within a 50-mile radius of a nuclear power plant, is recognized; LBP-12-10, 75 NRC 633 (2012)

for representational standing, neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit; LBP-11-13, 73 NRC 534 (2011)

form of settlement agreements is set forth in 10 C.F.R. 2.338(g); LBP-15-21, 82 NRC 1 (2015)

four factors must be addressed when the Commission or presiding officer is asked to stay the effectiveness of a presiding officer's decision or action during the pendency of an appeal; CLI-15-17, 82 NRC 33 (2015)

four-factor test for showing of special circumstances demonstrating that application of a rule would not serve the purpose for which it was adopted is outlined; CLI-12-6, 75 NRC 352 (2012); CLI-12-19, 76 NRC 377 (2012)

general environmental and policy interests are insufficient for organizational standing; LBP-12-3, 75 NRC 164 (2012)

general requirements for admissibility for all contentions are set forth in 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-12-27, 76 NRC 583 (2012)

generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 340 (2015)

genuine dispute prong of 10 C.F.R. 2.309(f)(1)(vi) requires a nexus between alleged deficiencies and a material consequence; LBP-15-1, 81 NRC 15 (2015)

geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet traditional standing requirements in certain types of proceedings, including operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

good cause exists when information on which the filing is based was not previously available and is materially different from information previously available and the filing has been submitted in a timely fashion based on the availability of the subsequent information; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-15-1, 81 NRC 15 (2015); LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)

"good cause" for late filing is defined as a showing that petitioner could not have met the filing deadline and filed as soon as possible thereafter; LBP-11-7, 73 NRC 254 (2011)

good cause for the failure to file on time is afforded the most weight in the balancing of the eight late-filing factors of 10 C.F.R. 2.309(c)(i)-(viii); CLI-12-10, 75 NRC 479 (2012); LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-7, 73 NRC 254 (2011); LBP-11-9, 73 NRC 391 (2011); LBP-11-10, 73 NRC 424 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-15, 73 NRC 629 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-32, 74 NRC 654 (2011); LBP-12-7, 75 NRC 503 (2012); LBP-12-27, 76 NRC 583 (2012)

good cause in section 2.307(a) does not share the same definition that is used for good cause in section 2.309(c); LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

good cause is the most important of the late-filing factors under section 2.309(c)(1), and absent good cause, a compelling showing must be made with regard to the other seven factors; LBP-12-10, 75 NRC 633 (2012); LBP-12-12, 75 NRC 742 (2012)

Google Maps and Mapquest searches of distance from petitioner's address may be used to establish proximity to a proposed facility; LBP-12-3, 75 NRC 164 (2012)

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- governmental body's interest in protecting the individuals and territory that fall under that body's authority establishes an organizational interest for standing purposes; LBP-11-6, 73 NRC 149 (2011)
- governmental entity is permitted to participate in the proceeding as an interested local governmental body and will thus have the opportunity to support intervenors' already-admitted contention; LBP-15-19, 81 NRC 815 (2015)
- grant of interlocutory review requires a showing that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-15-24, 82 NRC 331 (2015)
- grant of summary disposition where other contentions are pending is not a final decision, and is appealable only upon a showing that the standards for interlocutory review have been met; CLI-11-14, 74 NRC 801 (2011)
- health issues or an unexpected weather event are reasons that might constitute good cause for purposes of requesting an extension under section 2.307; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)
- hearing demand under section 2.103(b)(2) has only to meet the prescribed filing deadline and specify the reasons why the demander deemed the denial of the sought operator's license to have been unjustified; LBP-13-3, 77 NRC 82 (2013)
- hearing is granted where petitioner has proffered at least one admissible contention and established standing; LBP-15-5, 81 NRC 249 (2015)
- hearing petitioners have an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to uncover any information that could serve as the foundation for a specific contention; LBP-11-9, 73 NRC 391 (2011)
- hearing request must set forth with particularity the contentions petitioner seeks to litigate; CLI-15-20, 82 NRC 211 (2015)
- hearing request on safety concerns over steam generator replacement is referred to the Executive Director for Operations for disposition; CLI-14-11, 80 NRC 167 (2014)
- hearing request or petition to intervene must set forth with particularity the contentions sought to be raised by satisfying the six criteria; CLI-12-5, 75 NRC 301 (2012); LBP-11-21, 74 NRC 115 (2011)
- if a contention is based upon new information, it must meet the standards of 10 C.F.R. 2.309(f)(2); LBP-11-35, 74 NRC 701 (2011)
- if a contention satisfies the timeliness requirement of 10 C.F.R. 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. 2.309(c) which specifically applies to nontimely filings; LBP-12-18, 76 NRC 127 (2012)
- if a new or amended contention is deemed untimely under section 2.309(f)(2)(iii), it will be evaluated under 10 C.F.R. 2.309(c)(1), which requires a balancing of eight factors to determine whether it is admissible; LBP-12-12, 75 NRC 742 (2012); LBP-12-23, 76 NRC 445 (2012)
- if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 11 (2014)
- if a party submits a proposed contention after the initial filing deadline announced in the applicable Federal Register notice for submitting a hearing petition, it will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause; LBP-13-9, 78 NRC 37 (2013); LBP-15-11, 81 NRC 401 (2015)
- if a proposed new contention that is filed after the initial filing period set forth in the hearing notice is not timely under 10 C.F.R. 2.309(f)(2)(iii), then proponent must address the eight criteria of section 2.309(c)(1) and show that a balance of these factors weighs in favor of admitting that contention; LBP-11-9, 73 NRC 391 (2011); LBP-11-10, 73 NRC 424 (2011); LBP-11-32, 74 NRC 654 (2011)
- if a summary disposition proponent fails to make the requisite showing, the board must deny the motion even if the opposing party chooses not to respond or its response is inadequate; LBP-11-4, 73 NRC 91 (2011)
- if any portion of a filing is untimely tendered, it must be accompanied by a motion to file out of time; LBP-11-13, 73 NRC 534 (2011)

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- if applicants believe that their actions render a contention moot, then they should promptly file a motion for summary disposition; LBP-12-19, 76 NRC 184 (2012)
- if at least one petitioner demonstrates standing and proffers an admissible contention so that its petition to intervene is granted, section 2.315(c) allows a local governmental body that has not been admitted as a party to participate in a hearing as an interested nonparty; LBP-11-6, 73 NRC 149 (2011)
- if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 91 (2011)
- if good cause is not shown, a board may still permit the late filing, but petitioner or intervenor must make a strong showing on the other factors of 10 C.F.R. 2.309(c); LBP-11-7, 73 NRC 254 (2011); LBP-11-9, 73 NRC 391 (2011); LBP-11-32, 74 NRC 654 (2011)
- if intervenor cannot meet the requirements for filing a contention under the new section 2.309(c)(1), he or she can still take advantage of an extension request if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline; LBP-15-1, 81 NRC 15 (2015)
- if intervenors file a new or amended contention, with supporting materials, within 60 days after pertinent information first becomes available, then the contention will be deemed timely filed and intervenors will be absolved of their obligation to satisfy the late-filing requirements of 10 C.F.R. 2.309(c) or the requirements for reopening the record; LBP-11-22, 74 NRC 259 (2011)
- if intervenors raise issues that are not within the scope of an admitted contention and have not sought to amend the contention to include those issues, the board will not consider the issues; LBP-12-23, 76 NRC 445 (2012)
- if leave to file a motion for reconsideration is granted, the motion must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, which renders the decision invalid; CLI-12-17, 76 NRC 207 (2012)
- if movant makes a proper showing for summary disposition, and if the opposing party does not show that a genuine issue of material fact exists, the board may summarily dispose of all arguments on the basis of the pleadings; LBP-11-4, 73 NRC 91 (2011)
- if no answer to a summary disposition motion is filed, the decision sought, if appropriate, must be rendered; LBP-12-26, 76 NRC 559 (2012)
- if no genuine dispute remains, then the board may dispose of all arguments based on the pleadings; LBP-11-7, 73 NRC 254 (2011)
- if opponent of summary disposition declines to oppose the moving party's prima facie showing of undisputed material facts, NRC regulations provide that those facts will be considered admitted; LBP-12-4, 75 NRC 213 (2012)
- if petitioner believes that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for petitioner's belief; CLI-15-20, 82 NRC 211 (2015); LBP-11-6, 73 NRC 149 (2011)
- if petitioner fails to show standing pursuant to section 2.309(d), a board may grant discretionary standing when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; LBP-11-29, 74 NRC 612 (2011)
- if petitioner neglects to provide the requisite support for its contentions, it is not within the board's power to make assumptions or draw inferences that favor petitioner, nor may the board supply information that is lacking; LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013)
- if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; LBP-11-14, 73 NRC 591 (2011); LBP-11-20, 74 NRC 65 (2011)
- if reopening standards are inapplicable, or if reopening criteria have been satisfied, a new contention must also meet the standards for contention admissibility; LBP-11-35, 74 NRC 701 (2011)
- if summary disposition movant discusses a matter in its statement of undisputed facts, the board may view with skepticism any later argument by that movant that a response regarding that issue is outside the scope of the contention, particularly given the onus that is placed upon an opposing party to respond to such a statement; LBP-11-4, 73 NRC 91 (2011)
- if summary disposition movant fails to make the requisite showing to satisfy that initial burden, then the board must deny the motion even if the opposing party chooses not to respond or its response is inadequate; LBP-11-14, 73 NRC 591 (2011); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

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if summary disposition movant meets its burden, opponent must set forth specific facts showing that there is a genuine issue and may not rely on mere allegations or denials; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

if the question is a close one, boards must, in considering summary disposition opponent's submission, carefully ascertain whether any factual disputes asserted are genuine and relate to issues that would affect the outcome of the proceeding under relevant substantive law; LBP-11-4, 73 NRC 91 (2011)

if the reason a motion to admit a new or amended contention was filed after the deadline does not relate to the substance of the filing itself, the standard in 10 C.F.R. 2.307 applies in determining whether the motion can be considered timely; LBP-13-9, 78 NRC 37 (2013); LBP-14-5, 79 NRC 377 (2014)

if the summary disposition movant meets its burden, then and only then is the nonmoving party required to proffer evidence that contradicts the moving party's showing and that proves the existence of a genuine issue of material fact; LBP-11-4, 73 NRC 91 (2011)

if the summary disposition proponent does not meet its burden, the nonmoving party is, without making any showing, entitled to a denial of the motion; LBP-11-4, 73 NRC 91 (2011)

if, considering only the moving party's support for its motion, the board determines that it has met its burden, the board then looks to whether an opponent of the motion has overcome the movant's case by showing a genuine dispute on a material issue of fact; LBP-11-4, 73 NRC 91 (2011)

if, within 60 days after pertinent information supporting a new contention first becomes available, intervenors submit a particularized and otherwise admissible contention regarding construction of a mixed oxide facility, then the contention will be deemed timely without the need to satisfy the balancing test for late-filing requirements or the requirements for reopening the record; LBP-11-9, 73 NRC 391 (2011)

importance of finality in adjudicatory proceedings is reflected in 10 C.F.R. 2.326; CLI-15-19, 82 NRC 151 (2015)

in 1989, NRC revised its rules to prevent the admission of poorly defined or supported contentions or those based on little more than speculation; CLI-12-8, 75 NRC 393 (2012)

in a proceeding governed by Subpart L, the board is to apply the standards of Subpart G when ruling on motions for summary disposition; LBP-11-17, 74 NRC 11 (2011)

in addition to satisfying the timeliness standards in 10 C.F.R. 2.309(f)(2) or the balancing test in 10 C.F.R. 2.309(c), a newly proffered contention must satisfy the admissibility criteria of 10 C.F.R. 2.309(f)(1); LBP-12-7, 75 NRC 503 (2012); LBP-15-19, 81 NRC 815 (2015); LBP-15-23, 82 NRC 55 (2015)

in addressing the good cause factor for late filing, petitioner must explain not only why it failed to file within the time required, but also why it did not file as soon thereafter as possible; LBP-11-7, 73 NRC 254 (2011)

in affidavits supporting motions to reopen, each of the criteria must be separately addressed, with a specific explanation of why it has been met; LBP-12-10, 75 NRC 633 (2012); LBP-11-23, 74 NRC 287 (2011)

in an ongoing proceeding in which a hearing petition has been granted and there are contentions pending for merits resolution, intervenors must satisfy two sets of requirements to gain the admission of a new contention; LBP-11-37, 74 NRC 774 (2011)

in analyzing the admissibility of a proffered contention, a licensing board need not turn a blind eye to those portions of a petitioner's exhibits that might militate against admissibility; LBP-11-6, 73 NRC 149 (2011)

in applying the summary disposition standard, it is appropriate for the board to look not only to NRC regulatory and case law, but also to federal court case law on summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-4, 73 NRC 91 (2011)

in assessing whether petitioner has demonstrated standing, boards are to construe the petition in favor of the petitioner; LBP-13-6, 77 NRC 253 (2013)

in cases involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility is considered to be sufficient to establish standing; LBP-11-16, 73 NRC 645 (2011)

in codifying the reopening requirements, the more neutral "exceptionally grave issue" language was chosen over the case law-based "sufficiently grave threat to public safety" phrasing; CLI-12-21, 76 NRC 491 (2012)

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- in deciding motions seeking a stay of agency action pending judicial review, the Commission looks to the same four-part test that governs stays of licensing board decisions pending Commission review; CLI-12-11, 75 NRC 523 (2012)
- in determining whether an individual member of an organization qualifies for standing in his or her own right, NRC generally applies traditional judicial standing concepts; LBP-11-13, 73 NRC 534 (2011)
- in determining whether petitioner has demonstrated standing, the Commission applies contemporaneous judicial concepts of standing; LBP-11-6, 73 NRC 149 (2011)
- in determining whether to grant or deny an application for a stay, a board must balance four separate interests; LBP-15-2, 81 NRC 48 (2015)
- in establishing the evidentiary standard of “relevant, material, and reliable evidence” being admissible in a hearing, 10 C.F.R. 2.337 thereby establishes the right of all parties to present such admissible evidence; LBP-11-4, 73 NRC 91 (2011)
- in its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review or brief on review, or upon its own initiative; CLI-11-8, 74 NRC 214 (2011)
- in materials licensing matters, there is no predefined distance marking the area of potential offsite consequences on which to establish standing and thus this must be judged on a case-by-case basis; LBP-12-24, 76 NRC 503 (2012)
- in reactor license renewal proceedings, petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the nuclear power facility; LBP-11-21, 74 NRC 115 (2011)
- in reactor licensing proceedings, petitioner is deemed to have standing pursuant to the Commission’s proximity presumption rule by showing that he or she resides in, or frequents the area within, a 50-mile radius of the facility; LBP-11-6, 73 NRC 149 (2011); LBP-12-24, 76 NRC 503 (2012)
- in Subpart L proceedings, licensing boards must apply the summary disposition standard for Subpart G proceedings; LBP-11-14, 73 NRC 591 (2011); LBP-11-4, 73 NRC 91 (2011)
- in the absence of clear error or abuse of discretion, the Commission defers to boards’ rulings on threshold issues; CLI-11-8, 74 NRC 214 (2011)
- in the context of a new contention filed after the initial petition, petitioner has an iron-clad obligation to examine the publicly available documentary material with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention; CLI-11-2, 73 NRC 333 (2011)
- in the interest of expediting the further proceedings, hearing on senior operator license denial will be conducted under the provisions of Subpart L of the Commission’s Rules of Practice; LBP-13-3, 77 NRC 82 (2013)
- in unusual circumstances, where fairness dictates, the Commission has been willing to soften or waive its reopening requirements; CLI-12-14, 75 NRC 692 (2012)
- in weighing the timeliness factors for motions to reopen, greatest weight is accorded to good cause for failure to file on time; CLI-11-8, 74 NRC 214 (2011)
- individual member who qualifies an organization for standing must have suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action and the injury is likely redressable by a favorable decision; LBP-14-4, 79 NRC 319 (2014)
- individuals or groups may seek discretionary intervention if the requirements necessary to be afforded standing as of right cannot be established; LBP-13-6, 77 NRC 253 (2013)
- intent of 10 C.F.R. 2.309(f)(1) is to focus litigation on concrete issues and result in a clearer and more focused record for decision and to ensure that the Commission expends resources to support the hearing process only for issues that are appropriate for, and susceptible to, resolution in an NRC hearing; LBP-11-16, 73 NRC 645 (2011)
- interested governmental entity may introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without being required to take a position with respect to the issue, file proposed findings, and petition for review by the Commission; LBP-11-6, 73 NRC 149 (2011)
- interests a municipality seeks to represent on behalf of its residents are germane to its own purposes in the context or standing; LBP-11-6, 73 NRC 149 (2011)
- interests that an organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action; LBP-11-6, 73 NRC 149 (2011)

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interlocutory review is discretionary and will be granted only upon a showing that the issue for which review is sought threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-13-3, 77 NRC 51 (2013)

interlocutory review of a board's dismissal of a new contention is granted only upon a showing of extraordinary circumstances; CLI-12-13, 75 NRC 681 (2012)

interlocutory review of board rulings is permitted when petitioner demonstrates either that the ruling threatens the petitioner with immediate and irreparable harm or the ruling has a pervasive and unusual effect on the structure of the proceeding; CLI-11-6, 74 NRC 203 (2011); CLI-12-12, 75 NRC 603 (2012)

interlocutory review of decisions and actions of a presiding officer may be available under 10 C.F.R. 2.341(f)(2); LBP-14-5, 79 NRC 377 (2014)

intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses; LBP-11-38, 74 NRC 817 (2011)

intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 259 (2011)

intervenor normally is not allowed to challenge a board's rejection of contentions where the board has granted a hearing on any contention; CLI-12-12, 75 NRC 603 (2012)

intervenor's failure to address the reopening standards in 10 C.F.R. 2.326 creates a yawning deficiency in its submissions because the evidentiary record has been closed and the board's jurisdiction in the proceeding does not extend beyond the narrow scope of the remand; LBP-11-20, 74 NRC 65 (2011)

intervenor have demonstrated their ability to contribute to the development of a sound record where they have put forward in support of those contentions the views of a witness whose expertise has been recognized in other NRC proceedings; LBP-11-9, 73 NRC 391 (2011)

intervenor in adjudicatory proceedings are prohibited from challenging regulations unless they first obtain a waiver by showing special circumstances; LBP-14-15, 80 NRC 151 (2014)

intervenor may not impose an additional requirement that is not present in a regulation; CLI-11-9, 74 NRC 233 (2011)

intervenor may seek a stay of NRC Staff's immediately effective license issuance; LBP-15-3, 81 NRC 65 (2015)

intervenor must assert a sufficiently specific challenge that demonstrates that further inquiry is warranted; CLI-11-9, 74 NRC 233 (2011)

intervenor must provide a concise statement of the facts or expert opinions that support their position and upon which they intend to rely at the hearing; LBP-12-18, 76 NRC 127 (2012)

intervenor's request for extension of time is granted because it is unopposed and intervenor have shown good cause for the modest extension; CLI-14-10, 80 NRC 157 (2014)

intervenor seeking a new hearing on a new contention after the board has closed the evidentiary record must move to reopen the evidentiary record and meet a deliberately higher threshold standard than that for an ordinary late-filed contention; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

intervenor's speculation that further review of certain issues might change some conclusions in the final safety evaluation report does not justify restarting the hearing process; LBP-11-23, 74 NRC 287 (2011)

intervention as a matter of discretion is permitted only where at least one petitioner has established standing and at least one admissible contention has been admitted, and petitioner is required to address six factors in its initial petition; CLI-15-14, 81 NRC 729 (2015)

intervention petition is denied for failure to proffer an admissible contention; LBP-11-21, 74 NRC 115 (2011)

intervention petition must be filed within the time specified in any notice of proposed action; LBP-15-13, 81 NRC 456 (2015)

intervention petition must contain the name, address, and phone number of the requestor or petitioner; LBP-15-20, 81 NRC 829 (2015)

intervention petition must satisfy the six pleading requirements of 10 C.F.R. 2.309(f)(1); LBP-15-13, 81 NRC 456 (2015)

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- intervention petition must state the nature of petitioner's statutory right to be made a party to the proceeding, nature and extent of petitioner's property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on petitioner's interest; LBP-15-13, 81 NRC 456 (2015)
- intervention petitioner bears the burden of providing facts sufficient to establish its standing; LBP-11-21, 74 NRC 115 (2011)
- intervention petitioner can justify filing a petition after the initial deadline has expired by showing that the contention is based on new information and that the petition was filed promptly after the new information became available; LBP-12-25, 76 NRC 540 (2012)
- intervention petitioner may not attack generic NRC requirements or regulations or express generalized grievances about NRC policies; CLI-15-9, 81 NRC 512 (2015)
- intervention petitioner must demonstrate that it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute and that the injury can fairly be traced to the challenged action and is likely to be redressed by a favorable decision; LBP-12-8, 75 NRC 539 (2012)
- intervention petitioner must either file its petition by the date specified in the *Federal Register* notice or show good cause for filing after the deadline; LBP-12-25, 76 NRC 540 (2012)
- intervention petitioner must establish standing and propose at least one admissible contention that meets the criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi); CLI-15-21, 82 NRC 295 (2015); CLI-15-23, 82 NRC 321 (2015); LBP-12-25, 76 NRC 540 (2012); LBP-13-8, 78 NRC 1 (2013)
- intervention petitioner need not discuss each and every portion of the application that bears any relation to the issue being contested, but only provide a brief explanation of the argument and a concise statement of the relevant facts; CLI-14-2, 79 NRC 11 (2014)
- intervention petitioner's burden is met if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-13-6, 77 NRC 253 (2013)
- intervention petitioners must establish standing by demonstrating the nature of their right under the Atomic Energy Act to be made a party to the proceeding, nature and extent of their interest in the proceeding, and possible effect of any decision in the proceeding on their interest; LBP-12-24, 76 NRC 503 (2012)
- intervention petitions must be timely, demonstrate standing, and proffer at least one admissible contention; CLI-15-5, 81 NRC 329 (2015); LBP-15-6, 81 NRC 314 (2015); LBP-15-13, 81 NRC 456 (2015)
- intervention petitions must include a statement of petitioner's name, address, and telephone contact information, nature of petitioner's right under the AEA to be made a party, nature of petitioner's interest in the proceeding, whether property, financial or otherwise, and possible effect of any decision or order that might be issued in the proceeding on the petitioner's interest; LBP-12-3, 75 NRC 164 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-13-6, 77 NRC 253 (2013)
- intervention petitions must set forth with particularity the contentions a petitioner seeks to have litigated in a hearing; CLI-15-8, 81 NRC 500 (2015)
- irreparable injury is the most important of the stay criteria; CLI-12-11, 75 NRC 523 (2012); LBP-15-2, 81 NRC 48 (2015)
- issue raised in a contention must fall within the scope of the proceeding and be material to the findings that the NRC must make; CLI-15-8, 81 NRC 500 (2015)
- it is intervention petitioner's responsibility to put others on notice as to the issues it seeks to litigate; CLI-11-11, 74 NRC 427 (2011)
- it is well within NRC's discretion to impose specific requirements that clarify or go beyond those already established by regulations; LBP-14-4, 79 NRC 319 (2014)
- judicial concepts of standing are generally followed in NRC proceedings; LBP-11-2, 73 NRC 28 (2011); LBP-11-21, 74 NRC 115 (2011)
- judicial concepts of standing require that petitioner establish that it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute and that the injury can fairly be traced to the challenged action and is likely to be redressed by a favorable decision; LBP-11-21, 74 NRC 115 (2011)
- late-filed contention is inadmissible both for lack of a good cause showing and for failure to address the other factors of 10 C.F.R. 2.309(c)(1); LBP-11-6, 73 NRC 149 (2011)

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late-filed contention shall not be considered by a licensing board unless the petitioner demonstrates that a multifactor balancing test weighs in favor of consideration; LBP-11-6, 73 NRC 149 (2011)

late-filed contentions must show that the information upon which the new contention is based was not previously available and is materially different than information previously available; CLI-12-10, 75 NRC 479 (2012)

late-filing factor given the most weight is whether there is good cause for the failure to file on time; CLI-12-15, 75 NRC 704 (2012)

lateness is a sufficient ground on which to deny a motion for reconsideration; CLI-12-17, 76 NRC 207 (2012)

level of support required to sustain a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-6, 75 NRC 352 (2012)

license denial letter that contained apparent boilerplate that was incomplete and perforce misleading does not accord with concepts of fundamental fairness and might well counter hearing rights granted under the AEA; LBP-13-3, 77 NRC 82 (2013)

licensee or other person to whom the Commission has issued an immediately effective order may move the presiding officer to set aside the immediate effectiveness of the order; LBP-14-4, 79 NRC 319 (2014)

licensing board order granting a request for hearing on the question whether the request should have been wholly denied is appealable; CLI-15-23, 82 NRC 321 (2015)

licensing board, construing the petition in favor of petitioners, based its standing finding on potential harm from traffic-generated dust and light pollution; CLI-12-12, 75 NRC 603 (2012)

licensing boards are bound to admit for litigation contentions that are material and supported by reasonably specific factual and legal allegations; LBP-11-6, 73 NRC 149 (2011)

licensing boards are obliged to independently assess petitioners' standing; LBP-15-5, 81 NRC 249 (2015)

licensing boards are to apply the same standards for granting or denying summary disposition as would be applied in proceedings conducted under Subpart G, which are set forth in section 2.710; LBP-11-7, 73 NRC 254 (2011); LBP-12-19, 76 NRC 184 (2012)

licensing boards have broad powers to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay, and to maintain order; LBP-15-30, 82 NRC 339 (2015)

licensing boards in Subpart L proceedings must apply the summary disposition standard for Subpart G proceedings found in 10 C.F.R. 2.710; LBP-12-23, 76 NRC 445 (2012)

licensing boards must examine the record in the light most favorable to the opponent of summary disposition and draw all justifiable inferences in favor of that party; LBP-12-23, 76 NRC 445 (2012)

like issues related to standing and contention admissibility, the question whether a pleading satisfies the requirements of section 2.326 and therefore justifies reopening a closed proceeding is a threshold issue; CLI-11-8, 74 NRC 214 (2011)

limited appearance statements do not constitute evidence but may assist the board and/or parties in defining the issues being considered; LBP-13-13, 78 NRC 246 (2013)

limited exception to NRC's general prohibition against challenges to its rules or regulations in adjudicatory proceedings is provided in 10 C.F.R. 2.335(b); CLI-13-7, 78 NRC 199 (2013)

limited interlocutory appeal right attaches only when the board has fully ruled on the initial intervention petition, that is, when it has admitted or rejected all proposed contentions; CLI-14-3, 79 NRC 31 (2014)

litigants may not challenge a rule in NRC adjudicatory proceedings absent a showing of special circumstances; CLI-15-1, 81 NRC 1 (2015)

litigants seeking to reopen a record must comply fully with section 2.326(b); LBP-12-10, 75 NRC 633 (2012)

litigation opportunities available to an entity participating as a local governmental body pursuant to 10 C.F.R. 2.315(c) are discussed; LBP-15-19, 81 NRC 815 (2015)

local governmental body that is not admitted as a party shall, upon request, be permitted to participate in a hearing as an interested nonparty; LBP-11-6, 73 NRC 149 (2011)

material difference must exist between information on which a contention is based and information that was previously available, e.g., a difference between the environmental report and the draft EIS or the draft EIS and the final EIS; CLI-15-1, 81 NRC 1 (2015)

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“materially different result” requirement of section 2.326(a)(3) is analyzed using the Commission’s test of whether it has been shown that a motion for summary disposition could be defeated; LBP-12-1, 75 NRC 1 (2012)

materiality requirement for contention admission often dictates that allegations of deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the public health and safety or the environment; LBP-12-15, 76 NRC 14 (2012)

mere interest in a problem is not sufficient by itself to render the organization adversely affected or aggrieved within the meaning of the Administrative Procedure Act; CLI-11-3, 73 NRC 613 (2011)

mere mention of the future filing of an affidavit does not satisfy the requirement of section 2.326(b); LBP-14-8, 79 NRC 519 (2014)

mere notice pleading is insufficient for contention admission; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-12-8, 75 NRC 539 (2012)

merits determination cannot be resolved at the contention admissibility stage of the proceeding; LBP-11-6, 73 NRC 149 (2011)

minimal showing that material facts are in dispute is sufficient to render a proposed contention admissible; LBP-12-8, 75 NRC 539 (2012)

Model Milestones permit the filing of proposed late-filed contentions on the Safety Evaluation Report and necessary National Environmental Policy Act documents within 30 days of the issuance of those documents; LBP-11-22, 74 NRC 259 (2011)

most important among the late-filing factors was that the intervenors demonstrate good cause; LBP-15-1, 81 NRC 15 (2015)

motion for reconsideration is denied for failure to meet the high standard of 10 C.F.R. 2.323(e); LBP-12-26, 76 NRC 559 (2012)

motion for reconsideration is procedurally defective, out of time, and fails to assert compelling circumstances justifying reconsideration; CLI-13-7, 78 NRC 199 (2013)

motion for summary disposition may be granted in a proceeding governed by Subpart G if filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with statements of the parties and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-11-17, 74 NRC 11 (2011)

motion to admit a new contention must be supported by an affidavit that separately addresses each of the 2.326(a) criteria; LBP-14-8, 79 NRC 519 (2014)

motion to file new or amended contentions must address the motion to reopen standards after an intervention petition has been denied; LBP-11-20, 74 NRC 65 (2011)

motion to reopen a closed record must be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; LBP-11-20, 74 NRC 65 (2011)

motion to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the claim that the reopening criteria have been met; LBP-11-20, 74 NRC 65 (2011)

motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in section 2.309(c); CLI-11-8, 74 NRC 214 (2011); LBP-11-23, 74 NRC 287 (2011)

motion to reopen will not be granted unless movant satisfies all three criteria listed in 10 C.F.R. 2.326(a) and the motion is accompanied by an affidavit that satisfies section 2.326(b); CLI-15-19, 82 NRC 151 (2015)

motion to reply is denied because no compelling circumstances are presented; CLI-12-6, 75 NRC 352 (2012)

motion to strike may be granted where a pleading or other submission contains information that is irrelevant; LBP-14-6, 79 NRC 404 (2014)

motions for reconsideration must be filed within 10 days of the action for which reconsideration is requested; CLI-14-10, 80 NRC 157 (2014); LBP-11-15, 73 NRC 629 (2011)

motions for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid; CLI-14-1, 79 NRC 1 (2014); LBP-11-15, 73 NRC 629 (2011)

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motions for reconsideration should not include new arguments or evidence unless it relates to a board concern that applicant could not reasonably have anticipated; LBP-14-7, 79 NRC 451 (2014)

motions for summary disposition must contend that there are facts on which there is no genuine issue to be heard; LBP-14-5, 79 NRC 377 (2014)

motions for summary disposition shall be granted if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 213 (2012)

motions must be rejected if they do not include a certification by the attorney or representative of the moving party that movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that movant's efforts to resolve the issue(s) have been unsuccessful; LBP-12-27, 76 NRC 583 (2012)

motions seeking admission of new or amended contentions must be filed within 30 days of the date the information that forms the basis for the contention becomes available; CLI-11-8, 74 NRC 214 (2011)

motions to admit new contentions must be rejected if they do not include a certification by movant's attorney or representative that movant has made a sincere effort to contact other parties and resolve the issues raised in the motion, and that movant's efforts have been unsuccessful; LBP-11-34, 74 NRC 685 (2011)

motions to amend a contention must be based on new information that is materially different from information previously available and must be submitted in a timely fashion; LBP-12-27, 76 NRC 583 (2012)

motions to reopen could be rejected solely on the basis of the appellants' failure to address the reopening standards in the supporting affidavit; LBP-12-10, 75 NRC 633 (2012)

motions to reopen must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of 10 C.F.R. 2.326(a) have been satisfied; CLI-11-8, 74 NRC 214 (2011); CLI-12-3, 75 NRC 132 (2012); CLI-12-14, 75 NRC 692 (2012); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-10, 75 NRC 633 (2012); LBP-15-14, 81 NRC 591 (2015)

motions to reopen must be supported by affidavit, be timely, address a significant safety or environmental issue, and demonstrate that a materially different result would have been likely if the evidence had been available; CLI-12-6, 75 NRC 352 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-12-21, 76 NRC 491 (2012); LBP-11-35, 74 NRC 701 (2011); LBP-12-1, 75 NRC 1 (2012); LBP-14-8, 79 NRC 519 (2014); LBP-15-14, 81 NRC 591 (2015)

motions to reopen on issues not previously litigated must satisfy the balancing test of 10 C.F.R. 2.309(c) in addition to the reopening standards; CLI-12-3, 75 NRC 132 (2012); LBP-12-1, 75 NRC 1 (2012); LBP-12-10, 75 NRC 633 (2012); LBP-12-16, 76 NRC 44 (2012)

motions to reopen the record are governed by 10 C.F.R. 2.326; CLI-12-3, 75 NRC 132 (2012); CLI-15-19, 82 NRC 151 (2015)

motions to reopen will not be granted unless all of the criteria of 10 C.F.R. 2.326(a) are satisfied; CLI-11-8, 74 NRC 214 (2011)

movant has no right to reply except as permitted by the presiding officer and only in compelling circumstances; LBP-15-28, 82 NRC 233 (2015)

movant has the burden to present information in a manner that complies with section 2.326(b); LBP-12-10, 75 NRC 633 (2012)

movant may obtain summary disposition if the filings in the proceeding, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

municipality is deemed to have standing in a reactor licensing proceeding that involves a facility located within its boundaries; LBP-11-6, 73 NRC 149 (2011)

neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow admission of a proffered contention; LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-13-6, 77 NRC 253 (2013)

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new and amended contentions submitted after an intervenor's initial hearing request are evaluated under 10 C.F.R. 2.309(f)(2) for timeliness and, if found timely, their general admissibility is analyzed pursuant to section 2.309(f)(1); LBP-11-10, 73 NRC 424 (2011)

new contention filed after the record has closed must also satisfy general contention admissibility requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-12-16, 76 NRC 44 (2012)

new contention is inadmissible because it neither points to nor references any specific portion of the application that is disputed; LBP-11-35, 74 NRC 701 (2011)

new contentions are deemed timely if filed within 30 days of the date when the new and material information on which they are based first became available; LBP-11-39, 74 NRC 862 (2011); LBP-12-1, 75 NRC 1 (2012)

new contentions filed after the record has closed must satisfy the timeliness requirement of either 10 C.F.R. 2.309(f)(2) or 2.309(c), and the admissibility requirements of section 2.309(f)(1); LBP-11-22, 74 NRC 259 (2011); LBP-11-34, 74 NRC 685 (2011); LBP-11-39, 74 NRC 862 (2011)

new contentions must be based upon information that was not previously available, is materially different from information previously available, and is timely filed; LBP-14-5, 79 NRC 377 (2014); LBP-14-6, 79 NRC 404 (2014); LBP-14-8, 79 NRC 519 (2014)

new or amended contention is considered timely if it is filed within 60 days of the date when the material information first became available to the moving party through service, publication, or any other means; LBP-11-9, 73 NRC 391 (2011); LBP-15-1, 81 NRC 15 (2015)

new or amended contention must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. 2.309(f)(1); LBP-13-10, 78 NRC 117 (2013); LBP-14-5, 79 NRC 377 (2014); LBP-14-8, 79 NRC 519 (2014)

new or amended contentions based on material information that has subsequently become available must meet the general contention admissibility requirements of 10 C.F.R. 2.309(f)(1) as well as the three requirements in section 2.309(c)(1); LBP-14-6, 79 NRC 404 (2014)

new or amended contentions filed after the initial filing period has expired may be admitted as timely only with leave of the licensing board if they meet the timeliness standards of 10 C.F.R. 2.309(f)(2); LBP-12-7, 75 NRC 503 (2012); LBP-12-12, 75 NRC 742 (2012)

new or amended contentions must demonstrate good cause for post-initial-hearing petition deadline filing, based on three factors; LBP-13-10, 78 NRC 117 (2013)

new or amended contentions must satisfy the substantive contention admissibility standards and failure to meet any of them renders a contention inadmissible; LBP-15-11, 81 NRC 401 (2015); LBP-15-15, 81 NRC 598 (2015)

new or amended contentions not related to the question of foreign ownership that an interested person may wish to file during the pendency of the combined license application are subject to usual rules of practice, including rules governing reopening the record of a closed proceeding; CLI-13-4, 77 NRC 101 (2013)

newly proffered contention that does not satisfy the timeliness requirements of section 2.309(f)(2) may still be considered for admission if it satisfies section 2.309(c)(1); LBP-11-15, 73 NRC 629 (2011)

no defense to an insufficient showing by summary disposition proponent is required; LBP-11-14, 73 NRC 591 (2011); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

no further demonstration of standing is required from a state that seeks to participate as a party in a proceeding pertaining to a utilization facility located within its boundaries; LBP-15-26, 82 NRC 163 (2015)

no proximity presumption applies in an import/export licensing case because petitioners have not shown that the import or export involves a significant source of radioactivity producing an obvious potential for offsite consequences; CLI-11-3, 73 NRC 613 (2011)

no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding; CLI-11-8, 74 NRC 214 (2011); CLI-15-20, 82 NRC 211 (2015); LBP-12-24, 76 NRC 503 (2012); LBP-15-5, 81 NRC 249 (2015)

nonlicensee with a purely economic interest has an automatic right to demand a hearing under section 2.202(a)(3) without showing standing or proffering an admissible contention; LBP-14-4, 79 NRC 319 (2014)

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nontimely contentions might be admissible if petitioner can show that the contention is based on new information and was filed promptly after the new information became available; LBP-12-27, 76 NRC 583 (2012)

nontimely proposed contention may be admissible if, on balance, it satisfies eight criteria; LBP-11-7, 73 NRC 254 (2011)

not only must a late-filing intervenor act promptly after learning of new information, but the information itself must be new information, not information already in the public domain; LBP-11-7, 73 NRC 254 (2011)

notification of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 48 (2015)

NRC adjudicatory rules are designed to promote fair and efficient resolution of disputes; CLI-14-7, 80 NRC 1 (2014)

NRC deliberately raised contention admissibility standards to relieve the hearing delays that poorly defined or supported contentions had caused in the past; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

NRC follows contemporaneous judicial concepts of standing, which call for showing of a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision, where the injury is to an interest arguably within the zone of interests protected by the governing statute; LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-29, 74 NRC 612 (2011)

NRC generally considers approximately 30-60 days as the limit for timely filings based on new information; CLI-11-2, 73 NRC 333 (2011)

NRC generally disfavors the filing of new contentions at the eleventh hour of an adjudication, a policy that is grounded in the doctrine of finality, which states that at some point, an adjudicatory proceeding must come to an end; CLI-11-2, 73 NRC 333 (2011)

NRC has endorsed a four-pronged test for grant of a rule waiver; LBP-11-35, 74 NRC 701 (2011)

NRC imposes a deliberately heavy burden on petitioners seeking to reopen a record, even with respect to an existing contention; CLI-11-2, 73 NRC 333 (2011)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-11-6, 73 NRC 149 (2011)

NRC possesses the authority to change its procedures on a case-by-case basis; CLI-13-8, 78 NRC 219 (2013)

NRC presumes that an individual has standing to intervene without the need to address traditional standing concepts upon a showing that he or she lives within, or otherwise has frequent contacts with, a geographic zone of potential harm; LBP-11-2, 73 NRC 28 (2011)

NRC proceedings would be incapable of attaining finality if contentions that could have been raised at the outset could be added later at will, regardless of the stage of the proceeding; CLI-12-10, 75 NRC 479 (2012)

NRC provides for an automatic right to appeal a board decision on the question whether a petition to intervene should have been wholly denied; CLI-14-2, 79 NRC 11 (2014)

NRC recognizes an exception to the timeliness requirement in rare instances in which petitioner raises an exceptionally grave issue; CLI-11-2, 73 NRC 333 (2011)

NRC regulations do not allow use of reply briefs to provide, for the first time, the necessary threshold support for contentions; LBP-11-6, 73 NRC 149 (2011)

NRC regulations may not be challenged in an adjudicatory proceeding absent a request for a waiver under section 2.335(b); LBP-12-8, 75 NRC 539 (2012); LBP-12-12, 75 NRC 742 (2012)

NRC revised its rules in 1989 to prevent admission of contentions based on little more than speculation; CLI-12-5, 75 NRC 301 (2012)

NRC rules are designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate in a hearing; CLI-12-15, 75 NRC 704 (2012)

NRC rules are designed to avoid unfocused inquiry in contested proceedings; CLI-15-1, 81 NRC 1 (2015)

NRC rules contain ample provisions through which litigants may seek admission of new or amended contentions; CLI-12-13, 75 NRC 681 (2012)

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NRC rules provide the board with substantial authority to regulate hearing procedures; CLI-14-10, 80 NRC 157 (2014)

NRC rules provide for an automatic right to appeal a licensing board decision deciding standing and contention admissibility, on the question whether a petition to intervene and request for hearing should have been granted, or denied in its entirety; CLI-12-8, 75 NRC 393 (2012)

NRC Staff counsel may file written interrogatories that the target of an enforcement order must answer; LBP-14-11, 80 NRC 125 (2014)

NRC Staff counsel may require the target of an enforcement order to provide the Director with a copy of any designated relevant document that is within his possession, custody, or control; LBP-14-11, 80 NRC 125 (2014)

NRC Staff counsel may take the deposition of the target of an enforcement order or any other person; LBP-14-11, 80 NRC 125 (2014)

NRC Staff is required to notify the presiding officer and the parties whether it desires to participate as a party in a license transfer proceeding; CLI-14-5, 79 NRC 254 (2014)

NRC Staff will become a party to cases involving an application denial; CLI-14-5, 79 NRC 254 (2014)

NRC standards for ruling on summary disposition motions are analogous to the standards for granting summary judgment motions under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-7, 73 NRC 254 (2011)

NRC's contention admissibility rules are intentionally strict; CLI-15-20, 82 NRC 211 (2015)

NRC's demanding regulatory requirements for reopening the record regarding contentions submitted after the record has closed must be satisfied; LBP-11-20, 74 NRC 65 (2011)

NRC's strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing; LBP-12-27, 76 NRC 583 (2012)

officer, member, or attorney representing an organization in a proceeding must file a written notice of appearance stating, among other things, his or her basis for representing the organization; LBP-11-13, 73 NRC 534 (2011)

once parties demonstrate standing, they will then be free to assert any contention, which, if proven, will afford them the relief they seek; LBP-11-21, 74 NRC 115 (2011)

once the deadline for filing petitions to intervene has passed, a party may file new or amended contentions if it is able to demonstrate good cause by meeting the three requirements specified in this section; LBP-15-1, 81 NRC 15 (2015)

one demanding a hearing on a challenge to an enforcement order need not comply with the requirements of 10 C.F.R. 2.309(f)(1); LBP-13-3, 77 NRC 82 (2013); LBP-14-4, 79 NRC 319 (2014)

one fundamental purpose of the prehearing conference and the scheduling order is expediting the disposition of the proceeding; LBP-12-19, 76 NRC 184 (2012)

only 10 C.F.R. 2.203 refers to a notice of hearing as part of the settlement procedure; LBP-15-30, 82 NRC 339 (2015)

only alleged facts, not evidence or expert opinion, are required to support contention admissibility; LBP-13-8, 78 NRC 1 (2013)

only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition; LBP-11-4, 73 NRC 91 (2011)

only relevant, material, and reliable evidence that is not unduly repetitious will be admitted; LBP-12-21, 76 NRC 218 (2012)

only the petitioning party may file reply briefs; CLI-15-7, 81 NRC 481 (2015)

opponent of a summary disposition motion cannot rest on the allegations or denials of a pleading, but instead must go beyond the pleadings and by its own affidavits, or the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; LBP-12-4, 75 NRC 213 (2012)

opponent of a summary disposition motion may not raise distinctly new asserted deficiencies; LBP-11-4, 73 NRC 91 (2011)

organization asserting standing in its own right must establish a discrete institutional injury to the organization's interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding; LBP-12-3, 75 NRC 164 (2012)

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- organization may base its standing on immediate or threatened injury to its organizational interests; CLI-11-3, 73 NRC 613 (2011)
- organization may establish organizational standing; LBP-11-6, 73 NRC 149 (2011)
- organization may represent the interests of members using representational standing if it can show that the interests it seeks to protect are germane to its own purpose, identify by name and address at least one member who qualifies for standing in his or her own right, show that it is authorized by that member to request a hearing on his or her behalf and show that neither the claim asserted nor the relief requested requires an individual member's participation in the organization's legal action; LBP-11-2, 73 NRC 28 (2011)
- organization seeking standing as a party must show either a discrete injury to its own institutional interests or authorization to represent an individual who would have standing in his or her own right; LBP-12-24, 76 NRC 503 (2012)
- organization seeking to intervene in its own right must allege that the challenged action will cause a cognizable injury to its interests or to the interests of its members; LBP-11-21, 74 NRC 115 (2011); LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012); LBP-13-8, 78 NRC 1 (2013)
- organization that seeks to establish representational standing, must show that at least one of its members would be affected by the proceeding and identify that member by name and address, show that the member would have standing to intervene in his or her own right, and that the identified member has authorized the organization to request a hearing on their behalf; CLI-11-3, 73 NRC 613 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)
- organization's standing can be demonstrated through the interests of its members, but if a member acts or speaks on behalf of the organization, that member must also demonstrate authorization by that organization to represent it; LBP-11-13, 73 NRC 534 (2011)
- organizations may claim standing on their own behalf; LBP-11-29, 74 NRC 612 (2011)
- page limit for appellate briefs excludes tables of contents and citations, appropriate exhibits, and statutory or regulatory extracts; CLI-11-8, 74 NRC 214 (2011)
- partial initial decision constitutes a final decision of the Commission 40 days from the date of issuance or the first agency business day following that date if it is a Saturday, Sunday, or federal holiday unless a petition for review is filed in accordance with section 2.1212; LBP-12-5, 75 NRC 227 (2012)
- participant may request the waiver of a current rule or regulation in a specific proceeding under special circumstances as an exception to the prohibition against challenging NRC rules or regulations in adjudicatory proceedings; CLI-14-7, 80 NRC 1 (2014)
- parties are expected to adhere to page-limit requirements, or timely seek leave for an enlargement of the page limit; CLI-11-14, 74 NRC 801 (2011)
- parties bring settlement requests pursuant to 10 C.F.R. 2.338(i); LBP-15-30, 82 NRC 339 (2015)
- parties do not have an automatic right to respond to reply briefs; LBP-11-34, 74 NRC 685 (2011)
- parties may choose whether to submit a petition for review, an answer in support of the petition, or neither; CLI-11-14, 74 NRC 801 (2011)
- parties may file a petition for review of licensing board full or partial initial decisions, both of which are considered to be final; CLI-11-14, 74 NRC 801 (2011)
- parties may not raise new arguments that are outside the scope of their contentions, but may legitimately amplify arguments presented in support of the contention in order to fairly respond to arguments raised by the opposing party; LBP-12-23, 76 NRC 445 (2012)
- parties must list documents claimed to be privileged or protected on a privilege log; LBP-11-5, 73 NRC 131 (2011)
- parties pursuing settlement may seek to have a settlement judge appointed; LBP-14-11, 80 NRC 125 (2014)
- parties seeking a rule waiver must attach an affidavit that, among other things, states with particularity the special circumstances claimed to justify the waiver or exception requested; CLI-12-6, 75 NRC 352 (2012)
- parties seeking interlocutory review must show that the issue to be reviewed threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-14, 74 NRC 801 (2011)

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- parties to a Subpart L proceeding must update their disclosures every month after initial disclosures on a due date selected by the presiding officer in the order admitting contentions; LBP-14-2, 79 NRC 131 (2014)
- parties to an adjudication may petition for a waiver of a rule or regulation upon a showing that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted; CLI-12-6, 75 NRC 352 (2012)
- party may move to reopen the case to allow it to litigate a new version of a previously rejected contention, even if the licensing board has closed the evidentiary record and the Commission had issued its final decision authorizing the Staff to issue the license for the proposed facility; LBP-11-22, 74 NRC 259 (2011)
- party's policy arguments that are advanced during the adjudicatory process before a licensing board cannot trump directives issued by the Commission; LBP-13-7, 77 NRC 307 (2013)
- persistent difficulties with the NRC electronic filing system despite petitioners' good-faith efforts is good cause for late filing; LBP-11-2, 73 NRC 28 (2011)
- person adversely affected by an enforcement order has a legal right to demand a hearing; LBP-14-4, 79 NRC 319 (2014)
- persons not currently a party may file timely petitions to intervene provided that they satisfy the good-cause criteria; LBP-15-6, 81 NRC 314 (2015)
- persons who are not parties may file an amicus curiae brief if a matter is taken up by the Commission under 10 C.F.R. 2.341 or sua sponte; CLI-15-1, 81 NRC 1 (2015)
- pertinent zone in operating license renewal proceedings and other power reactor license matters is the area within a 50-mile radius of the site; LBP-11-2, 73 NRC 28 (2011)
- petition for review falls short of satisfying 10 C.F.R. 2.341(b)(4) if it does not specify the subsections upon which it relies but merely sets forth a series of general grievances fundamentally going to the correctness of the board's decision; CLI-11-2, 73 NRC 333 (2011)
- petition for review will be granted at Commission's discretion upon a showing that petitioner has raised a substantial question as to any of the factors of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-11-2, 73 NRC 333 (2011); CLI-12-21, 76 NRC 491 (2012); CLI-14-10, 80 NRC 157 (2014); CLI-15-1, 81 NRC 1 (2015); CLI-15-9, 81 NRC 512 (2015)
- petition pursuant to 10 C.F.R. 2.714, which was abolished in 2004, is treated as though filed under section 2.309; LBP-13-12, 78 NRC 239 (2013)
- petition that attempts to proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected; LBP-12-7, 75 NRC 503 (2012)
- petitioner asserting organizational standing must establish a discrete institutional injury to the organization's interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding; LBP-13-6, 77 NRC 253 (2013)
- petitioner bears the burden to provide facts sufficient to establish standing; LBP-13-6, 77 NRC 253 (2013)
- petitioner can justify missing a contention filing deadline by showing that the delay was caused by factors such as a weather event or unexpected health issues; LBP-12-27, 76 NRC 583 (2012)
- petitioner cannot rest its contentions on bare assertions and speculation; LBP-11-21, 74 NRC 115 (2011)
- petitioner does not have to prove its contentions at the admission stage; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011)
- petitioner failed to satisfy NRC standards for reopening because its motion was untimely and it failed to demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-11-2, 73 NRC 333 (2011)
- petitioner in materials licensing actions is entitled to a presumption of standing if petitioner resides in the zone of reasonably foreseeable harm from the source of radioactivity and the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-12-24, 76 NRC 503 (2012)
- petitioner is generally afforded 7 days to file its reply; LBP-12-3, 75 NRC 164 (2012)
- petitioner is required to make reference to specific sources and documents on which it intends to rely; LBP-12-8, 75 NRC 539 (2012)

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petitioner is required to present the factual allegations and/or expert opinion necessary to support its contention; LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012)

petitioner is required to provide a concise statement of the alleged facts or expert opinions that support its position; LBP-12-3, 75 NRC 164 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-13-6, 77 NRC 253 (2013)

petitioner lacked good cause for a hearing request filed 7 days after the filing deadline when the argument relied on a misimpression of due dates; LBP-11-9, 73 NRC 391 (2011)

petitioner may address the selection of hearing procedures, taking into account the provisions of 10 C.F.R. 2.310; LBP-11-6, 73 NRC 149 (2011)

petitioner may correct or supplement its showing on standing; LBP-11-21, 74 NRC 115 (2011)

petitioner may file at any time a request for action if it wishes to challenge ongoing operations; CLI-15-25, 82 NRC 389 (2015)

petitioner may raise a SAMA-related contention in a license renewal adjudication if it satisfies the general contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)

petitioner must also show that its contention is material to the findings NRC must make to support issuance of the license amendments; CLI-15-25, 82 NRC 389 (2015)

petitioner must demonstrate good cause for proffering a new contention after the initial deadline for the filing of contentions; LBP-15-23, 82 NRC 55 (2015)

petitioner must demonstrate that a contention asserts an issue of law or fact that is material to the findings the NRC must make to support the action that is involved in the proceeding; CLI-15-20, 82 NRC 211 (2015); CLI-15-25, 82 NRC 389 (2015); LBP-12-3, 75 NRC 164 (2012); LBP-12-13, 75 NRC 784 (2012); LBP-12-18, 76 NRC 127 (2012); LBP-15-20, 81 NRC 829 (2015)

petitioner must demonstrate that a contention of omission is within the scope of the proceeding; LBP-15-5, 81 NRC 249 (2015)

petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support petitioner's position and on which petitioner intends to rely in litigating the contention at hearing; CLI-15-8, 81 NRC 500 (2015); LBP-15-5, 81 NRC 249 (2015)

petitioner must provide a brief explanation of the basis for its contention; CLI-15-25, 82 NRC 389 (2015)

petitioner must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, including references to specific portions of the application that petitioner disputes and the supporting reasons for each dispute; CLI-14-2, 79 NRC 11 (2014); LBP-13-8, 78 NRC 1 (2013)

petitioner must refer to specific portions of the application that it disputes, along with the supporting reasons for each dispute; CLI-15-20, 82 NRC 211 (2015)

petitioner must show that a genuine dispute exists on a material issue of law or fact relating to the application; LBP-15-19, 81 NRC 815 (2015); LBP-15-23, 82 NRC 55 (2015)

petitioner must state the alleged facts or expert opinions that support its position and on which it intends to rely at hearing; CLI-15-20, 82 NRC 211 (2015)

petitioner must state the issue of law or fact to be raised or controverted and a brief explanation of the basis for each contention; CLI-15-20, 82 NRC 211 (2015)

petitioner must state the nature of right under either the Atomic Energy Act or the National Environmental Policy Act to be made a party, nature and extent of property, financial, or other interest, and possible effect of any decision or order that may be issued in the proceeding on his/her interest; LBP-15-19, 81 NRC 815 (2015)

petitioner need not prove its contentions at the admissibility stage; LBP-12-8, 75 NRC 539 (2012)

petitioner or intervenor may file timely new or amended contentions, with leave of the board, if the three requirements are met; LBP-11-9, 73 NRC 391 (2011)

petitioner residing within 50 miles of a nuclear power plant is presumed to have standing; LBP-13-8, 78 NRC 1 (2013)

petitioner who believes a regulation should not be applied in a particular proceeding may seek a waiver of that regulation; LBP-13-1, 77 NRC 57 (2013)

petitioner who satisfies the reopening standard must also show that its proposed new contention meets the standard for new or amended contentions in section 2.309(c) and the underlying admissibility standards of section 2.309(f)(1); LBP-14-8, 79 NRC 519 (2014)

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petitioner who seeks both to reopen the record and to submit a late contention must successfully satisfy two elevated standards; CLI-11-2, 73 NRC 333 (2011)

petitioner who seeks to demonstrate standing to intervene on behalf of its members must show that an individual member can fulfill all necessary standing elements and has authorized petitioner to represent his or her interests; LBP-12-15, 76 NRC 14 (2012)

petitioner's appellate argument must pass regulatory muster under the rigorous standards of 10 C.F.R. 2.326(a)(3); CLI-11-2, 73 NRC 333 (2011)

petitioner's burden on a contention of omission is to identify the omission and the supporting reasons for petitioners' belief that the application fails to contain information on a relevant matter as required by law; LBP-15-5, 81 NRC 249 (2015)

petitioner's reply must be narrowly focused on the legal or logical arguments presented in the applicant's or NRC Staff's answer; LBP-11-6, 73 NRC 149 (2011)

petitioners are not required to demonstrate that their complaint is unique to the facility in question or that their complaint reflects a significant safety issue; LBP-13-1, 77 NRC 57 (2013)

petitioners cannot challenge an NRC regulation without first obtaining a waiver; LBP-15-20, 81 NRC 829 (2015)

petitioners do not need to cite a specific portion of the application to support a contention of omission; LBP-15-5, 81 NRC 249 (2015)

petitioners have not raised an issue material to findings that NRC must make to support final decisions and they are unable to satisfy contention admissibility standards or meet the criteria to reopen a closed record; CLI-15-4, 81 NRC 221 (2015)

petitioners may not raise in adjudicatory proceedings contentions attacking the agency's rules and regulations or contentions that are the subject of ongoing rulemakings; LBP-11-29, 74 NRC 612 (2011)

petitioners may seek waiver of a regulation by demonstrating both special circumstances and that the regulation would not serve the purposes for which it was adopted; LBP-12-24, 76 NRC 503 (2012)

petitioners must provide a statement of the alleged facts or expert opinions upon which they rely; LBP-15-5, 81 NRC 249 (2015)

petitioners must state their name, address, and telephone number, the nature of their right to be made a party, the nature and extent of their property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on their interest; LBP-11-6, 73 NRC 149 (2011)

petitioners who are proceeding pro se should be shown greater leeway on the question of whether they have demonstrated good cause for lateness than petitioners represented by counsel; LBP-11-13, 73 NRC 534 (2011)

petitioners who choose to wait to raise contentions that could have been raised earlier risk the possibility that there will not be a material difference between the application and NRC Staff's review documents, thus rendering any newly proposed contention on previously available information impermissibly late; CLI-15-1, 81 NRC 1 (2015)

petitioners who have not shown good cause for their late filing must demonstrate that the balance of the remaining factors weighs in their favor; CLI-12-21, 76 NRC 491 (2012)

petitioners' claims of potential injury are also so speculative, and separate from the import and export license, that they do not amount to cognizable harm for purposes of standing; CLI-11-3, 73 NRC 613 (2011)

petitioners' generalized institutional interest in public forums and in preventing processing of foreign waste is insufficient to confer standing; CLI-11-3, 73 NRC 613 (2011)

petitioning parties may reply separately to each answer, especially considering that the answers may present different views or arguments; CLI-11-14, 74 NRC 801 (2011)

petitions for interlocutory review must show that the issue to be reviewed threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-12-13, 75 NRC 681 (2012)

petitions for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision and that procedural deficiency is reason enough to deny the request; CLI-12-17, 76 NRC 207 (2012)

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petitions for review are allowed after a full or partial initial decision, both of which are considered final decisions; CLI-11-10, 74 NRC 251 (2011)

petitions for review must be filed within 15 days; CLI-12-17, 76 NRC 207 (2012)

petitions for review of partial initial decision and any answer shall conform to the requirements of 10 C.F.R. 2.341(b)(4)(i)-(v); LBP-12-5, 75 NRC 227 (2012)

petitions for review will be granted at the Commission's discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-12-3, 75 NRC 132 (2012)

petitions, answers, and replies are allowed unless otherwise specified by the Commission or the presiding officer, but no other written answers or replies will be entertained; LBP-11-2, 73 NRC 28 (2011)

pleading requirements calling for a recitation of facts or expert opinion supporting the issue raised are inapplicable to a contention of omission beyond identifying the regulatively required missing information; LBP-15-5, 81 NRC 249 (2015); LBP-15-11, 81 NRC 401 (2015)

post-hearing petition contention (new or amended contention) also must satisfy the substantive contention admissibility standards; LBP-13-9, 78 NRC 37 (2013)

prejudice is not a factor in the balancing test for nontimely filings; LBP-11-13, 73 NRC 534 (2011)

presiding officer approval for settlements in contested proceedings with admitted contentions is evidenced from provisions of section 2.338 other than paragraph (g); LBP-15-30, 82 NRC 339 (2015)

presiding officer has discretion to consider an exceptionally grave issue even if untimely presented; LBP-11-20, 74 NRC 65 (2011)

presiding officer may certify questions or refer rulings to the Commission for decision; CLI-14-5, 79 NRC 254 (2014)

presiding officer may impose sanctions on a party that fails to provide any document required to be disclosed, unless the party demonstrates good cause for its failure to make the disclosure; LBP-14-2, 79 NRC 131 (2014)

presiding officer's jurisdiction terminates when the time period for the Commission to direct certification expires, when the Commission renders a final decision, and when the presiding officer withdraws from the case upon disqualifying himself; CLI-12-17, 76 NRC 207 (2012)

prior to its revision, 10 C.F.R. 2.341(f)(1) required that a referred ruling raise a significant and novel legal or policy issue and necessitate resolution to materially advance the orderly disposition of the proceeding; CLI-13-7, 78 NRC 199 (2013)

prior to NRC's 1989 rule revision, intervenors were able to trigger hearings after merely copying a contention from another proceeding, even though these admitted intervenors often had negligible knowledge of the issues and no direct case to present; CLI-12-5, 75 NRC 301 (2012); CLI-12-8, 75 NRC 393 (2012)

pro se litigants are generally not held to the same high standards of pleading and practice as parties with counsel; LBP-11-20, 74 NRC 65 (2011)

pro se litigants generally should be extended some latitude, but they are still expected to comply with procedural rules; LBP-11-13, 73 NRC 534 (2011)

procedure for obtaining a rule waiver is set out in 10 C.F.R. 2.335(a)-(d); CLI-12-19, 76 NRC 377 (2012)

"prompt" issuance is not defined as an immediate one in 10 C.F.R. 2.1202(a); LBP-15-2, 81 NRC 48 (2015)

proper inquiry under 10 C.F.R. 2.326(a)(3) goes to the likelihood that a different result will be reached if the information is considered; CLI-12-10, 75 NRC 479 (2012)

proper showing of standing includes the name, address, and telephone number of petitioner, nature of petitioner's right under a relevant statute to be made a party, nature and extent of the petitioner's property, financial, or other interest in the proceeding, and possible effect of any decision or order that might be issued on petitioner's interest; LBP-11-21, 74 NRC 115 (2011)

properly formulated contentions must focus on the license application in question, challenging either specific portions of, or alleged omissions from, the application (including the safety analysis report/technical report and the ER) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-12-27, 76 NRC 583 (2012)

proponent of a contention is responsible for formulating the contention and providing the necessary support to satisfy the admissibility requirements; CLI-15-23, 82 NRC 321 (2015)

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proponent of a contention must provide sufficient information to show that a genuine dispute exists with applicant/licensee on a material issue of law or fact; CLI-14-2, 79 NRC 11 (2014)

proponent of a motion to reopen must show that the motion is timely, addresses a significant safety or environmental issue, and a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-12-3, 75 NRC 132 (2012)

proponent of a new contention must demonstrate that a materially different result would have been likely had the newly proffered evidence been considered initially; CLI-11-2, 73 NRC 333 (2011)

proponents of new or amended contentions are required to demonstrate good cause for their filing, which includes showing that information on which the contention is based is materially different from information previously available; CLI-15-1, 81 NRC 1 (2015)

proposed new contention will be considered timely if it is filed within 30 days of the date when the new and material information on which the proposed contention is based first becomes available; LBP-11-7, 73 NRC 254 (2011); LBP-12-23, 76 NRC 445 (2012)

proposed new or amended contentions shall be deemed timely if filed within 60 days of the date when the document containing the new and material information first becomes available; LBP-12-12, 75 NRC 742 (2012)

proximity presumption applies if petitioner has frequent contacts with the geographic zone of potential harm

proximity presumption applies in reactor operating license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

purpose of 10 C.F.R. 2.309(f)(1) is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-13-8, 78 NRC 1 (2013); LBP-15-5, 81 NRC 249 (2015)

purpose of contention pleading requirements is to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-12-25, 76 NRC 540 (2012)

purpose of the reopening rule is to make sure that petitioners have an opportunity to raise serious issues after the close of the record; CLI-12-14, 75 NRC 692 (2012)

reach of a contention necessarily hinges upon its terms coupled with its stated bases; CLI-12-5, 75 NRC 301 (2012)

“receiving party” means the party to whom the mandatory disclosure must be made pursuant to 10 C.F.R. 2.336; LBP-11-5, 73 NRC 131 (2011)

recipient of a subpoena issued by the NRC’s Office of Investigations may move to quash the subpoena pursuant to 10 C.F.R. 2.702(f); CLI-13-5, 77 NRC 223 (2013)

reconsideration motion fails to identify a significant factual or legal matter that the board overlooked or provide compelling circumstances that render the board’s decision invalid; LBP-14-7, 79 NRC 451 (2014)

reconsideration motions must be filed within 10 days of the action for which reconsideration is requested; CLI-12-17, 76 NRC 207 (2012)

referred rulings or certified questions must raise significant and novel legal or policy issues or issues whose early resolution would materially advance the orderly disposition of the proceeding; CLI-15-1, 81 NRC 1 (2015)

regardless of a party’s resources, fairness to all involved in NRC’s adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and NRC regulations; CLI-14-10, 80 NRC 157 (2014)

regardless of when filed, all proposed contentions must comply with the general contention admissibility criteria; LBP-11-7, 73 NRC 254 (2011)

regulations are not subject to collateral attack in NRC hearings; LBP-13-9, 78 NRC 37 (2013)

relevant legal standards when evaluating a third-party petition for hearing on a confirmatory order are in section 2.309(d) and (f); LBP-14-4, 79 NRC 319 (2014)

reopening standard is intended to impose a deliberately heavy burden on parties seeking to supplement the evidentiary record at the 11th hour, after the record has closed; CLI-12-10, 75 NRC 479 (2012)

reopening standards expressly contemplate contentions that raise issues not previously litigated; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

reopening the record is an extraordinary action and proponents bear a heavy burden; LBP-11-22, 74 NRC 259 (2011)

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reopening will only be allowed where proponent presents material, probative evidence that either could not have been discovered before or could have been discovered but is so grave that, in the judgment of the presiding officer, it must be considered anyway; CLI-12-10, 75 NRC 479 (2012)

reply affidavit that did not accompany the motion to reopen will not be considered in determining whether petitioners have satisfied 10 C.F.R. 2.326(b); LBP-12-10, 75 NRC 633 (2012)

reply briefs may not be used to introduce new arguments to reinvigorate thinly supported contentions; CLI-12-5, 75 NRC 301 (2012)

reply briefs may not contain new information that was not raised in either the petition or answers, but may provide arguments that respond to the petition or answers, whether they are offered in rebuttal or in support; CLI-11-14, 74 NRC 801 (2011); LBP-12-8, 75 NRC 539 (2012)

reply must be filed within 7 days after the filing of answers to an intervention petition; LBP-11-21, 74 NRC 115 (2011)

representational standing associated with causation in power reactor license renewal proceedings is deemed fulfilled if a member of the organization resides or has significant contacts in an area within a 50-mile radius of the facility; LBP-12-15, 76 NRC 14 (2012)

representational standing claims must have supporting declarations from members identifying themselves, outlining their interests, and authorizing petitioners to represent them; LBP-12-3, 75 NRC 164 (2012)

representational standing granted in a different proceeding on the basis of the individual standing showing of a member cannot be the supporting basis for the organization's representational standing in another proceeding where that member does not provide the basis for standing; LBP-13-6, 77 NRC 253 (2013)

representational standing must be based on individual standing of at least one member; LBP-13-6, 77 NRC 253 (2013)

representative of a governmental entity that wishes to participate as a nonparty in the proceeding must identify those contentions on which it will participate in advance of any hearing held; LBP-15-11, 81 NRC 401 (2015)

request for hearing and/or petition for leave to intervene will be granted if the board determines that requestor/petitioner has standing and has proposed at least one admissible contention; LBP-12-8, 75 NRC 539 (2012)

request for hearing must state name and identity of requestor, nature of requestor's right to be a party, and nature and extent of the requestor's/petitioner's property, financial, or other interests in the proceeding; LBP-14-4, 79 NRC 319 (2014)

request for hearing or petition for leave to intervene must explain proposed contentions with particularity; CLI-11-8, 74 NRC 214 (2011)

request for hearing regarding a newly proffered contention cannot be admitted unless it satisfies the stringent standards for reopening the record; LBP-11-20, 74 NRC 65 (2011)

request to admit a new or amended contention requires petitioner to show that the information upon which it is based was not previously available and is materially different from information previously available; CLI-14-2, 79 NRC 11 (2014)

requests for hearing and petitions for leave to intervene must set forth with particularity the contentions sought to be raised and must satisfy all six requirements of 10 C.F.R. 2.309(f)(1); CLI-12-8, 75 NRC 393 (2012)

requests for hearing must provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact; LBP-13-3, 77 NRC 82 (2013)

requests for stays of licensing board decisions are considered under 10 C.F.R. 2.342; CLI-12-11, 75 NRC 523 (2012)

requirement for brief explanation of the basis for a contention merely means an explanation of the rationale or theory of the contention; LBP-15-20, 81 NRC 829 (2015)

requirement that a contention refer to specific portions of the application ensures that the board will be able to determine whether the contention is within the scope of the proceeding and that applicant knows which portions of the application it must defend; LBP-15-20, 81 NRC 829 (2015)

requirement that a contention refer to specific portions of the application is satisfied when a commonsense reading of the petition makes abundantly clear which sections of the application petitioners are challenging, even though petitioners do not specifically cite particular sections; LBP-15-20, 81 NRC 829 (2015)

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requirements for an admissible contention are provided in 10 C.F.R. 2.309(f)(i)-(vi); CLI-15-8, 81 NRC 500 (2015); LBP-12-3, 75 NRC 164 (2012)

requirements for demonstrating good cause are the same as the requirements for filing late contentions previously available under section 2.309(f)(2)(i)-(iii); LBP-15-1, 81 NRC 15 (2015)

requiring petitioners to proffer additional and conclusive support for the effect of their proposed contention would improperly require boards to adjudicate the merits of contentions before admitting them; LBP-11-7, 73 NRC 254 (2011); LBP-11-21, 74 NRC 115 (2011)

review is granted where petitions for review raise substantial questions of law and procedure; CLI-15-6, 81 NRC 340 (2015)

review of a board's certified question that raises a significant and novel issue whose early resolution will materially advance the orderly disposition of the proceeding is granted; CLI-11-4, 74 NRC 1 (2011)

revised rules no longer require leave from the presiding officer to amend a contention or file a new contention; LBP-12-27, 76 NRC 583 (2012)

routine contention admissibility determinations generally are not appropriate for interlocutory review; CLI-12-12, 75 NRC 603 (2012)

rule waiver petitions are reviewed under section 2.335 as well as case law; CLI-13-7, 78 NRC 199 (2013)

rule waiver petitions must include an affidavit that states with particularity the special circumstances that justify waiver of the rule; CLI-13-7, 78 NRC 199 (2013); LBP-13-12, 78 NRC 239 (2013)

rule waiver requests must demonstrate that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted; CLI-15-21, 82 NRC 295 (2015)

rule waivers may be granted only when all four factors in 10 C.F.R. 2.335(b) are met; LBP-14-15, 80 NRC 151 (2014)

rulemaking petitioner who is also a participant in a licensing proceeding may request suspension of that proceeding pending the outcome of the rulemaking petition; CLI-14-7, 80 NRC 1 (2014)

rules on contention admissibility are strict by design; LBP-11-21, 74 NRC 115 (2011); LBP-11-22, 74 NRC 259 (2011); LBP-12-25, 76 NRC 540 (2012); LBP-13-8, 78 NRC 1 (2013); LBP-15-5, 81 NRC 249 (2015)

scope of a contention is limited to the issues of law and fact pleaded with particularity and any factual and legal material in support thereof; LBP-11-38, 74 NRC 817 (2011)

scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board; LBP-15-20, 81 NRC 829 (2015)

section 2.206 provides a process for stakeholders to advance concerns and obtain full or partial relief, or written reasons why the requested relief is not warranted; LBP-15-4, 81 NRC 156 (2015)

section 2.309(c)(1)(iii) does not stipulate what is considered timely, and the board looks to Commission precedent; LBP-15-11, 81 NRC 401 (2015)

section 2.309(c)(vii) weighs heavily against admission of a contention because the addition of a hearing on its subject matter will unduly broaden the issues and materially delay the proceeding; LBP-11-35, 74 NRC 701 (2011)

section 2.309(f)(1) has no application to reactor operator licensee proceedings; LBP-13-3, 77 NRC 82 (2013)

section 2.311 does not provide for the filing of replies; CLI-14-3, 79 NRC 31 (2014)

section 2.311(a) is applicable to an appeal of a board decision rejecting an intervention petition and a hearing request; CLI-14-6, 79 NRC 445 (2014)

section 2.311(d)(1) provides for appeals as of right on the question of whether a request for hearing should have been wholly denied; CLI-11-11, 74 NRC 427 (2011)

section 2.318(a) does not provide an exhaustive list of every situation where board jurisdiction lapses; CLI-12-14, 75 NRC 692 (2012); CLI-12-17, 76 NRC 207, 210 (2012)

section 2.326(a)(3) expressly refers to a motion to reopen a closed record to consider additional evidence and newly proffered evidence; LBP-11-22, 74 NRC 259 (2011)

section 2.338 is a new provision that consolidates and amplifies the previous rules pertaining to settlement; LBP-15-30, 82 NRC 339 (2015)

section 2.341 applies to appeals of rulings on new contentions filed after initial intervention petitions; CLI-12-7, 75 NRC 379 (2012)

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section 2.341(f)(2)(i) is compared to 10 C.F.R. 2.1213(d)(1); CLI-15-17, 82 NRC 33 (2015)

section 2.342 does not apply to requests for stays of Commission decisions pending judicial review; CLI-12-11, 75 NRC 523 (2012)

section 2.342(e) standards are applied to motion to stay issuance of a license; CLI-14-6, 79 NRC 445 (2014)

section 2.802(d) suspension request is inapplicable where no petition for rulemaking has been filed before the Commission; CLI-14-6, 79 NRC 445 (2014)

service of a filing is not complete until accompanied by a certificate of service and a request for oral argument; LBP-11-21, 74 NRC 115 (2011)

settlement agreement approval process in 10 C.F.R. 2.338(i) is discussed; LBP-15-21, 82 NRC 1 (2015)

settlement agreements are contingent upon approval by a licensing board; LBP-15-21, 82 NRC 1 (2015)

settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted; LBP-15-30, 82 NRC 339 (2015)

settlements approved by a presiding officer are subject to Commission review; LBP-15-21, 82 NRC 1 (2015)

should a suspended adjudication resume, the Commission will consider appeals in due course, consistent with relevant Subpart J rules; CLI-13-8, 78 NRC 219 (2013)

should requirements for reopening the record be satisfied, the requirements for untimely contentions must also be satisfied, as well as the contention admissibility criteria of section 2.309(f)(1); LBP-11-35, 74 NRC 701 (2011)

should the Commission determine at a future time that case-specific waste confidence challenges are appropriate for consideration, normal procedural rules will apply; LBP-13-1, 77 NRC 57 (2013); LBP-14-6, 79 NRC 404 (2014)

showing of special circumstances demonstrating that application of the rule would not serve the purpose for which it was adopted is required for rule waiver; CLI-12-19, 76 NRC 377 (2012); LBP-11-35, 74 NRC 701 (2011); LBP-13-1, 77 NRC 57 (2013)

simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention; LBP-12-27, 76 NRC 583 (2012)

sole provision of NRC's procedural rules explicitly authorizing stay applications is available only to parties to adjudicatory proceedings seeking stays of decisions or actions of a presiding officer pending the filing and resolution of a petition for review; CLI-11-5, 74 NRC 141 (2011)

special circumstances are required for a rule waiver; LBP-14-16, 80 NRC 183 (2014)

standard for admission of new or amended contentions involves a balancing of eight factors; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention; CLI-11-2, 73 NRC 333 (2011); CLI-12-10, 75 NRC 479 (2012); CLI-11-8, 74 NRC 214 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-11-22, 74 NRC 259 (2011)

standard for deciding motions for summary disposition in Subpart L proceedings is found in section 2.710; LBP-11-31, 74 NRC 643 (2011)

standard for determining whether a party has met the "materially different result" requirements of 10 C.F.R. 2.326(a)(3) is whether the party can defeat a motion for summary disposition; LBP-11-23, 74 NRC 287 (2011)

standard for discretionary review is described; CLI-15-7, 81 NRC 481 (2015)

standard for review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or an abuse of discretion; CLI-12-7, 75 NRC 379 (2012)

standard for when an issue is "significant" in the context of reopening a closed record is the same as the standard for when supplementation of an environmental impact statement is required, i.e., the new and significant information must paint a seriously different picture of the environmental landscape; LBP-11-23, 74 NRC 287 (2011)

standards for admission of new contentions are reviewed; LBP-11-25, 74 NRC 380 (2011)

standards for reopening apply not only when a party is seeking to introduce new evidence on a previously admitted contention after the evidentiary record is closed, but also when a party is seeking to introduce a new contention after the record is closed; LBP-11-23, 74 NRC 287 (2011)

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standards for reopening the case record require movant to show that the motion is timely, addresses a significant safety or environmental issue, and demonstrates that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; CLI-12-10, 75 NRC 479 (2012)

standards governing contention admissibility are strict by design; LBP-12-7, 75 NRC 503 (2012)

standing based on the proximity presumption has been found if petitioner or a representative of a petitioner organization resides within approximately 50 miles of the facility in question; LBP-11-13, 73 NRC 534 (2011)

standing criteria for federally recognized Indian tribes are less stringent, but only where the facility at issue is within the tribe's boundaries; LBP-12-24, 76 NRC 503 (2012)

standing requires petitioner to show a concrete and particularized harm, stemming from the challenged action, and redressable by a favorable decision; CLI-13-2, 77 NRC 39 (2013)

state government may file an amicus brief within the time allowed to the party whose position the brief will support

state has standing because facility is located within the boundaries of the state and no further demonstration of standing is required; LBP-15-24, 82 NRC 68 (2015)

state intervenor provided good cause for its late e-filing submission because the State submitted its petition to NRC by e-mail before the deadline lapsed and the delay was purely a matter of obtaining digital credentials for the system, not an attempt to gain extra time to prepare a pleading or otherwise to flout NRC's procedural requirements; LBP-15-4, 81 NRC 156 (2015)

stay movant has the burden of persuasion on the four factors of 10 C.F.R. 2.1213(d); LBP-15-2, 81 NRC 48 (2015)

stay pursuant to 10 C.F.R. 2.342 is available only where a presiding officer or licensing board has issued a decision or taken action in a proceeding to which the movant is a party; CLI-14-4, 79 NRC 249 (2014)

strict rules of evidence do not apply to written submissions; LBP-12-21, 76 NRC 218 (2012)

strictures governing settlements are set forth in 10 C.F.R. 2.338; LBP-15-21, 82 NRC 1 (2015)

sua sponte authority of presiding officer is compared under predecessor rule 10 C.F.R. 2.760a; LBP-14-9, 80 NRC 15 (2014)

sua sponte review authority shall be used only in extraordinary circumstances; CLI-15-1, 81 NRC 1 (2015)

subject matter of contentions must impact the grant or denial of a pending license application; LBP-12-15, 76 NRC 14 (2012)

Subpart L hearing procedures provide that motions for summary disposition must be in writing and must include a written explanation of the basis of the motion and affidavits to support statements of fact; LBP-12-4, 75 NRC 213 (2012)

Subpart L provides for motions for summary disposition, and such motions are governed by the same standards as those in Subpart G proceedings; LBP-12-2, 75 NRC 159 (2012); LBP-12-4, 75 NRC 213 (2012)

summary disposition is not a tool for trying to convince a licensing board to decide, on written submissions, genuine issues of material fact that warrant resolution at a hearing; LBP-11-14, 73 NRC 591 (2011)

summary disposition is particularly inappropriate when a licensing board is presented with conflicting expert testimony, for at that stage of a proceeding it is not the role of licensing boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-14, 73 NRC 591 (2011)

summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-12-2, 75 NRC 159 (2012)

summary disposition movant bears the burden of demonstrating that there is no genuine issue as to any material fact and that it is entitled to a decision in its favor; LBP-11-4, 73 NRC 91 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-17, 74 NRC 11 (2011); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

summary disposition opponent may not rest upon mere allegations or denials, but must state specific facts showing that there is a genuine issue of fact for hearing; LBP-11-4, 73 NRC 91 (2011)

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summary disposition opponent need not demonstrate that it would prevail on the issues at hand, but it must at least show that there is a genuine dispute of material fact to be tried; LBP-12-19, 76 NRC 184 (2012)

summary disposition proponent bears the burden of establishing that no facts remain in dispute, even if the motion is unopposed; LBP-12-26, 76 NRC 559 (2012)

summary disposition should be granted if filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with statements of parties and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-11-4, 73 NRC 91 (2011); LBP-12-26, 76 NRC 559 (2012)

summary disposition, like summary judgment, is an extreme remedy that should be granted with caution especially before the parties have been afforded an opportunity to marshal their evidence; LBP-11-7, 73 NRC 254 (2011)

summary judgment should be awarded only when the truth is quite clear; LBP-11-4, 73 NRC 91 (2011); LBP-11-14, 73 NRC 591 (2011)

support required for a contention necessarily will depend on the issue sought to be litigated; CLI-11-11, 74 NRC 427 (2011)

support required for a motion to reopen is greater than that required for a contention under the general admissibility requirements of 10 C.F.R. 2.309(f)(1); CLI-12-3, 75 NRC 132 (2012)

suspension provision provides an opportunity for a participant to ensure that a successful rulemaking petition is applied in an ongoing adjudication; CLI-14-7, 80 NRC 1 (2014)

tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable; CLI-11-2, 73 NRC 333 (2011)

target of an enforcement order may require NRC Staff to attend a prehearing meeting where he can require that Staff member to answer questions orally under oath; LBP-14-11, 80 NRC 134 (2014); LBP-14-11, 80 NRC 125 (2014)

target of an enforcement order may serve interrogatories on NRC Staff, must show that answers to the interrogatories are necessary to a proper decision in the proceeding, and may ask the board to direct NRC Staff to answer those interrogatories; LBP-14-11, 80 NRC 125 (2014)

target of an enforcement order must be provided a copy of all NRC Staff documents that are relevant to disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 125 (2014)

term "petition" in section 2.335 refers to the waiver petition, not a petition to intervene; CLI-11-11, 74 NRC 427 (2011)

terminating an adjudication has significant implications for the rights of intervenors under Atomic Energy Act § 189a; LBP-11-22, 74 NRC 259 (2011)

test for the "materially different result" requirement of section 2.326(a)(3) is whether it has been shown that a motion for summary disposition could be defeated; LBP-11-20, 74 NRC 65 (2011)

that a summary disposition opponent declines to oppose the motion does not mean that movant is entitled to a favorable judgment; LBP-12-4, 75 NRC 213 (2012)

those providing affidavits must be competent individuals or appropriately qualified experts; CLI-11-8, 74 NRC 214 (2011)

time for submitting a new/amended contention based on information that would be newly available, materially different, and otherwise timely submitted given the information's availability can be extended if the extension request is based on good cause; LBP-13-10, 78 NRC 117 (2013)

timeliness of an initial hearing petition in different situations is defined as being filed between 20 and 60 days after certain specified events; LBP-15-11, 81 NRC 401 (2015)

timely new contentions may be filed with leave of the presiding officer if information on which they are based was not previously available and is materially different than information previously available and they have been submitted in a timely fashion based on the availability of the subsequent information; LBP-11-25, 74 NRC 380 (2011); LBP-11-32, 74 NRC 654 (2011)

timing of license issuance is informed by instruction for NRC Staff to promptly issue its approval or denial of the application consistent with its findings, and despite the pendency of a hearing; LBP-15-2, 81 NRC 48 (2015)

to be accepted for hearing, contentions must meet strict admission standards; CLI-12-10, 75 NRC 479 (2012); CLI-12-15, 75 NRC 704 (2012)

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- to be admissible, contentions must include specific grievances beyond mere notice pleading; LBP-11-29, 74 NRC 612 (2011)
- to be admissible, each contention must satisfy six pleading requirements; LBP-11-29, 74 NRC 612 (2011)
- to be admissible, late-filed contentions must not only meet standards of section 2.309(f)(1), but must also satisfy the timeliness requirements of section 2.309(c) or section 2.307; LBP-13-9, 78 NRC 37 (2013)
- to be considered under the motions rule, replies must satisfy the compelling circumstances standard; CLI-14-3, 79 NRC 31 (2014)
- to demonstrate representational standing, an organization must show that at least one of its members would be affected by the agency's approval of the requested license, identify such members, and establish (preferably through an affidavit) that such members have authorized it to act as their representative and to request a hearing on their behalf; LBP-11-29, 74 NRC 612 (2011)
- to demonstrate standing, petitioner must describe the nature of petitioner's right to be made a party, nature and extent of petitioner's property, financial, or other interest, and possible effect of any subsequent decision or order on petitioner's interest; LBP-13-8, 78 NRC 1 (2013)
- to demonstrate standing, petitioner must show that it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute, that the injury can fairly be traced to the challenged action, and that the injury is likely to be redressed by a favorable decision; LBP-13-8, 78 NRC 1 (2013)
- to derive standing from a member, an organization must demonstrate that the individual member has standing to participate and has authorized the organization to represent his or her interests; LBP-12-8, 75 NRC 539 (2012); LBP-13-8, 78 NRC 1 (2013)
- to determine whether petitioner has demonstrated that application of a regulation would not serve the purposes for which it was adopted, a board must first determine the purpose of rule or regulation for which waiver is sought; LBP-13-1, 77 NRC 57 (2013)
- to establish organizational standing, petitioner must show that its interests will be harmed by the licensing action, while an organization seeking representational standing must demonstrate that the interests of at least one of its members will be harmed; LBP-12-10, 75 NRC 633 (2012)
- to establish representational standing, organizations must show that at least one of its members may be harmed by the licensing action and would have standing to sue in his or her own right, identify that member by name and address, show that the organization is authorized to request a hearing on behalf of that member, and show that the interests that the representative organization seeks to protect are germane to its own interests; LBP-12-10, 75 NRC 633 (2012)
- to gain the admission of a new or amended contention, a party must meet the requirements of 10 C.F.R. 2.309(c) and (f); LBP-15-16, 81 NRC 618 (2015)
- to have a new contention admitted after the contested proceeding has terminated, petitioner must meet three criteria; CLI-12-14, 75 NRC 692 (2012)
- to intervene as a party in an adjudicatory proceeding concerning a proposed license action, petitioner must establish standing and proffer at least one admissible contention; LBP-13-11, 78 NRC 177 (2013); LBP-13-12, 78 NRC 239 (2013); LBP-15-13, 81 NRC 456 (2015); LBP-15-19, 81 NRC 815 (2015)
- to intervene as a party, a union must establish standing and proffer at least one admissible contention; LBP-14-4, 79 NRC 319 (2014)
- to justify granting a motion to reopen, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition; CLI-11-8, 74 NRC 214 (2011)
- to make additional claims in a contention, intervenor must provide a sufficient explanation of its concern and a concise statement of the alleged facts supporting its position; LBP-14-5, 79 NRC 377 (2014)
- to obtain a hearing, petitioner must show that its request is timely, that it has standing to obtain a hearing, and that it has proposed at least one admissible contention; CLI-14-11, 80 NRC 167 (2014)
- to proffer an admissible contention, interveners must demonstrate a genuine dispute suitable for evidentiary hearing; LBP-11-28, 74 NRC 604 (2011)
- to remove an admitted contention from the proceeding, a party must file, and a board must grant, a motion for summary disposition; LBP-14-5, 79 NRC 377 (2014)
- to reopen a closed proceeding, intervenors must file a motion demonstrating, among other things, that a materially different result would be or would have been likely had the newly proffered evidence been considered initially; LBP-12-19, 76 NRC 184 (2012)

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to satisfy contention admissibility standards, petitioner must meet all six pleading requirements of 10 C.F.R. 2.309(f)(1)(i)-(vi); CLI-15-23, 82 NRC 321 (2015)

to show a genuine dispute with applicant on a material issue of law or fact, a contention must include references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute; CLI-11-9, 74 NRC 233 (2011)

to show standing, a hearing request must state petitioner's name, address, and telephone number, nature of its right under the applicable statutes to be made a party, nature and extent of property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on its interest; LBP-11-29, 74 NRC 612 (2011)

to the extent that contentions raise matters other than onsite spent fuel storage, the board should assess their admissibility under generally applicable rules of practice; CLI-14-8, 80 NRC 71 (2014)

to trigger a full adjudicatory hearing, petitioners must be able to proffer at least some minimal factual and legal foundation in support of their contentions; LBP-12-27, 76 NRC 583 (2012)

trigger point for the timely submission of new or amended contentions is when new information becomes available, and intervenor has the obligation to raise new contentions based on such information; CLI-12-13, 75 NRC 681 (2012)

two issues in one contention are best evaluated as separate contentions; LBP-15-5, 81 NRC 249 (2015)

under 10 C.F.R. 2.311, appeal of a ruling on contentions is allowed only if the order wholly denies an intervention petition or a party other than the petitioner alleges that a petition for leave to intervene or a request for hearing should have been wholly denied; CLI-12-7, 75 NRC 379 (2012)

under current rules, intervenors may use discovery to develop a case once contentions are admitted, but contentions shall not be admitted if at the outset they are not described with reasonable specificity or are not supported by some alleged fact or facts demonstrating a genuine material dispute with the applicant; CLI-12-8, 75 NRC 393 (2012)

under the proximity presumption, an individual who resides within a 50-mile radius of a nuclear power plant is not required to specifically plead injury, causation, and redressability to establish his or her standing to intervene; LBP-12-10, 75 NRC 633 (2012)

unless the presiding officer otherwise orders, applicant or proponent of an order has the burden of proof; LBP-14-2, 79 NRC 131 (2014); LBP-15-2, 81 NRC 48 (2015)

untimeliness constitutes sufficient grounds on its own for denying a motion to reopen and thus the board need not consider other subsections under sections 2.326 and 2.309; LBP-12-16, 76 NRC 44 (2012)

untimely filed contention is appropriate for sua sponte board review; LBP-14-9, 80 NRC 15 (2014)

untimely issues may be considered in the discretion of the presiding officer if the issue is exceptionally grave; CLI-12-10, 75 NRC 479 (2012)

using reply briefs to provide, for the first time, the necessary threshold support for contentions would effectively bypass and eviscerate NRC rules governing timely filing, contention amendment, and submission of late-filed contentions; LBP-12-7, 75 NRC 503 (2012)

vague accusation does not rise to the level of an admissible genuine dispute of material fact or law; LBP-11-10, 73 NRC 424 (2011)

waiver of rule or regulation may be obtained upon a showing that applying provision at issue would not serve the purposes for which the rule or regulation was adopted; LBP-15-3, 81 NRC 65 (2015)

waiver petition would permit consideration of an issue in an adjudicatory proceeding that would otherwise impermissibly challenge an NRC rule or regulation; CLI-14-7, 80 NRC 1 (2014)

waivers of NRC regulations may be granted in extraordinary situations where special circumstances can be demonstrated; LBP-13-12, 78 NRC 239 (2013)

when a contention is considered to be timely filed is not specified in 10 C.F.R. 2.309(c)(1)(iii); LBP-15-15, 81 NRC 598 (2015)

when a motion to reopen is untimely, the section 2.326(a)(1) "exceptionally grave" test supplants the section 2.326(a)(2) "significant safety or environmental issue" test; CLI-11-8, 74 NRC 214 (2011)

when a petition for review is filed with the Commission at the same time as a motion for reconsideration is filed with the board, the Commission will delay considering the petition for review until after the board has ruled; CLI-12-5, 75 NRC 301 (2012)

when determining whether a new contention is timely for purpose of reopening a record, the Commission looks to whether the information on which it is based was previously available or whether it is

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- materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability; CLI-12-21, 76 NRC 491 (2012)
- when petitioner seeks leave to intervene after the initial deadline for the filing of contentions, it must demonstrate good cause for its belated filing; LBP-15-19, 81 NRC 815 (2015)
- when ruling on summary disposition motions, the Commission applies standards analogous to those used by federal courts when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-12-23, 76 NRC 445 (2012)
- when seeking to intervene in a representational capacity, an organization must identify at least one member who is affected by the licensing action and who qualifies for standing in his or her own right, and show that the member has authorized the organization to intervene on his or her behalf; LBP-11-21, 74 NRC 115 (2011)
- where a motion to reopen relates to a contention not previously in controversy, the motion must demonstrate that the balance of the nontimely filing factors of 10 C.F.R. 2.309(c) favors granting the motion to reopen; LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011)
- where a nonmoving party declines to oppose a motion for summary disposition, the board shall accept as admitted the moving party's prima facie showing of material facts; LBP-12-4, 75 NRC 213 (2012)
- where admission of a late-filed contention would cause a material delay in the proceeding weighed against admission of the contention; CLI-12-15, 75 NRC 704 (2012)
- where an admitted contention is pending before the board, appeals do not lie under section 2.311, but rather under section 2.341(f)(2), which governs petitions for interlocutory review, including board rulings on new contentions; CLI-13-3, 77 NRC 51 (2013)
- where an issue arises over the scope of an admitted contention, NRC opinions have long referred back to the bases set forth in support of the contention; LBP-12-23, 76 NRC 445 (2012)
- where initial decisions have been issued, the record should not be reopened to take evidence on some accident-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision; CLI-11-5, 74 NRC 141 (2011)
- where petitioner fails to establish good cause for late filing, its demonstration on the other factors must be particularly strong; LBP-12-7, 75 NRC 503 (2012)
- where the evidentiary record had been closed, the demanding requirements for reopening must be satisfied; LBP-12-1, 75 NRC 1 (2012)
- where the time for filing contentions had expired in a given case, no new TMI-related contentions would be accepted absent a showing of good cause and a balancing of the late-filing factors; CLI-11-5, 74 NRC 141 (2011)
- withdrawal of an application after issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe; LBP-12-20, 76 NRC 215 (2012)
- within 15 days from an order granting a hearing, each party must indicate what kind of hearing it prefers; CLI-14-5, 79 NRC 254 (2014)
- within 45 days of the initial scheduling order, target of the enforcement order must provide certain information and documents to the NRC enforcement director; LBP-14-11, 80 NRC 125 (2014)
- within certain constraints, target of an enforcement order may pursue discovery against the NRC Staff; LBP-14-11, 80 NRC 125 (2014)
- RULES OF PROCEDURE**
- except upon a showing of substantial prejudice to the complaining party, it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it; CLI-13-8, 78 NRC 219 (2013)
- federal courts leave to an agency's discretion the manner in which the agency determines whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-6, 75 NRC 352 (2012)
- if case-specific challenges to the waste confidence rule are appropriate for consideration, normal procedural rules will apply; CLI-12-16, 76 NRC 63 (2012)
- licensing boards applied existing procedural rules to new contentions and motions to reopen filed in response to the Three Mile Island accident and the September 11, 2001, terrorist attacks; CLI-12-13, 75 NRC 681 (2012)

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- NRC's action in adopting new procedural rules meets the rational basis test; LBP-11-4, 73 NRC 91 (2011)
- procedural rule governing appeals in a 10 C.F.R. Part 2, Subpart J proceeding provides for review only in the limited circumstances prescribed in the rule; CLI-11-13, 74 NRC 635 (2011)
- procedural rules in Subpart L govern most adjudicatory proceedings; CLI-14-5, 79 NRC 254 (2014)
- procedural rules in Subpart M govern adjudications on transfer applications; CLI-14-5, 79 NRC 254 (2014)
- proceedings on enforcement matters must be conducted under the procedures of Subpart G unless all parties agree otherwise; LBP-14-11, 80 NRC 125 (2014)
- raising new issues related to the Fukushima events does not warrant new procedures or a separate timetable; CLI-12-6, 75 NRC 352 (2012); CLI-12-13, 75 NRC 681 (2012)
- "rational basis review" was applied to intervenor's challenge to the NRC's 2004 changes to its procedural rules, citing cases involving challenges to laws regulating aspects of prisoners' right to access to the courts; LBP-11-4, 73 NRC 91 (2011)
- separate hearings have been shown to be appropriate for cases governed by different procedural rules; CLI-14-5, 79 NRC 254 (2014)
- should the agency's administration of its new procedural rules contradict its present representations that cross-examination will be allowed under the rules when required for a full and true disclosure of the facts or otherwise flout this principle, the rules may be subject to future challenges; LBP-11-4, 73 NRC 91 (2011)
- Subpart G procedures are mandated for certain proceedings and parties are permitted to propound interrogatories, take depositions, and cross-examine witnesses without leave of the board; LBP-11-13, 73 NRC 534 (2011)
- Subpart L procedures provide for a more informal proceeding in which discovery is generally prohibited except for specified mandatory disclosures under 10 C.F.R. 2.336 and the mandatory production of the hearing file under 10 C.F.R. 2.1203(a); LBP-11-13, 73 NRC 534 (2011)
- Subpart M logically applies to all license transfer hearing requests, regardless of who files them, because the types of issues litigated (e.g., financial assurance, technical qualifications, foreign ownership, and staffing levels) are likely to be similar regardless of whether they are initiated by intervention petitions or by challenges to a Staff action; CLI-14-5, 79 NRC 254 (2014)
- See also Federal Rules of Civil Procedure; Hearing Procedures
- SABOTAGE**
- licensees must establish and maintain systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material; CLI-11-4, 74 NRC 1 (2011)
- NEPA imposes no legal duty on NRC to consider intentional malevolent acts in conjunction with commercial power reactor license renewal applications; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)
- SAFE SHUTDOWN EARTHQUAKE**
- geologic and seismic siting factors considered for design must include a determination of the SSE ground motion for the site and the potential for surface tectonic and nontectonic deformations; LBP-11-16, 73 NRC 645 (2011)
- whether the SSE exceedance in applicant's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in the proceeding; LBP-11-10, 73 NRC 424 (2011)
- SAFE SHUTDOWN SYSTEMS**
- ability of a facility to shut down safely following a potential earthquake is a current operating issue, and is not unique to whether licenses should be renewed; LBP-15-6, 81 NRC 314 (2015)
- contention that operating license should not be renewed unless and until applicant establishes that the plant can withstand and be safely shut down following an earthquake is not within the scope of a license renewal proceeding; LBP-15-6, 81 NRC 314 (2015)
- licensee cited for violations for use of unapproved operator manual actions to mitigate safe shutdown equipment malfunctions caused by a fire-induced single spurious actuation in lieu of protecting the equipment; DD-12-3, 76 NRC 416 (2012)

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means to ensure that a redundant train of safe-shutdown cables and equipment is free of fire damage in instances in which redundant trains are located in the same fire area outside of primary containment are described; DD-12-3, 76 NRC 416 (2012)

under its certified design, the Economic Simplified Boiling Water Reactor could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 249 (2015)

underlying purpose of 10 C.F.R. Part 50, Appendix R, § III.G is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event; DD-12-3, 76 NRC 416 (2012)

SAFEGUARDS INFORMATION

board determination of expert's need to know with regard to a document withheld as safeguards information was reversed; LBP-11-9, 73 NRC 391 (2011)

boards may exclude the public from adjudicatory hearings or actions that involve restricted data, defense information, safeguards information protected from disclosure under the authority of AEA §147, or information protected from disclosure under the authority of section 148; LBP-11-5, 73 NRC 131 (2011)

NRC Staff and its counsel, like the board and its staff, are federal government employees and are thus subject to stringent sanctions for the unauthorized disclosure of the protected information or protected documents; LBP-11-5, 73 NRC 131 (2011)

petitioner was denied access to a safeguards-protected design-related document on the basis of his lacking a need to know; LBP-11-9, 73 NRC 391 (2011)

SAFETY

Congress expressly recognized and impliedly approved NRC's regulatory scheme and practice under which the safety of interim storage of high-level wastes at commercial nuclear power reactor sites has been determined separately from the safety of government-owned permanent storage facilities that have not yet been established; CLI-15-4, 81 NRC 221 (2015)

"exceptionally grave" issues warranting reopening of a record are limited to those affecting public safety; CLI-12-21, 76 NRC 491 (2012)

NRC's long-continued regulatory practice of issuing operating licenses with an implied finding of reasonable assurance that safe permanent disposal of spent nuclear fuel can be available when needed is in accord with the intent of Congress underlying the Atomic Energy Act and Energy Reorganization Act; CLI-15-4, 81 NRC 221 (2015)

NRC's safety regulations cover a 50-mile planning area; LBP-14-4, 79 NRC 319 (2014)

spent nuclear fuel can be stored safely at licensed nuclear facilities until such time as a long-term geologic storage facility is constructed; LBP-12-24, 76 NRC 503 (2012)

stringent safety requirements apply to the construction and operation of reactor spent fuel pools and independent spent fuel storage installations; CLI-15-4, 81 NRC 221 (2015)

See also Health and Safety

SAFETY ANALYSIS

equivalent margins analysis must demonstrate that the calculated energy will provide margins of safety against fracture that are equivalent to those required by Appendix G of Section XI of the ASME Code; CLI-15-23, 82 NRC 321 (2015)

if NRC does not approve continued operation based on licensee's safety analysis, licensee must request an opportunity to modify the reactor pressure vessel or related reactor systems to reduce the potential for failure of the reactor vessel due to pressurized thermal shock events; LBP-15-17, 81 NRC 753 (2015)

if reference values projected at specific areas of the reactor pressure vessel for the end of life of the plant surpass the current screening criteria, licensee must submit a safety analysis and obtain NRC approval to continue to operate; LBP-15-17, 81 NRC 753 (2015)

independent assessment of the safety aspects of the combined license application is required; CLI-15-13, 81 NRC 555 (2015)

license amendments are not contingent upon any additional safety determination regarding spent fuel storage under the Atomic Energy Act; CLI-15-4, 81 NRC 221 (2015)

licensees have the option of demonstrating that values of Charpy upper-shelf energy below 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME BPV Code; LBP-15-20, 81 NRC 829 (2015)

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NRC cannot look to the sufficiency of safety standards enacted under the Atomic Energy Act to avoid its NEPA obligations; LBP-12-18, 76 NRC 127 (2012)

NRC's independent technical evaluation of information submitted by licensee to demonstrate that no functional damage occurred as a result of an earthquake is described; DD-15-9, 82 NRC 274 (2015)

petitioners' contention challenges the sufficiency of the equivalent margins analysis to provide reasonable assurance of reactor safety and is therefore within the scope of the proceeding; LBP-15-20, 81 NRC 829 (2015)

petitioners' request for a safety analysis relative to Fukushima-related concerns was granted to the extent that the requested analyses had already been undertaken; CLI-12-9, 75 NRC 421 (2012)

severe accident mitigation alternatives analyses are conducted for the purposes of the NRC's environmental review under NEPA and are not safety analyses; CLI-15-18, 82 NRC 135 (2015)

when an NRC regulation permits use of a particular analysis, a contention asserting that a different analysis or technique should be used is inadmissible because it indirectly attacks NRC's regulations; LBP-15-20, 81 NRC 829 (2015)

See also Final Safety Analysis Report; Final Safety Evaluation Report; Integrated Safety Analysis

SAFETY ANALYSIS REPORT

construction permit applications must include the principal design criteria for a proposed facility and describe the design bases and their relationship to the principal design criteria in the preliminary safety analysis report; DD-13-3, 78 NRC 571 (2013)

operating license applicant must present the design bases of the facility and safety analyses of the facility as a whole in the final SAR; DD-15-11, 82 NRC 361 (2015)

technical specifications derived from the analyses and evaluations included in the safety analysis report are required; DD-13-3, 78 NRC 571 (2013)

See also Final Safety Analysis Report

SAFETY CULTURE

board erred in admitting a contention pertaining to a plant's safety culture; CLI-11-11, 74 NRC 427 (2011)

broad-based issues akin to safety culture such as operational history, quality assurance, quality control, management competence, and human factors are outside the scope of license renewal because they raise issues that are relevant to current plant operation; LBP-12-27, 76 NRC 583 (2012)

contention challenging applicant's safety culture and claiming to rely on NRC Staff's Safety Evaluation Report was inadmissible because the SER did not discuss safety culture as a general matter and could not serve as a reasonably apparent foundation for a safety culture contention; LBP-15-11, 81 NRC 401 (2015)

contention charging that licensee's poor safety culture could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)

contention that licensee's history of managing whistleblower complaints regarding safety issues demonstrates that the plant will not be operated safely during the license renewal term is inadmissible; LBP-13-8, 78 NRC 1 (2013)

contentions alleging that applicants' handling of past safety issues at the plants demonstrated that the applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term are inadmissible; LBP-13-8, 78 NRC 1 (2013)

if a stakeholder is of the view that immediate action is needed to remedy an ailing safety culture at any facility, then that matter should be brought immediately to the attention of the agency via section 2.206; LBP-13-8, 78 NRC 1 (2013)

this issue is beyond the scope of a license renewal proceeding; LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015)

SAFETY EVALUATION REPORT

applicant's environmental report is not the vehicle for the NRC Staff's safety review; LBP-11-6, 73 NRC 149 (2011)

contention challenging applicant's safety culture and claiming to rely on NRC Staff's SER was inadmissible because the SER did not discuss safety culture as a general matter and could not serve as a reasonably apparent foundation for a safety culture contention; LBP-15-11, 81 NRC 401 (2015)

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- discovery cannot be completed nor can the evidentiary hearing be held until the SER and all necessary environmental impact statements are completed; CLI-13-8, 78 NRC 219 (2013)
- filing of new contentions based on the SER and Staff NEPA documents is expressly contemplated by the Model Milestones; LBP-11-22, 74 NRC 259 (2011)
- good cause for a late-filed contention based on information in the SER did not add a last piece of information, but merely compiled and organized preexisting information; CLI-11-8, 74 NRC 214 (2011)
- hearings on safety issues may commence before publication of NRC Staff's safety evaluation if commencing the hearings at that time would expedite the proceeding; LBP-13-13, 78 NRC 246 (2013)
- intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 259 (2011)
- intervention petitioners may not challenge the adequacy of the SER, but may file contentions challenging the combined license application based on new information in the SER; LBP-11-22, 74 NRC 259 (2011)
- licensing hearing does not embrace *anything* new revealed in the SER or the NEPA documents; CLI-12-14, 75 NRC 692 (2012)
- Model Milestones permit intervenors' proposed late-filed contentions on the SER and necessary NEPA documents to be filed within 30 days of the issuance of those documents; LBP-11-22, 74 NRC 259 (2011)
- NRC Staff ensures that applicant's design basis for the new units will protect public health and safety by verifying that the design basis will withstand maximum flooding events; LBP-11-6, 73 NRC 149 (2011)
- NRC Staff, incident to its preparation of the SER, is obliged to ensure that applicant's design basis for the new units will protect public health and safety; LBP-11-6, 73 NRC 149 (2011)
- until the SER and Staff NEPA documents have been issued, a licensing board is generally prohibited from holding the hearing on the license application; LBP-11-22, 74 NRC 259 (2011)
- See Final Safety Evaluation Report
- ### SAFETY ISSUES
- adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as NRC Staff review, for NRC's hearing process, like NRC Staff's review, necessarily examines only the questions NRC safety rules make pertinent; LBP-15-5, 81 NRC 249 (2015)
- almost every item originally contained in technical specifications has some conceivable connection to safety, but this general premise is insufficient, by itself, as a ground for intervention; LBP-12-25, 76 NRC 540 (2012)
- although a SAMA analysis considers safety issues, it is actually an environmental review that must be judged under NEPA's rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 246 (2015)
- although intervenors disagree with applicant's opportunistic inspection strategy for managing rebar corrosion, they merely assert, and do not plausibly explain, how applicant's approach will lead to a material safety impact; LBP-15-1, 81 NRC 15 (2015)
- although safety issues are reviewed under the adequacy and sufficiency standard, licensing boards conducting mandatory hearings must independently consider the final balance among the conflicting costs and benefits when reviewing National Environmental Policy Act issues; LBP-12-21, 76 NRC 218 (2012)
- applicant has the burden of establishing that it is entitled to the applied-for license by a preponderance of the evidence; LBP-12-5, 75 NRC 227 (2012); LBP-14-3, 79 NRC 267 (2014)
- applicant has the burden of proof on safety issues in a licensing proceeding; LBP-13-13, 78 NRC 246 (2013); LBP-14-1, 79 NRC 39 (2014)
- applicant is required to show that safety features will fulfill their intended function, not that every structure will maintain its current licensing basis throughout the renewal period; LBP-15-5, 81 NRC 249 (2015)
- based on NRC Staff's and applicant's written responses to board questions, and on the resumes, CVs, and SPQs admitted as part of the evidentiary record to respond to the questions, the board considers safety issues resolved for the proceeding; LBP-11-11, 73 NRC 455 (2011)

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because primary responsibility to address and comply with AEA safety-related requirements resides with a license applicant, that application, not the Staff's application review, is the focus of any safety-related contentions and thus the migration tenet does not apply; LBP-13-10, 78 NRC 117 (2013)

Commission chose to review intervenors' motion along with similar motions in other proceedings and associated petitions to suspend reactor licensing pending issuance of waste confidence safety findings; CLI-15-6, 81 NRC 340 (2015)

concern that involves safety will not support standing in an enforcement proceeding if petitioner seeks merely a better settlement, i.e., one that promises greater improvements to safety than the settlement that was actually negotiated; LBP-14-4, 79 NRC 319 (2014)

concerns about current or ongoing safety deficiencies can be raised as a petition for enforcement action; CLI-15-8, 81 NRC 500 (2015)

contention about a matter not covered by a specific rule need only allege that it poses a significant safety problem; CLI-15-23, 82 NRC 321 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-20, 81 NRC 829 (2015)

contention asserting that applicant's Integrated Plant Assessment for the license renewal application fails to identify and assess safety-related incidents at the plant in its required time-limited aging analysis is a safety contention, is not admissible; LBP-13-8, 78 NRC 1 (2013)

contention that NRC or licensee has abused or exceeded its lawful discretion with respect to nuclear safety programs is not admissible because it fails to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact; LBP-14-4, 79 NRC 319 (2014)

contentions challenging aging management of non-environmentally qualified inaccessible medium-voltage cables and wiring are decided; LBP-13-13, 78 NRC 246 (2013)

contentions challenging existing NRC safety regulations are barred from consideration in adjudicatory proceedings; LBP-12-18, 76 NRC 127 (2012)

court directed NRC to determine whether there is reasonable assurance that an offsite storage solution will be available by the end of a reactor's license term], and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates; CLI-15-4, 81 NRC 221 (2015)

current safety issues are beyond the scope of a license renewal proceeding; LBP-12-27, 76 NRC 583 (2012)

directing NRC Staff to investigate a safety issue that the board could not reach through the adjudicatory process may put the Commission in a position, after receiving views of applicant if it desired, to assure itself about the significance, or lack thereof, of the shield building cracking issues raised by intervenors, and to direct such followup proceedings, if any, as it might deem appropriate; LBP-15-1, 81 NRC 15 (2015)

hearing request on safety concerns over steam generator replacement is referred to the Executive Director for Operations for disposition; CLI-14-11, 80 NRC 167 (2014)

hearings on safety issues may commence before publication of NRC Staff's safety evaluation if commencing the hearings at that time would expedite the proceeding; LBP-13-13, 78 NRC 246 (2013)

if there were any doubt over the intent of Congress not to require a safety finding on spent fuel disposal, it was laid to rest by enactment of the Energy Reorganization Act of 1974; CLI-15-4, 81 NRC 221 (2015)

impact of a proposed action on public safety is an issue that must be considered under the National Environmental Policy Act as well as the Atomic Energy Act; LBP-12-18, 76 NRC 127 (2012)

inquiry into future, inchoate plans of licensee would generally invite petitioners in license renewal cases to raise safety issues involving a myriad of possible future license amendments; LBP-13-8, 78 NRC 1 (2013)

issue that does not involve aging management is outside the scope of the license renewal proceeding; LBP-15-5, 81 NRC 249 (2015)

issues that are routinely addressed through the agency's ongoing regulatory oversight are outside the scope of license renewal proceedings because considering them in that context would be unnecessary and wasteful; LBP-11-2, 73 NRC 28 (2011)

issues that the Commission must consider in the mandatory portion of a combined license proceeding are outlined; CLI-15-13, 81 NRC 555 (2015)

license renewal applicant is not required to identify safety-related incidents that have occurred during the current licensing term; LBP-13-8, 78 NRC 1 (2013)

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licensing boards can refer potentially significant safety issues that cannot be addressed through the adjudicatory process to NRC Staff for review; LBP-15-1, 81 NRC 15 (2015)

matters relating to reasonable assurance of safety during the current license term are to be addressed under the current license and are outside the scope of a license renewal review; CLI-15-21, 82 NRC 295 (2015)

new contentions on the safety and environmental implications of the NRC Task Force Report on the Fukushima Dai-ichi accident are premature and must be denied on that basis without regard to any other considerations; LBP-11-27, 74 NRC 591 (2011)

no one can challenge an enforcement order as long as the order, in any way, improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

NRC Staff review of combined license application relative to regulatory actions that the NRC has taken in response to lessons learned from the Fukushima Dai-ichi accident is discussed; CLI-15-13, 81 NRC 555 (2015)

NRC Staff's safety analysis and environmental analysis occur separately, and intervenors are expected to raise safety challenges in response to the safety reports and environmental challenges in response to the environmental statements; LBP-15-11, 81 NRC 401 (2015)

pending tax litigation would not have a significant implication for public health and safety and, to the extent the claim is viable, it would be better handled through a petition for enforcement action; LBP-15-15, 81 NRC 598 (2015)

protection of regulatory treatment of non-safety systems equipment from external hazards at the site is discussed; CLI-15-13, 81 NRC 555 (2015)

questions of safety impacts of onsite low-level waste storage are largely site- and design-specific, and appropriately decided in an individual licensing proceeding; LBP-12-4, 75 NRC 213 (2012)

request that NRC immediately shut down plants until all turbine building high-energy line break concerns are identified and those important to safety were corrected is granted in part; DD-14-5, 80 NRC 205 (2014)

requesting authorization from the Commission for the board, on its own motion, to examine and decide the serious safety or common defense and security matters underlying contentions is allowed to be used for matters that were initially raised by a party, where that party later withdrew; LBP-11-9, 73 NRC 391 (2011)

rule waiver should not be granted unless the petition relates to a significant safety problem; LBP-14-16, 80 NRC 183 (2014)

safety contention challenging aging management of electrical transformers is decided; LBP-13-13, 78 NRC 246 (2013)

safety matters generally need to be raised, relative to an admitted safety contention, in the context of the merits disposition of the already admitted safety contention or, in the case of a new issue, as a wholly new safety contention; LBP-13-10, 78 NRC 117 (2013)

safety portion of contention questioning risk analysis of the long-term storage of irradiated nuclear fuel is inadmissible in license renewal proceeding; LBP-13-8, 78 NRC 1 (2013)

scope of the license renewal proceeding on safety-related issues is limited to plant structures and components that will require an aging management review for the period of extended operation under the renewed license and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses; CLI-15-21, 82 NRC 295 (2015)

severe accident mitigation alternatives analysis is conducted pursuant to the National Environmental Policy Act, and thus is an environmental issue, not a safety issue; LBP-15-1, 81 NRC 15 (2015)

soil-structure interaction analysis is discussed; CLI-15-13, 81 NRC 555 (2015)

standing to challenge a confirmatory order exists only when a petitioner credibly alleges that a settlement somehow actually reduces safety; LBP-14-4, 79 NRC 319 (2014)

system must be provided to transfer heat from structures, systems, and components important to safety to an ultimate heat sink under normal operating and accident conditions, and must be able to perform this safety function with either onsite or offsite power, assuming a single component failure; DD-15-11, 82 NRC 361 (2015)

there is no imminent safety reason to halt new reactor licensing, because there is sufficient time to implement new Fukushima-related requirements before operation; CLI-12-2, 75 NRC 63 (2012)

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to assess whether a contention is within the scope of, and material to, the proceeding, boards need to know the legal basis (safety or environmental) of the contention; LBP-13-8, 78 NRC 1 (2013)

to demonstrate a significant safety issue, petitioners must establish either that uncorrected errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely; LBP-11-35, 74 NRC 701 (2011)

unless safety findings prescribed by the Atomic Energy Act and the regulations can be made, the reactor does not obtain a license, no matter how badly it is needed; CLI-15-4, 81 NRC 221 (2015)

when NRC imposes new regulatory requirements that are important safety enhancements but not deemed necessary to ensure adequate protection of public health and safety, NRC often does not require existing licensees to implement them based on considerations such as whether they are cost-beneficial; CLI-12-2, 75 NRC 63 (2012)

See also Generic Safety Issues; Health and Safety; Unresolved Safety Issues

SAFETY-RELATED

all credible accident sequences must be identified in the integrated safety analysis summary as well as items relied on for safety and necessary safety controls; LBP-12-21, 76 NRC 218 (2012)

all structures and components that are important to safety must be maintained to manage the effects of aging, but most systems, structures, and components are adequately maintained under existing programs as required by the Maintenance Rule; CLI-15-6, 81 NRC 340 (2015)

applicant must establish and implement its own quality assurance program when it enters into a contract for the conduct of safety-related combined license application activities and to retain overall control of safety-related activities performed by the contractor; CLI-14-10, 80 NRC 157 (2014)

because changes to technical specifications require a license amendment, technical specifications should be limited to those plant conditions most important to safety; LBP-13-7, 77 NRC 307 (2013)

buried pipelines, channels, and tanks that fall under aging management provide safety-related functions by maintaining adequate flow and pressure; LBP-11-2, 73 NRC 28 (2011)

electric equipment that must be environmentally qualified is described; LBP-11-20, 74 NRC 65 (2011)

focus of the license renewal regulations in 10 C.F.R. Part 54 is to ensure that licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; CLI-15-6, 81 NRC 340 (2015)

inspection to determine effects of wet or underwater conditions on underground safety-related electrical cables is discussed; DD-15-1, 81 NRC 193 (2015)

plants must employ an ultimate heat sink to transfer heat from structures, systems, and components that are important to safety; LBP-15-13, 81 NRC 456 (2015)

safety significance of a structure, system, or component is defined in terms of its safety-related functions, and within the scope of license renewal are included those SSCs whose failure could prevent satisfactory accomplishment of the safety-related function; CLI-15-6, 81 NRC 340 (2015)

scope of license renewal, including buried piping, addresses all safety-related structures, systems, and components that are relied upon to remain functional to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down and maintain the safe shutdown of the reactor, or the capability to prevent or mitigate the consequences of accidents which could result in potential offsite radiation exposures; LBP-13-13, 78 NRC 246 (2013)

structures and components that are subject to aging management review include those that perform certain safety-related functions without moving parts or without a change in configuration or properties; LBP-11-2, 73 NRC 28 (2011)

structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as floods without loss of capability to perform their safety functions; LBP-13-8, 78 NRC 1 (2013)

systems, structures, and components relied upon to remain functional during and following design-basis events to ensure specific functions are safety-related; LBP-11-20, 74 NRC 65 (2011)

uranium enrichment facility applications must identify radiological and chemical hazards, facility hazards that could affect safety of licensed materials, potential accident sequences and their consequences and likelihood of occurrence, and each item relied on for safety; LBP-12-21, 76 NRC 218 (2012)

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SAFETY RELIEF VALVES

evidence that relief valve failure and inoperability may have existed for a period of time greater than allowed by technical specifications is a reportable event; DD-11-6, 74 NRC 420 (2011)

failure and inoperability found during refueling outage, which potentially affected the ability of the SRVs to satisfy design actuation requirements, meets the requirements for a licensee event report; DD-11-6, 74 NRC 420 (2011)

request for cold shutdown because of inoperability of main steam safety relief valves is denied but petitioner's concerns about the SRVs have been resolved; DD-11-6, 74 NRC 420 (2011)

SAFETY REVIEW

active components are not subject to an aging management review because existing regulatory programs, including required maintenance programs, can be expected to directly detect the effects of aging on active functions; LBP-11-2, 73 NRC 28 (2011)

aging management review is required for components that function without moving parts and without a change in configuration or properties, and includes a non-exhaustive list of components that either do or do not fit this description; CLI-15-6, 81 NRC 340 (2015)

aging-based safety review set out in Part 54 is analytically separate from Part 51's environmental inquiry and does not in any sense restrict NEPA; LBP-11-17, 74 NRC 11 (2011)

although sufficiency of the application and NRC Staff's environmental review of that application are proper targets of contentions, sufficiency of NRC Staff's safety review of the application is not; LBP-11-29, 74 NRC 612 (2011)

applicant for a renewed license must first identify all structures, systems, and components that serve a function relating directly or indirectly to safety, as defined by this regulation; CLI-15-6, 81 NRC 340 (2015)

before a final decision approving or disapproving a construction authorization application may be reached, not only must the Staff complete its safety and environmental reviews but a formal hearing must be conducted, and the Commission's own review of both contested and uncontested issues must take place; CLI-13-8, 78 NRC 219 (2013)

Commission examines whether NRC Staff's safety review of the combined license application under 10 C.F.R. 52.97(a)(1)(i)-(v) has been adequate to support its findings; CLI-12-9, 75 NRC 421 (2012)

conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors are excluded from license renewal review in favor of a safety-related review focusing on maintaining particular functions of certain physical systems, structures, and components; CLI-11-11, 74 NRC 427 (2011)

contention fails because it contests NRC Staff's safety review rather than the license renewal application; LBP-15-15, 81 NRC 598 (2015)

existing regulatory programs can be expected to directly detect the effects of aging on active functions; CLI-12-5, 75 NRC 301 (2012)

focus of license renewal safety review is described in 10 C.F.R. 54.4(a); CLI-12-5, 75 NRC 301 (2012)

for active structures, systems, and components, NRC chose to exempt from license renewal, challenges to a plant's operational activities covered by its current licensing basis; LBP-13-13, 78 NRC 246 (2013)

for license renewal safety review, it is not clear whether any enhancements or changes considered by the Fukushima Task Force will bear on license renewal regulations, which are focused more narrowly on the proper management of aging; CLI-12-10, 75 NRC 479 (2012)

for mandatory uncontested proceeding on a uranium enrichment facility license, a licensing board is to conduct a simple sufficiency review rather than a de novo review on both safety and environmental issues; LBP-11-26, 74 NRC 499 (2011)

goal of NRC's license renewal safety review is to ensure that licensee can successfully manage the detrimental effects of aging; CLI-15-6, 81 NRC 340 (2015)

illustrative list of structures and components that are subject to an aging management review is provided in 10 C.F.R. 54.21(a)(1)(i); CLI-12-5, 75 NRC 301 (2012)

in context of license renewal, NRC's Atomic Energy Act review under Part 54 does not compromise or limit the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013); LBP-13-13, 78 NRC 246 (2013)

in establishing its license renewal process, NRC did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to reanalysis because those are

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effectively addressed and maintained by ongoing agency oversight, review, and enforcement; LBP-13-13, 78 NRC 246 (2013)

in response to the Fukushima accident in Japan, NRC is conducting a comprehensive safety review of the requirements and guidance associated with accident mitigation measures; CLI-12-1, 75 NRC 39 (2012)

key functions of buried structures, systems, and components that are the focus of the license renewal safety review under Part 54 do not include the prevention of inadvertent radioactive leaks from buried structures; LBP-11-2, 73 NRC 28 (2011)

license renewal applicants must conduct aging management reviews of any structure, system, or component that performs one of these intended functions if the SSC is passive (performs its intended function without moving parts or without a change in configuration or properties); CLI-12-5, 75 NRC 301 (2012)

license renewal safety review and any associated license renewal adjudicatory proceeding focus on the detrimental effects of aging posed by long-term reactor operation; CLI-12-5, 75 NRC 301 (2012)

license renewal safety review is limited to the matters specified in 10 C.F.R. Part 54, which focus on the management of aging for certain systems, structures, and components, and the review of time-limited aging analyses; LBP-11-21, 74 NRC 115 (2011); LBP-15-5, 81 NRC 249 (2015); LBP-15-6, 81 NRC 314 (2015)

license renewal safety reviews are generally limited to aging-related issues because NRC recognizes that it has the ongoing responsibility to oversee the safety and security of operating nuclear reactors, and maintains an aggressive and ongoing program to oversee plant operation; LBP-13-13, 78 NRC 246 (2013)

limited scope of the intended functions of structures, systems, and components subject to aging management review is described in 10 C.F.R. 54.4(b); CLI-12-5, 75 NRC 301 (2012)

many safety questions that relate to plant aging become important during the extended renewal term since the design of some components may have been based upon a service lifetime of only 40 years; LBP-11-21, 74 NRC 115 (2011)

NRC Staff's safety review for license renewal applications is guided by NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, and NUREG-1801, Generic Aging Lessons Learned Report; LBP-13-13, 78 NRC 246 (2013)

NRC's AEA safety review under Part 54 does not compromise or limit NEPA; LBP-15-5, 81 NRC 249 (2015)

operating license renewal applicants must make a detailed assessment, conducted on passive, safety-related physical systems, structures, and components of the plant; LBP-11-21, 74 NRC 115 (2011)

presiding officer must take into consideration NRC Staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact Staff's ability to complete its reviews in a timely manner; LBP-13-13, 78 NRC 246 (2013)

proximity of nuclear power plant site to the Canadian border is considered in the contexts of environmental and safety reviews; CLI-15-13, 81 NRC 555 (2015)

regardless of whether a hearing request is granted, NRC Staff performs a full safety review of every license amendment request and no request is approved until all necessary public health and safety findings have been made; CLI-15-22, 82 NRC 310 (2015)

severe accident mitigation alternatives analysis is not part of the agency's safety review for license renewal under the Atomic Energy Act, but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)

structures and components associated only with active functions can be generically excluded from a license renewal aging management review; CLI-12-5, 75 NRC 301 (2012)

to evaluate an operating license renewal application, the NRC reviews the management of aging effects and time-limited aging analysis of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011)

transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded from an aging management review; CLI-12-5, 75 NRC 301 (2012)

variety of electrical and instrumentation and control components are excluded from an aging management review for license renewal; CLI-12-5, 75 NRC 301 (2012)

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SALTWATER INTRUSION

contention alleging that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 456 (2015)

SANCTIONS

authority empowering a licensing board to impose sanctions is found in 10 C.F.R. 2.314(c) and 2.319; LBP-13-2, 77 NRC 71 (2013)

board denies a motion seeking sanctions against petitioner for violating the governing protective order and nondisclosure agreement, but imposes a document review requirement upon petitioner in light of its misconduct and to enhance future compliance with the proceeding's protective order; LBP-13-2, 77 NRC 71 (2013)

boards may take disciplinary action against a party that fails to comply with any prehearing order, as long as the action is just; CLI-14-10, 80 NRC 157 (2014)

boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance; LBP-13-2, 77 NRC 71 (2013)

Commission has imposed or upheld disciplinary measures against parties and their representatives when they failed to comply with board directives and procedural rules; CLI-14-10, 80 NRC 157 (2014)

dismissal with prejudice is a harsh sanction reserved for unusual situations because it is the equivalent of a decision on the merits of the license amendment request; LBP-15-28, 82 NRC 233 (2015)

every participant in NRC adjudicative proceedings has the duty to fulfill the obligations imposed by and in accordance with applicable law, and when participant fails to meet its obligations, a licensing board should consider the imposition of sanctions against the offending party; LBP-13-2, 77 NRC 71 (2013)

harm factor of sanction test has two components, requiring boards to consider the potential harm to the other parties and the potential harm to the orderly conduct of the proceeding; LBP-13-2, 77 NRC 71 (2013)

if a party fails to file an answer or pleading within the time prescribed in 10 C.F.R. Part 2 or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just; CLI-14-2, 79 NRC 11 (2014)

important health and safety issue referred to a licensing board by the Commission satisfies the importance factor of the multifactor sanction test; LBP-13-2, 77 NRC 71 (2013)

in any enforcement action, especially one that has been settled to NRC's satisfaction without creating a formal record, NRC's choice of sanctions is quintessentially a matter of the Commission's sound discretion; LBP-14-4, 79 NRC 319 (2014)

in selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances; LBP-13-2, 77 NRC 71 (2013)

licensing boards have all the powers necessary to perform their duties, including powers to regulate the conduct of the participants and to issue orders necessary to carry out their duties and responsibilities; LBP-13-2, 77 NRC 71 (2013)

licensing boards may impose on contumacious parties or their representatives reprimands, censures, or suspensions from proceedings; LBP-13-2, 77 NRC 71 (2013)

NRC Staff and its counsel, like the Board and its staff, are federal government employees and are thus subject to stringent sanctions for the unauthorized disclosure of the protected information or protected documents; LBP-11-5, 73 NRC 131 (2011)

parties, including NRC Staff, may be sanctioned for noncompliance with the disclosure regulations; LBP-14-2, 79 NRC 131 (2014)

party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 71 (2013)

party who neglects to fully participate in a proceeding is subject to sanctions including dismissal of its contention; CLI-14-2, 79 NRC 11 (2014)

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period allotted for the filing of challenges to enforcement orders that impose some sanction is 20 days; LBP-13-3, 77 NRC 82 (2013)

presiding officer may impose sanctions on a party that fails to provide any document required to be disclosed, unless the party demonstrates good cause for its failure to make the disclosure; LBP-14-2, 79 NRC 131 (2014)

pro se representative in licensing board proceedings, like all other representatives and/or lawyers, are required to be accurate and truthful and are subject to reprimand, censure, or suspension for failing in these duties; LBP-13-8, 78 NRC 1 (2013)

request that board impose additional discovery activities as a requirement of withdrawal of license amendment request is too broad because it goes beyond the scope of the admitted contentions and discovery is peculiarly related to particular proceedings and particular contentions; LBP-15-28, 82 NRC 233 (2015)

when considering whether a disclosure of proprietary information was an isolated incident or part of a pattern of behavior, licensing boards may consider the circumstances underlying the disclosure, the corrective action taken, and petitioner's representation that no disclosure will occur in the future; LBP-13-2, 77 NRC 71 (2013)

SCHEDULE, BRIEFING

all parties are obliged to follow the procedures in 10 C.F.R. Part 2 and board scheduling orders; CLI-14-10, 80 NRC 157 (2014)

board conducted an initial scheduling conference to discuss development of an initial scheduling order that would help achieve just resolution of a dispute as efficiently and expeditiously as possible; LBP-14-11, 80 NRC 125 (2014)

boards must use the applicable Model Milestones in 10 C.F.R. Part 2, Appendix B as a starting point for the schedule, but the board shall make appropriate modifications based upon the circumstances of each case; LBP-11-22, 74 NRC 259 (2011)

failure of counsel to review the scheduling order does not constitute good cause for failure to meet a filing deadline; LBP-12-12, 75 NRC 742 (2012)

schedule for Subpart L proceedings, including the closing of the record, is described; CLI-12-3, 75 NRC 132 (2012)

shortly after a hearing request has been granted, the board must set a schedule to govern the proceeding; LBP-11-22, 74 NRC 259 (2011)

unless a deadline has been specified in the scheduling order for the proceeding, the determination of timeliness is subject to a reasonableness standard that depends on the facts and circumstances in the case; LBP-12-27, 76 NRC 583 (2012)

SCHEDULING

ASTM Standard E 185 anticipates that during the course of a nuclear power plant's life the surveillance capsule withdrawal schedule may need to be revised and allows and provides for such changes; LBP-15-20, 81 NRC 829 (2015)

boards are to consider NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule; LBP-12-3, 75 NRC 164 (2012)

boards should develop schedules that will provide a fair and expeditious procedure for resolving new or amended contentions that might be proposed during the course of the proceeding, not just those already admitted; LBP-11-22, 74 NRC 259 (2011)

if a board issues a scheduling order before the effective date of the final rule that incorporates 10 C.F.R. 2.336(d), which currently requires parties to update their disclosures every 14 days, that obligation would change to every month on a day specified by the board, unless the parties agree otherwise, once the effective date of the rule is reached; LBP-15-1, 81 NRC 15 (2015)

initial scheduling orders set forth issues or matters in controversy to be determined in the proceeding; LBP-14-11, 80 NRC 125 (2014)

licensing board may modify or waive the provisions of its scheduling orders as it deems appropriate in the interest of sound case management; LBP-15-29, 82 NRC 246 (2015)

NRC must preapprove the schedule for removing material samples from the reactor vessel; LBP-15-17, 81 NRC 753 (2015)

once the nature of a license transfer hearing is settled, Subpart M and NRC Model Milestones set a default schedule for the remainder of the proceeding; CLI-14-5, 79 NRC 254 (2014)

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- one fundamental purpose of the prehearing conference and the scheduling order is expediting the disposition of the proceeding; LBP-12-19, 76 NRC 184 (2012)
- presiding officer must take into consideration NRC Staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact Staff's ability to complete its reviews in a timely manner; LBP-13-13, 78 NRC 246 (2013)
- purpose of scheduling orders is to ensure proper case management, with the objective of expediting disposition of the proceeding, establishing early and continuing control so that the proceeding will not be protracted because of lack of management, and discouraging wasteful prehearing activities; LBP-15-29, 82 NRC 246 (2015)
- raising new issues related to the Fukushima events does not warrant new procedures or a separate timetable; CLI-12-6, 75 NRC 352 (2012)
- settlement is encouraged, but the fact that a possible settlement is being negotiated does not change any of the deadlines set forth in an initial scheduling order; LBP-14-11, 80 NRC 125 (2014)
- subject to exceptions, the presiding officer must adhere to the schedule set forth in 10 C.F.R. Part 2, Appendix D; CLI-13-8, 78 NRC 219 (2013)
- unless a schedule is so onerous or unfair that it deprives a party of procedural due process, scheduling is a matter of licensing board discretion; LBP-15-29, 82 NRC 246 (2015)
- when establishing a schedule, boards are to consider NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding, along with other factors; LBP-11-22, 74 NRC 259 (2011)
- SEA LEVEL RISE**
- although the combined license application is not expressly required to consider sea level rise, the board decides that the issue is within the scope of a COL proceeding; LBP-11-6, 73 NRC 149 (2011)
- SEALED SOURCES**
- any special nuclear material that is physically encased in a capsule, rod, element, etc. that prevents the leakage, escape, and removal of the SNM without penetrations of the casing is a sealed source; LBP-14-1, 79 NRC 39 (2014)
- SECRETARY OF THE COMMISSION**
- Secretary refers motions to reopen to the Atomic Safety and Licensing Board Panel pursuant to her authority; CLI-12-14, 75 NRC 692 (2012)
- SECURITY**
- ability to detect the loss of plutonium in a timely manner, to allow for an effective response, is a crucial security requirement; LBP-11-9, 73 NRC 391 (2011)
- choosing to store a radiographic exposure device at a facility that did not comply with NRC security requirements and was not an authorized storage location under the license is considered deliberate misconduct; LBP-14-11, 80 NRC 125 (2014)
- contentions that address an important security issue regarding Part 74's strict requirements for the proposed facility, which applicant previously admitted it failed to satisfy, are admissible; LBP-11-9, 73 NRC 391 (2011)
- "controlled access area" is any temporarily or permanently established area that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; CLI-15-9, 81 NRC 512 (2015)
- petitioners' argument opposing an order that imposed additional security measures at a spent fuel storage facility, because it created a false sense of security was rejected because petitioners did not explain how they would be better off without the measures in the order; CLI-13-2, 77 NRC 39 (2013)
- whether a foreign entity has the ability to restrict or inhibit compliance with security or other regulations of the Atomic Energy Commission is of greatest significance to a foreign ownership, control, or domination review; CLI-15-7, 81 NRC 481 (2015)
- See Common Defense and Security; Physical Security
- SECURITY CLEARANCES**
- Pentapartite Agreement between the United States and four European governments to prevent new restricted data from being disseminated to European nationals will be a prerequisite to the NRC Staff issuing a facility clearance; LBP-11-11, 73 NRC 455 (2011)
- an enrichment facility security clearance requires a determination that granting the clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign

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ownership, control, or influence to such a degree that a determination could not be made; LBP-11-11, 73 NRC 455 (2011)

Staff imposed a license condition on a uranium enrichment facility to ensure that clearances are obtained before classified matter is processed, stored, reproduced, transmitted, handled, or accessed; LBP-11-11, 73 NRC 455 (2011)

SECURITY PLANS

cyber security plans must be submitted for NRC approval; CLI-12-2, 75 NRC 63 (2012)

cyber security plans must take into account site-specific conditions; CLI-12-2, 75 NRC 63 (2012)

licensees are permitted to develop their own individual access authorization programs, provided they satisfy 10 C.F.R. 73.56; LBP-14-4, 79 NRC 319 (2014)

NRC Staff granted an exemption from 10 C.F.R. 74.33(c)(5) subject to license conditions that require applicant to submit, for NRC Staff's prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 218 (2012)

written policies, implementing procedures, site-specific analysis, and other supporting technical information developed to implement cyber security plans are subject to periodic inspection by NRC Staff; CLI-12-2, 75 NRC 63 (2012)

See also Physical Security

SECURITY PROGRAM

application for a uranium enrichment facility is required to contain a description of the security program to protect against unauthorized disclosure of classified matter in accord with Part 95; LBP-11-11, 73 NRC 455 (2011)

licensee is obliged to give local union notice and an opportunity to bargain over the effects of its decision to implement changes in the terms and conditions of the employees' employment regarding behavioral observations of security concerns; CLI-15-16, 81 NRC 810 (2015)

licensees must establish and maintain systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material; CLI-11-4, 74 NRC 1 (2011)

NRC's program addresses not only current operations, but also extends into the license renewal term; CLI-11-11, 74 NRC 427 (2011)

protecting against the threat of air attacks is not within licensees' responsibilities because a private security force cannot reasonably be expected to defend against such attacks and adequate protection is ensured through the actions of other federal agencies with defense capabilities and air-safety expertise; CLI-11-4, 74 NRC 1 (2011)

SEGMENTATION

as to whether the connected action aspect of 40 C.F.R. 1508.25(a)(1) supports an improper-segmentation contention's admissibility, petitioners have not providing sufficient supporting information to show that a genuine dispute exists on the material issue; LBP-13-10, 78 NRC 117 (2013)

contention that NRC has failed to properly define the scope of the proposed major federal action and instead improperly segments the project is inadmissible; LBP-13-10, 78 NRC 117 (2013)

cumulative effects and improper segmentation issues raise separate but similar questions; LBP-14-6, 79 NRC 404 (2014)

failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-6, 79 NRC 404 (2014)

failure to include all connected actions within the scope of the proposed action is generally referred to as segmentation; LBP-14-9, 80 NRC 15 (2014)

federal agencies may plan a number of related actions but may decide to prepare impact statements on each action individually rather than prepare an impact statement on the entire group, creating a segmentation or piecemealing problem; LBP-14-6, 79 NRC 404 (2014)

piecemealing or segmentation occurs when an action is divided into component parts, each involving action with less significant environmental effects; LBP-14-6, 79 NRC 404 (2014)

policies set forth by NEPA prevent NRC Staff from segmenting the disposal issues from the inquiry into whether applicant will be allowed to create 11e(2) byproduct material in the first instance; LBP-13-9, 78 NRC 37 (2013)

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segmentation is to be avoided in order to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions; LBP-14-6, 79 NRC 404 (2014)

separate actions are connected if, among other things, they cannot or will not proceed unless other actions are taken previously or simultaneously, or they are interdependent parts of a larger action and depend on the larger action for their justification; LBP-12-12, 75 NRC 742 (2012)

to ensure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions, segmentation in the environmental impact statement is to be avoided; LBP-14-9, 80 NRC 15 (2014)

when an action is divided into component parts, each involving action with less significant environmental effects, segmentation or piecemealing occurs; LBP-12-12, 75 NRC 742 (2012); LBP-14-9, 80 NRC 15 (2014)

SEISMIC ANALYSIS

although NRC Staff reviews submissions under 10 C.F.R. 50.71(e) for compliance with such administrative requirements as timeliness and content, it does not approve substantive changes, such as changes to a seismic analysis, as part of the process; LBP-15-27, 82 NRC 184 (2015)

any amendment to an existing license as a result of NRC review of licensee seismic hazard reevaluations that leads to changes in the current licensing basis would be subject to a hearing opportunity; CLI-15-21, 82 NRC 295 (2015)

as part of the NRC post-Fukushima lessons-learned activities, NRC is requiring all licensees to reevaluate seismic hazards at their sites, and to this end, issued a request for information; DD-15-1, 81 NRC 193 (2015)

contention that final safety analysis report is deficient because it does not include information provided in applicant's seismic evaluation process report is rejected; LBP-15-14, 81 NRC 591 (2015)

design bases for earthquakes are to be determined through evaluation of the geologic and seismic history of the site and surrounding region; DD-12-1, 75 NRC 573 (2012)

geologic and seismic siting factors considered for design must include a determination of the safe shutdown earthquake ground motion for the site and the potential for surface tectonic and nontectonic deformations; LBP-11-16, 73 NRC 645 (2011)

highly site-specific seismic hazard analysis reflects consideration not only of the location and magnitude of historic earthquakes, but also the nature of the bedrock and the style of faulting in the surrounding region; LBP-11-11, 73 NRC 455 (2011)

modernization plans for seismic instrumentation following failure of an annunciation panel in the main control room are discussed; DD-12-2, 76 NRC 391 (2012)

NRC's post-Fukushima lessons learned and information-gathering process authorizes NRC to collect information from licensees to determine whether licenses should be modified, suspended, or revoked; LBP-15-27, 82 NRC 184 (2015)

request for information instructed all licensees to reevaluate seismic hazards at their sites using updated seismic hazard information, present-day guidance and methodologies, and a risk evaluation; DD-15-6, 81 NRC 884 (2015)

request that NRC order licensees to perform seismic and flood protection walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers and seals in the interim period until longer-term actions are completed to update the design basis for external events is addressed; DD-14-2, 79 NRC 489 (2014)

seismic hazard reevaluations of all nuclear power reactors are not de facto license amendments; LBP-15-27, 82 NRC 184 (2015)

Staff's ability to satisfy its NEPA obligations will be undermined if applicant either fails to include seismic information in its SAMA analysis, or, in omitting the information, fails to explain its absence and justify that the overall costs of obtaining it are exorbitant; CLI-11-11, 74 NRC 427 (2011)

to evaluate the impact of a fault on current operations, a probabilistic risk assessment rather than a deterministic analysis is the accepted and standard practice in SAMA analyses; CLI-11-11, 74 NRC 427 (2011)

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where seismic suitability of a site was evaluated at the early site permit stage, further litigation of the geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 519 (2014)

See also Earthquakes

SEISMIC DESIGN

NRC issued an order on station blackout mitigation strategies requiring mitigation strategies to protect against, among many other hazards, postulated seismic events; DD-15-1, 81 NRC 193 (2015)

petitioner may file a petition for rulemaking to expand the scope of NRC license renewal regulations if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 295 (2015)

petitioner may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action that may be proper, if it believes that applicant's seismic design and licensing basis are now invalid and that safe operation of the plant can no longer be ensured; CLI-15-21, 82 NRC 295 (2015)

SEISMIC ISSUES

seismology is an evolving science; LBP-15-27, 82 NRC 184 (2015)

SENIOR REACTOR OPERATOR

any individual licensed under Part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators is designated as an SRO; LBP-14-2, 79 NRC 131 (2014)

SRO is any individual licensed under 10 C.F.R. Part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators; LBP-13-3, 77 NRC 82 (2013)

SENIOR REACTOR OPERATOR LICENSE

any individual who manipulates the controls of any facility licensed under Parts 50, 52, or 54 of NRC's regulations is required to have an operator's license; LBP-14-2, 79 NRC 131 (2014)

any license is limited to the facility for which it is issued; LBP-13-3, 77 NRC 82 (2013)

applicant denied an SRO license has the right to demand a hearing, rather than being required to negotiate the contention admissibility requirements and a possible appeal in the event a hearing is granted; LBP-13-3, 77 NRC 82 (2013)

applicant must pass both the written examination and the operating test and meet the other requirements specified in 10 C.F.R. Part 55; LBP-13-3, 77 NRC 82 (2013)

applicant who does not accept a proposed license denial may, within 20 days of the date of the denial letter, demand a hearing; LBP-14-2, 79 NRC 131 (2014)

applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused from reexamination on the portions of the examination or test that the applicant has passed; LBP-13-3, 77 NRC 82 (2013)

applicant who passes both a written examination and operating test and meets the other requirements specified in 10 C.F.R. Part 55 will be eligible to receive senior reactor operator license; LBP-13-5, 77 NRC 233 (2013)

applicant who was denied a license after the first examination may elect to retake the tests; LBP-14-2, 79 NRC 131 (2014)

because an applicant denied an operator's license (or a byproduct, source, special materials, or facility license) would be entitled to demand a hearing, rather than merely request a hearing, no more than 20 days would be required to prepare a document that would satisfy the conditions precedent to obtaining the hearing; LBP-13-3, 77 NRC 82 (2013)

contention admissibility requirements do not apply to hearing demands submitted under section 2.103(b)(2) and petitioner lacked actual and constructive notice of the contention admissibility requirements that NRC Staff asserts she was required to satisfy; LBP-13-3, 77 NRC 82 (2013)

demand for hearing on denial of application for a senior reactor operator license is granted; LBP-13-3, 77 NRC 82 (2013)

hearing demand under section 2.103(b)(2) has only to meet the prescribed filing deadline and specify the reasons why the demander deemed the denial of the sought operator's license to have been unjustified; LBP-13-3, 77 NRC 82 (2013)

licenses are subject to the satisfaction of other licensing requirements not considered in this proceeding, such as health, that the NRC Staff must assess before issuing a license; LBP-14-2, 79 NRC 131 (2014)

licenses shall be effective as of the date issued and shall be subject to the usual terms and conditions; LBP-14-2, 79 NRC 131 (2014)

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NRC regional office has the discretion to grant a waiver for retesting on a passed test for a senior reactor operator applicant who has failed only one part of the test if it determines that sufficient justification is presented; LBP-14-2, 79 NRC 131 (2014)

NRC Staff acted inconsistently with its own guidance and applied that guidance in an inconsistent manner when it denied an SRO license; LBP-14-2, 79 NRC 131 (2014)

Part 55 of 10 C.F.R. establishes procedures and criteria for issuance of reactor operator licenses under the Atomic Energy Act or the Energy Reorganization Act; LBP-14-2, 79 NRC 131 (2014)

to obtain a license, applicant must pass both a written test and an operating test and meet the other requirements specified in Part 55; LBP-14-2, 79 NRC 131 (2014)

SENSITIVE UNCLASSIFIED NONSAFEGUARDS INFORMATION

boards have closed their hearings even when they were concerned with less sensitive (i.e., nonpublic but unclassified) types of information; LBP-12-21, 76 NRC 218 (2012)

lack of clarity in the terms and application of the agency's newly established SUNSI policy contributed to intervenors' misapprehension that they were required to demonstrate a need for the information in order to request SUNSI documents; LBP-11-9, 73 NRC 391 (2011)

NRC Staff was admonished for having imposed a stricter-than-necessary standard of "need" for access to SUNSI; LBP-11-9, 73 NRC 391 (2011)

rules governing access to SUNSI apply only to potential parties, whereas party access to SUNSI is governed by protective orders and nondisclosure agreements; LBP-11-9, 73 NRC 391 (2011)

SUNSI policy does not expand upon or create any new category of legally privileged or confidential information that is exempt from discovery or from mandatory disclosure; LBP-11-5, 73 NRC 131 (2011)

SERVICE OF DOCUMENTS

service of a filing is not complete until accompanied by a certificate of service and a request for oral argument; LBP-11-21, 74 NRC 115 (2011)

SETTLEMENT AGREEMENTS

agreements are contingent upon approval by a licensing board; LBP-15-21, 82 NRC 1 (2015)

approval process in 10 C.F.R. 2.338(i) is discussed; LBP-15-21, 82 NRC 1 (2015)

board authority under section 2.338(i) is to approve or reject a settlement agreement, and so it cannot amend the agreement without consent of the parties; LBP-15-21, 82 NRC 1 (2015)

board finds that it is not necessary for a notice of hearing to be issued before the board can approve a settlement; LBP-15-30, 82 NRC 339 (2015)

boards are empowered to approve settlements proposed by the parties; LBP-15-30, 82 NRC 339 (2015)

concerns about how some aspect of a settlement agreement is being implemented or enforced can be brought to the Commission, which retains supervisory authority over the parties' agreement; LBP-15-21, 82 NRC 1 (2015)

content requirements are set forth in 10 C.F.R. 2.338(h); LBP-15-21, 82 NRC 1 (2015)

form requirements are set forth in 10 C.F.R. 2.338(g); LBP-15-21, 82 NRC 1 (2015)

if licensee or other person to whom an order is issued consents to its issuance, or the order confirms actions agreed to by the licensee or such other person, that consent or agreement constitutes a waiver by the licensee or such other person of a right to a hearing and any associated rights; LBP-14-4, 79 NRC 319 (2014)

if parties settle their dispute after a hearing, the board should dismiss the adjudication; LBP-11-22, 74 NRC 259 (2011)

in any enforcement action, especially one that has been settled to NRC's satisfaction without creating a formal record, NRC's choice of sanctions is quintessentially a matter of the Commission's sound discretion; LBP-14-4, 79 NRC 319 (2014)

licensee is banned from engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations and must complete a formal radiation safety officer training course; LBP-15-21, 82 NRC 1 (2015)

licensing boards are to approve settlements when they are fair and reasonable and comport with the public interest; LBP-15-30, 82 NRC 339 (2015)

nonparty petitioners may not challenge a confirmatory order embodying a settlement if the order improves the safety situation over what it was in the absence of the order; LBP-14-4, 79 NRC 319 (2014)

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- NRC Staff's position in an enforcement proceeding is not itself dispositive of whether an enforcement agreement should be approved, but regulatory instruction to accord that position due weight is dispositive proof of the importance of Staff's views; LBP-15-21, 82 NRC 1 (2015)
- NRC's policy of encouraging settlements specifically recognizes that settlements are not inviolate, and the presiding officer or Commission may order adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding; LBP-14-4, 79 NRC 319 (2014)
- only 10 C.F.R. 2.203 refers to a notice of hearing as part of the settlement procedure; LBP-15-30, 82 NRC 339 (2015)
- parties agreed that additional analysis in the Final Supplemental Environmental Impact Statement would be sufficient to address the only contention remaining in this proceeding; LBP-15-22, 82 NRC 49 (2015)
- parties bring settlement requests pursuant to 10 C.F.R. 2.338(i); LBP-15-30, 82 NRC 339 (2015)
- parties who choose to resolve litigation through settlement may not dispose of the claims of a third party and may not impose duties or obligations on a third party without that party's agreement; LBP-14-4, 79 NRC 319 (2014)
- presiding officer's approval for settlements in contested proceedings with admitted contentions is evidenced from provisions of section 2.338 other than paragraph (g); LBP-15-30, 82 NRC 339 (2015)
- presiding officer's approval of settlement is a matter that must give due consideration to the public interest; LBP-15-21, 82 NRC 1 (2015)
- presiding officer's public interest inquiry for approval of settlement agreement is described; LBP-15-21, 82 NRC 1 (2015)
- public interest does not require additional adjudication of an enforcement matter and, given that all matters required to be adjudicated as part of this proceeding have been resolved, the proceeding is dismissed; LBP-11-3, 73 NRC 81 (2011)
- public interest standard for settlement agreement review concerns whether the approval process deprives interested parties of meaningful participation; LBP-15-21, 82 NRC 1 (2015)
- section 2.338 is a new provision that consolidates and amplifies the previous rules pertaining to settlement; LBP-15-30, 82 NRC 339 (2015)
- settlements approved by a presiding officer are subject to Commission review; LBP-15-21, 82 NRC 1 (2015)
- strictures governing settlements are set forth in 10 C.F.R. 2.338; LBP-15-21, 82 NRC 1 (2015)
- upon review of a settlement agreement, the board is satisfied that its terms reflect a fair and reasonable settlement in keeping with the objectives of the NRC's enforcement policy, and satisfy the requirements of 10 C.F.R. 2.338(g) and (h); LBP-11-3, 73 NRC 81 (2011)
- where a licensed and operating plant has been found unsafe, where the Commission has ordered some remedial amendment, and where the licensee has accepted that amendment, there is no public interest in the proceeding; LBP-14-4, 79 NRC 319 (2014)
- SETTLEMENT JUDGES**
- parties pursuing settlement may seek to have a settlement judge appointed; LBP-14-11, 80 NRC 125 (2014)
- SETTLEMENT NEGOTIATIONS**
- boards lack authority to order NRC Staff to bring licensee employees into settlement negotiations; LBP-14-4, 79 NRC 319 (2014)
- settlement is encouraged, but the fact that a possible settlement is being negotiated does not change any of the deadlines set forth in the initial scheduling order; LBP-14-11, 80 NRC 125 (2014)
- when a filing deadline is approaching, notwithstanding that an attorney is engaged in good-faith settlement discussions, prudence should compel the attorney to take all actions that are necessary to ensure the deadline will be met in the event that settlement discussions are unsuccessful; LBP-15-4, 81 NRC 156 (2015)
- SETTLEMENTS**
- Commission, like other adjudicatory bodies, looks with favor upon settlements; LBP-14-4, 79 NRC 319 (2014)
- fair and reasonable settlement of issues proposed for litigation is encouraged; LBP-15-21, 82 NRC 1 (2015); LBP-15-30, 82 NRC 339 (2015)

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settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted; LBP-15-30, 82 NRC 339 (2015)

settlements may become illusory if licensees consent to confirmatory orders and are nonetheless subjected to formal proceedings, possibly leading to different or more severe enforcement actions; LBP-14-4, 79 NRC 319 (2014)

too freely allowing third parties to contest enforcement settlements at hearings would undercut the NRC's policy favoring enforcement settlements; LBP-14-4, 79 NRC 319 (2014)

SEVERE ACCIDENT MITIGATION ALTERNATIVES

assertion that other SAMAs might become cost-effective if implemented, without indication of any particular positive or negative environmental impact from any such implementation, fails to present an exceptionally grave issue; LBP-12-1, 75 NRC 1 (2012)

Category 2 issues focus on severe accident mitigation, to further reduce severe accident risk (probability or consequences); CLI-12-19, 76 NRC 377 (2012)

COL applications must include a description and plans for implementation of the guidance and strategies required by section 50.54(hh)(2) for severe accident mitigation; CLI-11-9, 74 NRC 233 (2011)

contention that indicates neither positive nor negative impact from proposed severe accident mitigation alternative implementation does not paint the required seriously different picture of the environmental landscape to reopen the record; LBP-11-35, 74 NRC 701 (2011)

design or procedural modifications that could mitigate the consequences of a severe accident are known as severe accident mitigation alternatives; LBP-11-38, 74 NRC 817 (2011)

environmental reports must include a discussion of SAMAs if NRC has not considered them previously for the applicant's plant; CLI-13-7, 78 NRC 199 (2013)

extensive damage mitigation guidelines are intended to guide onsite emergency actions and they include guidance and strategies intended to maintain or restore core cooling and containment and spent fuel pool cooling capabilities under the circumstances associated with the loss of large areas of the plant due to fire or explosion; LBP-12-18, 76 NRC 127 (2012)

however "significance" is defined, the Fukushima accident and its aftermath have (as any such severe accident would do) clearly painted a seriously different picture of the environmental landscape; LBP-11-23, 74 NRC 287 (2011)

if cost of implementing a particular SAMA is greater than its estimated benefit, the SAMA is not considered cost-beneficial to implement; LBP-11-33, 74 NRC 675 (2011)

in a combined license proceeding, NRC may require implementation of mitigation measures it deems necessary and appropriate by imposing conditions in the license; LBP-12-18, 76 NRC 127 (2012)

individual licensing proceedings are not the appropriate forum for evaluating SAMAs; LBP-13-1, 77 NRC 57 (2013)

it is applicant's responsibility to include information in the environmental report that NRC Staff needs to prepare the draft environmental impact statement, including information on alternatives available for reducing or avoiding adverse environmental effects; LBP-12-12, 75 NRC 742 (2012)

license renewal applicant is compelled to implement safety-related SAMAs that deal with aging management; LBP-11-17, 74 NRC 11 (2011)

materiality of a SAMA contention is based on whether it purports to show that an additional SAMA should have been identified as potentially cost-beneficial; CLI-11-11, 74 NRC 427 (2011)

NEPA is a procedural statute and although it requires a hard look at mitigation measures, it does not, in and of itself, provide the statutory basis for their implementation; CLI-11-14, 74 NRC 801 (2011)

NRC shall require backfitting of a facility only when it determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security and that the costs of implementation are justified in view of this increased protection; LBP-11-17, 74 NRC 11 (2011)

NRC Staff has authority to require implementation of non-aging-management SAMAs through its current licensing basis backfit review under Part 50 or through setting conditions of the license renewal; LBP-11-17, 74 NRC 11 (2011)

petitioner may raise a SAMA-related contention in a license renewal adjudication if it satisfies the general contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)

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petitioner must approximate the relative cost and benefit of a challenged SAMA or provide at least some ballpark consequence and implementation costs should the SAMA be performed; CLI-11-11, 74 NRC 427 (2011)

possibility that new SAMA candidates may become available cannot be the basis for a successful petition to waive 10 C.F.R. 51.53(c)(3)(ii)(L), because the Commission knew that SAMA technology would change, but was confident that processes, other than the SAMA analysis process, would adequately address any such developments; LBP-13-1, 77 NRC 57 (2013)

record of decision is required to summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-13-9, 78 NRC 37 (2013)

SAMA need not be implemented during a particular plant's license renewal review if the Commission is concurrently resolving the safety improvement achieved by that SAMA through a generic process attached to the agency's review of all plants' current licensing bases; LBP-11-17, 74 NRC 11 (2011)

SAMAs are category 2 items under 10 C.F.R. Part 51, Subpart A, App. B, and NRC must treat them as such; CLI-12-19, 76 NRC 377 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-12-15, 76 NRC 14 (2012)

SAMAs are safety enhancements such as a new hardware item or procedure intended to reduce the risk of severe accidents; LBP-11-33, 74 NRC 675 (2011)

SAMAs are somewhat broader than severe accident mitigation design alternatives, which focus on design changes and do not consider procedural modifications; LBP-11-38, 74 NRC 817 (2011)

SAMAs fall within Category 2 and must therefore be addressed on a site-specific basis; LBP-15-5, 81 NRC 249 (2015)

section 51.53(c)(3)(ii)(L) does not convert the Category 2 (site-specific) issue of SAMAs into a Category 1 issue; LBP-12-8, 75 NRC 539 (2012)

subsection (L) of 10 C.F.R. 51.53(c)(3)(ii) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in case-by-case license renewal adjudications; LBP-13-1, 77 NRC 57 (2013)

unsupported speculation that fresh analysis might lead NRC to require additional mitigation measures simply does not raise a significant safety issue or an exceptionally grave issue; LBP-11-23, 74 NRC 287 (2011)

SEVERE ACCIDENT MITIGATION ALTERNATIVES ANALYSIS

absent a valid regulation limiting NRC's NEPA obligations, the consideration of alternative severe accident mitigation measures may not be excluded from the agency's NEPA reviews; LBP-12-18, 76 NRC 127 (2012)

accounting for the meteorological patterns, atmospheric transport modeling, and data issues raised by intervenor cannot credibly alter which severe accident mitigation alternatives are potentially cost-beneficial to implement; LBP-11-18, 74 NRC 29 (2011)

admissibility of contention that common-mode failures and/or mutually exacerbating catastrophes are entitled SAMA analysis is decided; LBP-15-5, 81 NRC 249 (2015)

admissibility of contention that SAMA analysis fails to evaluate the impact that a severe accident at one unit would have on the operation of a proposed nearby unit is decided; LBP-15-5, 81 NRC 249 (2015)

admission of a contention that might require further explanation of SAMA cost-benefit analysis did not have a pervasive and unusual effect on the litigation; CLI-11-6, 74 NRC 203 (2011)

alternatives for reducing adverse environmental impacts, including impacts of severe accidents, are among the limited issues within the scope of a license renewal proceeding; LBP-11-13, 73 NRC 534 (2011)

alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives; LBP-11-2, 73 NRC 28 (2011)

although a contention might have been more detailed or otherwise better supported, petitioners have done enough to raise a question about the adequacy of the probability figures used in applicant's SAMA analysis, namely, whether they should have incorporated or otherwise acknowledged information from a Sandia study; LBP-12-18, 76 NRC 127 (2012)

although a SAMA analysis considers safety issues, it is actually an environmental review that must be judged under NEPA's rule of reason and not under the safety requirements of the Atomic Energy Act; LBP-15-29, 82 NRC 246 (2015)

although a SAMA analysis must be provided if not previously performed, applicant must provide this analysis only for those issues identified as Category 2 issues in Appendix B to Subpart A of Part 51; LBP-11-2, 73 NRC 28 (2011)

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although NEPA does not mention mitigation, by administrative practice and regulation, mitigation plays an important role in the discharge by federal agencies of their procedural duty under NEPA to prepare an EIS; LBP-12-18, 76 NRC 127 (2012)

although NRC has found that severe accident risks are small for all U.S. licensed nuclear power plants, NRC Staff is required under NEPA to consider mitigation alternatives during its license renewal review; LBP-12-26, 76 NRC 559 (2012)

although petitioners are not required to run their own computer models at the contention admissibility stage, a contention challenging a SAMA analysis nonetheless must be tethered to the computer modeling and mathematical aspects of the analysis; CLI-12-15, 75 NRC 704 (2012)

although potential SAMAs must be considered for license renewal, no site-specific severe accident impacts analysis needs to be done; CLI-12-15, 75 NRC 704 (2012)

although there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decisionmaking; LBP-11-7, 73 NRC 254 (2011)

among the limited issues within the scope of a license renewal proceeding are alternatives for reducing adverse environmental impacts listed as Category 2 issues in Appendix B to Subpart A of 10 C.F.R. Part 51; LBP-11-2, 73 NRC 28 (2011)

an environmental report must contain a full discussion of mitigation plans; LBP-11-6, 73 NRC 149 (2011)

analysis is conducted pursuant to the National Environmental Policy Act, and thus is an environmental issue, not a safety one; LBP-15-1, 81 NRC 15 (2015)

analysis is not based on either best-case or worst-case accident scenarios, but on mean accident consequence values, averaged over the many hypothetical severe accident scenarios; LBP-13-13, 78 NRC 246 (2013)

analysis issues can present difficult judgment calls at the contention admission stage; LBP-15-5, 81 NRC 249 (2015)

analysis must be considered as part of the environmental report and, ultimately, as part of NRC Staff's supplemental environmental impact statement for a power reactor license renewal; LBP-15-5, 81 NRC 249 (2015)

analysis must necessarily be site specific because the potential consequences of a severe accident will largely be the product of the location of the plant; LBP-13-13, 78 NRC 246 (2013)

applicant is exempt from including in its environmental report a site-specific SAMA analysis because NRC Staff previously considered severe accident mitigation design alternatives in its final environmental impact statement; CLI-13-7, 78 NRC 199 (2013)

applicant is to provide in its environmental report an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-12-8, 75 NRC 539 (2012)

applicant need only ensure that the environmental consequences of the project have been fairly evaluated; LBP-11-2, 73 NRC 28 (2011)

applicant's environmental report must contain a sufficient analysis of potential environmental consequences and alternatives to enable the NRC Staff to prepare an environmental impact statement that fulfills the agency's obligations under NEPA; LBP-11-14, 73 NRC 591 (2011)

applicant's estimate and NRC Staff's approval of projected population estimate for severe accident mitigation alternatives analysis are reasonable and satisfy the requirements under NEPA and 10 C.F.R. 51.53(c)(3)(ii)(L); LBP-13-13, 78 NRC 246 (2013)

applicant's use of the MAAP code to generate fission product source terms for use in its severe accident mitigation alternatives analysis is reasonable under NEPA; LBP-12-26, 76 NRC 559 (2012)

arguments that more conservative SAMA analysis needs to be performed, using 95th percentile computations, and not using a discount factor to evaluate the time effects of cleanup costs are policy matters that are solely within Commission jurisdiction and represent inadmissible challenges to binding Commission rulings; LBP-11-20, 74 NRC 65 (2011)

as issues of mitigation, SAMAs need only be discussed in sufficient detail to ensure that environmental consequences of the proposed project have been fairly evaluated; LBP-13-13, 78 NRC 246 (2013)

because NRC has established a requirement to provide information to be used by NRC staff in fulfillment of its obligation under the National Environmental Policy Act, suitability of applicant's SAMA analysis must be judged by the requirements of NEPA; LBP-11-18, 74 NRC 29 (2011)

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because the analysis is largely quantitative, resting on inputs used in computer modeling, it will always be possible to propose that the analysis use one or more other inputs; LBP-13-13, 78 NRC 246 (2013)

because the probability of a spent fuel pool accident causing significant harm is remote, there is no need for applicants to assess spent fuel pool accident mitigation alternatives as part of license renewal; LBP-15-5, 81 NRC 249 (2015)

bird collisions with cooling towers have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term; LBP-13-1, 77 NRC 57 (2013)

board assessment of a severe accident mitigation alternatives analysis does not consider whether more or different analysis can be done; LBP-13-13, 78 NRC 246 (2013)

boards should not have to guess what aspects of the SAMA analysis the petitioner is challenging; LBP-12-1, 75 NRC 1 (2012)

CEQ regulations require that agencies discuss possible mitigation measures in defining the scope of the EIS, in discussing alternatives to the proposed action and consequences of that action, and in explaining its ultimate decision; LBP-12-18, 76 NRC 127 (2012)

challenge to the inputs and methodology in the SAMA analysis is impermissibly late; CLI-12-10, 75 NRC 479 (2012)

challenges to extensive damage mitigation guidelines are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to NRC's assumptions about operators' capability to mitigate an accident are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

challenges to NRC's excessive secrecy regarding accident mitigation measures are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

citation of studies indicating that source terms from the Modular Accident Analysis Progression (MAAP) code are lower than results from Source Term Code Package or NUREG-1150 satisfies the requirements of 10 C.F.R. 2.309(f)(1)(v); LBP-11-2, 73 NRC 28 (2011)

claim that SAMA analysis is deficient for failing to address potential spent fuel pool accidents falls beyond the scope of NRC SAMA analysis and impermissibly challenges NRC regulations; LBP-11-13, 73 NRC 534 (2011)

Commission requests briefing from NRC Staff on the circumstances, if any, NRC Staff would judge a potentially cost-beneficial mitigation alternative to warrant further NRC consideration outside of the license renewal review, either via a backfit analysis or as part of another process; CLI-15-3, 81 NRC 217 (2015)

Commission requests briefing from NRC Staff on the level of uncertainty that NRC Staff considers acceptable for the implementation cost portion of the cost-benefit analysis, and why; CLI-15-3, 81 NRC 217 (2015)

Commission requests briefing from NRC Staff on whether it has a process in place to follow up with licensee to determine which potentially cost-beneficial mitigation alternatives ultimately were found by licensee to be cost-beneficial, if any, and which alternatives, if any, licensee implemented; CLI-15-3, 81 NRC 217 (2015)

conclusory statements do not amount to a challenge to a SAMA analysis; CLI-15-18, 82 NRC 135 (2015)

consistent with NEPA's rule of reason, applicant and NRC Staff acted on the basis of best available information and analysis in completing the SAMA evaluation; LBP-13-13, 78 NRC 246 (2013)

contention is within the scope of license renewal proceeding because NRC regulations require that the environmental report include a SAMA analysis; LBP-15-5, 81 NRC 249 (2015)

contention proposing alternative inputs or methodologies for SAMA analysis must present some factual or expert basis for why the proposed changes in the analysis are warranted; LBP-12-26, 76 NRC 559 (2012)

contention questioning accuracy of the SAMA results given the geographic location and variable meteorological conditions at the site and the large population base surrounding the plant is admissible; LBP-11-2, 73 NRC 28 (2011)

contention regarding mitigation alternatives is effectively a collateral attack on regulation that exempts applicants from having to reanalyze SAMAs during the renewal process; LBP-14-15, 80 NRC 151 (2014)

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contention that applicant's SAMA analysis improperly ignored radioactive waste disposal is outside the scope of the proceeding because it directly challenges the generic determinations in Table B-1 of Appendix B to Part 51; LBP-11-2, 73 NRC 28 (2011)

contention that applicant's SAMA analysis is significantly flawed because of the use of inaccurate factual assumptions about population is admissible; LBP-15-5, 81 NRC 249 (2015)

contention that challenges lack of SAMA analysis in applicant's environmental report is inadmissible; CLI-13-7, 78 NRC 199 (2013)

contention that environmental report does not satisfy NEPA because it does not consider a range of mitigation measures to mitigate the risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 249 (2015)

contention that environmental report fails to accurately and thoroughly conduct SAMA analysis to design vulnerability of GE Mark I boiling water reactor pressure suppression containment system and environmental consequences of a to-be-anticipated severe accident post-Fukushima Daiichi fails to present a genuine material dispute; LBP-15-5, 81 NRC 249 (2015)

contention that other costs were ignored is not admissible because petitioners presented no facts or expert opinion that show it to be plausible that including them might affect the outcome of the SAMA analysis; LBP-11-2, 73 NRC 28 (2011)

contention that population used for analysis might underestimate the exposed population in a severe accident and, in turn, underestimate the benefit achieved in implementing a SAMA analysis is admissible; LBP-15-5, 81 NRC 249 (2015)

contention that SAMA analysis does not accurately reflect decontamination and cleanup costs is decided; LBP-13-13, 78 NRC 246 (2013)

contention that the draft environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-13-9, 78 NRC 37 (2013)

contentions challenging a SAMA analysis must identify a deficiency that plausibly could alter the overall result of the analysis in a material way; LBP-13-13, 78 NRC 246 (2013)

contentions proposing alternative inputs or methodologies for the SAMA analysis must present some factual or expert basis for why the proposed changes in the analysis are warranted; CLI-12-8, 75 NRC 393 (2012)

contradiction between paragraphs (ii)(L) and (iv) of 10 C.F.R. 51.53(c)(3) is discussed; LBP-13-1, 77 NRC 57 (2013)

cost-effective candidate SAMAs are identified by comparing the annualized cost of the mitigation measure with the benefit as determined by the averted cost of severe accidents (consequences), as weighted by the probability of the accidents' occurrence; LBP-11-13, 73 NRC 534 (2011)

degree to which specific additional mitigation measures may reduce the risk of various accident scenarios is analyzed on a site-specific basis; LBP-13-13, 78 NRC 246 (2013)

discussion of steps that can be taken to mitigate adverse environmental consequences plays an important role in the environmental analysis under NEPA; LBP-12-18, 76 NRC 127 (2012)

draft environmental impact statements must include a preliminary analysis that considers and weighs alternatives available for reducing or avoiding adverse environmental effects; LBP-12-18, 76 NRC 127 (2012)

draft environmental impact statements need not contain more information on mitigation measures than a description of the mitigation measures on which NRC relies and explanation of the limiting effect of the mitigation measures on environmental impacts; LBP-13-9, 78 NRC 37 (2013)

environmental analysis of severe accidents is designated as a Category 2 site-specific issue for license renewal, and therefore the SAMA analysis normally is subject to challenge in a license renewal adjudicatory proceeding; CLI-13-7, 78 NRC 199 (2013)

environmental impact statement is required to discuss a recently discovered fault located near the plant; LBP-15-29, 82 NRC 246 (2015)

environmental impact statements cannot fulfill their role of providing a springboard for public comment if they fail to evaluate significant issues such as measures that the agency's experts recommend to mitigate the consequences of a severe accident; LBP-12-18, 76 NRC 127 (2012)

environmental impact statements must include a reasonably complete discussion of possible mitigation measures; LBP-12-18, 76 NRC 127 (2012)

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environmental report for license renewal must consider SAMAs for all plants that have not considered such alternatives; LBP-15-5, 81 NRC 249 (2015)

environmental reports must discuss new SAMAs addressed in more recent reports for other nuclear power plants of the same or similar boiling water reactor Mark II design; LBP-14-15, 80 NRC 151 (2014)

evaluation is governed by the rule of reason and alternatives must be bounded by some notion of feasibility; LBP-13-13, 78 NRC 246 (2013)

exception in 10 C.F.R. 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in certain license renewal adjudications; CLI-13-7, 78 NRC 199 (2013)

failure to challenge the existing SAMA analysis would be insufficient to establish a material dispute for the purposes of satisfying the general contention admissibility standards, let alone the reopening standards; CLI-12-6, 75 NRC 352 (2012)

final supplemental environmental impact statement must demonstrate that the NRC Staff has received sufficient information to take a hard look at severe accident mitigation alternatives; LBP-11-17, 74 NRC 11 (2011)

following the Three Mile Island accident NRC set safety goals with respect to severe accidents; LBP-12-18, 76 NRC 127 (2012)

for an admissible contention, petitioners do not have to prove outright that a SAMA analysis is deficient; CLI-11-11, 74 NRC 427 (2011)

for license renewal, a SAMA analysis is a cost-benefit analysis, weighing a particular mitigation measure's estimated degree of risk reduction against its estimated cost of implementation; CLI-12-8, 75 NRC 393 (2012)

Gaussian plume model's incorporation in the MACCS2 code and the wide, customary use of the code are not a sufficient ground to exclude the code's integral dispersion model from all challenge if adequate support is provided for a contention; LBP-11-2, 73 NRC 28 (2011)

generalized reference to the potential human and economic costs from an accident falls short of the support necessary for a SAMA contention; CLI-15-18, 82 NRC 135 (2015)

given the quantitative nature of analysis, which rests largely on selected inputs, it may always be possible to conceive of alternative and more conservative inputs, whose use in the analysis could result in greater estimated accident consequences; LBP-13-13, 78 NRC 246 (2013)

goal of a SAMA analysis is to identify potential changes to a nuclear power plant or its operations that might reduce the risk or likelihood or impact, or both, of a severe reactor accident for which the benefit of implementing the changes outweighs the cost of the implementation; LBP-11-18, 74 NRC 29 (2011)

if NRC Staff has not already considered site-specific SAMAs for a facility, they must be considered as part of applicant's environmental report and ultimately as part of NRC Staff's supplemental environmental impact statement in a power reactor license renewal proceeding; LBP-11-17, 74 NRC 11 (2011); LBP-11-18, 74 NRC 29 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-13-1, 77 NRC 57 (2013)

implicit in NEPA's demand that an agency prepare a detailed environmental impact statement is an understanding that the EIS will discuss the extent to which adverse effects can be avoided; LBP-12-18, 76 NRC 127 (2012)

inadequacy in the SAMA analysis is material if license renewal applicant failed to consider complete information without justifying why particular information was omitted; LBP-15-5, 81 NRC 249 (2015)

it is not possible simply to plug in and run a different atmospheric dispersion model in the MACCS2 code; LBP-11-2, 73 NRC 28 (2011)

it must be genuinely plausible that revising the SAMA analysis would change the outcome so that one or more of the SAMA candidates that applicant evaluated and rejected would become cost-beneficial; LBP-15-5, 81 NRC 249 (2015)

it will always be possible to envision and propose some alternative approach to SAMA analysis, some additional detail to include, or some refinement; LBP-15-29, 82 NRC 246 (2015)

license renewal applicant is not required to perform a new SAMA analysis; LBP-14-15, 80 NRC 151 (2014)

license renewal applicant must file an environmental report that includes an alternatives analysis that considers and balances the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects; LBP-11-13, 73 NRC 534 (2011)

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license renewal applicants are not required to base their analysis on consequence values at the 95th percentile consequence level; LBP-11-2, 73 NRC 28 (2011)

license renewal applicant's environmental report must contain a consideration of alternatives for reducing adverse impacts for all Category 2 license renewal issues in Appendix B; LBP-11-21, 74 NRC 115 (2011)

license renewal applicants must provide a SAMA analysis if NRC Staff has not yet previously considered SAMAs for the applicant's plant in an environmental impact statement or related supplement, or in an environmental assessment; CLI-12-5, 75 NRC 301 (2012); LBP-12-8, 75 NRC 539 (2012); CLI-12-19, 76 NRC 377 (2012); CLI-15-18, 82 NRC 135 (2015)

license renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues; CLI-13-7, 78 NRC 199 (2013)

licensing boards must admit an adequately supported contention alleging that the agency's NEPA analysis of severe accident mitigation alternatives is deficient; LBP-12-18, 76 NRC 127 (2012)

mitigation measures assessed in the SAMA analysis under the National Environmental Policy Act are supplemental to those already required under NRC safety regulations for reasonable assurance of safe operation and likewise to those NRC may order or require under ongoing regulatory oversight over reactor safety, pursuant to the Atomic Energy Act; CLI-12-15, 75 NRC 704 (2012)

mitigation must be discussed in sufficient detail in an environmental impact statement to ensure that environmental consequences have been fairly evaluated; LBP-12-18, 76 NRC 127 (2012)

National Environmental Policy Act requires NRC to consider SAMAs; LBP-13-1, 77 NRC 57 (2013)

NEPA allows agencies to select their own methodology as long as that methodology is reasonable; LBP-11-2, 73 NRC 28 (2011); LBP-11-7, 73 NRC 254 (2011)

NEPA does not require a fully developed plan that will mitigate all environmental harm before an agency can act, but only requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-18, 74 NRC 29 (2011); LBP-11-23, 74 NRC 287 (2011)

NEPA does not require agencies to resolve all uncertainties, including uncertainties associated with the NUREG-1150 values used in the SAMA analysis; LBP-13-13, 78 NRC 246 (2013)

NEPA imposes no substantive requirement that mitigation measures actually be taken; LBP-11-14, 73 NRC 591 (2011)

NEPA neither requires nor authorizes NRC to order implementation of mitigation measures analyzed in an environmental analysis; CLI-12-10, 75 NRC 479 (2012)

NEPA regulations require consideration of SAMAs in environmental impact statements and supplements thereto at the operating license stage; LBP-12-15, 76 NRC 14 (2012)

NEPA requires a hard look at severe accident mitigation measures; LBP-12-26, 76 NRC 559 (2012)

NEPA requires that agencies provide a reasonably complete discussion of possible severe accident mitigation measures; LBP-12-18, 76 NRC 127 (2012)

NEPA requires that NRC take a hard look at alternatives, including SAMAs, and to provide a rational basis for rejecting alternatives that are cost-effective; LBP-12-8, 75 NRC 539 (2012)

NEPA SAMA analysis need not reflect the most conservative, or worst-case, analysis; CLI-12-10, 75 NRC 479 (2012); LBP-12-26, 76 NRC 559 (2012)

new information from studies of the Fukushima event as to potential consequences of a severe accident at a U.S. nuclear power plant is irrelevant to any uncertainty that might exist regarding which agency has authority over cleanup after a severe accident; LBP-11-20, 74 NRC 65 (2011)

NRC does not mandate a specific approach to SAMA analyses, but instead, reviews each severe accident mitigation consideration provided by a license renewal applicant on its merits and determines whether it constitutes a reasonable consideration of SAMAs; CLI-13-7, 78 NRC 199 (2013)

NRC generally reviews SAMAs using a cost-benefit analysis, and SAMAs that are not cost-beneficial need not be implemented by licensee; LBP-12-18, 76 NRC 127 (2012)

NRC is required to consider SAMAs in issuing a new operating license; LBP-11-7, 73 NRC 254 (2011)

NRC policy statement is not a sufficient vehicle to preclude consideration of severe accident mitigation design alternatives, and NRC must take the requisite hard look at them, giving them the careful consideration and disclosure required by the National Environmental Policy Act; CLI-12-19, 76 NRC 377 (2012)

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NRC Staff's approval of the NUREG-1150 TIMDEC and CDNFRM input values is reasonable and appropriate and satisfies the requirements under NEPA; LBP-13-13, 78 NRC 246 (2013)

NRC Staff's obligations under Part 51 and NEPA are not limited to only those SAMAs that address aging management; LBP-11-17, 74 NRC 11 (2011)

NRC was ordered to analyze features or actions that could prevent a serious accident or mitigate its consequences; LBP-14-15, 80 NRC 151 (2014)

NRC's obligation to evaluate new recommendations for enhanced accident mitigation does not depend upon whether intervenors have identified unique characteristics of the site or the proposed new reactor; LBP-12-18, 76 NRC 127 (2012)

one important component of an environmental impact statement is the discussion of possible actions that might mitigate adverse environmental consequences; LBP-11-7, 73 NRC 254 (2011)

only if the probability of a severe accident is so small as to be effectively zero could NRC Staff dispense with the consequences portion of the analysis; CLI-15-6, 81 NRC 340 (2015)

parties are directed to provide further briefing on questions relating to severe accident decontamination time values and costs used in the SAMA analysis; CLI-15-2, 81 NRC 213 (2015)

petitioner does not demonstrate, with the level of support required under section 2.326(b), that a materially different result would have been likely had the possibility of recriticality over a period longer than 24 hours, or even 4 days, been considered in the SAMA analysis initially; CLI-12-3, 75 NRC 132 (2012)

petitioner fails to specifically explain why a materially different result would have been likely had information currently available from the Fukushima accident been considered ab initio in the severe accident mitigation alternatives analysis or why that information presents a significant safety or environmental issue; LBP-11-35, 74 NRC 701 (2011)

petitioner has provided adequate support for its claim that there are numerous new SAMA candidates that should be evaluated for their significance; LBP-12-8, 75 NRC 539 (2012)

petitioner may question the practice for SAMA analysis to utilize mean consequence values, which results in an averaging of potential consequences; LBP-11-13, 73 NRC 534 (2011)

petitioner need not rerun applicant's own cost-benefit calculations, but must do more than merely suggest that additional factors be evaluated or that different analytical techniques be used; LBP-15-5, 81 NRC 249 (2015)

petitioner's assertion that severe accidents from spent fuel pools must be considered in applicant's SAMA analysis is in direct conflict with NRC regulations; LBP-11-2, 73 NRC 28 (2011)

petitioner's assertions that the MACCS2 code was not subjected to quality assurance requirements is deficient because a SAMA analysis is not subject to such requirements; LBP-11-2, 73 NRC 28 (2011)

petitioner's failure to address applicant's supplemental economic analyses, demonstrate specific knowledge of the analysis, and not indicate, even broadly that the SAMA economic cost-benefit conclusions are not sufficiently conservative renders a contention inadmissible; LBP-15-5, 81 NRC 249 (2015)

petitioners have not established that use of another source term would identify additional cost-beneficial severe accident mitigation alternatives; LBP-11-13, 73 NRC 534 (2011)

petitioners must provide a nexus between its concerns and any deficiencies in applicant's SAMA analysis, which would be necessary to establish a genuine dispute for an admissible contention; CLI-15-18, 82 NRC 135 (2015)

petitioners must provide site-specific support to show that the SAMA analysis is unreasonable; LBP-15-5, 81 NRC 249 (2015)

plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face general criticism that the passage of time between original licensing and renewal has rendered their SAMA analysis out of date upon application for a subsequent renewal term; CLI-13-7, 78 NRC 199 (2013)

portion of a contention asserting that applicant failed to consider the results of a particular study in its SAMA analysis is admissible; CLI-11-11, 74 NRC 427 (2011)

possible changes, such as improvements in hardware, training, or procedures, that could cost-effectively mitigate the environmental impacts that would otherwise flow from a potential severe accident are identified and addressed; LBP-11-13, 73 NRC 534 (2011); LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)

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probabilities of accident scenarios are taken into account, ultimately assessing whether and to what extent the probability-weighted consequences of the analyzed severe accident sequences would decrease if a specific mitigation alternative were implemented; LBP-13-13, 78 NRC 246 (2013)

proper question is not whether there are plausible alternative choices for use in the SAMA analysis, but whether the analysis that was done is reasonable under NEPA; CLI-13-7, 78 NRC 199 (2013); LBP-15-29, 82 NRC 246 (2015)

purpose of 10 C.F.R. 51.53(c)(3)(ii)(L) is to limit the analysis during relicensing to exclude consideration of SAMAs regarding plant operation that were previously considered; LBP-13-1, 77 NRC 57 (2013)

purpose of SAMA analyses is to identify safety enhancements that would be cost-beneficial to adopt; LBP-15-29, 82 NRC 246 (2015)

purpose of the exemption from 10 C.F.R. 51.53(c)(3)(ii)(L) is to reflect NRC's view that one SAMA analysis, as a general matter, satisfies NRC obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; LBP-14-15, 80 NRC 151 (2014)

purpose of the supplemental-SAMA-analysis exception in 10 C.F.R. 51.53(c)(3)(ii)(L) is to reflect NRC's view that one SAMA analysis, as a general matter, satisfies NRC's NEPA obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents; CLI-13-7, 78 NRC 199 (2013)

question of material impacts hinges upon whether a severe accident mitigation alternative may be cost-beneficial to implement; LBP-13-13, 78 NRC 246 (2013)

record of decision for the license must state whether NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected, and if not, to explain why those measures were not adopted; LBP-12-18, 76 NRC 127 (2012)

record of decision must also summarize any license conditions and monitoring programs adopted in connection with mitigation measures; LBP-12-18, 76 NRC 127 (2012)

relevant issue is whether any additional SAMA should have been identified as potentially cost beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; LBP-15-29, 82 NRC 246 (2015)

required level of demonstration by petitioners of cost-effectiveness of other SAMAs is case and issue specific; LBP-11-35, 74 NRC 701 (2011)

requirement for license renewal applicants to consider SAMAs stems from 10 C.F.R. 51.53(c)(3)(ii)(L); CLI-12-10, 75 NRC 479 (2012)

SAMA analyses are conducted for the purposes of the NRC's environmental review under NEPA and are not safety analyses; CLI-15-18, 82 NRC 135 (2015)

SAMA analysis for relicensing must be performed by licensee and included in the license renewal application; LBP-12-26, 76 NRC 559 (2012)

SAMA analysis fulfills the requirement to provide a consideration of alternatives to mitigate severe accidents and therefore is governed by NEPA's rule of reason; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

SAMA analysis is a cost-benefit analysis, not a direct safety analysis, and thus does not raise any exceptionally grave issue; LBP-11-23, 74 NRC 287 (2011)

SAMA analysis is a quantitative cost-benefit analysis, assessing whether the cost of implementing a specific enhancement outweighs its benefit; CLI-15-18, 82 NRC 135 (2015); LBP-13-13, 78 NRC 246 (2013)

SAMA analysis is an analysis of a class of SAMA candidates using probabilistic risk assessment techniques to determine whether any of the SAMA candidates would be cost-beneficial; LBP-13-1, 77 NRC 57 (2013)

SAMA analysis is neither a worst-case nor a best-case impacts analysis; LBP-11-7, 73 NRC 254 (2011)

SAMA analysis is neither a worst-case nor a best-case impacts analysis, and the agency's obligations under NEPA are tempered by a practical rule of reason; LBP-11-18, 74 NRC 29 (2011)

SAMA analysis is not part of the agency's safety review for license renewal under the Atomic Energy Act, but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act; LBP-13-8, 78 NRC 1 (2013)

SAMA contentions are admissible only if it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA

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candidates evaluated; LBP-11-2, 73 NRC 28 (2011); LBP-11-7, 73 NRC 254 (2011); LBP-11-13, 73 NRC 534 (2011)

SAMAs must be considered for all plants that have not considered such alternatives because they are a Category 2 issue; LBP-12-8, 75 NRC 539 (2012)

sea-breeze effect and the hot-spot effect must cause the expected average offsite damages to increase by at least a factor of 2 for the next most costly SAMA to be cost-effective; LBP-11-18, 74 NRC 29 (2011)

severe accidents in the spent fuel pools are Category 1 issues that do not need to be included in the SAMA analysis; LBP-15-5, 81 NRC 249 (2015)

showing merely that changes to the SAMA analysis results are possible or likely or probable is not enough to reopen a record; LBP-11-35, 74 NRC 701 (2011)

showing necessary to demonstrate that a materially different result in the outcome of the SAMA analysis would be or would have been likely had the newly proffered evidence been considered initially is discussed; LBP-11-35, 74 NRC 701 (2011)

simply because alternative inputs could be used does not demonstrate that the original inputs were unreasonable; LBP-13-13, 78 NRC 246 (2013)

site-specific consideration of SAMAs is required at the time of license renewal unless a previous consideration of such alternatives regarding plant operation has been included in a final environmental impact statement, final environmental assessment, or a related supplement; CLI-11-5, 74 NRC 141 (2011)

speculation that NRC would consider other SAMAs than have been previously considered does not demonstrate that the issue raised is material to NRC's decision; LBP-12-1, 75 NRC 1 (2012)

Staff's ability to satisfy its NEPA obligations will be undermined if applicant either fails to include seismic information in its SAMA analysis, or, in omitting the information, fails to explain its absence and justify that the overall costs of obtaining it are exorbitant; CLI-11-11, 74 NRC 427 (2011)

sufficiency of the NRC's hard look at the benefits of SAMAs in comparison to their costs is subject to litigation in a license renewal proceeding; LBP-11-17, 74 NRC 11 (2011)

this probability-weighted analysis is carried out for the limited purpose of identifying mitigation alternatives that meet a defined benefit-cost criterion; CLI-12-15, 75 NRC 704 (2012)

time frame for SAMA analysis is inherent in NRC's regulatory scheme, which provides for a 40-year license term, with the possibility of license renewal for an additional 20-year period; CLI-13-7, 78 NRC 199 (2013)

to demonstrate that a revised SAMA analysis would produce a materially different result, intervenor should indicate how much the mean consequences of the severe accident scenarios could reasonably be expected to change as well as cost of implementing other SAMAs it believes might become cost-effective; LBP-12-1, 75 NRC 1 (2012)

to evaluate the impact of a fault on current operations, a probabilistic risk assessment rather than a deterministic analysis is the accepted and standard practice in SAMA analyses; CLI-11-11, 74 NRC 427 (2011)

to litigate a SAMA-related contention in adjudicatory proceedings where the SAMA-analysis exception applies, petitioner must obtain a waiver by satisfying the requirements in this section as well as the contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)

to litigate SAMA-related issues requires demonstration of potentially significant deficiency in the SAMA analysis that credibly could render the SAMA analysis unreasonable under NEPA standards; CLI-13-7, 78 NRC 199 (2013); LBP-13-13, 78 NRC 246 (2013)

to satisfy its obligations under NEPA the final supplemental environmental impact statement need only explain any known shortcomings in available methodology, disclose incomplete or unavailable information and significant uncertainties, and make a reasoned evaluation of whether and to what extent these or other considerations credibly could alter the SAMA analysis conclusions; LBP-13-13, 78 NRC 246 (2013)

ultimate issue on SAMA analysis is whether any additional SAMA should have been identified as potentially cost-beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

unless a contention, submitted with adequate factual, documentary, or expert support, raises a potentially significant deficiency in the SAMA analysis, a SAMA-related dispute will not be material to the

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- licensing decision and is not appropriate for litigation in NRC proceedings; LBP-12-26, 76 NRC 559 (2012)
- unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions and models may change the cost-benefit conclusions for the severe accident mitigation alternative candidates evaluated, no purpose would be served to further refine the SAMA analysis; CLI-12-5, 75 NRC 301 (2012); LBP-15-5, 81 NRC 249 (2015)
- unless petitioner sets forth a supported contention pointing to an apparent error or deficiency that may have significantly skewed the environmental conclusions, there is no genuine material dispute with the application; CLI-12-8, 75 NRC 393 (2012)
- unlike plume modeling for an actual severe accident, the SAMA analysis is not focused on predicting the precise trajectory of a real-time plume but rather is a probabilistic analysis involving statistical averaging over many hundreds of randomly selected hourly weather sequences obtained from a year of hourly weather data; CLI-12-8, 75 NRC 393 (2012)
- use of mean consequences in SAMA analysis is consistent with NRC policy and precedent, whereas the 95th percentile approach is akin to a worst-case scenario analysis, which is not required by NRC; LBP-11-18, 74 NRC 29 (2011)
- whether a proposed alternative method for estimating a macroscopic frequency of occurrence of a severe offsite radiological release should have been used in the SAMA analysis could have been raised when the original license renewal application was submitted and thus is not timely; LBP-11-35, 74 NRC 701 (2011)
- whether a SAMA is worthy of more detailed analysis in an environmental report or supplemental environmental impact statement hinges on whether it may be cost-beneficial to implement; CLI-12-3, 75 NRC 132 (2012); LBP-11-2, 73 NRC 28 (2011)
- See also Consideration of Alternatives
- SEVERE ACCIDENT MITIGATION DESIGN ALTERNATIVES ANALYSIS**
- adequacy of a SAMDA analysis is judged not by whether plainly better assumptions or methodologies could have been used or the analysis refined further but whether it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMDA analysis; LBP-11-38, 74 NRC 817 (2011)
- all environmental issues concerning SAMDAs associated with the information in NRC's final environmental assessment for certified reactor design are deemed resolved for plants whose site parameters are within those specified in the technical support document; LBP-11-7, 73 NRC 254 (2011)
- appellate review of board decision rejecting a challenge to the SAMA analysis is denied; CLI-12-1, 75 NRC 39 (2012)
- careful consideration of SAMDAs is required under NEPA, and NRC's failure to consider them is a violation of NEPA; LBP-12-8, 75 NRC 539 (2012)
- issues surrounding SAMDAs that have been resolved by regulation may not be challenged in a combined license adjudication; CLI-11-6, 74 NRC 203 (2011)
- NRC Staff's creation of a list of site parameters for use in the combined license proceeding cannot cure the absence of a list of site parameters in the technical support document, rendering it impossible to resolve SAMDA issues by rule; LBP-11-7, 73 NRC 254 (2011)
- NRC-endorsed guidance on SAMA analysis methodology specifies use of the mean annual offsite dose and economic impact; CLI-12-1, 75 NRC 39 (2012)
- SAMA analysis is a probability-weighted assessment of the benefits and costs of mitigation alternatives that can be used to reduce the risks of potential severe accidents at nuclear power plants; CLI-12-1, 75 NRC 39 (2012)
- SAMA analysis is neither a worst-case nor a best-case impacts analysis; CLI-12-1, 75 NRC 39 (2012)
- SAMDA analyses examine whether implementing a SAMDA would decrease the probability-weighted consequences of severe accidents; LBP-11-38, 74 NRC 817 (2011)
- scaling SAMDA implementation costs (inflation rate, regional cost-of-living adjustment, risk reduction factor) and implementation benefits (discount rate, power pricing data, power market effects, consumer impacts, power price spikes, loss of grid) is discussed; LBP-11-38, 74 NRC 817 (2011)
- severe accident mitigation alternatives are somewhat broader than SAMDAs, which focus on design changes and do not consider procedural modifications; LBP-11-38, 74 NRC 817 (2011)

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there is no purpose for further refining a SAMDA analysis, unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated; LBP-11-7, 73 NRC 254 (2011)
to require worst-case analyses can easily lead to limitless NEPA analyses because it is always possible to introduce yet another additional variable to a hypothetical scenario to conjure up a worse worst case; CLI-12-1, 75 NRC 39 (2012)

SHELTERING

in developing the recommended range of protective actions in an emergency plan, sheltering must be considered; LBP-11-6, 73 NRC 149 (2011)
lack of detail for emergency sheltering option is not significant because size of sheltering population is very small; LBP-15-18, 81 NRC 793 (2015)

SHIELD BUILDING

because the building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts and thus petitioner's contention concerns a subject matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 15 (2015)
directing NRC Staff to investigate a safety issue that the board could not reach through the adjudicatory process may put the Commission in a position, after receiving views of applicant if it desired, to assure itself about the significance, or lack thereof, of the shield building cracking issues raised by intervenors, and to direct such followup proceedings, if any, as it might deem appropriate; LBP-15-1, 81 NRC 15 (2015)
intervenor must do more than point to issues with the shield building, but must also indicate what is wrong with applicant's response and its amended inspection program and why intervenor believes the particular inspection program makes the license renewal application unacceptable; LBP-15-1, 81 NRC 15 (2015)
intervenors must point to the specific ways in which the shield building monitoring aging management plan is wrong or inadequate to raise a genuine dispute with applicant's license renewal application; LBP-12-27, 76 NRC 583 (2012)
intervenors' allegations do not plausibly indicate that the shield building would lose its functionality under the proposed aging management plan; LBP-15-1, 81 NRC 15 (2015)

SHUTDOWN

all nuclear power facilities that are shut down permanently or indefinitely are exempted from participating in the ERDS program; LBP-15-4, 81 NRC 156 (2015)
all Part 50 licensees must meet emergency planning requirements, regardless of whether the facility is operating or has been permanently shut down and defueled; LBP-15-18, 81 NRC 793 (2015)
assurance of adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant; LBP-11-16, 73 NRC 645 (2011)
because the plant is now permanently shut down and will not restart, no live controversy remains between the litigants; CLI-13-9, 78 NRC 551 (2013)
docketing of certifications of shutdown and defueling means that licensee's Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel; DD-14-3, 79 NRC 500 (2014)
"exigent circumstances" determination seems compelled by the fact that violation of the technical specifications limit for the plant, whatever the cause of the temperature increase, requires a dual-unit shutdown; LBP-15-13, 81 NRC 456 (2015)
following an earthquake exceeding the design basis, the plant must remain shut down until licensee demonstrates to NRC that no functional damage occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-2, 76 NRC 391 (2012)
guidance for implementation of risk management requirements during shutdown operations is provided in 10 C.F.R. 50.65(a)(4); DD-13-3, 78 NRC 571 (2013)
licensee is required to shut down a nuclear power plant when the vibratory ground motion exceeds that of the operating basis earthquake; DD-12-2, 76 NRC 391 (2012)
licensee must provide certifications to NRC Staff that it has permanently ceased power operations and that all fuel has been permanently removed from the reactor vessel; DD-14-3, 79 NRC 500 (2014); DD-15-1, 81 NRC 193 (2015); DD-15-7, 82 NRC 257 (2015)

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licensee of a permanently shutdown reactor is never required to activate the ERDS link, and thus it follows that such a licensee need not maintain the ERDS link; LBP-15-4, 81 NRC 156 (2015)

meaning of “shut down permanently” is discussed; CLI-15-20, 82 NRC 211 (2015); LBP-15-4, 81 NRC 156 (2015)

petitioner’s request for action relating to containment structural damage is mooted by licensee’s decision to shut down and defuel the facility; DD-14-3, 79 NRC 500 (2014)

petitioners’ request for cold shutdown because of radiological contamination of groundwater from tritium is denied; DD-11-3, 73 NRC 375 (2011)

preponderance of the evidence supports conclusion that NRC Staff’s reasoned, qualitative approach to weighing the costs and benefits of plant shutdown on property values and the local community is reasonable and satisfies regulatory requirements; LBP-13-13, 78 NRC 246 (2013)

proposed staffing changes meet emergency plan standards and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency commensurate with credible accidents in the permanently shutdown and defueled condition; CLI-15-20, 82 NRC 211 (2015)

reactors must be shut down and remain shut down until licensee demonstrates to NRC that an earthquake exceeding its operating basis caused no functional damage to features necessary for continued operation without undue risk; DD-15-9, 82 NRC 274 (2015)

reactors subject to the section 2.202 confirmatory orders would not have to shut down if the orders were not sustained; CLI-13-2, 77 NRC 39 (2013)

request for cold shutdown because of inoperability of main steam safety relief valves is denied but petitioner’s concern about the SRVs have been resolved; DD-11-6, 74 NRC 420 (2011)

request that NRC immediately shut down plants until all turbine building high-energy line break concerns are identified and those important to safety are corrected is granted in part; DD-14-5, 80 NRC 205 (2014)

request that NRC order the immediate shutdown of all nuclear power reactors that are known to be located on or near an earthquake fault line is denied; DD-15-6, 81 NRC 884 (2015)

upon docketing of certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, license will no longer authorize operation of the reactor or emplacement or retention of fuel in the reactor vessel; CLI-15-20, 82 NRC 211 (2015)

when an earthquake results in ground accelerations greater than those assumed in the design of the nuclear power plant, the plant is required to be shut down and to remain shut down until licensee demonstrates to NRC that no functional damage occurred to those features necessary for continued operation without undue risk to the health and safety of the public; DD-12-1, 75 NRC 573 (2012)

where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment; LBP-15-13, 81 NRC 456 (2015)

See also Safe Shutdown Systems

SIGNATURE

persons without digital ID certificates may sign electronically by typing “Executed in Accord with 10 C.F.R. 2.304(d)” or its equivalent on the signature line and including the date of signature and the signatory’s name, capacity, address, phone number, and e-mail address; LBP-11-2, 73 NRC 28 (2011)

submitted documents must be signed; LBP-11-2, 73 NRC 28 (2011)

SINGLE-FAILURE CRITERION

system must be provided to transfer heat from structures, systems, and components important to safety to an ultimate heat sink under normal operating and accident conditions, and must be able to perform this safety function with either onsite or offsite power, assuming a single component failure; DD-15-11, 82 NRC 361 (2015)

SITE CHARACTERIZATION

adequacy of the final environmental impact statement regarding site geology and hydrology is discussed; LBP-13-4, 77 NRC 107 (2013)

admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 401 (2015)

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- applicant for a uranium ISR license is required to provide data from a groundwater monitoring program that are sufficient to establish a precicensing site characterization baseline for assessing the potential effects of facility operations on local groundwater quality; LBP-15-3, 81 NRC 65 (2015)
- applicant must provide complete baseline data on a milling site and its environs; LBP-15-16, 81 NRC 618 (2015)
- applicant's monitoring program for establishing existing site characterization baseline values for certain site groundwater constituents prior to issuance of a source materials license for ISR facility construction and operation need not, to comply with NEPA and NRC's Part 51 implementing regulations, be conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 65 (2015)
- applicants referencing a certified design must provide sufficient information for NRC Staff to determine whether the site's characteristics fall within the design's parameters; CLI-15-13, 81 NRC 555 (2015)
- contention alleging that final supplemental environmental impact statement fails to provide an adequate baseline groundwater characterization or demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-16, 81 NRC 618 (2015)
- design bases for earthquakes are to be determined through evaluation of the geologic and seismic history of the site and surrounding region; DD-12-1, 75 NRC 573 (2012)
- factors used for a site geological and seismological evaluation are stated in 10 C.F.R. 100.23(d); LBP-11-10, 73 NRC 424 (2011)
- geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail; LBP-11-10, 73 NRC 424 (2011)
- if applicant did not pursue an early site permit, all relevant site characteristics, including site geology, hydrology, seismology, and man-made hazards, as well as potential environmental impacts of the project, were studied as part of NRC Staff's combined license review and are within the scope of the Commission decision; CLI-15-13, 81 NRC 555 (2015)
- investigation of geological, seismological, and engineering characteristics of a site is required; LBP-14-8, 79 NRC 519 (2014)
- nothing in 10 C.F.R. Part 40, Appendix A, Criterion 5B precludes an inquiry, based on a well-pleaded contention, into whether the particular measures used in applicant's precicensing program were adequate to provide the necessary information to characterize properly the environmental impacts of employing an ISR mining process in the aquifers below a proposed site; LBP-15-3, 81 NRC 65 (2015)
- NRC Staff's creation of a list of site parameters for use in the combined license proceeding cannot cure the absence of a list of site parameters in the technical support document, rendering it impossible to resolve SAMDA issues by rule; LBP-11-7, 73 NRC 254 (2011)
- site-specific data to confirm proper baseline quality values, and confirm whether existing rock units provide adequate confinement cannot be collected until an in situ leach well field has been installed; LBP-15-3, 81 NRC 65 (2015)
- soil-structure interaction analysis is discussed; CLI-15-13, 81 NRC 555 (2015)
- waiting until after licensing, but before mining operations begin, to establish definitively the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach well fields; LBP-15-3, 81 NRC 65 (2015)
- SITE REMEDIATION**
- areas of minor radioactive contamination are evaluated and remediated as needed during plant decommissioning; DD-11-1, 73 NRC 7 (2011)
- certain "construction" activities are allowed at a reactor site pursuant to a limited work authorization as long as a site redress plan is submitted; LBP-11-11, 73 NRC 455 (2011)
- contention alleging that final supplemental environmental impact statement fails to adequately describe or analyze proposed mitigation measures is admissible; LBP-14-5, 79 NRC 377 (2014)
- licensee is required to ensure that the site can be safely maintained and decommissioned, even in the face of unexpected costs; LBP-15-24, 82 NRC 68 (2015)
- petition requesting that NRC not allow restart after scheduled refueling outage until completion of all environmental remediation work and relevant reports on leaking tritium at the plant is denied; DD-11-1, 73 NRC 7 (2011)

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there is no agency requirement that applicant submit a redress plan relative to preconstruction activities or, absent state or local requirements, take any remediation action regarding preconstruction activities if it decides not to complete the project or is denied agency authorization to construct and operate the facility; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

SITE RESTORATION

admissibility of contention that environmental assessment fails to adequately describe and analyze aquifer restoration goals in light of new standards for determining alternative control limits is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that environmental documents and associated monitoring values and restoration goals rely on baseline data calculations that are inadequate and unacceptable is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that environmental documents lack an adequate description of adequate financial assurances sufficient to pay the costs of restoration and long-term monitoring of up to 30 years is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that final environmental assessment failed to conduct the required hard look at impacts of the proposed mine associated with restoration standards and difficulty and cost in achieving them and the use of the alternative standards permitted under the proposed rules is decided; LBP-15-15, 81 NRC 598 (2015)

bounding analysis provided in the final supplemental environmental impact statement, as supplemented in the record, provides sufficient information about a reasonable range of hazardous constituent concentration values associated with potential post-operational alternate concentration limits so as to provide an appropriate NEPA assessment of the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits; LBP-15-3, 81 NRC 65 (2015)

contention that FSEIS fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 65 (2015)

EPA drinking water maximum contaminant levels continue to be an accepted groundwater restoration standard; LBP-15-3, 81 NRC 65 (2015)

no in situ recovery facility has ever requested that all OZ aquifer groundwater hazardous constituents be restored to CAB concentrations or Criterion 5B(5)(b) MCLs, as those are currently defined; LBP-15-3, 81 NRC 65 (2015)

“primary groundwater restoration” is to return the constituent to background levels; LBP-15-3, 81 NRC 65 (2015)

requirements for groundwater restoration standards for ISR mining operations are set forth in 10 C.F.R. Part 40, Appendix A, Criterion 5B(5); LBP-15-3, 81 NRC 65 (2015)

restoration to an alternate concentration limit is permitted only when restoration to a primary or the secondary Table 5C standard is not practically achievable; LBP-15-3, 81 NRC 65 (2015)

“secondary groundwater restoration” is restoration of constituent levels to the drinking water limits enumerated in Appendix A, Table 5C; LBP-15-3, 81 NRC 65 (2015)

SITE SAFETY ANALYSIS REPORT

applicant need not submit information regarding control room habitability and ventilation system design in the SSAR portion of an early site permit application; LBP-11-16, 73 NRC 645 (2011)

applicant’s SSAR must provide sufficient data to enable the requisite determination of the potential for surface deformation as a result of growth faults at the site; LBP-11-16, 73 NRC 645 (2011)

even though a cooling pond is not a safety-related structure, knowledge of faulting under the pool and the impact this faulting might have on the pool’s operation are required; LBP-11-16, 73 NRC 645 (2011)

SITE SELECTION

for siting alternatives, an agency’s duty under NEPA is to study all alternatives that appear reasonable and appropriate for study at the time of drafting the environmental impact statement; CLI-12-5, 75 NRC 301 (2012)

seismic avoidance areas are discussed; LBP-11-26, 74 NRC 499 (2011)

winter weather- and earthquake-related criteria are discussed; LBP-11-26, 74 NRC 499 (2011)

SITE SUITABILITY

investigation of geological, seismological, and engineering characteristics of a site is required; LBP-14-8, 79 NRC 519 (2014)

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NRC Staff's steps in the geographic and demographic review in the final safety evaluation report to determine whether the COL applicant has proposed an acceptable site, including acceptable site boundaries, with appropriate consideration of nearby populations and natural and manmade features, are described; CLI-12-9, 75 NRC 421 (2012)

where seismic suitability of a site was evaluated at the early site permit stage, further litigation of the geologic fault issue is foreclosed at the combined license stage; LBP-14-8, 79 NRC 519 (2014)

SITING

by 1974, NRC had adopted an aggressive approach to its environmental responsibilities in the context of transmission line siting; LBP-14-9, 80 NRC 15 (2014)

SOCIOECONOMIC IMPACTS

contention that alleges an omission, not an inadequacy, of an environmental report's analysis of socioeconomic impacts raises an issue that is not material to any finding NRC must make in an early site permit proceeding; LBP-11-16, 73 NRC 645 (2011)

SOLAR POWER

because a solely wind- or solar-powered facility could not satisfy the project's purpose, there was no need to compare the impact of such facilities to the impact of the proposed nuclear plant; LBP-11-7, 73 NRC 254 (2011)

contention seeking full impacts analysis of the power supply alternative of wind, either alone or in combination with solar and storage, is inadmissible because it fails to adequately demonstrate the capacity to produce baseload power; LBP-12-15, 76 NRC 14 (2012)

extent to which operation and maintenance costs of a solar facility may present a comparative benefit is immaterial since the four-part combination of alternative energy sources is not environmentally preferable to two new nuclear units; LBP-11-4, 73 NRC 91 (2011)

technologies available for utility-scale plants are discussed; LBP-12-17, 76 NRC 71 (2012)

SOURCE MATERIAL

"item" means any discrete quantity or container of special nuclear material or source material, not undergoing processing, having a unique identity and also having an assigned element and isotope quantity; LBP-14-1, 79 NRC 39 (2014)

uranium being extracted through the ISL process is defined as "source material"; LBP-15-16, 81 NRC 618 (2015)

SOURCE MATERIALS LICENSES

applicant for a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery must submit an environmental report with its application; LBP-15-3, 81 NRC 65 (2015)

application may incorporate information contained in previous applications, statements or reports filed with the Commission, provided that the reference is clear and specific; LBP-12-24, 76 NRC 503 (2012)

bond-issuing licensees may provide a self-guarantee of funds for decommissioning costs based on a financial test set forth in Appendix C of Part 30; CLI-13-1, 77 NRC 1 (2013)

decommissioning funding plans must include a periodically adjusted cost estimate, specify the method for assuring that sufficient funds will be available when needed, and certify that the amount assured for decommissioning meets or exceeds estimated decommissioning costs; CLI-13-1, 77 NRC 1 (2013)

exemption from the decommissioning financial assurance requirements is considered to be an extraordinary equitable remedy to be used only sparingly; CLI-13-1, 77 NRC 1 (2013)

grounds for license denial exist if, prior to issuance of a license to possess and use source and byproduct materials for uranium milling, there is commencement of construction by an applicant; LBP-12-3, 75 NRC 164 (2012)

intangible assets may be used to meet specified criteria in the financial tests for self-guarantees; CLI-13-1, 77 NRC 1 (2013)

issuing a license to possess and use source material to a uranium milling facility is identified as a major federal action; LBP-15-16, 81 NRC 618 (2015)

licensees can seek an exemption from the decommissioning financial assurance requirements; CLI-13-1, 77 NRC 1 (2013)

licensees must submit a decommissioning funding plan far in advance of submitting the actual plans for decommissioning; CLI-13-1, 77 NRC 1 (2013)

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- licensees must submit a decommissioning plan when it decides to cease NRC-licensed activities at its facility; CLI-13-1, 77 NRC 1 (2013)
- nongovernment licensees must demonstrate financial assurance for decommissioning by prepayment, use of a surety method, insurance, or other guarantee method, or use of an external sinking fund; CLI-13-1, 77 NRC 1 (2013)
- notification of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 48 (2015)
- NRC Staff must prepare an environmental impact statement in connection with a license to possess and use source and AEA § 11e(2) byproduct material for the purpose of in situ uranium recovery; LBP-15-3, 81 NRC 65 (2015)
- NRC Staff must take steps necessary to identify the presence of historic properties within the area encompassed by the source materials license renewal application; LBP-15-2, 81 NRC 48 (2015)
- timing of renewal application enables licensee to operate under NRC's timely renewal provision until the agency renews the license; LBP-15-2, 81 NRC 48 (2015)
- to qualify for the alternative method of self-funding for decommissioning, licensee must have, among other things, a bond rating of "A" or better, as issued by Standard and Poor's or Moody's; CLI-13-1, 77 NRC 1 (2013)
- when licensee has made timely and sufficient application for a license renewal, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency; LBP-15-2, 81 NRC 48 (2015); LBP-15-11, 81 NRC 401 (2015)
- with limited exceptions, licensees must demonstrate that they can pay for the decommissioning of their regulated facilities; CLI-13-1, 77 NRC 1 (2013)
- SOURCE TERM**
- applicant's use of the MAAP code to generate fission product source terms for use in its severe accident mitigation alternatives analysis is reasonable under NEPA; LBP-12-26, 76 NRC 559 (2012)
- petitioners have not established that use of another source term would identify additional cost-beneficial severe accident mitigation alternatives; LBP-11-13, 73 NRC 534 (2011)
- SOVEREIGN IMMUNITY DOCTRINE**
- because Equal Access to Justice Act operates as a waiver of sovereign immunity it must be narrowly construed to avoid creating a waiver of sovereign immunity that Congress did not intend; LBP-11-8, 73 NRC 349 (2011)
- once Congress has waived sovereign immunity over certain subject matter, a court should be careful not to assume the authority to narrow the waiver that Congress intended; LBP-11-8, 73 NRC 349 (2011)
- Equal Access to Justice Act renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity and any such waiver must be strictly construed in favor of the United States; LBP-11-8, 73 NRC 349 (2011)
- SPECIAL CIRCUMSTANCES**
- any interested person may challenge the use of a categorical exclusion by presenting special circumstances; LBP-15-26, 82 NRC 163 (2015)
- circumstances must be unusual if not unique, and the Commission must not have previously considered such circumstances, either explicitly or by necessary implication, when it promulgated the relevant regulation in the first place; LBP-12-6, 75 NRC 256 (2012)
- Commission approval of a rule waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist; CLI-15-6, 81 NRC 340 (2015)
- definition in 10 C.F.R. 2.335 employs language very similar to the definition under 10 C.F.R. 50.12(a)(2)(ii); LBP-12-6, 75 NRC 256 (2012)
- exemption may be appropriate where there is present any circumstance that was not considered by NRC when it promulgated the pertinent regulation in the first place; LBP-12-6, 75 NRC 256 (2012)
- exemption should be granted if special circumstances exist, such as when compliance is not necessary to satisfy the purpose of the regulations from which an exemption is sought; LBP-12-6, 75 NRC 256 (2012)
- NRC case law has given meaning to the "special circumstances" requirement for rule waiver; CLI-13-7, 78 NRC 199 (2013)
- party may petition the Commission for permission to challenge a rule, but that party must make a showing of special circumstances; LBP-15-5, 81 NRC 249 (2015)

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- rule exemption requests that do not involve special circumstances must be denied as a matter of law; CLI-13-1, 77 NRC 1 (2013)
- rule waiver requests must demonstrate that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted; CLI-15-21, 82 NRC 295 (2015); LBP-13-1, 77 NRC 57 (2013)
- special circumstances required to obtain a rule waiver have been described as a prima facie showing that application of a rule in a particular way would not serve the purposes for which the rule was adopted; LBP-15-5, 81 NRC 249 (2015)
- to obtain waiver of a rule, the allegation of special circumstances must be set forth with particularity and supported by an affidavit or other proof; LBP-15-5, 81 NRC 249 (2015)
- where special circumstances make a generic rule inapplicable to a particular proceeding, participant may petition for a rule waiver or exception; CLI-15-6, 81 NRC 340 (2015)
- SPECIAL NUCLEAR MATERIALS**
- accuracy is an integral component of the portion of the regulatory requirement that addresses item presence verification; CLI-15-9, 81 NRC 512 (2015)
- basis for NRC authority to regulate the use of special nuclear material in facilities like nuclear power reactors is established; CLI-15-4, 81 NRC 221 (2015)
- certifications of financial assurance, which are used by applicants seeking to possess smaller quantities of material, are governed by 10 C.F.R. 70.25(b)(2); CLI-11-4, 74 NRC 1 (2011)
- depending on the quantity of material, Part 70 license applicants must submit either a decommissioning funding plan or a certification of financial assurance; CLI-11-4, 74 NRC 1 (2011)
- “item” means any discrete quantity or container of SNM or source material, not undergoing processing, having a unique identity and also having an assigned element and isotope quantity; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
- “material access area” is any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which constitute a physical barrier; CLI-15-9, 81 NRC 512 (2015)
- materials license amendment applications must contain a full description of applicant’s program for control and accounting of special nuclear material to show how it will comply with the 10 C.F.R. Part 74 requirements; LBP-11-9, 73 NRC 391 (2011)
- meaning of “verify” in the context of item presence verification is discussed; CLI-15-9, 81 NRC 512 (2015)
- possession limits associated with a certification of financial assurance are set forth in 10 C.F.R. 70.25(d); CLI-11-4, 74 NRC 1 (2011)
- “sealed source” means any SNM that is physically encased in a capsule, rod, element, etc. that prevents the leakage, escape, and removal of the SNM without penetrations of the casing; LBP-14-1, 79 NRC 39 (2014)
- “tamper-safing” refers to use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault; CLI-15-9, 81 NRC 512 (2015)
- technical specifications must include information on the amount, kind, and source of special nuclear material, the place of use, and the particular characteristics of the facility; LBP-12-25, 76 NRC 540 (2012)
- See also Strategic Special Nuclear Material
- SPECIAL NUCLEAR MATERIALS LICENSES**
- applications may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission if the references are clear and specific; LBP-12-24, 76 NRC 503 (2012)
- SPECIAL PROCEEDINGS**
- when a matter is not strictly adjudicatory in nature or otherwise does not fit cleanly within the procedures described in NRC rules of practice, the Commission undertakes a decision as an exercise of its inherent supervisory authority over agency proceedings; CLI-13-8, 78 NRC 219 (2013)

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SPENT FUEL COOLING SYSTEM

Commission imposed a license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment and spent fuel pool cooling capabilities following a beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink; CLI-12-9, 75 NRC 421 (2012)

extensive damage mitigation guidelines are intended to guide onsite emergency actions and they include guidance and strategies intended to maintain or restore core cooling and containment and spent fuel pool cooling capabilities under the circumstances associated with the loss of large areas of the plant due to fire or explosion; LBP-12-18, 76 NRC 127 (2012)

fuel storage system must be designed to prevent significant reduction in coolant inventory under accident conditions and with a residual heat removal capability having reliability and testability that reflects the importance to safety of decay heat and other residual heat removal; DD-15-11, 82 NRC 361 (2015)

licensees must develop and implement guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities to address loss of large areas from fires or explosions that arise from a beyond-design-basis event; CLI-12-2, 75 NRC 63 (2012)

NRC imposed requirements to provide makeup water independent of offsite power and the normal emergency alternating current power sources to maintain or restore spent fuel pool cooling capability in the event of an accident; DD-15-1, 81 NRC 193 (2015)

revision of 10 C.F.R. 50.63 to expand the coping capability to include cooling the spent fuel, preventing a loss-of-coolant accident, and preventing containment failure would be a significant benefit; LBP-12-18, 76 NRC 127 (2012)

SPENT FUEL MANAGEMENT

admissibility of contention that environmental report lacks site-specific safety and environmental findings regarding storage and disposal of spent fuel is decided; LBP-15-5, 81 NRC 249 (2015)

because irradiated fuel is continually present in the spent fuel pool once the reactor discharges the first batch of spent fuel, and conditions are most challenging during reactor shutdown for refueling, maintenance of equipment related to the safe storage of spent fuel is typically addressed as part of shutdown risk management; DD-13-3, 78 NRC 571 (2013)

contention that does not dispute any specific portion of applicant's fuel handling accident analysis is inadmissible for lack of a genuine dispute; LBP-15-18, 81 NRC 793 (2015)

establishing safety limits for stored irradiated fuel is not appropriate, but measures to prevent a significant loss of coolant inventory under accident conditions that could challenge the cooling of the stored fuel are documented in the updated final safety analysis report; DD-13-3, 78 NRC 571 (2013)

license amendment request seeks to replace 30-day notice requirement and other plant-specific license conditions with the decommissioning fund requirements; LBP-15-28, 82 NRC 233 (2015)

licensee must provide certifications when a nuclear power station has permanently ceased power operations and all fuel has been permanently removed from the reactor vessel and placed in the spent fuel pool; DD-15-1, 81 NRC 193 (2015)

licensee seeks regulatory exemptions to allow it to use decommissioning funds to manage spent fuel and eliminate the 30-day notice requirement that would otherwise apply to spent fuel management; LBP-15-28, 82 NRC 233 (2015)

licensees must submit for NRC approval their plans to manage spent fuel after the permanent cessation of reactor operation; CLI-15-4, 81 NRC 221 (2015)

regulation governing the storage and disposal of spent nuclear fuel was vacated; LBP-14-15, 80 NRC 151 (2014)

spent fuel management is not a decommissioning activity; LBP-15-24, 82 NRC 68 (2015)

structural integrity of GE Mark I boiling water reactor spent fuel pools and spent fuel management in dry storage casks are discussed; DD-15-1, 81 NRC 193 (2015)

without an exemption from the NRC, licensee is prohibited from using decommissioning funds for spent fuel management because it is not an allowable decommissioning expense; LBP-15-28, 82 NRC 233 (2015)

SPENT FUEL POOL EXPANSION

petitioners challenged NRC's approval of operating license amendments to allow for the use of higher-density spent-fuel-storage racks in the reactors' spent fuel pools; CLI-15-4, 81 NRC 221 (2015)

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SPENT FUEL POOLS

- absent demonstration that petitioner's alleged special circumstances are unique to the facility rather than common to a large class of facilities, the request for waiver of regulations excluding spent fuel pool issues from license renewal proceedings is denied; LBP-11-35, 74 NRC 701 (2011)
- any evaluation of the Fukushima events will include consideration of lessons learned that may apply to spent fuel pools; LBP-12-1, 75 NRC 1 (2012)
- applicability of 10 C.F.R. Part 50, Appendix A, GDC 44 to boiling water reactor spent fuel pools is discussed; DD-15-11, 82 NRC 361 (2015)
- because the probability of a spent fuel pool accident causing significant harm is remote, there is no need for applicants to assess spent fuel pool accident mitigation alternatives as part of license renewal; LBP-15-5, 81 NRC 249 (2015)
- Commission administratively exempted from the backfit rule, an order to the combined license holder to address spent fuel pool instrumentation requirements not specified in the certified design as enhanced protective measures that represent a substantial increase in the protection of public health and safety; CLI-12-9, 75 NRC 421 (2012)
- concerns that apply generically to all spent fuel pools at all reactors are more appropriately addressed via rulemaking or other appropriate generic activity; CLI-12-6, 75 NRC 352 (2012)
- contention concerning need under NEPA to include a discussion of the environmental impacts of spent fuel pool leakage, SFP fires, and the lack of a spent fuel repository is held in abeyance; LBP-12-26, 76 NRC 559 (2012)
- contention that applicant must include a discussion of environmental impacts of spent fuel pool leakage, fires, and lack of a spent fuel repository is dismissed; LBP-14-12, 80 NRC 138 (2014)
- contention that environmental report does not satisfy NEPA because it does not consider a range of measures to mitigate risk of catastrophic fires in densely packed, closed-frame spent fuel storage pools is decided; LBP-15-5, 81 NRC 249 (2015)
- contention that environmental report is inadequate insofar as it does not consider the risk of spent fuel pool fires is inadmissible; LBP-15-5, 81 NRC 249 (2015)
- establishing safety limits for stored irradiated fuel is not appropriate, but measures to prevent a significant loss of coolant inventory under accident conditions that could challenge the cooling of the stored fuel are documented in the updated final safety analysis report; DD-13-3, 78 NRC 571 (2013)
- Fukushima-related petitions for suspension of proceeding and rescission of regulations that make generic conclusions about environmental impacts of severe reactor and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings are denied; LBP-11-39, 74 NRC 862 (2011)
- generic analysis remains appropriate for spent fuel pool accidents in license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)
- generic environmental impact statement for spent fuel pools is not limited to discussing only normal operations, but also discusses potential accidents and other nonroutine events, and thus need not be included in the severe accident mitigation alternatives analysis for license renewal; LBP-15-5, 81 NRC 249 (2015)
- in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 221 (2015)
- merely pointing to the compliance program is in no way sufficient to support a scientific finding that spent fuel pools will not cause a significant environmental impact during the extended storage period; LBP-14-9, 80 NRC 15 (2014)
- NRC argument that leaks from spent fuel pools will not occur because the NRC is on duty was rejected; LBP-13-4, 77 NRC 107 (2013)
- NRC must include an evaluation of failure to secure permanent disposal, as well as an improved analysis of spent fuel pool leaks and spent fuel pool fires; CLI-14-8, 80 NRC 71 (2014)
- Part 51 treats all spent fuel pool accidents, whatever their cause, as generic, Category 1 events not suitable for case-by-case adjudication; LBP-11-2, 73 NRC 28 (2011)
- petitioner's assertion that severe accidents from spent fuel pools must be considered in applicant's SAMA analysis is in direct conflict with NRC regulations; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

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post-9/11 motion to reopen satisfied rules for reopening the record and for late-filed contentions, but contention involving a license amendment request for reconfiguring a spent fuel pool was inadmissible; CLI-11-5, 74 NRC 141 (2011)

post-Fukushima spent fuel pool concerns are being addressed through rulemaking on mitigation of beyond-design-basis events; DD-15-1, 81 NRC 193 (2015)

request for additional instrumentation for all Mark I spent fuel storage pools has been addressed through an order modifying licenses with regard to reliable spent fuel pool instrumentation; DD-15-1, 81 NRC 193 (2015)

request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise technical specifications for spent fuel pool instrumentation is denied; DD-13-3, 78 NRC 571 (2013)

request that NRC order licensees to have an installed, seismically qualified means to spray water into the spent fuel pools, including an easily accessible connection to supply the water (e.g., using a portable pump or pumper truck) at grade outside the building is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide safety-related AC electrical power for the spent fuel pool makeup system is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters from the control room is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to revise their technical specifications to address requirements to have one train of onsite emergency electrical power operable for spent fuel pool makeup and spent fuel pool instrumentation when there is irradiated fuel in the spent fuel pool, regardless of the operational mode of the reactor is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

request that technical specification for secondary containment isolation instrumentation be changed to require the reactor building exhaust radiation-high function to be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

request that the applicability for technical specification be revised to include spent fuel storage pool water level and AC and DC sources and distribution systems for shutdown whenever irradiated fuel is stored in the spent fuel pool instead of only when irradiated fuel assemblies are being moved in the SFP or secondary containment is denied; DD-13-3, 78 NRC 571 (2013)

severe accidents in the spent fuel pools are Category 1 issues that do not need to be included in the severe accident mitigation alternatives analysis; LBP-15-5, 81 NRC 249 (2015)

stringent safety requirements apply to the construction and operation of reactor spent fuel pools and independent spent fuel storage installations; CLI-15-4, 81 NRC 221 (2015)

structural integrity of GE Mark I boiling water reactor spent fuel pools and spent fuel management in dry storage casks are discussed; DD-15-1, 81 NRC 193 (2015)

suspension request that would have halted final licensing decisions pending action on a petition for rulemaking regarding NRC Staff's review of the potential expedited transfer of spent fuel from pools to dry casks was denied; CLI-15-13, 81 NRC 555 (2015)

to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in a license renewal proceeding, the Commission must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 427 (2011)

SPENT FUEL STORAGE

agency did not need to assess site-specific impacts of continuing to store the spent fuel in either an onsite or offsite storage facility in new reactor licensing environmental impact statements or environmental assessments beyond the expiration dates of reactor licenses; LBP-14-16, 80 NRC 183 (2014)

assumptions used in analysis of impacts of continued storage of spent fuel are sufficiently conservative to bound the impacts such that variances that may occur between sites are unlikely to result in environmental impact determinations greater than those presented in the continued storage generic environmental impact statement; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

because generic impact determinations on impacts of continued storage have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings; LBP-14-15, 80 NRC 151 (2014)

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because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petition and motions itself; CLI-14-9, 80 NRC 147 (2014)

boards are directed to reject waste storage contentions pending before them; LBP-14-16, 80 NRC 183 (2014)

challenges to NRC's previous rejection of petitioner's concerns regarding environmental impacts of high-density pool storage of spent fuel are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

Commission adopted a generic environmental impact statement to identify and analyze the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-12, 81 NRC 452 (2015)

Commission approval of the Continued Storage Rule and generic environmental impact statement mandates that contentions discussing the long-term storage of spent nuclear fuel not be heard by individual licensing boards; LBP-14-16, 80 NRC 183 (2014)

Commission denied petition to supplement and declined to admit "placeholder" contention; CLI-15-13, 81 NRC 555 (2015)

Commission directed all licensing boards to reject pending waste confidence contentions that had been held in abeyance, because the generic impact determinations have been the subject of extensive public participation in the rulemaking process, and therefore are excluded from litigation in individual proceedings; LBP-15-1, 81 NRC 15 (2015); LBP-15-5, 81 NRC 249 (2015)

Commission directed that all spent fuel storage contentions be held in abeyance; CLI-15-6, 81 NRC 340 (2015); LBP-15-1, 81 NRC 15 (2015)

Commission exercised its inherent supervisory authority over agency adjudications to review motion and petition addressing the spent fuel storage issue; LBP-15-1, 81 NRC 15 (2015)

Commission exercised its supervisory authority and dismissed proposed waste confidence safety contention and denied suspension petitions; CLI-15-13, 81 NRC 555 (2015)

Commission instituted a rulemaking to revise the agency's generic determination on the environmental impacts of continued storage of spent nuclear fuel; LBP-14-12, 80 NRC 138 (2014)

Commission lifted suspension on final licensing decisions, declined to accept contentions concerning continued storage of spent nuclear fuel, and directed boards to reject pending contentions on this issue; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015); LBP-14-14, 80 NRC 144 (2014)

Congress expressly recognized and impliedly approved NRC's regulatory scheme and practice under which the safety of interim storage of high-level wastes at commercial nuclear power reactor sites has been determined separately from the safety of government-owned permanent storage facilities that have not yet been established; CLI-15-4, 81 NRC 221 (2015)

contention concerning need under NEPA to include a discussion of the environmental impacts of spent fuel pool leakage, SFP fires, and the lack of a spent fuel repository is held in abeyance; LBP-12-26, 76 NRC 559 (2012)

contention that supplementation of the environmental impact statement is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the continued storage GEIS and Continued Storage Rule is inadmissible; CLI-15-10, 81 NRC 535 (2015)

contentions concerning release of radiological, chemical, and herbicidal materials and storage of spent fuel are Category 1 issues and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

Continued Storage Rule and supporting generic environmental impact statement to assess the environmental impacts of spent fuel storage after the end of a reactor's license term were approved; CLI-15-10, 81 NRC 535 (2015)

Continued Storage Rule makes generic safety findings concerning feasibility and capacity of spent fuel disposal; LBP-15-9, 81 NRC 396 (2015)

court directed NRC to determine whether there is reasonable assurance that an offsite storage solution will be available by the end of a reactor's license term, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates; CLI-15-4, 81 NRC 221 (2015)

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court recognized the long-term nature of the concerns associated with spent fuel storage and disposal when it declined to vacate the license amendments that were the subject of the case, noting that doing so would effectively shut down the plants; CLI-15-4, 81 NRC 221 (2015)

“deemed incorporated” function of 10 C.F.R. 51.23(b) provides administrative efficiency by adding the environmental impacts of continued storage to site-specific environmental impact statements without additional work by the Staff; CLI-15-10, 81 NRC 535 (2015)

denial of license transfer applications typically is on grounds of operating costs and inability to pay the annual cost for spent fuel storage; CLI-14-5, 79 NRC 254 (2014)

discussion of any environmental impact of spent fuel storage during the period following the term of the reactor operating license in any environmental analysis prepared in connection with power reactor and dry cask licenses is excluded; CLI-14-8, 80 NRC 71 (2014)

environmental impacts of at-reactor and away-from-reactor storage of spent fuel are considered for 60 years after the end of a reactor’s licensed life for operation, an additional 100 years of storage, and the indefinite storage of spent nuclear fuel and incorporated into site-specific environmental impact statements; CLI-15-10, 81 NRC 535 (2015)

environmental impacts of continued storage have been incorporated into the environmental impact statements at issue in the proceedings by operation of law; CLI-15-10, 81 NRC 535 (2015)

following adoption of a revised Continued Storage Rule, boards were ordered to reject continued storage contentions pending before them, except contentions unresolved by the Continued Storage Rule; CLI-15-6, 81 NRC 340 (2015)

for all plants, onsite dry or pool storage can safely accommodate spent fuel accumulated from a 20-year license extension with small environmental effects; LBP-11-13, 73 NRC 534 (2011)

general license may be granted to all Part 50 and Part 52 reactor licensees to store spent fuel in an independent spent fuel storage installation; CLI-15-4, 81 NRC 221 (2015)

general scope of NRC’s authority is established in Atomic Energy Act § 161, but it does not discuss spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

generic analyses of the environmental impacts of continued storage and disposal in the context of NRC reactor licensing proceedings are acceptable; CLI-15-4, 81 NRC 221 (2015)

generic findings are reflected regarding impacts of spent fuel storage after cessation of licensed operation of a nuclear power plant; CLI-14-8, 80 NRC 71 (2014)

hearing on exemption-related matters is necessary insofar as resolution of the exemption request directly affects the licensability of a proposed fuel storage site and the exemption raises material questions directly connected to an agency licensing action; LBP-15-18, 81 NRC 793 (2015)

if NRC Staff safety review reveals any new and significant information relating to the environmental impacts of storage of high-burnup fuel, Staff will supplement its environmental analysis as required by the National Environmental Policy Act; LBP-14-6, 79 NRC 404 (2014)

if there were any doubt over the intent of Congress not to require a safety finding on spent fuel disposal, it was laid to rest by enactment of the Energy Reorganization Act of 1974; CLI-15-4, 81 NRC 221 (2015)

impact determinations in the Continued Storage generic environmental impact statement shall be deemed incorporated into the environmental impact statements associated with combined license and license renewal applications; CLI-15-10, 81 NRC 535 (2015)

impacts of continued storage will not vary significantly across sites and can be analyzed generically; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015); LBP-14-16, 80 NRC 183 (2014)

in light of the dim prospects for moving forward with a geologic repository in the contemporary political environment, NRC must consider the environmental effects of storing waste in spent fuel pools or casks for extended periods; LBP-12-24, 76 NRC 503 (2012)

in light of the vacatur of the Waste Confidence Decision and Temporary Storage Rule, environmental reports must consider the reasonably foreseeable impacts of permanent storage of spent fuel, and contentions concerning the failure of the ER to do so must be held in abeyance; LBP-12-24, 76 NRC 503 (2012)

in view of its adoption of a revised rule codifying NRC’s generic determinations regarding the pertinent environmental impacts associated with continued storage of spent nuclear fuel, the Commission directs boards to reject pending contentions on this issue; LBP-14-13, 80 NRC 142 (2014)

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information is specified in Atomic Energy Act § 182 that must be provided by applicant for a license and it has no reference to spent fuel disposal; CLI-15-4, 81 NRC 221 (2015)

it makes more sense for NRC to study whether, as a technical matter, the agency should modify its requirements relating to spent fuel storage for all plants than to litigate the issue in particular adjudications; CLI-12-6, 75 NRC 352 (2012)

license amendments are not contingent upon any additional safety determination regarding spent fuel storage under the Atomic Energy Act; CLI-15-4, 81 NRC 221 (2015)

license applicants were permitted to omit any discussion of any environmental impact of spent fuel storage in independent spent fuel storage installations for the period following the term of the initial ISFSI license in any environmental report, environmental impact statement, environmental assessment, or other analysis; LBP-12-24, 76 NRC 503 (2012)

license renewal applicants need not provide a site-specific analysis of the environmental impacts of spent fuel storage in their environmental report; CLI-11-11, 74 NRC 427 (2011)

license renewal provisions cover environmental issues relating to onsite spent fuel storage generically, and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-15-5, 81 NRC 249 (2015)

licensee determined that dry storage cask displacement and damage to the NUHOMS HD 32PTH caused by an earthquake exceeding the design basis were not reportable; DD-12-2, 76 NRC 391 (2012)

licensee must protect spent fuel cladding from degradation during storage or confine the fuel in such a way that degradation does not cause operational problems when removed from storage; LBP-12-24, 76 NRC 503 (2012)

licensee must provide for ready retrieval of spent fuel from storage for further processing or disposal; LBP-12-24, 76 NRC 503 (2012)

licensee's assessment of the structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS HD dry cask storage systems following an earthquake exceeding the plant's design basis is described; DD-12-2, 76 NRC 391 (2012)

new contention concerning continued storage of spent nuclear fuel is ordered held in abeyance pending further Commission order; LBP-14-14, 80 NRC 144 (2014)

NRC adopted a generic environmental impact statement identifying and analyzing environmental impacts of continued storage of spent nuclear fuel and associated revisions to the Temporary Storage Rule in 10 C.F.R. 51.23; LBP-15-1, 81 NRC 15 (2015)

NRC is not required, as a precondition to issuing or renewing operating licenses for nuclear power plants, to make definitive findings concerning technical feasibility of a repository for the disposal of spent nuclear fuel; CLI-15-4, 81 NRC 221 (2015)

NRC Staff must account for the environmental impacts of continued storage before finalizing individual licensing decisions, and, when appropriate circumstances exist, the question of whether to prepare a supplemental final environmental impact statement is to be part of that analysis; CLI-15-10, 81 NRC 535 (2015)

NRC's long-continued regulatory practice of issuing operating licenses with an implied finding of reasonable assurance that safe permanent disposal of spent nuclear fuel can be available when needed is in accord with the intent of Congress underlying the Atomic Energy Act and Energy Reorganization Act; CLI-15-4, 81 NRC 221 (2015)

Part 51's license renewal provisions cover environmental issues relating to onsite spent fuel storage generically and all such issues, including accident risk, fall outside the scope of license renewal proceedings; LBP-11-13, 73 NRC 534 (2011)

petitioners' argument opposing an order that imposed additional security measures at a spent fuel storage facility, because it created a false sense of security was rejected because petitioners did not explain how they would be better off without the measures in the order; CLI-13-2, 77 NRC 39 (2013)

placeholder contentions that challenge the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage are inadmissible; CLI-15-15, 81 NRC 803 (2015); CLI-15-27, 82 NRC 414 (2015)

potential consequences of insufficient offsite storage for spent fuel is one of the unforeseen conditions that 10 C.F.R. 50.82(a)(8)(i)(B) was promulgated to address; LBP-15-24, 82 NRC 68 (2015)

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rulemaking petitioners assert that NRC Staff's review of the expedited-transfer issue generated new and significant information regarding the environmental impacts of spent fuel storage; CLI-14-7, 80 NRC 1 (2014)

section 51.61 applies to an application for an independent spent fuel storage installation; LBP-15-24, 82 NRC 68 (2015)

spent fuel can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation and there is reasonable assurance that sufficient mined geologic repository capacity will be available when necessary; CLI-14-8, 80 NRC 71 (2014)

spent fuel storage pool matters will be addressed, if studies of implications from Fukushima warrant, through more generic regulatory reform; LBP-11-35, 74 NRC 701 (2011)

spent nuclear fuel can be stored safely at licensed nuclear facilities until such time as a long-term geologic storage facility is constructed; LBP-12-24, 76 NRC 503 (2012)

systems must be designed to ensure adequate safety under normal and postulated accident conditions; CLI-15-4, 81 NRC 221 (2015)

Temporary Storage Rule was vacated; LBP-15-1, 81 NRC 15 (2015)

to the extent NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in the adjudicatory process; CLI-15-11, 81 NRC 546 (2015); CLI-15-12, 81 NRC 551 (2015)

when considering continued storage in licensing reviews with previously completed final environmental impact statements, NRC Staff is expected to use a consistent and transparent process to ensure that all stakeholders are aware of how the environmental impacts of continued storage are considered in each licensing action affected by this regulation; CLI-15-10, 81 NRC 535 (2015)

See also Continued Storage Rule; Dry Cask Storage

SPENT FUEL STORAGE CASKS

certification for transportation poses such a minimal environmental impact that it merits a categorical exclusion from NEPA; LBP-14-6, 79 NRC 404 (2014)

licensee assessed structural integrity and radiation shielding capability of both the TN-32 cask and NUHOMS-HD dry cask storage systems following an earthquake and reviewed the event for reportability; DD-12-1, 75 NRC 573 (2012)

loss of spent fuel confinement would produce a dose of 0.15 rem at the nearest site boundary, which is less than the 5-rem limit; LBP-12-24, 76 NRC 503 (2012)

STAFF REQUIREMENTS MEMORANDUM

external entities are not entitled to seek revisions to a Commission direction to NRC Staff contained in a Staff Requirements Memorandum; CLI-15-19, 82 NRC 151 (2015)

Fukushima-related contention based on an SRM are inadmissible because the SRM does not define or impose any new requirements arising from the Fukushima accident and thus fails to establish a genuine dispute on a material issue of law or fact; LBP-11-37, 74 NRC 774 (2011)

STAFFING

proposed staffing changes meet emergency plan standards and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency commensurate with credible accidents in the permanently shutdown and defueled condition; CLI-15-20, 82 NRC 211 (2015)

STANDARD OF PROOF

applicant in a licensing proceeding bears the burden of proof by a preponderance of the evidence on safety issues that it is entitled to the applied-for license; LBP-12-17, 76 NRC 71 (2012)

applicant in a licensing proceeding must meet its burden of proof by a preponderance of the evidence; LBP-11-38, 74 NRC 817 (2011)

if intervenors provide sufficient evidence to support the claims made, applicant has the burden of demonstrating by a preponderance of the evidence that it has met the relevant NRC regulations and that the board should therefore reject each contention on the merits; LBP-14-1, 79 NRC 39 (2014)

in proving prejudicial error by a federal agency, it is sufficient that the agency's error may have affected the outcome; LBP-14-2, 79 NRC 131 (2014)

NRC administrative proceedings have applied a "preponderance of the evidence" standard in reaching the ultimate conclusions after hearing in resolving a proceeding; LBP-14-2, 79 NRC 131 (2014)

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NRC has never adopted a “clear and convincing” standard as the evidentiary yardstick in its enforcement proceedings, nor is it required to do so under the Atomic Energy Act or the Administrative Procedure Act; LBP-14-2, 79 NRC 131 (2014)

on safety issues, applicant has the burden of establishing that it is entitled to the applied-for license by a preponderance of the evidence; LBP-14-3, 79 NRC 267 (2014)

on safety issues, license applicants have the burden of establishing entitlement to the applied-for license by a preponderance of the evidence; LBP-12-5, 75 NRC 227 (2012)

once it made a determination of plausible injury from the proposed project, the board was not required to weigh the evidence to determine whether the harm to petitioners was beyond doubt; CLI-12-12, 75 NRC 603 (2012)

party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 71 (2013)

preponderance-of-the-evidence standard is the one generally applied in proceedings under the Administrative Procedure Act; LBP-14-2, 79 NRC 131 (2014)

preponderance-of-the-evidence standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence; LBP-14-3, 79 NRC 267 (2014)

relative to factual matters, to carry burden of proof, NRC Staff and/or applicant must establish that its position is supported by a preponderance of the evidence; LBP-15-3, 81 NRC 65 (2015); LBP-15-16, 81 NRC 618 (2015)

to meet the reasonable assurance standard, applicant must make a showing that meets the preponderance-of-the-evidence threshold of compliance with the applicable regulations; LBP-13-13, 78 NRC 246 (2013); LBP-14-1, 79 NRC 39 (2014)

STANDARD OF REVIEW

absent error of law or abuse of discretion, the Commission defers to licensing board rulings on contention admissibility; CLI-11-8, 74 NRC 214 (2011); CLI-11-9, 74 NRC 233 (2011); CLI-11-11, 74 NRC 427 (2011); CLI-12-3, 75 NRC 132 (2012); CLI-12-5, 75 NRC 301 (2012); CLI-12-6, 75 NRC 352 (2012); CLI-12-8, 75 NRC 393 (2012); CLI-12-10, 75 NRC 479 (2012); CLI-12-12, 75 NRC 603 (2012); CLI-12-15, 75 NRC 704 (2012); CLI-12-19, 76 NRC 377 (2012); CLI-14-2, 79 NRC 11 (2014); CLI-15-20, 82 NRC 211 (2015); CLI-15-22, 82 NRC 310 (2015); CLI-15-23, 82 NRC 321 (2015); CLI-15-25, 82 NRC 389 (2015)

abuse of discretion standard of review is applicable to discretionary Staff actions not subject to a hearing opportunity; CLI-13-1, 77 NRC 1 (2013)

although safety issues are reviewed under the adequacy and sufficiency standard, licensing boards conducting mandatory hearings must independently consider the final balance among the conflicting costs and benefits when reviewing NEPA issues; LBP-12-21, 76 NRC 218 (2012)

although the Commission has authority to undertake a de novo factual review, where a board’s decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board’s factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-13-1, 77 NRC 1 (2013)

although the entire record is considered on appeal, including pleadings that appellants ask to be adopted by reference, the Commission’s decision responds to the arguments made explicitly in the appellate brief; CLI-11-8, 74 NRC 214 (2011)

appeal as of right is allowed on the question whether a request for hearing should have been wholly denied; CLI-15-18, 82 NRC 135 (2015); CLI-15-21, 82 NRC 295 (2015)

applicant satisfied the regulatory standards for discretionary review by identifying a substantial question as to whether the board decision reaches at least one necessary legal conclusion without governing precedent or addresses at least one substantial and important question of law, policy, or discretion; CLI-13-1, 77 NRC 1 (2013)

board is the appropriate arbiter of fact-specific questions of contention admissibility, and the Commission will not second-guess the board’s evaluation of factual support for the contention, absent an error of law or abuse of discretion, even if support for the contention is weak; CLI-15-25, 82 NRC 389 (2015)

board rulings on standing are given substantial deference on appeal; CLI-14-2, 79 NRC 11 (2014)

board’s role in mandatory hearings is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but the NRC Staff’s underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the

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board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-11, 73 NRC 455 (2011)

boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)

boards conducting mandatory hearings should not second-guess the underlying technical or factual findings by the NRC Staff; LBP-12-21, 76 NRC 218 (2012)

Commission addresses the sufficiency of NRC Staff's review of a combined license application rather than making a de novo review; CLI-12-2, 75 NRC 63 (2012); CLI-12-9, 75 NRC 421 (2012); CLI-15-13, 81 NRC 555 (2015)

Commission gives substantial deference to licensing board findings of fact, and it will not overturn a board's factual findings unless they are not even plausible in light of the record viewed in its entirety; CLI-14-10, 80 NRC 157 (2014)

Commission may grant a petition for review of a board decision at its discretion, giving due weight to whether there is a substantial question regarding the considerations in 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-12-15, 75 NRC 704 (2012)

Commission may grant interlocutory review if the issue for which the party seeks review threatens the party adversely affected by it with immediate and serious irreparable impact which could not be alleviated through an appeal at the end of the case; CLI-15-17, 82 NRC 33 (2015)

Commission must determine whether NRC Staff review of a combined license application has been adequate to support the findings listed in 10 C.F.R. 52.97 and 51.107(a) for each of the licenses to be issued and in 10 C.F.R. 50.10 and 51.107(d) with respect to the limited work authorizations; CLI-12-2, 75 NRC 63 (2012)

Commission reviews board's legal rulings de novo and will reverse a board's legal rulings if they are contrary to established law; CLI-15-6, 81 NRC 340 (2015)

Commission reviews questions of law de novo, but defers to the board's findings with respect to the underlying facts unless they are clearly erroneous; CLI-15-6, 81 NRC 340 (2015); CLI-15-7, 81 NRC 481 (2015); CLI-15-9, 81 NRC 512 (2015)

Commission will consider taking discretionary interlocutory review where the requesting party shows that the board's ruling threatens the party adversely affected by it with immediate and serious irreparable impact or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-15-17, 82 NRC 33 (2015)

Commission will grant a petition for review at its discretion, giving due weight to the existence of a substantial question with respect to one or more of the considerations of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-11-9, 74 NRC 233 (2011); CLI-15-19, 82 NRC 151 (2015)

de novo standard is applicable to review of an NRC Staff decision on a license transfer application; CLI-15-26, 82 NRC 408 (2015)

deference to a board's factual determinations is particularly high when they are based in significant part on its assessment of expert testimony and credibility of the witnesses offering that testimony; CLI-13-1, 77 NRC 1 (2013)

deference to board rulings on contention admissibility is appropriate even where the Commission may consider that the support for the contention is weak, or where the claim's materiality presents a close question; CLI-14-2, 79 NRC 11 (2014)

deferential clear error standard is applied in analyzing a board's findings of fact; CLI-13-1, 77 NRC 1 (2013)

discretionary interlocutory review is granted only where the party demonstrates that the issue for which it seeks review threatens it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through an appeal following the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-12-18, 76 NRC 371 (2012)

disfavor of piecemeal appeals leads the Commission to grant interlocutory review only upon a showing of extraordinary circumstances; CLI-11-14, 74 NRC 801 (2011)

expansion of issues for litigation that results from a board action does not have a pervasive and unusual effect on the litigation; CLI-11-10, 74 NRC 251 (2011)

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federal agency would be acting arbitrarily and capriciously if it did not look at relevant data and sufficiently explain a rational nexus between the facts found in its review and the choice it makes as a result of that review; LBP-11-17, 74 NRC 11 (2011)

for a hearing petitioner to take an appeal pursuant to section 2.311(c), petitioner must claim that, after considering all pending contentions, the board has erroneously denied a hearing; CLI-14-3, 79 NRC 31 (2014)

for mandatory proceedings on uranium enrichment facility licensing, boards are to conduct a simple sufficiency review rather than a de novo review on both AEA and NEPA issues; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

for threshold issues such as contention admissibility, the Commission gives substantial deference to a board's determinations; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

giving appropriate deference to NRC Staff technical expertise, boards are to probe the logic and evidence supporting NRC Staff findings and decide whether those findings are sufficient to support license issuance; LBP-12-21, 76 NRC 218 (2012)

grant of discretionary review must show that a board's ruling was a departure from, or contrary to, established law; CLI-15-7, 81 NRC 481 (2015)

grant of discretionary review requires a showing that the board's findings are not even plausible in light of the record viewed in its entirety; CLI-13-1, 77 NRC 1 (2013)

important questions of law and material fact merit Commission review; CLI-15-6, 81 NRC 340 (2015)

in a mandatory hearing, a licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

in an uncontested operating license proceeding, the Commission would informally review the Staff recommendations, and the license would issue only after Commission action; CLI-11-5, 74 NRC 141 (2011)

in mandatory proceedings for uranium enrichment facility licensing, boards are to make independent environmental judgments with respect to certain NEPA findings; LBP-11-11, 73 NRC 455 (2011)

in mandatory proceedings on uranium enrichment facility licensing, boards should inquire whether the NRC Staff performed an adequate review and made findings with reasonable support in logic and fact; LBP-11-11, 73 NRC 455 (2011)

interlocutory review is allowed where the ruling threatens petitioner with immediate and serious irreparable harm, or has a pervasive and unusual effect on the basic structure of the proceeding; CLI-12-12, 75 NRC 603 (2012)

interlocutory review is generally disfavored and requests for such review are granted only under extraordinary circumstances; CLI-15-24, 82 NRC 331 (2015)

license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors; CLI-15-6, 81 NRC 340 (2015)

licensing boards conducting mandatory hearings on uncontested issues should conduct a simple sufficiency review of uncontested issues, not a de novo review; LBP-12-21, 76 NRC 218 (2012)

licensing boards have limited their review of NRC Staff reactor operator licensing decisions to those issues that were resolved against the license applicant in the Staff's informal review; LBP-14-2, 79 NRC 131 (2014)

licensing board's inquiry should not be whether there are plainly better methodologies or whether the severe accident mitigation alternatives analysis can be refined further, but rather whether the SAMA analysis resulted in erroneous conclusions on which SAMAs and SAMDAs are found cost-beneficial to implement; LBP-11-7, 73 NRC 254 (2011)

licensing boards must be vested with considerable latitude in determining the course of the proceedings that they are called upon to conduct, and the Commission will enter that arena only to the extent necessary to ensure that no party has been denied a fair opportunity to advance its cause; LBP-15-29, 82 NRC 246 (2015)

mere presence of evidence supporting both sides does not call for Commission review, where it appears that the board considered all the evidence and arguments before it; CLI-15-7, 81 NRC 481 (2015)

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NRC Staff may accord substantial weight to the stated purpose of the project, i.e., to provide additional baseload electrical generation capacity for use in the owner's current markets and/or for potential sale on the wholesale market; LBP-11-7, 73 NRC 254 (2011)

NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 499 (2011)

NUREG-1021 provides that NRC's regional offices shall obtain approval from the Office of Nuclear Reactor Regulation operator licensing program office before knowingly deviating from the intent of any of the NUREG-1021 standards; LBP-14-2, 79 NRC 131 (2014)

on appeal intervenors must show that the board's resolution of the contested issue in favor of applicant is clearly erroneous; CLI-14-10, 80 NRC 157 (2014)

parties seeking interlocutory review must show that the issue to be reviewed threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision or affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-14, 74 NRC 801 (2011)

petition for review must raise a substantial question with respect to whether a necessary legal conclusion is without governing precedent or is contrary to established law; CLI-15-7, 81 NRC 481 (2015)

petition for review will be granted at Commission discretion upon a showing that petitioner has raised a substantial question as to any of the five factors of 10 C.F.R. 2.341(b)(4)(i)-(v); CLI-15-9, 81 NRC 512 (2015)

petition is considered under interlocutory review standard because neither NRC Staff's issuance of the license nor the board's denial of a stay of the effectiveness of that license constitutes final agency action; CLI-15-17, 82 NRC 33 (2015)

petition under 10 C.F.R. 2.206 will be reviewed only where petitioner specifies the bases for taking the requested action; DD-15-6, 81 NRC 884 (2015)

petitions to review interlocutory board orders typically are denied summarily, without engaging in extensive merits discussion; CLI-13-3, 77 NRC 51 (2013)

question before the Commission is not whether it would have made different factual findings than those of the board but whether the board's findings of fact are so lacking in record support as to be clearly erroneous; CLI-13-1, 77 NRC 1 (2013)

"rational basis review" was applied to intervenor's challenge to the NRC's 2004 changes to its procedural rules, citing cases involving challenges to laws regulating aspects of prisoners' right to access to the courts; LBP-11-4, 73 NRC 91 (2011)

review is granted where petitions for review raise substantial questions of law and procedure; CLI-15-6, 81 NRC 340 (2015)

review of a board's certified question that raises a significant and novel issue whose early resolution will materially advance the orderly disposition of the proceeding is granted; CLI-11-4, 74 NRC 1 (2011)

review of contention admissibility determinations is the same, whether an appeal lies under section 2.311 or 2.341, and the Commission will disturb a licensing board's contention admissibility ruling only if there has been an error of law or an abuse of discretion; CLI-12-7, 75 NRC 379 (2012)

standard for discretionary review is described; CLI-15-7, 81 NRC 481 (2015)

standard for showing clear error is difficult to meet, requiring that intervenors demonstrate that the board's determination is not even plausible in light of the record as a whole; CLI-15-7, 81 NRC 481 (2015); CLI-15-9, 81 NRC 512 (2015)

standard of review of a board's determination on standing is deferential and the Commission will uphold the decision absent a clear misapplication of facts or law; CLI-15-25, 82 NRC 389 (2015)

where a board's decision rests on a weighing of extensive fact-specific evidence presented by technical experts, the Commission generally will defer to the board's factual findings, unless there appears to be a clearly erroneous factual finding or related oversight; CLI-12-1, 75 NRC 39 (2012)

where issues in a case have been sharply contested, the Commission will explain its view of the case in some detail; CLI-13-1, 77 NRC 1 (2013)

STANDARD REVIEW PLANS

although an SRP lacks the legal force of regulations, it is to be given special weight as a guidance document that has been approved by the Commission but is nonbinding guidance; LBP-14-3, 79 NRC 267 (2014)

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for power reactors, NRC developed a Commission-approved standard review plan to assist in evaluating applications for reactor licenses or applications for the transfer of such licenses; LBP-11-11, 73 NRC 455 (2011)

GALL Report and the SRP are guidance documents, and therefore not binding, but they do carry special weight; CLI-12-5, 75 NRC 301 (2012)

guidance documents do not have the force of law, but the SRP for the Review of a License Application for a Fuel Cycle Facility has benefited from extensive consideration within the agency, with which the Commission has never expressed disagreement; LBP-12-21, 76 NRC 218 (2012)

if after conducting a threshold review, NRC Staff concludes that the applicant may be considered to be foreign owned, controlled, or dominated, or that additional action would be necessary to negate the foreign ownership, control, or domination, applicant shall be promptly advised and requested to submit a negation action plan; LBP-11-11, 73 NRC 455 (2011)

SRP does not in itself impose requirements on an applicant but provides guidance to NRC Staff in reviewing an application; CLI-14-2, 79 NRC 11 (2014)

SRPs do not have the force and effect of law; CLI-15-6, 81 NRC 340 (2015)

to perform an appropriate integrated safety analysis, NUREG-1520 standard review plan guidance for fuel cycle facilities indicates that applicant should identify the process designs, accident sequences, and items relied upon for safety that are associated with the facility; LBP-11-11, 73 NRC 455 (2011)

where no Staff guidance was available for the particular type of facility undergoing license review, the board reasonably selected a standard for a facility most like the facility under review; CLI-15-6, 81 NRC 340 (2015)

STANDING TO INTERVENE

absent an obvious potential for harm, to obtain standing, it is petitioner's burden to show how harm will or may occur; LBP-14-4, 79 NRC 319 (2014)

aesthetic harms may amount to an injury in fact sufficient for standing; CLI-12-12, 75 NRC 603 (2012)

although it might be fatal for standing purposes if an Indian tribe were seeking to have intervenors represent their interests in the proceeding, intervenors' lack of authority to represent them is not a bar to intervenors raising the tribe's contention; LBP-12-12, 75 NRC 742 (2012)

although NRC regulations mandate that a petition contain the name, address, and telephone number of petitioner, the Commission's hearing notice advises prospective petitioners not to include personal privacy information, such as home addresses or home phone numbers, in their filings; LBP-11-21, 74 NRC 115 (2011)

although petitioner bears the burden of establishing standing, licensing boards should evaluate petitioner's standing construing the petition in favor of petitioner; LBP-15-13, 81 NRC 456 (2015)

argument that, in addition to the tribe, individual tribal representative has standing to sue under NHPA section 106 consultation provisions is rejected; LBP-13-6, 77 NRC 253 (2013)

as de facto targets of an enforcement order, licensee employees have automatic standing if they are adversely affected by an enforcement order; LBP-14-4, 79 NRC 319 (2014)

as distance increases from in situ uranium recovery facility, petitioner with an upgradient water source must expect to provide the board with some analysis as to how any contamination will affect any wells alleged to be impacted by the facility; LBP-12-3, 75 NRC 164 (2012)

Atomic Energy Act authorizes NRC to accord protection from radiological injury to both health and property interests, and thus a genuine property interest is sufficient to accord petitioner proximity-based standing; LBP-15-17, 81 NRC 753 (2015)

before any hearing is granted on an order issued pursuant to 10 C.F.R. 2.202, a threshold question, intertwined with both standing and contention admissibility issues, is whether the hearing requests are within the scope of the proceeding; CLI-13-2, 77 NRC 39 (2013)

board is obliged to independently assess petitioners' standing, even if it is unchallenged; LBP-15-17, 81 NRC 753 (2015)

board may grant a timely filed petition to intervene if it concludes that petitioner has established standing and proffered at least one admissible contention; LBP-15-26, 82 NRC 163 (2015)

board need not address the issue of standing where petitioner has failed to demonstrate the existence of a licensing action subject to AEA hearing rights; LBP-15-27, 82 NRC 184 (2015)

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boards are to construe intervention petitions in favor of petitioners in determine whether petitioner has demonstrated standing; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)

boards have an independent obligation to determine whether petitioners meet the threshold criteria for intervention even if their standing is uncontested; LBP-12-24, 76 NRC 503 (2012)

boards look to judicial concepts of standing and determine whether petitioner is threatened with a concrete injury and the injury is fairly traceable to the licensing action and capable of being redressed by a favorable decision; LBP-12-15, 76 NRC 14 (2012); LBP-12-24, 76 NRC 503 (2012)

boards should determine whether plaintiff's grievance arguably falls within the zone of interests protected or regulated by the statutory provision invoked in the suit; LBP-14-4, 79 NRC 319 (2014)

both standing (redressability) and contention admissibility (scope) in the context of an NRC enforcement order are addressed; LBP-14-4, 79 NRC 319 (2014)

burden of setting forth a clear and coherent argument for standing is generally on petitioner, but *pro se* petitioner is not held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; CLI-15-25, 82 NRC 389 (2015)

by reason of their own standing in a proceeding, intervenors may assert any violation of law that would lead to a redress of their injuries, including their interests in seeing that the NEPA process is properly carried out or in preventing or delaying issuance of the requested combined license; LBP-12-12, 75 NRC 742 (2012)

case or controversy limitation does not apply to NRC because it is not an Article III court; LBP-14-4, 79 NRC 319 (2014)

claims based on economic impacts are only cognizable in NRC proceedings with regard to NEPA-based concerns; LBP-12-3, 75 NRC 164 (2012)

Commission affirmed board ruling on standing and upheld the validity of the proximity presumption; CLI-15-13, 81 NRC 555 (2015)

Commission affirmed board standing ruling, but declined to accept review of challenges to board's admission of two contentions because petitioner had failed to perfect its appeal by challenging the validity of the board's admissibility rulings regarding other contentions; LBP-15-3, 81 NRC 65 (2015)

Commission permits petitioners to cure deficiencies with regard to standing in their replies; LBP-15-5, 81 NRC 249 (2015)

concern that involves safety will not support standing in an enforcement proceeding if petitioner seeks merely a better settlement, i.e., one that promises greater improvements to safety than the settlement that was actually negotiated; LBP-14-4, 79 NRC 319 (2014)

conclusory allegations about potential radiological harm are insufficient to establish standing; CLI-11-3, 73 NRC 613 (2011)

contemporaneous judicial concepts of standing are applied in NRC proceedings; CLI-11-3, 73 NRC 613 (2011); CLI-15-25, 82 NRC 389 (2015); LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-11-29, 74 NRC 612 (2011); LBP-12-3, 75 NRC 164 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-13-6, 77 NRC 253 (2013); LBP-13-8, 78 NRC 1 (2013); LBP-14-4, 79 NRC 319 (2014); LBP-15-17, 81 NRC 753 (2015); LBP-15-19, 81 NRC 815 (2015)

contemporaneous judicial concepts of standing require petitioner to allege an injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-11-29, 74 NRC 612 (2011); LBP-14-4, 79 NRC 319 (2014); LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015)

courts should not inquire whether there has been a congressional intent to benefit the would-be plaintiff; LBP-14-4, 79 NRC 319 (2014)

discretionary intervention is permitted only where at least one petitioner has established standing and at least one admissible contention has been admitted; CLI-14-11, 80 NRC 167 (2014)

economic injuries suffered by ratepayers are not particularized or distinct to the extent required to support standing, but are instead generalized and shared by a large class; LBP-14-4, 79 NRC 319 (2014)

economic interest generally is not sufficient to afford standing in NRC licensing proceedings regarding health and safety; LBP-14-4, 79 NRC 319 (2014)

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essential to establishing standing are findings of injury, causation, and redressability; CLI-11-3, 73 NRC 613 (2011)

even if undisputed, the jurisdictional nature of standing in NRC proceedings requires independent examination by the presiding officer; LBP-11-16, 73 NRC 645 (2011)

extended power uprate proceedings necessarily trigger application of the 50-mile proximity presumption given that such license applications entail an obvious increase in the potential for offsite consequences; LBP-11-29, 74 NRC 612 (2011)

for a request for hearing and petition to intervene to be granted, petitioner must establish that it has standing and propose at least one admissible contention; LBP-11-21, 74 NRC 115 (2011)

for an enforcement order, the threshold question, related to both standing and admissibility of contentions, is whether the hearing request is within the scope of the proceeding as outlined in the order; LBP-14-4, 79 NRC 319 (2014)

for an individual or organization to be deemed a "person whose interest may be affected by the proceeding," so as to have standing as of right such that party status can be granted in an agency adjudicatory proceeding, the intervention petition must comply with 10 C.F.R. 2.309(d)(1)(i)-(iv); LBP-12-15, 76 NRC 14 (2012)

for constitutional standing, plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief; LBP-14-4, 79 NRC 319 (2014)

for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 164 (2012)

for prudential standing, plaintiff usually must show, in addition to constitutional standing, that the interest sought to be protected by complainant is arguably within the zone of interests to be protected or regulated by the statute; LBP-14-4, 79 NRC 319 (2014)

fugitive dust generated onsite at a facility, particularly during construction, can be a concern in the vicinity of a facility; LBP-12-3, 75 NRC 164 (2012)

generic, unsubstantiated claims regarding health, safety, and property devaluation impacts are insufficient to establish standing; LBP-12-3, 75 NRC 164 (2012)

geographic proximity to a facility (i.e., living or working within 50 miles) is presumptively sufficient to meet traditional standing requirements in certain types of proceedings, including operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012)

Google Maps and Mapquest searches of distance from petitioner's address may be used to establish proximity to a proposed facility; LBP-12-3, 75 NRC 164 (2012)

health-impact potential of facility traffic-associated dust, if properly pleaded, could provide a basis for standing; LBP-12-3, 75 NRC 164 (2012)

hearing request is granted where petitioners have submitted a timely petition, established representational standing, and proffered an admissible contention; LBP-15-20, 81 NRC 829 (2015)

hearing requests must state petitioner's name, address, and telephone number, nature of its right under the applicable statutes to be made a party, nature and extent of property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on its interest; LBP-11-29, 74 NRC 612 (2011)

if petitioner fails to show standing pursuant to section 2.309(d), a board may grant discretionary standing when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; LBP-11-29, 74 NRC 612 (2011)

if petitioner's factual claims in support of its standing are contested, untenable, conjectural, or conclusory, a board need not uncritically accept such assertions, but may weigh those informational claims and exercise its judgment about whether standing has been satisfied; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

if proximity-based standing cannot be demonstrated, then standing must be established according to traditional principles of redressability, injury, and causation; LBP-12-3, 75 NRC 164 (2012)

in assessing whether petitioner has demonstrated its standing, licensing boards are to construe petitions in favor of petitioners; CLI-14-2, 79 NRC 11 (2014); CLI-15-25, 82 NRC 389 (2015); LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

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in cases involving the possible construction or operation of a nuclear power reactor, proximity to the proposed facility is considered sufficient to establish standing; LBP-11-16, 73 NRC 645 (2011)

in license amendment proceedings, petitioners may not claim standing simply upon a residence or visits near the plant, unless the proposed action quite obviously entails an increased potential for offsite consequences; LBP-11-29, 74 NRC 612 (2011)

in lieu of the injury and causation showings for standing, petitioner has been able to establish proximity-plus by showing that the proposed licensing action involves a significant source of radiation that has an obvious potential for offsite consequences; LBP-12-3, 75 NRC 164 (2012)

in materials licensing matters, there is no predefined distance marking the area of potential offsite consequences on which to establish standing and thus this must be judged on a case-by-case basis; LBP-12-24, 76 NRC 503 (2012)

in reactor license renewal proceedings, petitioner is presumed to have standing without the need to specifically plead injury, causation, and redressability if petitioner lives within 50 miles of the nuclear power facility; LBP-11-21, 74 NRC 115 (2011); LBP-11-29, 74 NRC 612 (2011)

in reactor licensing proceedings, petitioner is deemed to have standing pursuant to the Commission's proximity presumption rule by showing that he or she resides in, or frequents the area within, a 50-mile radius of the facility; LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011)

in reactor proceedings, the Commission applies a proximity presumption, whereby an individual's or organization's location within 50 miles of a reactor is sufficient to demonstrate the requisite threat of injury; LBP-12-24, 76 NRC 503 (2012)

in situations involving obvious potential for offsite consequences, Commission has routinely granted standing to petitioners who live within a certain distance of the facility at issue under the proximity presumption, effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability; LBP-15-13, 81 NRC 456 (2015)

increases in risk can at times be injuries in fact sufficient to confer standing; LBP-14-4, 79 NRC 319 (2014)

individual tribal member who does not reside on a tribal reservation where a facility is proposed to be located must show injury in fact relative to that member's activities on the reservation even when the reservation is asserted to be on aboriginal tribal lands; LBP-13-6, 77 NRC 253 (2013)

individual tribal member's assertion of an interest based on cultural resource concerns must show that there is a concrete or particularized injury to herself as an individual; LBP-13-6, 77 NRC 253 (2013)

injury-in-fact can result when the risk of encountering environmental harms prevents a plaintiff from taking an action; LBP-14-4, 79 NRC 319 (2014)

interests that representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the required relief must require an individual member to participate in the organization's legal action; LBP-15-5, 81 NRC 249 (2015)

intervenor is entitled to cure deficiencies with regard to standing when it files its reply; LBP-14-4, 79 NRC 319 (2014)

interveners have standing based upon their proximity to the proposed facility; LBP-12-12, 75 NRC 742 (2012)

intervention petitioner must demonstrate that it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute and that the injury can fairly be traced to the challenged action and is likely to be redressed by a favorable decision; LBP-12-8, 75 NRC 539 (2012); LBP-13-8, 78 NRC 1 (2013)

intervention petitioner's burden is met if petitioner provides plausible factual allegations that satisfy each element of standing; LBP-13-6, 77 NRC 253 (2013)

intervention petitions must include a statement of petitioner's name, address, and telephone contact information, nature of petitioner's right under the AEA to be made a party, nature of petitioner's interest in the proceeding, whether property, financial or otherwise, and possible effect of any decision or order that might be issued in the proceeding on the petitioner's interest; LBP-12-15, 76 NRC 14 (2012)

license amendments related to reactor pressure vessel embrittlement present an obvious potential for offsite public health and safety consequences; LBP-15-17, 81 NRC 753 (2015)

licensing actions that could increase reactor vessel embrittlement, such as license renewals, hold the potential for offsite consequences that are obvious; LBP-15-17, 81 NRC 753 (2015)

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licensing board, construing the petition in favor of petitioners, based its standing finding on potential harm from traffic-generated dust and light pollution; CLI-12-12, 75 NRC 603 (2012)

licensing boards are obliged to independently assess petitioners' standing; LBP-15-5, 81 NRC 249 (2015)

light pollution is a matter of concern as a proposed nuclear materials facility undergoes agency licensing review; LBP-12-3, 75 NRC 164 (2012)

living within 50 miles of a nuclear power reactor is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto; LBP-15-17, 81 NRC 753 (2015); LBP-15-20, 81 NRC 829 (2015)

mere potential exposure to minute doses of radiation within regulatory limits does not constitute a distinct and palpable injury on which standing can be founded; CLI-11-3, 73 NRC 613 (2011)

more subjective appraisal of declining property values might be permissible in the context of a licensing action associated with an applicant or facility shown to have engaged in a continuous and pervasive course of illegal conduct; LBP-12-3, 75 NRC 164 (2012)

mother was denied standing based on her son's residence within 50 miles of a power plant, because she herself lived more than 50 miles away; LBP-15-17, 81 NRC 753 (2015)

municipality is deemed to have standing in a reactor licensing proceeding that involves a facility located within its boundaries; LBP-11-6, 73 NRC 149 (2011)

Native American tribe's statutorily recognized interest in tribal cultural resources that may still be extant on its recognized aboriginal lands provides a cognizable interest for the purpose of establishing its standing; LBP-13-6, 77 NRC 253 (2013)

no further demonstration of standing is required from a state that seeks to participate as a party in a proceeding pertaining to a utilization facility located within its boundaries; LBP-15-24, 82 NRC 68 (2015); LBP-15-26, 82 NRC 163 (2015)

no proximity presumption applies in an import/export licensing case because petitioners have not shown that the import or export involves a significant source of radioactivity producing an obvious potential for offsite consequences; CLI-11-3, 73 NRC 613 (2011)

nonradiological impacts can be a basis for standing; LBP-13-6, 77 NRC 253 (2013)

non-speculative showing that increased traffic accidents could be another impact of increased road usage might establish standing; LBP-12-3, 75 NRC 164 (2012)

NRC could consider adopting, at least for the initial construction/operation authorization of in situ recovery facilities, a standing regime by which persons living or having substantial contacts within a 50-mile radius of the facility are afforded standing; LBP-12-3, 75 NRC 164 (2012)

NRC has latitude to define who is an "affected person" within the meaning of Atomic Energy Act § 189a, 42 U.S.C. § 2239(a); LBP-12-3, 75 NRC 164 (2012)

NRC is lenient in permitting pro se petitioners the opportunity to cure procedural defects in petitions to intervene regarding standing; LBP-11-13, 73 NRC 534 (2011)

NRC must provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-11-6, 73 NRC 149 (2011)

NRC sometimes imposes standing requirements more stringent than those imposed in federal court; LBP-14-4, 79 NRC 319 (2014)

NRC's 50-mile proximity presumption is an example of NRC's great liberality in the arena of standing; LBP-14-4, 79 NRC 319 (2014)

once parties demonstrate standing, they will then be free to assert any contention, which, if proven, will afford them the relief they seek; LBP-11-21, 74 NRC 115 (2011); LBP-11-29, 74 NRC 612 (2011)

once the board makes its determination that petitioner has articulated sufficient detail as to how the proposed action would affect its members, it would not be appropriate for the board to weigh the evidence to determine whether the harm to petitioner's members is certain; CLI-15-25, 82 NRC 389 (2015)

parent could attain proximity-based standing through reference to her child if the child was a minor or otherwise under a legal disability and thus unable to participate herself; LBP-15-17, 81 NRC 753 (2015)

participation in a licensing proceeding requires a demonstration of standing; LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015); LBP-15-19, 81 NRC 815 (2015)

petitioner asserts standing based on use of proposed site to gather eagle feathers for ceremonial and religious uses; LBP-13-6, 77 NRC 253 (2013)

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petitioner bears the burden of providing facts sufficient to establish its standing; LBP-11-21, 74 NRC 115 (2011); LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)

petitioner could not rely on caretakers maintaining and farming the property in petitioner's absence as grounds for proximity-based standing; LBP-15-17, 81 NRC 753 (2015)

petitioner does not meet the redressability requirement for standing, because vacating the confirmatory orders would not ameliorate the injury of which Pilgrim Watch complains; CLI-13-2, 77 NRC 39 (2013)

petitioner has some latitude to supplement or cure a standing showing in its reply pleading, but any additional arguments should be supported by either the declaration that accompanied the original hearing request or a supplemental affidavit; LBP-12-3, 75 NRC 164 (2012)

petitioner has standing when seeking to intervene to ensure that an enforcement order will be upheld; CLI-13-2, 77 NRC 39 (2013)

petitioner in materials licensing actions is entitled to a presumption of standing if petitioner resides in the zone of reasonably foreseeable harm from the source of radioactivity and the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-12-24, 76 NRC 503 (2012)

petitioner may act to vindicate its own rights, but it has no standing to assert the rights of others; CLI-12-6, 75 NRC 352 (2012)

petitioner may correct or supplement its showing on standing; LBP-11-21, 74 NRC 115 (2011)

petitioner may use its reply as an opportunity to cure potential defects in standing; LBP-15-13, 81 NRC 456 (2015)

petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; CLI-11-3, 73 NRC 613 (2011); CLI-13-2, 77 NRC 39 (2013)

petitioner must demonstrate that the asserted injury is plausibly linked to the challenged action; CLI-15-25, 82 NRC 389 (2015)

petitioner need only show that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury; LBP-13-6, 77 NRC 253 (2013)

petitioner residing within 50 miles of a nuclear power plant is presumed to have standing; LBP-13-8, 78 NRC 1 (2013)

petitioner seeking a hearing must demonstrate standing and proffer at least one admissible contention; LBP-11-29, 74 NRC 612 (2011)

petitioner was allowed to clarify standing declarations by submitting revised declarations with its reply; LBP-11-13, 73 NRC 534 (2011)

petitioner who lives, has frequent contacts, or has significant property interest in within 50 miles of a nuclear power reactor has standing without the need to make an individualized showing of injury, causation, and redressability; LBP-15-17, 81 NRC 753 (2015)

petitioner whose property is upgradient but nonetheless located in close proximity to a proposed in situ recovery facility may be able to establish its plausible pathway with a less particularized showing; LBP-12-3, 75 NRC 164 (2012)

petitioner's averment that proffered environmental contentions will better position NRC to fully review the possible impacts of the proposed project and, based on petitioners and their experts' information, may address concerns and mitigate impacts to water, land, and other resources is sufficient to fulfill the redressability element of the standing requirement; CLI-12-12, 75 NRC 603 (2012); LBP-12-3, 75 NRC 164 (2012)

petitioners cannot gain standing from the interests of third parties except in very limited circumstances; LBP-15-17, 81 NRC 753 (2015)

petitioners considerably upgradient of a mining area must provide scientific or technical support for how contaminated material from an in situ recovery site might plausibly enter their drinking water to fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)

petitioners had proximity-based standing even though they did not provide a reactor vessel failure scenario; LBP-15-17, 81 NRC 753 (2015)

petitioners must establish standing by demonstrating the nature of their right under the Atomic Energy Act to be made a party to the proceeding, nature and extent of their interest in the proceeding, and possible effect of any decision in the proceeding on their interest; LBP-12-24, 76 NRC 503 (2012)

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- petitioners must state their name, address, and telephone number, the nature of their right to be made a party, the nature and extent of their property, financial, or other interest in the proceeding, and the possible effect of any decision or order that may be issued in the proceeding on their interest; LBP-11-6, 73 NRC 149 (2011); LBP-11-16, 73 NRC 645 (2011); LBP-11-21, 74 NRC 115 (2011); LBP-13-8, 78 NRC 1 (2013)
- potential harm necessary to demonstrate standing in NRC proceedings need not relate to physical or bodily injury; CLI-12-12, 75 NRC 603 (2012)
- proximity presumption allows petitioner living within 50 miles of the reactor to establish standing without the need to make an individualized showing of injury, causation, and redressability; LBP-15-5, 81 NRC 249 (2015)
- proximity presumption applied where petitioners' contention concerned a license amendment to move the schedule for the withdrawal of reactor vessel material specimens from the technical specifications to the updated safety analysis report; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applies across the board to all proceedings regardless of type because the rationale underlying it is not based on the type of proceeding per se but on whether the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applies if petitioner has frequent contacts with the geographic zone of potential harm; LBP-11-13, 73 NRC 534 (2011); LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applies in more limited license amendment proceedings only if the proposed amendment obviously entails an increased potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applies in reactor operating license renewal proceedings; LBP-13-8, 78 NRC 1 (2013)
- proximity presumption applies to persons who have a significant property interest in the area near a nuclear power plant; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption applies when an individual or organization, or an individual authorizing an organization to represent his or her interests seeks to establish its representational standing, resides within 50 miles of the proposed facility, or has frequent contacts with the area affected by the proposed facility; LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)
- proximity presumption applies when there are clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences; LBP-15-17, 81 NRC 753 (2015)
- proximity presumption is limited to reactor licensing proceedings and to other cases where there is an obvious potential for offsite radiological consequences; LBP-14-4, 79 NRC 319 (2014)
- proximity presumption of standing in a license renewal proceeding has not been explicitly endorsed by the Commission, but has been cited favorably for renewals in the context of a combined license hearing; LBP-12-15, 76 NRC 14 (2012)
- proximity presumption to establish standing is based on the finding that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-14-4, 79 NRC 319 (2014)
- proximity presumption was applied in a license amendment proceeding where management's lack of the required character and competence was alleged; LBP-15-17, 81 NRC 753 (2015)
- proximity-based standing based on frequent contacts is a determination to be made by a licensing board after weighing all the information provided; LBP-15-17, 81 NRC 753 (2015)
- proximity-based standing is allowed because license renewal allows operation of a reactor over an additional period of time during which the reactor could be subject to the same equipment failures and personnel errors as during operations over the original period of the license; LBP-12-8, 75 NRC 539 (2012)
- radius for the proximity presumption has to be at least as large as the range where obvious offsite consequences can occur; LBP-15-17, 81 NRC 753 (2015)
- remedy that makes even a small contribution to resolving a larger, more complex injury can still support a standing claim; LBP-15-13, 81 NRC 456 (2015)

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request for hearing and/or petition for leave to intervene will be granted if the board determines that requestor/petitioner has standing and has proposed at least one admissible contention; LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-12-8, 75 NRC 539 (2012)

requirement to demonstrate standing is derived from instruction to NRC to provide a hearing upon the request of any person whose interest may be affected by the proceeding; LBP-15-5, 81 NRC 249 (2015)

risk of future harm as an injury must be both actual and imminent; LBP-14-4, 79 NRC 319 (2014)

standard of review of a board's determination on standing is deferential and the Commission will uphold the decision absent a clear misapplication of facts or law; CLI-15-25, 82 NRC 389 (2015)

standing can be based on diminishment of recreational enjoyment of wildlife area due to, among other factors, an increase in dust due to traffic on adjacent highway; CLI-12-12, 75 NRC 603 (2012)

standing criteria for federally recognized Indian tribes are less stringent, but only where the facility at issue is within the tribe's boundaries; LBP-12-24, 76 NRC 503 (2012)

standing has been granted to a utilities commission based on injuries that would increase costs to regulated utilities; LBP-14-4, 79 NRC 319 (2014)

standing in each agency proceeding depends on the factual circumstances associated with that case; LBP-13-6, 77 NRC 253 (2013)

standing is refused only when congressional intent specifically precludes the party or issue from obtaining judicial review; LBP-14-4, 79 NRC 319 (2014)

standing to challenge a confirmatory order exists only when a petitioner credibly alleges that a settlement somehow actually reduces safety; LBP-14-4, 79 NRC 319 (2014)

standing was found for petitioner fishing a river 60 miles downstream from a proposed in situ recovery facility expansion alleged to allow drainage into the river from operations; LBP-12-3, 75 NRC 164 (2012)

state government has standing because the facility is located within the boundaries of the state and, accordingly, no further demonstration of standing is required; LBP-15-4, 81 NRC 156 (2015); LBP-15-18, 81 NRC 793 (2015); LBP-15-19, 81 NRC 815 (2015)

statement that petitioner lives, recreates, and conducts business within the vicinity of the plant is too vague to demonstrate a substantial or regular presence within 50 miles of the plant; LBP-15-17, 81 NRC 753 (2015)

surface water contamination has played a significant role in standing determinations in in situ recovery cases; LBP-12-3, 75 NRC 164 (2012)

taxpayer interest is too generalized and attenuated to support Article III standing; LBP-14-4, 79 NRC 319 (2014)

there is no contention-based requirement mandating that to have standing, besides showing that a cognizable injury is associated with a proposed licensing action and that granting the relief sought will address that injury, petitioner also must establish a link between that injury and the issues it wishes to litigate in challenging an application; LBP-12-3, 75 NRC 164 (2012)

to be adversely affected or aggrieved within the meaning of a statute, plaintiff must establish that the injury complained of falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for the complaint; LBP-14-4, 79 NRC 319 (2014)

to demonstrate frequent contacts within the 50-mile site radius under the proximity presumption, petitioner must show that her contacts are substantial and regular, and must describe them with specificity; LBP-15-17, 81 NRC 753 (2015)

to evaluate a petitioner's standing, boards construe the petition in favor of petitioner; LBP-14-4, 79 NRC 319 (2014)

to meet its burden to establish standing, petitioner must provide plausible factual allegations that satisfy each element of standing; LBP-12-3, 75 NRC 164 (2012)

tribal member who regularly visits tribal migratory route on national monument land to pursue cultural undertakings has standing under NHPA to raise concerns; LBP-13-6, 77 NRC 253 (2013)

under the proximity presumption, an individual who resides within a 50-mile radius of a nuclear power plant is not required to specifically plead injury, causation, and redressability to establish his or her standing to intervene; LBP-12-10, 75 NRC 633 (2012)

when a governmental organization, including a federally recognized Native American tribe, is unable to establish standing because the facility or nuclear material in question does not fall within its

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- jurisdictional boundaries, that entity nonetheless may be accorded standing if its boundaries come within a distance from the nuclear facility or material that otherwise would establish standing for an individual or nongovernmental organization, whether via a proximity presumption or otherwise; LBP-13-6, 77 NRC 253 (2013)
- when a radiological health or safety impact is asserted to provide the basis for a petitioner's injury in fact, in lieu of the usual injury and causation showings, petitioner can attempt to establish its standing based on the proximity plus protocol by showing that the proposed licensing action involves a significant source of radiation, which has an obvious potential for offsite consequences; LBP-13-6, 77 NRC 253 (2013)
- when petitioners considerably upgradient of the mining area fail to explain how contaminated material from the in situ recovery site might plausibly enter their drinking water, they fail to fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)
- where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality's boundaries, it can, for purposes of establishing standing, rely on the 50-mile proximity presumption to the same extent as an individual or an organization; LBP-11-6, 73 NRC 149 (2011)
- where petitioner has made no effort to establish that any proximity plus presumption should be applicable in determining standing relative to the challenged licensing action, boards must look to traditional standing precepts of injury and causation, as well as redressibility, to determine whether a sufficient factual and legal demonstration of standing has been made; LBP-13-6, 77 NRC 253 (2013)
- where plaintiff is not itself the subject of the contested regulatory action, the zone-of-interests test for standing denies a right of review if plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit; LBP-14-4, 79 NRC 319 (2014)
- whether petitioner could be affected by a materials licensing action must be determined on a case-by-case basis; LBP-12-3, 75 NRC 164 (2012)
- whether petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)
- whether plaintiff's interest is arguably protected by the statute within the meaning of the zone-of-interests test is to be determined not by reference to the overall purpose of the Act in question, but by reference to the particular provision of law upon which plaintiff relies; LBP-14-4, 79 NRC 319 (2014)
- whether the zone-of-interests test has been satisfied does not depend on how concrete or speculative the threat of injury may be; LBP-14-4, 79 NRC 319 (2014)
- zone-of-interests test is not meant to be especially demanding, there being no indication of congressional purpose to benefit the would-be plaintiff; LBP-14-4, 79 NRC 319 (2014)
- STANDING TO INTERVENE, ORGANIZATIONAL**
- analysis of standing of other petitioning organizations was unnecessary when public interest organization had clear representational standing; LBP-13-6, 77 NRC 253 (2013)
- argument that, in addition to the tribe, individual tribal representative has standing to sue under NHPA section 106 consultation provisions is rejected; LBP-13-6, 77 NRC 253 (2013)
- as a sovereign body, Native American tribes maintain a strong interest in its members' welfare such that its organizational purpose is germane to the interests it seeks to represent in proceeding; LBP-13-6, 77 NRC 253 (2013)
- association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit; LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011)
- board based tribe's standing on the presence onsite of cultural resources that could be harmed as a result of mining activities; CLI-14-2, 79 NRC 11 (2014)
- general environmental and policy interests are insufficient for organizational standing; LBP-12-3, 75 NRC 164 (2012)
- governmental body's interest in protecting the individuals and territory that fall under that body's authority establishes an organizational interest for standing purposes; LBP-11-6, 73 NRC 149 (2011)

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- in a license transfer proceeding, 3-mile distance between facility and organization's offices does not qualify for organizational standing; LBP-13-6, 77 NRC 253 (2013)
- in a reactor decommissioning proceeding, a public interest group lacked organizational standing when its business address did not lie within 50 miles of the facility; LBP-13-6, 77 NRC 253 (2013)
- Indian tribe has an organizational interest in protecting cultural artifacts connected with it; CLI-14-2, 79 NRC 11 (2014)
- interest in protecting the natural resources of the Black Hills of South Dakota with a focus on groundwater contamination from uranium mining is insufficient to establish organizational standing; LBP-13-6, 77 NRC 253 (2013)
- interest that is cognizable for the purpose of establishing standing is one that is more than a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem; LBP-13-6, 77 NRC 253 (2013)
- licensing board rejected union's claim to standing, but the appeal board under the rules then in effect permitted discretionary intervention; LBP-14-4, 79 NRC 319 (2014)
- members living within 50 miles of a reactor are presumed to have standing under the Commission's 50-mile proximity presumption; LBP-15-5, 81 NRC 249 (2015)
- mere interest in a problem is not sufficient by itself to render the organization adversely affected or aggrieved within the meaning of the Administrative Procedure Act; CLI-11-3, 73 NRC 613 (2011)
- organization may base its standing on immediate or threatened injury to its organizational interests; CLI-11-3, 73 NRC 613 (2011)
- organization may derive standing from a member if the organization demonstrates that the individual member has standing to participate and has authorized the organization to represent his or her interests; CLI-11-3, 73 NRC 613 (2011)
- organization may establish organizational standing; LBP-11-6, 73 NRC 149 (2011)
- organization must show either a discrete injury to its own institutional interests or authorization to represent an individual who would have standing in his or her own right; LBP-12-24, 76 NRC 503 (2012)
- organization seeking to intervene in its own right must allege that the challenged action will cause a cognizable injury to its interests or to the interests of its members; LBP-11-21, 74 NRC 115 (2011)
- organization that seeks representational standing must show that at least one of its members would be affected by the proceeding, identify that member by name and address, show that members would have standing to intervene in their own right, and that identified members have authorized the organization to request a hearing on their behalf; LBP-11-13, 73 NRC 534 (2011); LBP-15-5, 81 NRC 249 (2015)
- organizations may base standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members; LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012); LBP-13-8, 78 NRC 1 (2013)
- organizations may claim standing on their own behalf; LBP-11-29, 74 NRC 612 (2011)
- organization's standing can be demonstrated through the interests of its members, but if a member acts or speaks on behalf of the organization, that member must also demonstrate authorization by that organization to represent it; LBP-11-13, 73 NRC 534 (2011)
- petitioner asserting organizational standing must establish a discrete institutional injury to the organization's interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding; LBP-12-3, 75 NRC 164 (2012); LBP-13-6, 77 NRC 253 (2013)
- petitioner must show a discrete injury to the organization itself; LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015)
- petitioner must show that its interests will be harmed by the licensing action, while an organization seeking representational standing must demonstrate that the interests of at least one of its members will be harmed; LBP-12-10, 75 NRC 633 (2012)
- petitioners' claims of potential injury are also so speculative, and separate from the import and export license, that they do not amount to cognizable harm for purposes of standing; CLI-11-3, 73 NRC 613 (2011)
- petitioners' generalized institutional interest in public forums and in preventing processing of foreign waste is insufficient to confer standing; CLI-11-3, 73 NRC 613 (2011)

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standing in an agency adjudicatory proceeding could arise based on an asserted injury to a tangible asset, such as a building or land owned or regularly utilized by an organization, that is located near a proposed licensing activity; LBP-13-6, 77 NRC 253 (2013)

standing in an agency adjudicatory proceeding could be based on an organizational interest that has well-recognized institutional underpinnings; LBP-13-6, 77 NRC 253 (2013)

standing is footed in the capacity of an organization to show a discrete injury to its organizational interests; LBP-13-6, 77 NRC 253 (2013)

when an organization seeks to intervene on behalf of its members, it may establish standing by showing that one or more of its members would individually meet the above articulated standing requirements, the member has authorized the organization to represent its interest, and the interest represented is germane to the organization's purpose; LBP-15-13, 81 NRC 456 (2015)

STANDING TO INTERVENE, REPRESENTATIONAL

although an allegation that a purported representative is acting without his or her organization's authorization, i.e., is acting *ultra vires*, is distinct from a challenge to the organization's standing, petitioner may cure such a defect in representation as well; LBP-11-13, 73 NRC 534 (2011)

analysis of standing of other petitioning organizations was unnecessary when public interest organization had clear representational standing; LBP-13-6, 77 NRC 253 (2013)

association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit; LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011)

authority of an officer or attorney to sign a petition is distinguished from an authorization addressed to the organization's standing to intervene; LBP-11-13, 73 NRC 534 (2011)

boards cannot logically infer that identified members of one organization are also members of another organization for purpose of representational standing determinations; LBP-13-8, 78 NRC 1 (2013)

each organization member seeking representation must qualify for standing in his or her own right, the interests that the representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action; LBP-11-29, 74 NRC 612 (2011)

entity seeking representational standing must show it has an individual member who can fulfill all the necessary standing elements and who has authorized the organization to represent his or her interests; LBP-12-3, 75 NRC 164 (2012); LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012); LBP-13-6, 77 NRC 253 (2013)

even if there are no objections to petitioners' representational standing, boards have an independent obligation to determine whether they have adequately demonstrated standing; LBP-11-2, 73 NRC 28 (2011)

failure of organization member to provide an exact address in her affidavit is not a limiting concern; LBP-15-17, 81 NRC 753 (2015)

in determining whether an individual member of an organization qualifies for standing in his or her own right, NRC generally applies traditional judicial standing concepts; LBP-11-13, 73 NRC 534 (2011)

individual may not intervene in his or her own right while simultaneously being represented by another petitioner in the same proceeding; LBP-11-13, 73 NRC 534 (2011)

individual member who qualifies an organization for standing must have suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action and the injury is likely redressable by a favorable decision; LBP-14-4, 79 NRC 319 (2014)

interests a municipality seeks to represent on behalf of its residents are germane to its own purposes in the context of standing; LBP-11-6, 73 NRC 149 (2011)

interests that a representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the relief sought must require an individual member to participate in the organization's legal action; LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015)

neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit; LBP-11-13, 73 NRC 534 (2011)

organization members living within 50 miles of a reactor are presumed to have standing under the Commission's 50-mile proximity presumption; LBP-15-5, 81 NRC 249 (2015)

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- organization must show that at least one of its members might be affected by the proceeding, identify that member by name and address, and show that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf; LBP-11-6, 73 NRC 149 (2011); LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)
- organization seeking representational standing on behalf of its members may meet the injury-in-fact requirement by demonstrating that at least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding; LBP-11-21, 74 NRC 115 (2011); LBP-11-29, 74 NRC 612 (2011); LBP-15-5, 81 NRC 249 (2015); LBP-15-13, 81 NRC 456 (2015); LBP-15-17, 81 NRC 753 (2015)
- organizations may base standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members; LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012); LBP-13-8, 78 NRC 1 (2013)
- organizations must show that at least one of its members may be harmed by the licensing action and would have standing to sue in his or her own right, identify that member by name and address, show that the organization is authorized to request a hearing on behalf of that member, and show that the interests that the representative organization seeks to protect are germane to its own interests; LBP-12-10, 75 NRC 633 (2012)
- petitioner must show that an individual member can fulfill all necessary standing elements and has authorized petitioner to represent his or her interests; LBP-12-15, 76 NRC 14 (2012); LBP-12-24, 76 NRC 503 (2012); LBP-13-8, 78 NRC 1 (2013)
- petitioner's claims must have supporting declarations from members identifying themselves, outlining their interests, and authorizing petitioners to represent them; LBP-12-3, 75 NRC 164 (2012)
- petitioning member's affidavit must be sufficiently specific to show frequent contact within 50 miles of the plant; LBP-15-17, 81 NRC 753 (2015)
- representational standing associated with causation in power reactor license renewal proceedings is deemed fulfilled if a member of the organization resides or has significant contacts in an area within a 50-mile radius of the facility; LBP-12-15, 76 NRC 14 (2012)
- standing granted in a different proceeding on the basis of the individual showing of a member's standing cannot be the supporting basis for the organization's representational standing in another proceeding where that member does not provide the basis for standing; LBP-13-6, 77 NRC 253 (2013)
- standing must be based on individual standing of at least one member; LBP-13-6, 77 NRC 253 (2013)
- union must show that the interests it seeks to protect are germane to its own purposes, identify by name and address at least one member who qualifies for standing in his or her own right, show that it is authorized by that member to request a hearing on his or her behalf, and show that neither the claim asserted nor the relief requested requires that member's participation in the proceeding in an individual capacity; LBP-14-4, 79 NRC 319 (2014)
- union's organizational standing argument was rejected in an indirect license transfer proceeding initiated before the Commission because it was merely the Local's representational standing argument dressed up in different clothes; LBP-14-4, 79 NRC 319 (2014)
- STATE GOVERNMENT
- deference can be given to a state permit's findings as to the acceptability of environmental impacts; LBP-15-11, 81 NRC 401 (2015)
- during a nuclear emergency in the United States, the individual licensee and the appropriate state and local government officials have direct responsibilities for the coordinated response to the event; LBP-11-15, 73 NRC 629 (2011)
- fact that a competent and responsible state authority has approved the environmental acceptability of a site or a project after extensive and thorough environmentally sensitive hearings is properly entitled to substantial weight in the conduct of NRC's own NEPA analysis; LBP-15-11, 81 NRC 401 (2015)
- government entity may file an amicus brief within the time allowed to the party whose position the brief will support; CLI-15-2, 81 NRC 213 (2015)
- intervenor may question whether the draft environmental impact statement includes a sufficient justification for its reliance upon future actions of a state agency; LBP-12-23, 76 NRC 445 (2012)
- NEPA encourages state participation when appropriate and authorized, but coordination between a federal agency and a state requires active involvement between the two in order for the federal agency to meet its independent review burden; LBP-15-11, 81 NRC 401 (2015)

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no further demonstration of standing is required from a state that seeks to participate as a party in a proceeding pertaining to a utilization facility located within its boundaries; LBP-15-24, 82 NRC 68 (2015); LBP-15-26, 82 NRC 163 (2015)

radiological emergency response plan was developed by the state and approved by the Federal Emergency Management Agency to ensure that the State is prepared to handle the offsite effects of a radiological emergency; LBP-15-4, 81 NRC 156 (2015)

reliance on a state permit, let alone one prepared and adopted by a state government, cannot satisfy a federal agency's obligations under NEPA; LBP-15-11, 81 NRC 401 (2015)

state government has standing because the facility is located within its boundaries and, accordingly, no further demonstration of standing is required; LBP-15-4, 81 NRC 156 (2015); LBP-15-18, 81 NRC 793 (2015)

when licensee requests an amendment, it must notify the state in which its facility is located of its request by providing that state with a copy of its application; LBP-15-28, 82 NRC 233 (2015)

See also Agreement State Programs

STATE REGULATORY REQUIREMENTS

adoption of building code rules by a state presents new and materially different information not previously available, upon which intervenors may rest their proposed contention; LBP-11-7, 73 NRC 254 (2011)

alleged violations of state law are outside the scope of, and not material to, an adjudicatory proceeding; LBP-15-24, 82 NRC 68 (2015)

any NEPA-based challenge to the efficacy of, or the Staff's reliance on, the state permitting process relative to the Staff's environmental review must await the Staff's initial environmental review document; LBP-13-6, 77 NRC 253 (2013)

because New Jersey has adopted more stringent criteria for license termination under restricted release than for unrestricted release, as well as more conservative criteria than NRC's, New Jersey's regulations are compatible with NRC's agreement-state policy; CLI-13-6, 78 NRC 155 (2013)

comments and questions generated by a state agency that is examining a state application to determine compliance with state legal and technical standards do not, in and of themselves, demonstrate a material deficiency in applicant's combined license application; LBP-11-6, 73 NRC 149 (2011)

EPA also has granted authority to some states to implement, maintain, and enforce their own EPA-compliant air quality programs through State Ambient Air Quality Standards; LBP-11-26, 74 NRC 499 (2011)

EPA-approved state permitting authority for Class I injection wells is the regulatory entity from which applicant must seek and obtain the permit necessary to allow it to operate a deep injection well at the site; LBP-13-6, 77 NRC 253 (2013)

Great Lakes Compact Agreement binds and imposes certain obligations on its member states, not on other governmental agencies or on utility companies; LBP-12-12, 75 NRC 742 (2012)

it is unlawful for any person to harvest, possess, or sell river herring in the Commonwealth of Massachusetts or in waters under its jurisdiction; LBP-12-16, 76 NRC 44 (2012)

matters within the purview of the state public service board are outside the jurisdiction of the licensing board, which is limited to considering only the license amendment request and NRC regulations; LBP-15-24, 82 NRC 68 (2015)

NRC adjudication is not the appropriate forum for a challenge to a decision by a state regulatory agency; LBP-12-23, 76 NRC 445 (2012)

NRC Staff's reference to, and reliance in its draft environmental impact statement on, state issuance of a site certification order and associated certificate of compliance on groundwater use does not dispense with NRC's duty under NEPA to conduct an independent hard look at environmental impacts related to active dewatering during operations at a nuclear plant; LBP-11-1, 73 NRC 19 (2011)

promulgation of state regulations falls within the broad reach of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body; LBP-11-7, 73 NRC 254 (2011)

state agency's 6-month review period of an applicant's consistency certification begins on the date the state agency receives the consistency certification; LBP-11-16, 73 NRC 645 (2011)

state water use permit is required for construction and operation of the nuclear units, associated facilities, and transmission lines and corridor; LBP-13-4, 77 NRC 107 (2013)

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state's regulations are not inherently unfair because they may be designed to effectuate a state-desired regulatory outcome; CLI-11-12, 74 NRC 460 (2011)

where implementation of a building code could not make a difference in the outcome of the proceeding, it cannot be material; LBP-11-7, 73 NRC 254 (2011)

where state and local governmental bodies that have jurisdiction over the area in which adverse effects need to be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that a federal agency has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary; LBP-13-4, 77 NRC 107 (2013)

STATEMENT OF CONSIDERATIONS

NRC often refers to the Statement of Considerations as an aid in interpreting the agency's regulations; LBP-14-9, 80 NRC 15 (2014)

SOC cannot interpret what the regulation itself does not contain; LBP-14-9, 80 NRC 15 (2014)

STATION BLACKOUT

Commission imposed a license condition requiring licensees to develop and implement strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities following a beyond-design-basis external event, including a simultaneous loss of all AC power and loss of normal access to the normal heat sink; CLI-12-9, 75 NRC 421 (2012)

concerns about licensee's response to a prolonged station blackout are being addressed in a rulemaking; DD-12-2, 76 NRC 391 (2012)

each nuclear power plant must be able to cool the reactor core and maintain containment integrity in the event of a station blackout of a specified duration; LBP-12-18, 76 NRC 127 (2012)

fire detection systems shall be automatic and capable of operating with or without offsite power; DD-12-3, 76 NRC 416 (2012)

for purposes of the license renewal rule, NRC Staff has determined that the plant system portion of the offsite power system that is used to connect the plant to the offsite power source should be included within the scope of the station blackout rule; CLI-12-5, 75 NRC 301 (2012)

licensees must develop strategies to mitigate a simultaneous loss of all a.c. power and loss of normal access to the ultimate heat sink; DD-15-5, 81 NRC 877 (2015)

NRC guidance documents outline the process licensees use to define and deploy strategies to enhance their ability to cope with beyond-design-basis external events, including station blackout; DD-15-5, 81 NRC 877 (2015)

NRC issued an order on station blackout mitigation strategies requiring mitigation strategies to protect against, among many other hazards, postulated seismic events; DD-15-1, 81 NRC 193 (2015)

petitioner proffers no new information on station blackout or mitigation measures, and the events therefore cannot form the basis for an assertion of timeliness of a motion to reopen; LBP-11-35, 74 NRC 701 (2011)

request that NRC order licensees to conduct periodic training and exercises for multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to ensure that emergency planning equipment and facilities are sufficient for dealing with multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide means to power communications equipment needed to communicate onsite and offsite during a prolonged station blackout until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)

station blackout is a beyond-design-basis event and therefore regulations requiring emergency operating procedures do not apply, and so operators would follow a set of procedures required by 10 C.F.R. 50.63(c)(ii) & (iii); LBP-12-18, 76 NRC 127 (2012)

under its certified design, the Economic Simplified Boiling Water Reactor could maintain circulation long enough to permit safe shutdown of the reactor even if it were to lose offsite power and all of its backup generators failed to operate; LBP-15-5, 81 NRC 249 (2015)

STATUTES

contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications; LBP-15-5, 81 NRC 249 (2015)

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contentions that amount to an attack on applicable statutory requirements or represent a challenge to the basic structure of the Commission's regulatory process must be rejected; LBP-11-29, 74 NRC 612 (2011)

relevant zone of interests in NRC proceedings are articulated in the Atomic Energy Act and the National Environmental Policy Act; LBP-11-29, 74 NRC 612 (2011)

STATUTORY CONSTRUCTION

agencies can reach exactly the same result on a remanded issue as long as they rely on the correct view of a law that they previously misinterpreted, or as long as they explain themselves better or develop better evidence for their position; CLI-11-12, 74 NRC 460 (2011)

agency's interpretation of what is properly within its jurisdictional scope is entitled to great deference, and will not be overturned if reasonably related to the language and purposes of the statute; LBP-14-9, 80 NRC 15 (2014)

agency's narrowed construction of its statutory authority, as distinct from an express prohibition by Congress, may not be used to limit the agency's obligations under NEPA; LBP-14-9, 80 NRC 15 (2014)

although pertinent language of the AEA is written in present tense, a board's inquiry does not end with evaluating foreign ownership, control, or domination concerns posed only by the current corporate structure and financing; LBP-14-3, 79 NRC 267 (2014)

application of the precept that different language is intended to mean different things may be suspended if the purpose or regulatory history behind the language shows that no difference was intended; LBP-13-3, 77 NRC 82 (2013)

applying the rule that the mention of one thing implies the exclusion of another, the fact that the regulation sets forth three specific circumstances in which a board's jurisdiction ends implies that jurisdiction does not end in other circumstances not listed; LBP-11-22, 74 NRC 259 (2011)

Atomic Energy Act § 189a has been interpreted to require that the hearing must encompass all material factors bearing on the licensing decision raised by the requester; LBP-11-22, 74 NRC 259 (2011)

Atomic Energy Act § 274d is construed as providing specific conditions under which NRC shall exercise the general legal authority granted to it under AEA § 274b; CLI-11-12, 74 NRC 460 (2011)

connection of the three prohibitions on foreign ownership with the conjunction "or" rather than "and" shows that a license may not be granted if *any* of the three prohibitions is violated; LBP-12-19, 76 NRC 184 (2012)

court cannot defer to interpretive proposals offered by counsel at oral argument and affirm on the basis of that reading when the statute does not plainly compel the reading being proposed; CLI-11-12, 74 NRC 460 (2011)

court is hesitant to adopt an interpretation of a congressional enactment that renders superfluous another portion of that same law; LBP-12-19, 76 NRC 184 (2012)

courts must give effect, if possible, to every clause and word of a statute to avoid any construction that implies that the legislature was ignorant of the meaning of the language it employed; LBP-12-19, 76 NRC 184 (2012)

doctrine of *expressio unis est exclusio alterius* instructs that where a law expressly describes a particular situation to which it shall apply, what was omitted or excluded was intended to be omitted or excluded; LBP-13-9, 78 NRC 37 (2013)

equivalent words have equivalent meaning when repeated in the same statute; LBP-13-3, 77 NRC 82 (2013)

in ruling that NRC had appropriately interpreted the Atomic Energy Act to include regulatory authority over attendant transmission lines, the court did not decide whether NEPA is an independent source of substantive jurisdiction; LBP-14-9, 80 NRC 15 (2014)

"incur" within the context of Equal Access to Justice Act means that an individual who is a prevailing party meeting the financial qualification of the EAJA is ineligible to receive an EAJA award when that individual was not responsible for the costs of the attorney's fees; LBP-11-8, 73 NRC 349 (2011)

intent of Congress in the Atomic Energy Act is to prohibit relationships where an alien has the power to direct the actions of the licensee; LBP-14-3, 79 NRC 267 (2014)

interpretation of regulations, like interpretation of a statute, begins with the language and structure of the provisions, and the entirety of each provision must be given effect; LBP-14-4, 79 NRC 319 (2014); LBP-14-7, 79 NRC 451 (2014)

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interpretation of statutes at issue and the regulations governing their implementation falls within the Commission's province; LBP-15-5, 81 NRC 249 (2015)

it is fair to read the AEC and NRC history as a de facto acquiescence in and ratification of the Commission's licensing procedure by Congress; CLI-15-4, 81 NRC 221 (2015)

it remains open to Congress to consider whether a ruling comports with actual legislative intent and, if appropriate, to enact clarifying legislation that, consistent with legislative history, mandates Administrative Procedure Act § 554 hearings in Atomic Energy Act enforcement proceedings; LBP-11-8, 73 NRC 349 (2011)

it would be impermissible to construe the prohibition of foreign ownership so as to make it redundant or otherwise deprive it of operative effect; LBP-12-19, 76 NRC 184 (2012)

language of NEPA indicates that Congress did not intend that it be precluded by the Atomic Energy Act; LBP-12-18, 76 NRC 127 (2012)

legislative history and case law require compliance with NEPA unless compliance is impossible, or another statute specifically prohibits compliance with NEPA; LBP-12-18, 76 NRC 127 (2012)

mandatory language used in Atomic Energy Act § 274d is construed as requiring NRC to enter into an agreement for state regulation of the particular categories of nuclear materials that a state certifies it both desires to regulate and has established a program for, provided NRC finds the state's program to be adequate and compatible; CLI-11-12, 74 NRC 460 (2011)

NEPA's legislative history reflects Congress's concern that agencies might attempt to avoid any compliance with NEPA by narrowly construing other statutory directives to create a conflict with NEPA; LBP-14-9, 80 NRC 15 (2014)

no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance with NEPA; LBP-14-9, 80 NRC 15 (2014)

no provision of a statute should be construed to be entirely redundant; LBP-12-19, 76 NRC 184 (2012)

NRC's broad definition of "construction" in the pre-2007 version of the regulation was originally added to Part 50 because of the interpretation that enactment of NEPA required NRC to expand its permitting/licensing authority; LBP-14-9, 80 NRC 15 (2014)

NRC's decision to include transmission lines that serve a nuclear power plant within the definition of "utilization facility" in NEPA, 42 U.S.C. § 2014(cc), was upheld; LBP-14-9, 80 NRC 15 (2014)

only in rare cases does legislative history overcome the strong presumption that the legislative purpose is expressed by the ordinary meaning of the statutory language; LBP-11-8, 73 NRC 349 (2011)

"owned, controlled, or dominated" refers to relationships in which the will of one party is subjugated to the will of another; CLI-15-7, 81 NRC 481 (2015); LBP-14-3, 79 NRC 267 (2014)

plain language of enacted text is the best indicator of intent; LBP-14-4, 79 NRC 319 (2014)

rules of interpretation applicable to statutes are equally germane in determining a regulation's meaning; LBP-13-3, 77 NRC 82 (2013)

section 7 applies only where threatened and endangered species or critical habitats are present and impacts on a species are expected as a result of the proposed project; LBP-13-9, 78 NRC 37 (2013)

"shall" is a term of legal significance in that it is mandatory or imperative, not merely precatory; CLI-11-12, 74 NRC 460 (2011)

specific inclusion of some conditions implies the exclusion of those not mentioned; CLI-12-14, 75 NRC 692 (2012)

statutes must, if possible, be construed so that every word has operative effect; LBP-12-19, 76 NRC 184 (2012)

usual rule of regulatory interpretation is that different language is intended to mean different things, and thus a demand for a hearing is not to be treated as a mere request for a hearing; LBP-13-3, 77 NRC 82 (2013)

STAY

absent a showing of irreparable injury, stay standards can only be met if movant can demonstrate a virtual certainty of success on the merits; CLI-15-17, 82 NRC 33 (2015)

brief stay of the close of a licensing proceeding was ordered to allow a state the opportunity to request status as an interested governmental entity; CLI-12-6, 75 NRC 352 (2012)

Commission denies a request for a protective stay of the license renewal proceeding; CLI-14-6, 79 NRC 445 (2014)

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Commission may consider requests to suspend or hold proceedings in abeyance pursuant to its inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 141 (2011)

Commission rarely grants an indefinite or very lengthy stay on the mere possibility of change; CLI-14-6, 79 NRC 445 (2014)

even if movant fails to show irreparable injury, a board may still grant a stay if movant has made an overwhelming showing or a demonstration of virtual certainty that it will prevail on the merits; LBP-15-2, 81 NRC 48 (2015)

in addressing the stay criteria in a Subpart L proceeding, litigant must come forth with more than general or conclusory assertions in order to demonstrate its entitlement to relief; LBP-15-2, 81 NRC 48 (2015)

in determining whether to grant or deny an application for a stay, a board must balance four separate interests; LBP-15-2, 81 NRC 48 (2015)

irreparable injury is the most important of the factors for grant or denial of a stay; LBP-15-2, 81 NRC 48 (2015)

merely raising the specter of a nuclear accident does not demonstrate irreparable harm; CLI-14-4, 79 NRC 249 (2014)

movant has the burden of persuasion on the four factors of 10 C.F.R. 2.1213(d); LBP-15-2, 81 NRC 48 (2015)

movant must specifically and reasonably demonstrate an injury, not merely allege generalized harm; LBP-15-2, 81 NRC 48 (2015)

request for a protective stay to hold the proceeding in abeyance indefinitely pending potential future events is inconsistent with NRC's longstanding interest in sound case management and regulatory finality and would be unfair to the other parties; CLI-14-6, 79 NRC 445 (2014)

rulemaking petitioner who is not a party to a licensing proceeding has no right under NRC rules to request a stay of that proceeding; CLI-12-6, 75 NRC 352 (2012)

section 2.342(e) standards are applied to motion to stay issuance of a license; CLI-14-6, 79 NRC 445 (2014)

sole provision of NRC's procedural rules explicitly authorizing stay applications is available only to parties to adjudicatory proceedings seeking stays of decisions or actions of a presiding officer pending the filing and resolution of a petition for review; CLI-11-5, 74 NRC 141 (2011)

stay is an extraordinary remedy and is rarely granted in NRC practice; CLI-15-17, 82 NRC 33 (2015)

to qualify as an irreparable injury, the potential harm cited by stay movant first must be related to the underlying claim that is the focus of the adjudication; LBP-15-2, 81 NRC 48 (2015)

under 10 C.F.R. 2.342, stay is available only where a presiding officer or licensing board has issued a decision or taken action in a proceeding to which movant is a party; CLI-14-4, 79 NRC 249 (2014)

upon a strong showing of irreparable injury, movant need not always establish a high probability of success on the merits; LBP-15-2, 81 NRC 48 (2015)

when considering stays or other forms of temporary injunctive relief, the Commission has applied the stay factors outlined in 10 C.F.R. 2.342(e), which restate commonplace principles of equity; CLI-14-6, 79 NRC 445 (2014)

where movant cannot show either irreparable injury or a likelihood of prevailing on the merits, a board need not consider the remaining factors; LBP-15-2, 81 NRC 48 (2015)

See also Injunctive Relief

STAY OF EFFECTIVENESS

although NRC has no specific rule governing stays of agency action pending judicial review, federal law requires parties seeking such stays in court to come to the agency first; CLI-12-11, 75 NRC 523 (2012)

automatic stay provisions were removed in 2007; CLI-11-5, 74 NRC 141 (2011)

four factors must be addressed when the Commission or presiding officer is asked to stay the effectiveness of a presiding officer's decision or action during the pendency of an appeal; CLI-15-17, 82 NRC 33 (2015)

if motions for stay of effectiveness demonstrate neither irreparable injury nor that reversal of the licensing board is a virtual certainty, then the remaining factors need not be considered; CLI-12-11, 75 NRC 523 (2012)

if NRC Staff grants a renewed license before a hearing takes place, intervenor may seek a stay of Staff's action; CLI-12-4, 75 NRC 154 (2012)

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in deciding motions seeking a stay of agency action pending judicial review, the Commission looks to the same four-part test that governs stays of licensing board decisions pending Commission review; CLI-12-11, 75 NRC 523 (2012)

intervenor may seek a stay of NRC Staff's immediately effective license issuance; LBP-15-3, 81 NRC 65 (2015)

irreparable injury is the most important of the stay criteria; CLI-12-11, 75 NRC 523 (2012)

licensee or other person to whom the Commission has issued an immediately effective order may move the presiding officer to set aside the immediate effectiveness of the order; LBP-14-4, 79 NRC 319 (2014)

notification of renewal of source materials license triggers the 5-day filing deadline to apply for a stay of the license; LBP-15-2, 81 NRC 48 (2015)

parties seeking a stay must show that they face imminent, irreparable harm that is both certain and great; CLI-12-11, 75 NRC 523 (2012)

requests for stays of licensing board decisions are considered under 10 C.F.R. 2.342; CLI-12-11, 75 NRC 523 (2012)

requests to stay effectiveness of future licensing action pending judicial appeal are more appropriately styled motions to reconsider and motions to hold in abeyance; CLI-12-11, 75 NRC 523 (2012)

section 2.342 does not apply to requests for stays of Commission decisions pending judicial review; CLI-12-11, 75 NRC 523 (2012)

stay of an NRC license is an extraordinary remedy, and a rare occurrence in NRC practice; LBP-15-2, 81 NRC 48 (2015)

to qualify as irreparable harm justifying a stay, the asserted harm must be related to the underlying claim; CLI-12-11, 75 NRC 523 (2012)

without a showing of irreparable injury, petitioners seeking a stay of effectiveness must demonstrate that reversal of the licensing board is a virtual certainty; CLI-12-11, 75 NRC 523 (2012)

STEAM GENERATOR TUBE DEGRADATION

petitioners' concerns about tube leaks, unplanned power changes, and potential primary coolant contamination did not constitute any violations that were more than minor; DD-15-2, 81 NRC 205 (2015)

wear of steam generator tubes is of critical importance to evaluations performed in the final safety analysis report, because the tubes are part of the reactor coolant pressure boundary, and assurance of their integrity is required; LBP-13-7, 77 NRC 307 (2013)

STEAM GENERATORS

any operation that might result in in-plane vibrations due to fluid elastic instability is inconsistent with the analyses or descriptions in the UFSAR is the type of test or experiment that triggers the obligation to seek a license amendment; LBP-13-7, 77 NRC 307 (2013)

changes with respect to components (i.e., steam generators) are permitted without a license amendment under prescribed conditions that assure that the replacement components are sufficiently similar to the original so that safety requirements are maintained or improved; LBP-13-7, 77 NRC 307 (2013)

contention that challenges the entire steam generator replacement project, rather than any aspect of the proposed changes to four technical specifications identified in the license amendment request is outside the scope of this proceeding; LBP-13-11, 78 NRC 177 (2013)

contention that is primarily based on the fact that steam generator replacements in other reactors have experienced problems is not adequately supported; LBP-13-11, 78 NRC 177 (2013)

contention that steam generator replacement project be deemed an experiment and that an adjudicatory public hearing be convened for independent analysis of the project before it is implemented is inadmissible; LBP-13-11, 78 NRC 177 (2013)

failure to verify adequacy of thermal-hydraulic and flow-induced vibration design of the replacement steam generators was determined to be of very low safety significance, because the tubes did not leak and continued to meet the required structural integrity criterion; DD-15-7, 82 NRC 257 (2015)

hearing request on safety concerns over steam generator replacement is referred to the Executive Director for Operations for disposition; CLI-14-11, 80 NRC 167 (2014)

request that NRC order licensee to submit a license amendment application for the design and installation of replacement steam generators and for additional enforcement action is moot; DD-15-7, 82 NRC 257 (2015)

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revisions to technical specifications that are necessary to allow licensee to operate safely with the replacement steam generators after they have been installed require a license amendment; LBP-13-11, 78 NRC 177 (2013)

STIPULATIONS

appeal board's ruling that the environmental impact statement was deemed modified by the parties' stipulations at hearing did not violate the letter or spirit of NEPA; CLI-15-6, 81 NRC 340 (2015)
Commission directs litigants to provide either a joint stipulation that local union's appeal should be dismissed or briefing on the question whether the appeal should be dismissed as moot and the proceeding terminated; CLI-15-16, 81 NRC 810 (2015)

STORAGE CANISTERS

determination regarding item integrity under 10 C.F.R. 74.55(b)(1) refers to the ability to determine that a container holding strategic special nuclear material items has not been breached and that the amount of SSNM within has not been altered; LBP-14-1, 79 NRC 39 (2014)

STRATEGIC SPECIAL NUCLEAR MATERIAL

adequacy finding on applicant's material control and accounting program requires the board to make a case-by-case determination, guided by the Atomic Energy Act's mandate that no license to possess special nuclear material may be issued if issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public; LBP-14-1, 79 NRC 39 (2014)

any statistical sampling plan for verifying the presence and integrity of SSNM items must have at least 99 percent power of detecting item losses that total 5 formula kg or more, plantwide, within 30 calendar days for Category IA items and 60 calendar days for Category IB items contained in a vault or in a permanently controlled access area isolated from the rest of the material access area; CLI-15-9, 81 NRC 512 (2015)

applicant has demonstrated that its program of automated equipment, computer systems (and their verification), and the use of secured and tamper-safed item storage area boundaries, satisfactorily demonstrates the ability to verify the presence and integrity of all SSNM items in storage; LBP-14-1, 79 NRC 39 (2014)

applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to rapidly assess the validity of alleged thefts; LBP-14-1, 79 NRC 39 (2014)

applicant's program for control and accounting of SSNM must show how compliance with the requirements of section 74.51 will be accomplished; LBP-14-1, 79 NRC 39 (2014)

applicant's proposal to seal and design strategic SSNM item storage locations to be tamper-safed or equivalent to tamper-safing such that confirmation that the physical boundary of these locations has not been breached ensures the integrity of these items; LBP-14-1, 79 NRC 39 (2014)

applicant's SSNM item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 39 (2014)

applicant's verification of the integrity of the SSNM vault boundaries on a daily basis exceeds the regulatory requirement to verify the integrity of the items every 30 or 60 days; LBP-14-1, 79 NRC 39 (2014)

applicants applying to possess 5 or more formula kilograms of SSNM must maintain alarm resolution capabilities designed to achieve the performance objectives of section 74.51(a); LBP-14-1, 79 NRC 39 (2014)

by verifying integrity of storage area boundaries, applicant can verify the integrity of all SSNM items in storage within the required 30- and 60-day time frames; LBP-14-1, 79 NRC 39 (2014)

capability to rapidly assess the validity of alleged thefts is aimed at the rapid determination of whether an actual loss of 5 or more formula kilograms occurred; LBP-14-1, 79 NRC 39 (2014)

capability to resolve alarms within approved time periods is most clearly aimed at the prompt investigation of anomalies potentially indicative of SSNM losses; LBP-14-1, 79 NRC 39 (2014)

capability under 10 C.F.R. 74.51(a)(1) to verify presence is most clearly aimed at ongoing confirmation of the presence of SSNM in assigned locations; LBP-14-1, 79 NRC 39 (2014)

capability under 10 C.F.R. 74.51(a)(4) to verify integrity is most clearly aimed at the prompt investigation of anomalies potentially indicative of SSNM losses; LBP-14-1, 79 NRC 39 (2014)

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- “Category IA” material means any SSNM directly usable in the manufacture of a nuclear explosive device; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
- “Category IB” material refers to all SSNM other than Category IA material; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
- contention that applicant’s revised material control and accounting plan is deficient because its item monitoring program does not have the capability to verify, on a statistical sampling basis, the presence and integrity of SSNM losses that total 5 formula kilograms of plutonium or more, plantwide, within the time frames specified by the regulation is inadmissible; CLI-15-9, 81 NRC 512 (2015)
- “controlled access area” is any temporarily or permanently established area that is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it; CLI-15-9, 81 NRC 512 (2015)
- determination regarding item integrity under 10 C.F.R. 74.55(b)(1) refers to the ability to determine that a container holding SSNM items has not been breached and that the amount of SSNM within has not been altered; LBP-14-1, 79 NRC 39 (2014)
- “formula kilogram” means SSNM in any combination in a quantity of 1000 grams computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium); CLI-15-9, 81 NRC 512 (2015)
- licensee must be able to rapidly assess the validity of alleged thefts; CLI-15-9, 81 NRC 512 (2015)
- licensees are not required to conduct assessments of alleged thefts without the use of their records systems, or by first verifying the integrity and accuracy of those records systems; LBP-14-1, 79 NRC 39 (2014)
- licensees must satisfy 10 C.F.R. 74.55(b)’s detection requirements for tamper-safed SSNM items in order to achieve the performance objectives set out in section 74.51(a); LBP-14-1, 79 NRC 39 (2014)
- licensees must verify on a statistical sampling basis, the presence and integrity of SSNM items; CLI-15-9, 81 NRC 512 (2015)
- no requirement to quantify the potential for an adversary to take measures to conceal any abnormalities in MMIS and PLC mapping can reasonably be found in (or implied by) the language of 10 C.F.R. 74.55(b)(1); LBP-14-1, 79 NRC 39 (2014)
- NRC may issue a license to possess and use 5 or more formula kilograms of SSNM only if applicant can establish, implement, and maintain a Commission-approved material control and accounting system that will achieve general performance objectives; LBP-14-1, 79 NRC 39 (2014)
- “power of detection” means the probability that the critical value of a statistical test will be exceeded when there is an actual loss of a specific quantity of SSNM; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
- rapid determination of SSNM theft assessment should be completed within an 8- or 72-hour timeline; LBP-14-1, 79 NRC 39 (2014)
- requirement in 10 C.F.R. 74.55(b) for 99% power of detection means that there must be a 99% probability that a missing item will be included within the sample chosen for inspection and would thus be detected; LBP-14-1, 79 NRC 39 (2014)
- section 74.55(b)(1) applies only to licensees that are authorized to possess 5 or more formula kilograms of SSNM; LBP-14-1, 79 NRC 39 (2014)
- statistical sampling is to be used to achieve verification of item presence and integrity but 10 C.F.R. 74.55(b) does not prescribe a particular method of sampling, only that statistical sampling must result in at least 99% power of detecting losses that total 5 formula kg or more; LBP-14-1, 79 NRC 39 (2014)
- “tamper-safing” means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of SSNM within the container or vault; LBP-14-1, 79 NRC 39 (2014)
- there is a general overarching requirement that applicant’s SSNM item monitoring method be sufficiently accurate to provide reasonable assurance that the specific regulatory requirement is satisfied; LBP-14-1, 79 NRC 39 (2014)
- to achieve SSNM loss-related performance objectives, the material control and accounting system must provide the capabilities described in sections 74.55 and 74.57; LBP-14-1, 79 NRC 39 (2014)
- “unit process” means an identifiable segment or segments of processing activities for which the amounts of input and output SSNM are based on measurements; CLI-15-9, 81 NRC 512 (2015)

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“vault” is a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry; CLI-15-9, 81 NRC 512 (2015); LBP-14-1, 79 NRC 39 (2014)
whether applicant’s item monitoring program has the capability to verify, on a statistical sampling basis, the presence and integrity of SSNM items is decided; LBP-14-1, 79 NRC 39 (2014)

STRIKING TESTIMONY

boards may on motion or on their own initiative strike any portion of a written presentation that is unreliable; LBP-11-14, 73 NRC 591 (2011)

STRUCTURAL ANALYSIS

because the shield building functions as a radiation and biological shield, failure or collapse of the shield building due to cracking propagation could lead to health and safety impacts and thus petitioner’s contention concerns a subject matter that could impact the grant or denial of a pending license application; LBP-15-1, 81 NRC 15 (2015)

structural limits on the block wall between the engineered safety feature switchgear rooms is discussed; DD-14-5, 80 NRC 205 (2014)

STRUCTURAL INTEGRITY

contention claiming that modifications to repair or replace inadequate structural beams and columns is more appropriately presented as a request for enforcement action; CLI-15-5, 81 NRC 329 (2015)

failure to verify adequacy of thermal-hydraulic and flow-induced vibration design of the replacement steam generators was determined to be of very low safety significance, because the tubes did not leak and continued to meet the required structural integrity criterion; DD-15-7, 82 NRC 257 (2015)

periodic visual inspections of the accessible interior and exterior surfaces of the containment system are required to identify structural deterioration that may affect containment integrity; LBP-15-26, 82 NRC 163 (2015)

request for enforcement action based on support beam deficiencies, flood protection inadequacy, flood risks from upstream dams, and primary reactor containment electrical penetration seals containing Teflon is denied because petitioner’s requests have been addressed through other actions; DD-15-4, 81 NRC 869 (2015)

SUA SPONTE ISSUES

although Commission approval is required before a board exercises its sua sponte authority, that authority still exists; LBP-14-9, 80 NRC 15 (2014)

amicus curiae briefs may be filed when the Commission has taken up a matter pursuant to section 2.341 or sua sponte; CLI-13-9, 78 NRC 551 (2013)

boards are not to proceed with sua sponte issues absent the Commission’s approval; LBP-11-9, 73 NRC 391 (2011)

boards’ authority to seek to trigger review in extraordinary circumstances remains and has been put to good use; LBP-11-9, 73 NRC 391 (2011)

boards have limited authority to consider matters in addition to those properly put into controversy by the parties; LBP-11-9, 73 NRC 391 (2011)

boards may consider any matter, but only to the extent that the board determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the board; LBP-11-9, 73 NRC 391 (2011)

licensing boards may not raise issues sua sponte when the sole intervenor has withdrawn from the proceeding; LBP-11-22, 74 NRC 259 (2011)

referring serious safety, environmental, or common defense and security matter to the Staff for resolution is not an adequate solution; LBP-11-9, 73 NRC 391 (2011)

requesting authorization from the Commission for the board, on its own motion, to examine and decide the serious safety or common defense and security matters underlying contentions is allowed to be used for matters that were initially raised by a party, where that party later withdrew; LBP-11-9, 73 NRC 391 (2011)

SUBPART G PROCEDURES

enforcement proceedings are typically conducted pursuant to the procedures in Subpart G; LBP-13-3, 77 NRC 82 (2013)

in a proceeding governed by Subpart L, the board is to apply the standards of Subpart G when ruling on motions for summary disposition; LBP-11-17, 74 NRC 11 (2011); LBP-12-2, 75 NRC 159 (2012)

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licensing boards are to apply the same standards for granting or denying summary disposition that are set forth in section 2.710; LBP-11-4, 73 NRC 91 (2011); LBP-11-7, 73 NRC 254 (2011)

petitioner must demonstrate by reference to the contention and its bases and the specific procedures in Subpart G that resolving the contention will require resolution of material issues of fact that may be best determined through use of the identified procedures; LBP-11-2, 73 NRC 28 (2011)

presiding officer must determine by order that a contested matter necessitates resolution of a material issue of fact relating to a past activity where the credibility of an eyewitness and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter may reasonably be expected to be at issue; LBP-11-6, 73 NRC 149 (2011)

proceedings on enforcement matters must be conducted under the procedures of Subpart G unless all parties agree otherwise; LBP-14-11, 80 NRC 125 (2014)

relatively formal procedures in Subpart G of Part 2 govern where the credibility of an eyewitness may reasonably be expected to be at issue and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter; LBP-11-2, 73 NRC 28 (2011); LBP-11-16, 73 NRC 645 (2011)

SUBPART G PROCEEDINGS

scope of discovery under Subpart G covers any matter that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party; LBP-14-11, 80 NRC 125 (2014)

scope of mandatory disclosures that parties must make under Subpart G is defined by the disputed issues alleged with particularity in the pleadings; LBP-14-11, 80 NRC 125 (2014)

SUBPART J PROCEEDINGS

should a suspended adjudication resume, the Commission will consider appeals in due course, consistent with relevant Subpart J rules; CLI-13-8, 78 NRC 219 (2013)

SUBPART L PROCEDURES

Commission has authority to rule that a license transfer case be adjudicated under Subpart L; CLI-14-5, 79 NRC 254 (2014)

in the absence of any assertion that Subpart G procedures should be used to resolve any of the admitted contentions, the Subpart L hearing procedures will be used to adjudicate each admitted contention; LBP-11-2, 73 NRC 28 (2011)

in the interest of expediting the further proceedings, hearing on senior operator license denial will be conducted under the provisions of Subpart L of the Commission's Rules of Practice; LBP-13-3, 77 NRC 82 (2013)

informal hearing procedures will ordinarily be used in proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits; LBP-11-6, 73 NRC 149 (2011); LBP-11-16, 73 NRC 645 (2011)

motions for summary disposition must be in writing and must include a written explanation of the basis of the motion and affidavits to support statements of fact; LBP-12-4, 75 NRC 213 (2012)

proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to Part 55 may be conducted under the procedures of Subpart L; LBP-13-3, 77 NRC 82 (2013)

taking of evidence for the record in a Subpart L hearing is described; CLI-12-3, 75 NRC 132 (2012)

SUBPART L PROCEEDINGS

all disclosures under section 2.336(c) must be accompanied by a certification (in the form of a sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification; LBP-14-2, 79 NRC 131 (2014)

because parties may not seek discovery from the other parties to the proceeding, all such parties must make periodic mandatory disclosures; LBP-14-2, 79 NRC 131 (2014)

board is to apply the standards of Subpart G when ruling on motions for summary disposition; LBP-11-17, 74 NRC 11 (2011); LBP-11-31, 74 NRC 643 (2011); LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

complexity and number of issues in a proceeding do not per se lead ineluctably to the conclusion that cross-examination is necessary to ensure a fair and adequate hearing; CLI-12-18, 76 NRC 371 (2012)

disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update; LBP-14-2, 79 NRC 131 (2014)

SUBJECT INDEX

evidentiary record is opened upon the filing of the first initial written statements of position and written testimony with supporting affidavits on the admitted contentions; LBP-11-22, 74 NRC 259 (2011)

in addressing the stay criteria in a Subpart L proceeding, litigant must come forth with more than general or conclusory assertions in order to demonstrate its entitlement to relief; LBP-15-2, 81 NRC 48 (2015)

NRC Staff is under a special obligation to create, maintain, and update a hearing file; LBP-14-2, 79 NRC 131 (2014)

NRC Staff must disclose or provide documents that support Staff's review of the application or proposed action, together with a list of all otherwise-discoverable documents for which a claim of protected or privileged status is being made; LBP-13-5, 77 NRC 233 (2013)

parties must update their disclosures every month after initial disclosures on a due date selected by the presiding officer in the order admitting contentions; LBP-14-2, 79 NRC 131 (2014)

procedural rules in Subpart L govern most adjudicatory proceedings; CLI-14-5, 79 NRC 254 (2014)

standard for deciding motions for summary disposition closely parallels the standard used by the federal courts in deciding motions for summary judgment; LBP-11-31, 74 NRC 643 (2011)

summary disposition motions in Subpart L proceedings are to be evaluated pursuant to the same standards for summary disposition set forth in Part 2, Subpart G; LBP-12-2, 75 NRC 159 (2012); LBP-12-4, 75 NRC 213 (2012)

where parties have provided prefiled direct testimony in Subpart L cases and submitted a list of confidential proposed questions for the board to ask the witnesses, the need for cross-examination by parties should be a rare circumstance, except where questions of witness credibility, motive, or intent are at issue; CLI-12-18, 76 NRC 371 (2012)

SUBPART M PROCEDURES

any discretionary diversion from the usual Subpart M procedural track will be rare, requiring extraordinary and unusual circumstances, and all requests to date to provide a non-Subpart M hearing in a license transfer case have been denied; CLI-14-5, 79 NRC 254 (2014)

license transfer hearings are to be oral in nature unless the parties unanimously move for a hearing consisting of written comments; CLI-14-5, 79 NRC 254 (2014)

SUBPART M PROCEEDINGS

scope of Subpart M proceedings covers all adjudicatory proceedings on an application for transfer of control of an NRC license, without distinction as to how the proceeding commences; CLI-14-5, 79 NRC 254 (2014)

Subpart M logically applies to all license transfer hearing requests, regardless of who files them, because the types of issues litigated (e.g., financial assurance, technical qualifications, foreign ownership, and staffing levels) are likely to be similar regardless of whether they are initiated by intervention petitions or by challenges to a Staff action; CLI-14-5, 79 NRC 254 (2014)

SUBPOENA PROCEEDINGS

schedule for Subpart L proceedings, including the closing of the record, is described; CLI-12-3, 75 NRC 132 (2012)

SUBPOENAS

administrative subpoena duces tecum is judicially enforceable where the inquiry is within the authority of the agency, the demand for production is neither too indefinite nor unreasonably broad nor burdensome, and the information sought is reasonably relevant to the authorized inquiry; CLI-13-5, 77 NRC 223 (2013)

agencies are required to use alternative means for obtaining information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 223 (2013)

Congress has vested NRC with authority to issue subpoenas in conjunction with investigations that the NRC deems necessary to protect public health or to minimize danger to life or property in matters involving nuclear materials; CLI-13-5, 77 NRC 223 (2013)

licensee's motion to quash a subpoena duces tecum because production of the requested file would compromise its employee concerns program by potentially subjecting information contained in the file to public disclosure as an official agency record under FOIA is denied; CLI-13-5, 77 NRC 223 (2013)

NRC is authorized to issue any necessary subpoenas; CLI-13-5, 77 NRC 223 (2013)

NRC subpoena was upheld notwithstanding assertion of First Amendment freedom of association rights, where the subpoena was narrowly tailored to documents supporting specific allegations; CLI-13-5, 77 NRC 223 (2013)

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NRC subpoenas have been quashed or limited when the subpoena was not closely drawn or NRC did not consider alternative means for obtaining the requested information to avoid unnecessary infringement of First Amendment associational rights; CLI-13-5, 77 NRC 223 (2013)

recipient of a subpoena issued by the NRC's Office of Investigations may move to quash the subpoena pursuant to 10 C.F.R. 2.702(f); CLI-13-5, 77 NRC 223 (2013)

under appropriate circumstances First Amendment rights give way to the compelling government interest in nuclear safety; CLI-13-5, 77 NRC 223 (2013)

under certain circumstances, a licensee or vendor might be required to disclose confidential ECP information (including the identity of a concerned individual) at the behest of a government agency (including the NRC), or in response to a subpoena; CLI-13-5, 77 NRC 223 (2013)

SUBSTANTIAL JUSTIFICATION STANDARD

although a court's merits reasoning may be quite relevant to the resolution of the substantial justification question, the inquiry into the reasonableness of the government's position may not be collapsed into an antecedent evaluation of the merits; LBP-11-8, 73 NRC 349 (2011)

board's determination of whether the government's position was substantially justified is made on the basis of the written record and oral argument; LBP-11-8, 73 NRC 349 (2011)

Congress did not want the "substantially justified" standard to be read to raise a presumption that the government position was not substantially justified simply because it lost the case; LBP-11-8, 73 NRC 349 (2011)

fact that one other court agreed or disagreed with the government does not establish whether its position was substantially justified; LBP-11-8, 73 NRC 349 (2011)

for the purposes of the Equal Access to Justice Act, the government's position should be considered substantially justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact; LBP-11-8, 73 NRC 349 (2011)

government must demonstrate the reasonableness not only of its litigation position, but also of the agency's actions; LBP-11-8, 73 NRC 349 (2011)

in determining whether the government's position was substantially justified, courts must look to the totality of the circumstances; LBP-11-8, 73 NRC 349 (2011)

in determining whether the government's position was substantially justified, the board does not make separate determinations regarding each stage but arrives at one conclusion that simultaneously encompasses and accommodates the entire civil action; LBP-11-8, 73 NRC 349 (2011)

justification "in substance or in the main" is equated with the "reasonable basis both in law and fact" standard that has been applied by a majority of federal appellate courts; LBP-11-8, 73 NRC 349 (2011)

prevailing party is not entitled to an award for attorneys' fees and expenses if the position of the Commission over which the applicant has prevailed was substantially justified; LBP-11-8, 73 NRC 349 (2011)

reasonableness, the legal standard governing the determination of substantial justification, is separate and distinct from the legal standard used in assessing the merits phase of a proceeding; LBP-11-8, 73 NRC 349 (2011)

under the Equal Access to Justice Act, the government bears the burden of establishing that its position was substantially justified; LBP-11-8, 73 NRC 349 (2011)

SUMMARY DISPOSITION

all facts are to be construed in the light most favorable to the nonmoving party; LBP-11-31, 74 NRC 643 (2011)

all material facts set forth in the statement required to be served by movant will be considered to be admitted unless controverted by the statement required to be served by the opposing party; LBP-11-4, 73 NRC 91 (2011); LBP-12-26, 76 NRC 559 (2012)

although it is risky for a nonmoving party to fail to proffer evidence in response to the summary judgment movant's showing, such a failure does not automatically mandate granting of the motion; LBP-11-4, 73 NRC 91 (2011)

any doubt as to the existence of a genuine issue of material fact is resolved against the movant; LBP-11-4, 73 NRC 91 (2011)

at issue is not whether evidence unmistakably favors one side or the other, but whether there is sufficient evidence favoring the summary disposition opponent for a reasonable trier of fact to find in favor of that party; LBP-11-4, 73 NRC 91 (2011)

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because the initial burden rests on summary disposition movant, a licensing board must examine the record in the light most favorable to the nonmoving party and all justifiable inferences must be drawn in favor of that party; LBP-11-14, 73 NRC 591 (2011)

board refused to consider new bases that were included in an answer to summary disposition motion and were outside the scope of the original contention; LBP-11-4, 73 NRC 91 (2011)

boards apply a two-part test in determining whether to grant summary disposition; LBP-12-26, 76 NRC 559 (2012)

boards cannot grant summary disposition unless movant discharges its burden of demonstrating that it is entitled to a decision as a matter of law; LBP-12-4, 75 NRC 213 (2012)

board's denial of a summary disposition motion did not constitute a de facto partial initial decision or a final decision on the merits ripe for Commission review; CLI-11-6, 74 NRC 203 (2011)

boards must view the record in the light most favorable to the summary disposition opponent; LBP-12-19, 76 NRC 184 (2012)

caution should be exercised in granting summary disposition, which may be denied if there is reason to believe that the better course would be to proceed to a full hearing; LBP-11-7, 73 NRC 254 (2011)

complex, fact-intensive issues are rarely appropriate for summary disposition, much less for resolution on the initial pleadings; LBP-11-2, 73 NRC 28 (2011)

correct inquiry with regard to the first criterion for summary disposition is whether there are material factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party; LBP-11-31, 74 NRC 643 (2011)

courts may treat motions to dismiss for failure to state a claim upon which relief can be granted and motions for judgment on the pleadings as motions for summary judgment under Rule 56 if matters outside the pleadings are presented to and not excluded by the court; LBP-12-2, 75 NRC 159 (2012)

denial of summary disposition does not constitute a full or partial initial decision warranting immediate Commission review; CLI-11-10, 74 NRC 251 (2011)

denial of summary disposition neither threatens NRC Staff with immediate and serious irreparable impact that could not be alleviated through a petition for review of the presiding officer's final decision nor affects the basic structure of the proceeding in a pervasive or unusual manner; CLI-11-10, 74 NRC 251 (2011)

even where no factual dispute exists, summary disposition may only be granted if movant is entitled to judgment as a matter of law; LBP-12-26, 76 NRC 559 (2012)

expansion of issues for litigation from the board's denial of a motion for summary disposition had neither a pervasive and unusual effect on the litigation nor a serious and irreparable impact on movant; CLI-15-24, 82 NRC 331 (2015)

grant of summary disposition on a particular contention is an interlocutory ruling appealable at the end of the case; CLI-11-6, 74 NRC 203 (2011)

grant of summary disposition where other contentions are pending is not a final decision, and is appealable only upon a showing that the standards for interlocutory review have been met; CLI-11-14, 74 NRC 801 (2011)

if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 184 (2012)

if a motion for summary disposition is granted, then the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of NRC Staff's treatment of the relevant issue; LBP-14-5, 79 NRC 377 (2014)

if a party believes an admitted contention is mooted by the inclusion of additional information, that party may file a motion for summary disposition; LBP-14-5, 79 NRC 377 (2014)

if applicants believe that their actions render a contention moot, then they should promptly file a motion for summary disposition; LBP-12-19, 76 NRC 184 (2012)

if evidence in favor of the summary disposition opponent is merely colorable or not significantly probative, summary disposition may be granted; LBP-11-4, 73 NRC 91 (2011)

if movant discusses a matter in its statement of undisputed facts, the board may view with skepticism any later argument by that movant that a response regarding that issue is outside the scope of the contention, particularly given the onus that is placed on an opposing party to respond to such a statement; LBP-11-4, 73 NRC 91 (2011)

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- if movant fails to make the requisite showing to satisfy that initial burden, then the board must deny the motion even if the opposing party chooses not to respond or its response is inadequate; LBP-11-4, 73 NRC 91 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)
- if movant makes a proper showing, and if the opposing party does not show that a genuine issue of material fact exists, the board may summarily dispose of all arguments on the basis of the pleadings; LBP-11-4, 73 NRC 91 (2011)
- if movant meets its burden, the nonmoving party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation and cannot rely on mere allegations or denials, or the facts in controversy will be deemed admitted; LBP-11-14, 73 NRC 591 (2011); LBP-12-19, 76 NRC 184 (2012)
- if movant meets its burden, then and only then is the nonmoving party required to proffer evidence that contradicts the moving party's showing and that proves the existence of a genuine issue of material fact; LBP-11-4, 73 NRC 91 (2011)
- if no answer to a summary disposition motion is filed, the decision sought, if appropriate, must be rendered; LBP-12-26, 76 NRC 559 (2012)
- if no genuine dispute remains, then the board may dispose of all arguments based on the pleadings; LBP-11-7, 73 NRC 254 (2011)
- if opponent of summary disposition declines to oppose the moving party's prima facie showing of undisputed material facts, NRC regulations provide that those facts will be considered admitted; LBP-12-4, 75 NRC 213 (2012)
- if proponent meets its burden, opponent must counter each adequately supported material fact with its own statement of material facts in dispute and supporting documentation and cannot rely on mere allegations or denials, or the facts in controversy will be deemed admitted; LBP-12-23, 76 NRC 445 (2012)
- if proponent meets its burden, opponent must set forth specific facts showing that there is a genuine issue, and may not rely on mere allegations or denials, but no defense to an insufficient showing is required; LBP-11-7, 73 NRC 254 (2011)
- if reasonable minds could differ as to the import of the evidence, summary disposition is not appropriate; LBP-11-14, 73 NRC 591 (2011); LBP-11-20, 74 NRC 65 (2011); LBP-12-23, 76 NRC 445 (2012)
- if the question is a close one, boards must, in considering summary disposition opponent's submission, carefully ascertain whether any factual disputes asserted are genuine and relate to issues that would affect the outcome of the proceeding under relevant substantive law; LBP-11-4, 73 NRC 91 (2011)
- if, after considering all arguments and facts proffered by the parties, no genuine issue of material fact exists, the board may dispose of all arguments based on the pleadings; LBP-12-19, 76 NRC 184 (2012)
- in a proceeding governed by Subpart L, the board is to apply the standards of Subpart G found in 10 C.F.R. 2.710 when ruling on motions for summary disposition; LBP-11-4, 73 NRC 91 (2011); LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-17, 74 NRC 11 (2011); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)
- in applying the summary disposition standard, it is appropriate for the board to look not only to NRC regulatory and case law, but also to federal court case law on summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-4, 73 NRC 91 (2011)
- in assessing whether movant has met his or her burden, a court must view all inferences to be drawn from underlying facts in the light most favorable to the party opposing the motion; LBP-11-4, 73 NRC 91 (2011)
- in establishing the evidentiary standard of "relevant, material, and reliable evidence" being admissible in a hearing, 10 C.F.R. 2.337 thereby establishes the right of all parties to present such admissible evidence; LBP-11-4, 73 NRC 91 (2011)
- in upholding summary disposition in a proceeding to enforce a suspension order, the Commission ruled that the hearsay nature of a witness's statement did not preclude the licensing board from considering it, at least in the absence of evidence questioning its reliability; LBP-11-14, 73 NRC 591 (2011)
- it is not appropriate for boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011)
- judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; LBP-11-14, 73 NRC 591 (2011)

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judgment should be granted only where the truth is clear; LBP-12-23, 76 NRC 445 (2012)

licensing boards must examine the record in the light most favorable to the opponent of summary disposition and draw all justifiable inferences in favor of that party; LBP-12-23, 76 NRC 445 (2012)

licensing boards or presiding officers should not conduct a trial on affidavits; LBP-12-23, 76 NRC 445 (2012)

like summary judgment, summary disposition is an extreme remedy that should be granted with caution especially before the parties have been afforded an opportunity to marshal their evidence; LBP-11-7, 73 NRC 254 (2011)

“materially different result” requirement of section 2.326(a)(3) is analyzed using the Commission’s test of whether it has been shown that a motion for summary disposition could be defeated; LBP-12-1, 75 NRC 1 (2012)

motion is granted because there is no genuine issue or dispute as to any material fact and applicant’s low-level radioactive waste plan satisfies the requirements of 10 C.F.R. 52.79(a); LBP-11-31, 74 NRC 643 (2011)

motions must contend that there are facts on which there is no genuine issue to be heard; LBP-14-5, 79 NRC 377 (2014)

motions shall be granted if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-11-4, 73 NRC 91 (2011); LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-17, 74 NRC 11 (2011); LBP-12-4, 75 NRC 213 (2012)

motions will be granted if there is no genuine issue as to any material fact and the moving party is entitled to a decision as a matter of law; LBP-11-31, 74 NRC 643 (2011)

movant bears the initial burden of showing the absence of a genuine issue as to any material fact and that it is entitled to judgment as a matter of law; LBP-11-4, 73 NRC 91 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

movant is entitled to summary disposition if filings in the proceeding together with statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that movant is entitled to a decision as a matter of law; LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

movant should prevail only where the truth is clear; LBP-11-4, 73 NRC 91 (2011); LBP-11-14, 73 NRC 591 (2011)

no defense to an insufficient showing by summary disposition proponent is required; LBP-11-14, 73 NRC 591 (2011); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)

NRC applies the same standards to motions for summary disposition that federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-12-2, 75 NRC 159 (2012); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012)

only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition; LBP-11-4, 73 NRC 91 (2011)

opponent cannot rest on the allegations or denials of a pleading, but instead must go beyond the pleadings and by its own affidavits, or the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial; LBP-12-4, 75 NRC 213 (2012)

opponent has 20 days from proponent’s filing of its motion to oppose that motion; LBP-12-7, 75 NRC 503 (2012)

opponent may not rest upon mere allegations or denials, but must state specific facts showing that there is a genuine issue of fact for hearing; LBP-11-4, 73 NRC 91 (2011)

opponent need not demonstrate that it would prevail on the issues at hand, but it must at least show that there is a genuine dispute of material fact to be tried; LBP-12-19, 76 NRC 184 (2012)

opponent of a summary disposition motion may not raise distinctly new asserted deficiencies; LBP-11-4, 73 NRC 91 (2011)

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proper method for raising an issue addressed in a motion to strike is to seek leave to file a reply in support of the summary disposition motion; LBP-11-14, 73 NRC 591 (2011)

proponent bears the burden of establishing that no facts remain in dispute, even if the motion is unopposed; LBP-12-26, 76 NRC 559 (2012)

purely legal disputes can be appropriately resolved by summary disposition; LBP-12-26, 76 NRC 559 (2012)

record must show movant's right to summary judgment with such clarity as to leave no room for controversy, and must demonstrate that his opponent would not be entitled to prevail under any discernible circumstances; LBP-11-4, 73 NRC 91 (2011)

regardless of the level of the dispute, at the summary disposition stage, it is not proper for a board to choose which expert has the better of the argument; LBP-12-23, 76 NRC 445 (2012)

standard for a motion to reopen is measured using the Commission's test of whether it has been shown that a motion for summary disposition could be defeated; CLI-11-8, 74 NRC 214 (2011); LBP-11-23, 74 NRC 287 (2011); LBP-11-35, 74 NRC 701 (2011)

standard for deciding motions for summary disposition in Subpart L proceedings closely parallels the standard used by the federal courts in deciding motions for summary judgment; LBP-11-31, 74 NRC 643 (2011)

standard for deciding motions for summary disposition in Subpart L proceedings is found in section 2.710; LBP-11-31, 74 NRC 643 (2011)

Subpart L hearing procedures provide that motions for summary disposition must be in writing and must include a written explanation of the basis of the motion and affidavits to support statements of fact; LBP-12-4, 75 NRC 213 (2012)

Subpart L provides for motions for summary disposition, and such motions are governed by the same standards as those in Subpart G proceedings; LBP-12-2, 75 NRC 159 (2012)

summary disposition may be entered with respect to all or any part of the matters involved in the proceeding if the motion, along with any appropriate supporting materials, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law; LBP-12-2, 75 NRC 159 (2012); LBP-12-26, 76 NRC 559 (2012)

test for the "materially different result" requirement of section 2.326(a)(3) is whether it has been shown that a motion for summary disposition could be defeated; LBP-11-20, 74 NRC 65 (2011)

that opponent declines to oppose the motion does not mean that movant is entitled to a favorable judgment; LBP-12-4, 75 NRC 213 (2012)

to avoid summary disposition, intervenors must present contrary evidence so significantly probative that it creates a material factual issue; LBP-12-19, 76 NRC 184 (2012)

to justify reopening the record, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition; CLI-11-2, 73 NRC 333 (2011)

to remove an admitted contention from the proceeding, a party must file, and a board must grant, a motion for summary disposition; LBP-14-5, 79 NRC 377 (2014)

when considering a motion for summary disposition, the function of the board is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for hearing; LBP-12-23, 76 NRC 445 (2012)

when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper; LBP-11-7, 73 NRC 254 (2011); LBP-12-23, 76 NRC 445 (2012)

when ruling on summary disposition motions, the Commission applies standards analogous to those used by federal courts when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-12-23, 76 NRC 445 (2012)

when the issue on which summary judgment is sought is one on which the nonmoving party bears the burden of proof, the burden on the moving party may be discharged by showing that there is an absence of evidence to support the nonmoving party's case; LBP-11-4, 73 NRC 91 (2011)

when there no longer exists any genuine dispute over a material fact and the moving party is entitled to judgment as a matter of law, summary disposition of a contention is appropriate; LBP-11-17, 74 NRC 11 (2011)

where a nonmoving party declines to oppose a motion for summary disposition, the board shall accept as admitted the moving party's prima facie showing of material facts; LBP-12-4, 75 NRC 213 (2012)

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- where alleged omission from initial renewal application is cured in updated SAMA analysis, summary disposition is appropriate; LBP-15-29, 82 NRC 246 (2015)
- whether offsite low-level radioactive waste storage and disposal facilities will ultimately be available is not material to summary disposition because applicant's FSAR provides an adequate contingency plan for long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available; LBP-12-4, 75 NRC 213 (2012)
- whether petitioners have adequately raised an issue as to whether transformers constitute active or passive components survived a motion for summary disposition; LBP-11-2, 73 NRC 28 (2011)
- SUMMARY JUDGMENT**
- courts may treat motions to dismiss for failure to state a claim upon which relief can be granted and motions for judgment on the pleadings as motions for summary judgment under Rule 56 if matters outside the pleadings are presented to and not excluded by the court; LBP-12-2, 75 NRC 159 (2012)
- movant bears the initial burden of demonstrating that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law; LBP-12-23, 76 NRC 445 (2012)
- movant has the burden to show that he is entitled to judgment under established principles, and if he does not discharge that burden, then he is not entitled to judgment; LBP-12-4, 75 NRC 213 (2012)
- NRC standards for ruling on summary disposition motions are analogous to the standards for granting summary judgment motions under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-7, 73 NRC 254 (2011); LBP-11-14, 73 NRC 591 (2011); LBP-11-31, 74 NRC 643 (2011); LBP-12-2, 75 NRC 159 (2012); LBP-12-4, 75 NRC 213 (2012); LBP-12-19, 76 NRC 184 (2012); LBP-12-23, 76 NRC 445 (2012)
- summary disposition, like summary judgment, is an extreme remedy that should be granted with caution especially before the parties have been afforded an opportunity to marshal their evidence; LBP-11-7, 73 NRC 254 (2011)
- summary judgment, which is appropriate upon proper showings of the lack of a genuine, triable issue of material fact, is an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action; LBP-11-4, 73 NRC 91 (2011)
- SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**
- agencies have discretion on the manner in which they determine whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-3, 75 NRC 132 (2012)
- agencies need not supplement an EIS every time new information comes to light after the EIS is finalized because it would render agency decisionmaking intractable; CLI-12-7, 75 NRC 379 (2012); LBP-12-18, 76 NRC 127 (2012)
- agencies shall prepare supplements to either draft or final EISs if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-15-13, 81 NRC 456 (2015)
- agency decisions regarding the need to supplement an EIS based on new and significant information are subject to the rule of reason; LBP-11-26, 74 NRC 499 (2011)
- alleged defects in applicant's environmental report may be mooted by the content of NRC's EIS or SEIS; LBP-11-28, 74 NRC 604 (2011)
- although a draft SEIS may rely in part on applicant's environmental report, NRC Staff must independently evaluate and be responsible for the reliability of all information used in the DSEIS; LBP-15-3, 81 NRC 65 (2015)
- although NRC has issued a generic environmental impact statement for in situ uranium recovery facilities that assesses potential ISR facility construction/operation/decommissioning impacts, for the initial licensing of each individual ISR facility, NRC Staff will first prepare a draft SEIS; LBP-15-3, 81 NRC 65 (2015)
- although NRC rules provide a mechanism for supplementing an original NEPA analysis, the rules do not guarantee a hearing nor is a hearing necessary to satisfy NRC's NEPA obligations; CLI-13-7, 78 NRC 199 (2013)
- before taking a proposed action, Staff must issue an SEIS if there are substantial changes in the proposed action that are relevant to environmental concerns or there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; LBP-11-39, 74 NRC 862 (2011)

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board's findings and the adjudicatory record are, in effect, part of the final SEIS; LBP-15-16, 81 NRC 618 (2015)

bounding analysis provided in the final SEIS, as supplemented in the record, provides sufficient information about a reasonable range of hazardous constituent concentration values associated with potential post-operational alternate concentration limits to provide an appropriate NEPA assessment of the environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits; LBP-15-3, 81 NRC 65 (2015)

contention questioning whether future anticipated use of MOX fuel is sufficiently definite to constitute a proposal under the law, with a connection, cumulative impact, interdependence, or similar relationship to matters at issue in a license renewal proceeding to warrant being addressed in the supplemental environmental impact statement is admissible; LBP-14-6, 79 NRC 404 (2014)

contention that final SEIS fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is decided; LBP-15-3, 81 NRC 65 (2015)

contention that final SEIS fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline (i.e., original or premining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is decided; LBP-15-3, 81 NRC 65 (2015)

contention that supplementation of the EIS is necessary to allow members of the public to lodge placeholder contentions challenging Commission reliance, in individual licensing proceedings, on the continued storage GEIS and Continued Storage Rule is inadmissible; CLI-15-10, 81 NRC 535 (2015)

decision of the board or Commission becomes the record of decision, which may also incorporate the final SEIS; CLI-15-6, 81 NRC 340 (2015)

distribution requirements for a final EIS and SEIS are imposed by 10 C.F.R. 51.93; LBP-15-3, 81 NRC 65 (2015)

DOE may be required to supplement its final EIS when there is new information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-13-8, 78 NRC 219 (2013)

duty to supplement the final environmental impact statement is mandatory, is not avoidable through findings of compliance with the agency's safety regulations, and is waivable only where the consequences are remote and highly improbable; CLI-12-11, 75 NRC 523 (2012)

EIS must be supplemented when there is new and significant information that will paint a seriously different picture of the environmental landscape; LBP-11-35, 74 NRC 701 (2011)

endangered/threatened species is a Category 2 issue that requires site-specific analysis in the supplemental environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

environmental assessment cannot import previous environmental analyses without considering subsequent developments at the site and to hold otherwise would render meaningless NEPA's requirement to supplement an EIS or environmental assessment; CLI-15-25, 82 NRC 389 (2015)

federal courts leave to an agency's discretion the manner in which the agency determines whether information is new or significant to warrant supplementation of an environmental impact statement, including the application of its procedural rules; CLI-12-6, 75 NRC 352 (2012)

final EIS and SEIS must be considered in the agency's decisionmaking; LBP-15-3, 81 NRC 65 (2015)

final EIS is supplemented by the board's decision as well as by the hearing record; CLI-15-6, 81 NRC 340 (2015)

final EIS may be supplemented if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts; CLI-12-6, 75 NRC 352 (2012)

final EIS must be supplemented to provide complete, accurate, and up-to-date sources of information for members of the public and state and local governments; CLI-15-10, 81 NRC 535 (2015)

final SEIS is a snapshot in time of expected environmental consequences; CLI-15-6, 81 NRC 340 (2015)

final SEIS must demonstrate that NRC Staff has received sufficient information to take a hard look at severe accident mitigation alternatives; LBP-11-17, 74 NRC 11 (2011)

final SEIS must include an analysis of cultural impacts; LBP-15-16, 81 NRC 618 (2015)

for each license renewal application, NRC Staff must prepare a plant-specific supplement to the generic environmental impact statement that adopts applicable generic impact findings from the GEIS and analyzes site-specific impacts; LBP-12-8, 75 NRC 539 (2012); LBP-12-10, 75 NRC 633 (2012)

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for license renewal, NRC Staff is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-13-13, 78 NRC 246 (2013)

for new information to be sufficiently significant to merit the preparation of a SFEIS, the information must paint a seriously different picture of the environmental landscape; CLI-12-11, 75 NRC 523 (2012)

Fukushima-related environmental impacts are not so significant as to satisfy the Commission's criterion for supplementing an environmental impact statement; LBP-12-18, 76 NRC 127 (2012)

if after preparation of the EIS, the agency is presented with new information or changed circumstances and there remains major federal action to occur, and if the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, an SEIS must be prepared; LBP-12-18, 76 NRC 127 (2012)

if NRC Staff has not already considered site-specific severe accident mitigation alternatives for a facility, they must be considered as part of applicant's environmental report and ultimately as part of NRC Staff's SEIS in a power reactor license renewal proceeding; LBP-11-17, 74 NRC 11 (2011)

if recommendations of the NRC's Near-Term Task Force review of the Fukushima Dai-ichi accident constitute relevant new and significant information, then the draft SEIS must address them; LBP-11-28, 74 NRC 604 (2011)

if there remains major federal action to occur, and if the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared; CLI-13-7, 78 NRC 199 (2013)

in mandatory hearings, Commission discussion regarding alternative site review supplements the environmental impact statement; LBP-11-26, 74 NRC 499 (2011)

intervenor may propose new contentions based on the Fukushima accident, the SER, the new SEIS, or other sources of new and materially different information, provided that it does so promptly after the new information becomes available and that it successfully fulfills the general contention admissibility requirements; LBP-11-22, 74 NRC 259 (2011)

intervenor fails to establish the validity of their various challenges to the adequacy of the final SEIS description of the baseline water quality at the ISR site; LBP-15-3, 81 NRC 65 (2015)

intervenor fails to specify what other alternatives to the license renewal application should be discussed in the draft SEIS, much less show that any proposed alternative would satisfy the purpose of applicant's proposed action; LBP-15-1, 81 NRC 15 (2015)

it is not clear that NRC Staff relied on the generic environmental impact statement when preparing the draft SEIS because it was not incorporated by reference or mentioned in any other manner; LBP-15-11, 81 NRC 401 (2015)

license renewal applicant need not include analyses of the environmental impacts of Category 1 issues in its environmental report because NRC Staff incorporates the GEIS analysis of Category 1 issues as part of the overall cost-benefit balance in the supplemental environmental impact statement for license renewal; CLI-12-19, 76 NRC 377 (2012)

license renewal applicants must submit an environmental report to aid the Staff in its preparation of a supplemental environmental impact statement; CLI-12-13, 75 NRC 681 (2012)

migration tenet applies when the information in the final SEIS is sufficiently similar to the information in the draft SEIS; LBP-14-5, 79 NRC 377 (2014)

NEPA imposes a continuing obligation on federal agencies to supplement an existing environmental impact statement if the proposed action has not been taken, in response to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-12-7, 75 NRC 379 (2012)

NEPA imposes a nondiscretionary duty on the NRC to amend an environmental impact statement if new and significant information comes to light; LBP-12-18, 76 NRC 127 (2012)

NEPA is not violated when an agency issues an SEIS before the Corps of Engineers completes a Clean Water Act section 404 permit review; LBP-15-23, 82 NRC 55 (2015)

NEPA regulations require consideration of severe mitigation alternatives in its EISs and supplements thereto at the operating license stage; LBP-12-15, 76 NRC 14 (2012)

new contentions must paint a seriously different picture of the environmental landscape that would require supplementation of an environmental impact statement; LBP-12-10, 75 NRC 633 (2012)

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new information on the need to supplement an issued final EIS must point to impacts that affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-15-16, 81 NRC 618 (2015)

new information requiring NRC Staff to prepare supplemental environmental review documents, must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-11-27, 74 NRC 591 (2011); LBP-11-28, 74 NRC 604 (2011)

new information that may be assessed for its relevance to an ongoing licensing matter may be derived in a wide variety of ways and is assessed for significance regardless of whether it has been acted upon in some way by the Commission or by NRC Staff; CLI-12-7, 75 NRC 379 (2012)

NRC is not required to wait until inchoate information matures into something that later might affect its environmental review; CLI-12-6, 75 NRC 352 (2012)

NRC need not supplement an EIS with information in an area of research that is still developing; CLI-12-6, 75 NRC 352 (2012)

NRC rules enable it to supplement an EIS if, before a proposed action is taken, new and significant information comes to light that bears on the proposed action or its impacts; CLI-12-7, 75 NRC 379 (2012)

NRC rules provide a process to prepare supplemental draft or final environmental impact statements when the agency identifies new and significant information; CLI-13-7, 78 NRC 199 (2013); CLI-14-7, 80 NRC 1 (2014)

NRC Staff has the option of preparing a supplement to a draft or final EIS when, in its opinion, preparation of a supplement will further the purposes of NEPA; CLI-11-5, 74 NRC 141 (2011)

NRC Staff must account for the environmental impacts of continued storage before finalizing individual licensing decisions, and, when appropriate circumstances exist, the question of whether to prepare a supplemental FEIS is to be part of that analysis; CLI-15-10, 81 NRC 535 (2015)

NRC Staff must include in the final SEIS an analysis of significant problems and objections raised by any affected Indian tribes, and by other interested persons; LBP-15-16, 81 NRC 618 (2015)

NRC Staff must include new and significant information in the supplemental DEIS; LBP-11-34, 74 NRC 685 (2011)

NRC Staff must prepare supplemental environmental review documents when there are substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-12-7, 75 NRC 379 (2012); LBP-11-33, 74 NRC 675 (2011); LBP-12-18, 76 NRC 127 (2012)

NRC Staff need not recirculate a supplemental NEPA document every time new information becomes available; LBP-13-9, 78 NRC 37 (2013)

NRC Staff uses applicant's environmental report as a starting point for its own environmental review of a license renewal application, the results of which are published as a supplement to the generic EIS; CLI-15-6, 81 NRC 340 (2015)

NRC Staff will incorporate any new SAMA-related information that it finds to be significant in the final supplemental EIS; CLI-13-7, 78 NRC 199 (2013)

NRC will consider all comments on the draft supplemental EIS regardless of whether the comment is directed to impacts in Category 1 or 2; CLI-13-7, 78 NRC 199 (2013)

NRC's NEPA regulations require a request for public comment on a draft environmental impact statement and a supplement to a DEIS distributed in accordance with 10 C.F.R. 51.74 and on any supplement to the FEIS prepared pursuant to 10 C.F.R. 51.92(a) or (b); LBP-14-9, 80 NRC 15 (2014)

only where new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned is supplementation of an environmental impact statement required; CLI-11-5, 74 NRC 141 (2011); LBP-11-28, 74 NRC 604 (2011); LBP-11-32, 74 NRC 654 (2011); LBP-11-39, 74 NRC 862 (2011)

parties agreed that additional analysis in the final SEIS would be sufficient to address the only contention remaining in the proceeding; LBP-15-22, 82 NRC 49 (2015)

petitioner may submit to NRC Staff any information that it believes to be new and significant by participating in NRC's parallel NEPA process wherein an opportunity for public comment on the draft supplemental EIS is provided; CLI-13-7, 78 NRC 199 (2013)

petitioner's rule waiver petition is referred to NRC Staff as additional comments on the draft supplemental EIS for the Staff's consideration and response; CLI-13-7, 78 NRC 199 (2013)

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petitioners may amend their contentions or file new contentions if the supplemental DEIS differs significantly from the data or conclusions in applicant's documents; LBP-11-34, 74 NRC 685 (2011)

placeholder contentions challenging NRC's reliance in the draft supplemental environmental impact statement on the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage is inadmissible; CLI-15-27, 82 NRC 414 (2015)

public comment period is required for draft and supplemental EIS; CLI-12-16, 76 NRC 63 (2012)

purpose of the final SEIS is to inform the decisionmaking agency and the public of a broad range of environmental impacts that will result, with a fair degree of likelihood, from a proposed project, rather than to speculate about worst-case scenarios and how to prevent them; CLI-15-6, 81 NRC 340 (2015)

relative to an individual ISR facility, when NRC Staff formulates its draft and final SEIS conclusions regarding the environmental impacts of a proposed action or alternative actions, it uses as guidance a standard scheme to categorize or quantify the impacts; LBP-15-3, 81 NRC 65 (2015)

requirement to supplement environmental analysis every time any new information, such as recommended but not yet adopted regulatory reform, comes to light would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made; LBP-11-28, 74 NRC 604 (2011)

severe accident mitigation alternatives analysis must be considered as part of the environmental report and, ultimately, as part of NRC Staff's SEIS for a power reactor license renewal; LBP-15-5, 81 NRC 249 (2015)

standard for preparing a supplemental environmental assessment is the same as for preparing a SEIS; LBP-15-13, 81 NRC 456 (2015)

subject of postdecision SEIS is not expressly addressed in NEPA; LBP-12-18, 76 NRC 127 (2012)

supplementation of the FEIS is not necessary every time new information comes to light after the environmental impact statement is finalized; CLI-15-10, 81 NRC 535 (2015)

supplementation of the FEIS is required when a final action has not been taken and there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-15-10, 81 NRC 535 (2015)

supplementing an EIS is not necessary unless new information presents a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; LBP-12-18, 76 NRC 127 (2012)

time for challenging the environmental report passes when NRC Staff releases its draft supplemental environmental impact statement, but contentions challenging the ER can be filed with the initial petition and prior to the time Staff's environmental review documents are completed; LBP-12-11, 75 NRC 731 (2012)

to assist NRC in preparation of a SEIS, license renewal applicants are required to prepare an environmental report; CLI-13-7, 78 NRC 199 (2013)

to constitute a basis for supplementing an EIS, the new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned; CLI-12-7, 75 NRC 379 (2012); CLI-15-10, 81 NRC 535 (2015)

to satisfy the hard-look requirement, NRC must provide detailed analysis of new information and a reasonable explanation of the agency's decision concerning supplementation, not merely a conclusory assertion that the agency has reviewed the new information and concluded that no supplement is required; LBP-12-18, 76 NRC 127 (2012)

when a supplement to a FEIS is required and what it must contain are outlined; LBP-15-3, 81 NRC 65 (2015)

when a supplement to an environmental impact statement is prepared, NRC Staff need not conduct a scoping process; LBP-13-9, 78 NRC 37 (2013)

when an environmental impact statement is prepared at the early site permit stage, NRC Staff must prepare a supplemental EIS for the combined license focusing on issues related to the impacts of construction and operation for which new and significant information has been identified; CLI-12-2, 75 NRC 63 (2012)

where an SEIS is being prepared, intervenor may submit proposed new contentions based on new information, including new information in the SER and Staff NEPA documents; LBP-11-22, 74 NRC 259 (2011)

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where environmental impacts are practically quantifiable, NRC has a duty to discuss them in those terms in the final SEIS; LBP-15-3, 81 NRC 65 (2015)

where NRC intends to mandate that an originally compliant environmental document be supplemented, it does so explicitly; LBP-11-32, 74 NRC 654 (2011)

whether a severe accident mitigation alternative is worthy of more detailed analysis in an environmental report or supplemental environmental impact statement hinges on whether it may be cost-beneficial to implement; CLI-12-3, 75 NRC 132 (2012)

with respect to the need to supplement an issued FEIS, the party offering the new contention has the burden of presenting information sufficient to show that there is a genuine issue regarding whether the NRC Staff should supplement its document; LBP-15-16, 81 NRC 618 (2015)

SURVEILLANCE

after the rulemaking is completed, licensees for new reactors will be required to comply with the ASME code preservice and inservice surveillance provisions for squib valves; CLI-15-13, 81 NRC 555 (2015)
licensee must perform a consistency check of its embrittlement model against available surveillance data; LBP-15-17, 81 NRC 753 (2015)

surveillance data are continuously integrated into future embrittlement projections; LBP-15-17, 81 NRC 753 (2015)

SURVEILLANCE PROGRAMS

although the Commission found NRC Staff's review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 555 (2015)

data used in the consistency check need not come from the same reactor pressure vessel that is the subject of the license amendment request; CLI-15-22, 82 NRC 310 (2015)

if licensee sought to make a change to a surveillance frequency that did not conform to the NEI 04-10 standard, then it would then need to request a license amendment; CLI-13-10, 78 NRC 563 (2013)

information that license amendment request must contain to use updated embrittlement model is described; CLI-15-22, 82 NRC 310 (2015)

integrated surveillance program among similar reactors is allowed if the reactors have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage; LBP-15-17, 81 NRC 753 (2015)

licensee is not required to collect additional surveillance data from the subject plant, but rather licensee must use any data that demonstrate the embrittlement trends for the materials, including surveillance programs at other plants with or without a surveillance program integrated under Part 50, Appendix H; CLI-15-22, 82 NRC 310 (2015)

licensees seeking to use the updated methodology in 10 C.F.R. 50.61a must submit a license amendment request; CLI-15-22, 82 NRC 310 (2015)

licensing board imposes a license condition directing implementation of a surveillance program for explosively actuated valves prior to fuel load; CLI-12-2, 75 NRC 63 (2012)

reactor pressure vessel temperature data from other plants are included, and licensees must consider these data under certain circumstances; CLI-15-22, 82 NRC 310 (2015)

reactor vessel material surveillance programs provide material property data necessary to implement a regulatory scheme to protect reactor pressure vessels from failure due to withstand a pressurized thermal shock event; CLI-15-22, 82 NRC 310 (2015)

requirements relate to testing, calibration, or inspection to ensure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met for certain structures, systems, and components; CLI-13-10, 78 NRC 563 (2013)

results from plant-specific surveillance program must be integrated into the fracture toughness estimate if the plant-specific surveillance data have been deemed credible; LBP-15-17, 81 NRC 753 (2015)

soundness of relocating certain surveillance frequencies from operating license technical specifications to licensee-controlled documents is better resolved in the context of a concrete dispute, where all of the parties have a stake in the outcome of the litigation; CLI-13-10, 78 NRC 563 (2013)

updated embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data; CLI-15-22, 82 NRC 310 (2015)

SUBJECT INDEX

SURVEILLANCE TESTING

- any changes to the material specimen withdrawal schedule that conform to the ASTM standard referenced in Appendix H will not alter the plant's license; LBP-15-20, 81 NRC 829 (2015)
- ASTM Standard E 185 anticipates that during the course of a nuclear power plant's life the surveillance capsule withdrawal schedule may need to be revised and allows and provides for such changes; LBP-15-20, 81 NRC 829 (2015)
- challenges based on 10 C.F.R. 50.61a and the question of whether applicant demonstrated substantial advantage under 10 C.F.R. Part 50, Appendix H as a reason to not test capsules are beyond the scope of a license amendment proceeding, which concerns compliance with Appendix G of 10 C.F.R. Part 50; LBP-15-20, 81 NRC 829 (2015)
- consistency check compares mean and slope of the embrittlement model curve against surveillance data and checks to confirm that outliers fall within acceptable residual values provided in the regulation; LBP-15-17, 81 NRC 753 (2015)
- consistency check is required if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 753 (2015)
- consistency check seeks to compare, for a specific material type, the model's projected embrittlement with the actual embrittlement values at the same fluence provided by material samples; LBP-15-17, 81 NRC 753 (2015)
- data must consist of material samples that are the same composition, or heat, as the materials being evaluated by the model; LBP-15-17, 81 NRC 753 (2015)
- differing amounts of copper, nickel, phosphorus, and manganese between material samples for the consistency check are accounted for; LBP-15-17, 81 NRC 753 (2015)
- exemption from the surveillance program is allowed if a reactor's lifetime irradiation levels are below a certain threshold; LBP-15-17, 81 NRC 753 (2015)
- if fewer than three surveillance data points exist for a specific material, then the embrittlement model must be used without performing the consistency check; LBP-15-17, 81 NRC 753 (2015)
- if licensee sought to relocate its surveillance frequencies from its operating license to a licensee-controlled document, then it would need to request a license amendment, which would trigger an opportunity for a member of the public to request a hearing; CLI-13-10, 78 NRC 563 (2013)
- if the embrittlement model deviates from the physical samples over the limits specified in 10 C.F.R. 50.61a(f)(6)(vi), licensee must submit additional evaluations and seek approval for the deviations from the Director of the Office of Nuclear Reactor Regulation; LBP-15-17, 81 NRC 753 (2015)
- if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 753 (2015)
- in calculating embrittlement reference temperatures, licensee must calculate neutron flux through the reactor pressure vessel using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases; LBP-15-17, 81 NRC 753 (2015)
- licensees have some discretion in considering other plant-specific information that may be helpful in aligning their embrittlement models with the surveillance data; LBP-15-17, 81 NRC 753 (2015)
- licensees must attach a particular number of surveillance capsules to specified areas within the reactor vessel, typically near the inside vessel wall at the beltline; LBP-15-20, 81 NRC 829 (2015)
- minimum frequency with which surveillance capsules must be tested is set by ASTM Standard E 185 (1982 version), which is incorporated into Appendix H; LBP-15-20, 81 NRC 829 (2015)
- NRC must preapprove the schedule for removing material samples from the reactor vessel; LBP-15-17, 81 NRC 753 (2015)
- petitioners are not barred from contending that additional testing is necessary to show margins of safety equivalent to those of the ASME BPV Code, Section XI, Appendix G because the petitioners allege noncompliance with 10 C.F.R. Part 50, Appendix G and not Appendix H; LBP-15-20, 81 NRC 829 (2015)
- physical specimens must come from near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface; LBP-15-17, 81 NRC 753 (2015)
- plant-specific surveillance data must be integrated into the transition fracture toughness reference temperature estimate; LBP-15-17, 81 NRC 753 (2015)

SUBJECT INDEX

pressurized thermal shock rule and embrittlement screening program are discussed; LBP-15-17, 81 NRC (2015); LBP-15-17, 81 NRC 753 (2015)

pressurized water reactor pressure vessel surveillance program relies on physical material samples, also known as specimens, capsules, or coupons; LBP-15-17, 81 NRC 753 (2015)

purpose of the consistency check is to determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 753 (2015)

surveillance data include any data that demonstrate embrittlement trends for the beltline materials; LBP-15-17, 81 NRC 753 (2015)

surveillance data must be used in the consistency check when it is a heat-specific match for one or more of the materials for which the reference temperature is being calculated and three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 753 (2015)

surveillance data need not be obtained from the same reactor pressure vessel that is the subject of the license amendment; LBP-15-17, 81 NRC 753 (2015)

three or more samples are required to conduct a consistency check; LBP-15-17, 81 NRC 753 (2015)

SURVEYS

Class III archeological survey involves a professionally conducted, pedestrian survey of an entire target area to identify properties that may be eligible for inclusion on the National Register of Historic Places; LBP-15-16, 81 NRC 618 (2015)

SUSPENSION

NRC approvals of plant restart and lifting suspensions did not trigger AEA § 189a hearing rights; CLI-15-14, 81 NRC 729 (2015)

SUSPENSION OF LICENSE

decision lifting license suspension and authorizing restart under stipulated conditions is not a license amendment; LBP-15-27, 82 NRC 184 (2015)

in cases involving license suspension or revocation, where the Atomic Energy Commission's staff is cast in an accusatory role, the precautions prescribed by the Administrative Procedure Act should be carefully observed; LBP-11-8, 73 NRC 349 (2011)

licensee is banned from engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations and must complete a formal radiation safety officer training course; LBP-15-21, 82 NRC 1 (2015)

materials license suspension proceeding is not an adversary adjudication for purposes of the Equal Access to Justice Act because the Atomic Energy Act does not require such a hearing to be on the record pursuant to Administrative Procedure Act § 554; LBP-11-8, 73 NRC 349 (2011)

NRC can issue an order suspending an individual from working anywhere in the nuclear industry who fails to report any concerns arising from behavioral observation; LBP-14-4, 79 NRC 319 (2014)

request that NRC order the immediate suspension of the operating licenses of all General Electric boiling-water reactors that use the Mark I primary containment system citing the Fukushima Dai-ichi accident in Japan as its rationale basis is resolved; DD-15-1, 81 NRC 193 (2015)

request that NRC suspend the operating licenses until completion of a set of activities related to the effects of an earthquake that exceeded the plant's operating basis earthquake is granted in part and denied in part; DD-12-2, 76 NRC 391 (2012)

request under 10 C.F.R. 50.54(f) is to enable the Commission to determine whether or not the license should be modified, suspended, or revoked; CLI-15-14, 81 NRC 729 (2015)

SUSPENSION OF PROCEEDING

agencies must set and complete proceedings on license applications with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time; CLI-12-6, 75 NRC 352 (2012)

all final decisions for licenses that relied on the Waste Confidence Decision and Temporary Storage Rule were suspended; CLI-15-4, 81 NRC 221 (2015)

although NRC rules require that motions be addressed to the presiding officer when a proceeding is pending, suspension motions are best addressed to the Commission; CLI-11-5, 74 NRC 141 (2011)

because petitions to suspend licensing decisions and proposed contentions are inextricably linked, and as a matter of sound case management, the Commission exercises its inherent supervisory authority over agency adjudications to review the petition and motions itself; CLI-14-9, 80 NRC 147 (2014)

SUBJECT INDEX

because waste confidence undergirds certain agency licensing decisions, the Commission held that the NRC should not issue licenses affected by the Waste Confidence Decision until the remanded issues are resolved; CLI-14-3, 79 NRC 31 (2014)

board does not consider intervenor's petition, which requests rulemaking and suspension of the proceeding, because the discussion in the petition's body specifically directs those requests to the Commission, which has already responded to the requests; LBP-11-34, 74 NRC 685 (2011)

Commission declined to suspend any adjudications or final licensing decisions, finding no imminent risk to public health and safety or to common defense and security because of the Fukushima accident; CLI-12-2, 75 NRC 63 (2012); CLI-12-5, 75 NRC 301 (2012); CLI-12-9, 75 NRC 421 (2012)

Commission denied suspension petitions and intervenors' motion to admit the new continued storage safety findings contentions; LBP-15-9, 81 NRC 396 (2015)

Commission may consider requests to suspend or hold proceedings in abeyance pursuant to its inherent supervisory authority over agency proceedings; CLI-11-5, 74 NRC 141 (2011)

Commission responses to requests for suspension of reactor licensing reviews and associated adjudications in the wake of the Three Mile Island accident and 9/11 terrorist attacks are discussed; LBP-11-37, 74 NRC 774 (2011)

decision to suspend final licensing decisions is highly dependent upon the facts and requires a judgment that the significance of the matter raised is so substantial as to warrant suspension; CLI-15-14, 81 NRC 729 (2015)

for pending license renewal applications, where the period of extended operation will not begin for at least a year, there is no imminent threat to public health and safety that requires suspension of licensing proceedings or decisions; LBP-11-35, 74 NRC 701 (2011)

for post-disaster suspension of proceedings, the Commission considers whether moving forward will jeopardize the public health and safety, continuing the review process will prove an obstacle to fair and efficient decisionmaking, and going forward will prevent appropriate implementation of any pertinent rule or policy changes that might emerge from its ongoing evaluation; CLI-11-5, 74 NRC 141 (2011); LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011)

Fukushima events do not present a sufficiently grave threat to public safety that reactor licensing proceedings should be suspended; CLI-12-11, 75 NRC 523 (2012); CLI-12-14, 75 NRC 692 (2012); LBP-12-1, 75 NRC 1 (2012)

given that NRC will have the opportunity to further consider the concerns that rulemaking petitioners have expressed, and as it further considers actions related to the Fukushima events, it declines to suspend any proceeding pending resolution of the rulemaking petition; CLI-14-7, 80 NRC 1 (2014)

in issuing the suspension of final licensing decisions in proceedings, NRC recognized that it could not move forward without first addressing the D.C. Circuit's remand because the vacatur left a regulatory gap in the Part 51 regulations that undergird licensing reviews in those matters; CLI-14-7, 80 NRC 1 (2014)

in light of current fiscal constraints, the board suspends the proceeding on the Department of Energy's application for authorization to construct a national high-level nuclear waste repository; LBP-11-24, 74 NRC 368 (2011)

in the context of NRC's post-Fukushima activities, nothing learned to date requires immediate cessation of NRC review of license applications; CLI-15-19, 82 NRC 151 (2015)

licensing boards (as opposed to the Commission) are not empowered to grant a request to suspend a licensing proceeding pending disposition of a rulemaking petition; LBP-11-33, 74 NRC 675 (2011)

moving forward with decisions and proceedings will have no effect on NRC's ability to implement necessary rule or policy changes that might come out of its review of the Fukushima accident; LBP-11-35, 74 NRC 701 (2011)

NEPA does not require that NRC suspend its licensing decisions upon receipt of a claim of new and significant information; CLI-14-7, 80 NRC 1 (2014)

no imminent risk to public health and safety or to the common defense and security post-Fukushima necessitates suspensions; LBP-12-18, 76 NRC 127 (2012)

NRC considers suspension to be a drastic action that is not warranted absent immediate threats to public health and safety or other compelling reason; CLI-11-5, 74 NRC 141 (2011)

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NRC is not required to conduct a rulemaking proceeding or to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely; CLI-15-4, 81 NRC 221 (2015)

petition for suspension of proceeding following 9/11 attack was denied because even if the licensing, construction, and shipping processes went forward as planned, no radiological materials would be present onsite for at least 2 years, so there was no immediate threat to public safety; CLI-11-5, 74 NRC 141 (2011)

petitioners have not shown compelling circumstances requiring NRC to suspend final licensing decisions pending completion of rulemaking; CLI-14-7, 80 NRC 1 (2014)

petitions to suspend final reactor licensing decisions pending a waste confidence safety finding were denied; DD-15-9, 82 NRC 274 (2015)

post-9/11 suspension was neither necessary nor appropriate where shipments of spent fuel to the facility were at least 2 years down the road; CLI-11-5, 74 NRC 141 (2011)

request for suspension of proceedings and other relief after the Fukushima Dai-ichi accident was denied; CLI-15-13, 81 NRC 555 (2015)

requests to suspend ongoing adjudicatory and licensing activities pending full consideration of the safety and environmental implications of the Fukushima accident are denied; CLI-11-8, 74 NRC 214 (2011); CLI-11-10, 74 NRC 251 (2011); LBP-11-33, 74 NRC 675 (2011); LBP-11-34, 74 NRC 685 (2011); LBP-11-35, 74 NRC 701 (2011); LBP-12-18, 76 NRC 127 (2012)

rulemaking petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking; CLI-11-5, 74 NRC 141 (2011); CLI-12-6, 75 NRC 352 (2012); CLI-14-6, 79 NRC 445 (2014); CLI-14-7, 80 NRC 1 (2014)

section 2.802(d) suspension request is inapplicable where no petition for rulemaking has been filed before the Commission; CLI-14-6, 79 NRC 445 (2014)

should a suspended adjudication resume, the Commission will consider appeals in due course, consistent with relevant Subpart J rules; CLI-13-8, 78 NRC 219 (2013)

sole provision of NRC's procedural rules explicitly authorizing stay applications is available only to parties to adjudicatory proceedings seeking stays of decisions or actions of a presiding officer pending the filing and resolution of a petition for review; CLI-11-5, 74 NRC 141 (2011)

suspension is a drastic action that is not warranted absent compelling circumstances; CLI-12-6, 75 NRC 352 (2012)

suspension of license renewal proceedings in light of the Fukushima accident is unnecessary because current regulatory and oversight processes provide reasonable assurance that each plant continues to comply with its current licensing basis, which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding; CLI-12-6, 75 NRC 352 (2012)

suspension of licensing proceedings is a drastic action that is not warranted absent immediate threats to public health and safety or other compelling reason; CLI-15-19, 82 NRC 151 (2015)

suspension provision provides an opportunity for a participant to ensure that a successful rulemaking petition is applied in an ongoing adjudication; CLI-14-7, 80 NRC 1 (2014)

suspension request that would have halted final licensing decisions pending action on a petition for rulemaking regarding NRC Staff's review of the potential expedited transfer of spent fuel from pools to dry casks was denied; CLI-15-13, 81 NRC 555 (2015)

to determine whether suspension of an adjudication or licensing decision is warranted, the Commission considers whether moving forward will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes; CLI-12-6, 75 NRC 352 (2012); CLI-14-7, 80 NRC 1 (2014)

SYNERGISTIC EFFECTS

"synergistic" refers to the joint action of different parts or sites which, acting together, enhance the effects of one or more individual sites; LBP-15-5, 81 NRC 249 (2015)

TAILINGS

section 11e(2) byproduct material is tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-12-3, 75 NRC 164 (2012)

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the byproduct material category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites; LBP-12-3, 75 NRC 164 (2012)

TECHNICAL QUALIFICATIONS

request that NRC order licensees to revise their technical specifications to address requirements to have one train of onsite emergency electrical power operable for spent fuel pool makeup and spent fuel pool instrumentation when there is irradiated fuel in the spent fuel pool, regardless of the operational mode of the reactor is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

TECHNICAL SPECIFICATIONS

almost every item originally contained in TSs has some conceivable connection to safety, but this general premise is insufficient, by itself, as a ground for intervention; LBP-12-25, 76 NRC 540 (2012)

applicants for nuclear power plant operating licenses must include TSs as part of the license; DD-13-3, 78 NRC 571 (2013)

because changes to TSs require a license amendment, technical specifications should be limited to those plant conditions most important to safety; LBP-13-7, 77 NRC 307 (2013)

because TSs are an integral part of an operating license, changes to technical specifications require a license amendment; LBP-13-7, 77 NRC 307 (2013)

construction permit applications must include the principal design criteria for a proposed facility and describe the design bases and their relationship to the principal design criteria in the preliminary safety analysis report; DD-13-3, 78 NRC 571 (2013)

contention challenging removal of details from licensee's TSs to a licensee-controlled document was rejected; LBP-12-25, 76 NRC 540 (2012)

contention that challenges entire steam generator replacement project, rather than any aspect of the proposed changes to four TSs identified in the license amendment request, is outside the scope of the proceeding; LBP-13-11, 78 NRC 177 (2013)

criteria for limiting conditions for operation address aspects of reactor operation that contribute to prevention of accidents and provide the capability to provide immediate mitigation of accidents; DD-13-3, 78 NRC 571 (2013)

criteria to be used in determining what items must be included in TSs are identified; LBP-13-7, 77 NRC 307 (2013)

design features to be included in TSs are those features of the facility such as materials of construction and geometric arrangements, which, if altered or modified, would have a significant effect on safety and are not covered by other TSs; DD-13-3, 78 NRC 571 (2013)

every license to operate a nuclear power reactor must contain a list of TSs necessary for adequate protection of public health and safety; LBP-12-25, 76 NRC 540 (2012)

"exigent circumstances" determination seems compelled by the fact that violation of the TSs limit for the plant, whatever the cause of the temperature increase, requires a dual-unit shutdown; LBP-15-13, 81 NRC 456 (2015)

for limiting conditions for operation of a nuclear reactor, TSs must be established for each item meeting one or more of the four criteria specified in 10 C.F.R. 50.36(c)(2)(ii); DD-13-3, 78 NRC 571 (2013)

information on the amount, kind, and source of special nuclear material, the place of use, and the particular characteristics of the facility must be included; LBP-12-25, 76 NRC 540 (2012)

license amendment to eliminate numerous detailed procedures for monitoring routine radioactive releases from the TSs and transfer them to a licensee-controlled document would allow licensee to make future changes to the radiation monitoring procedures without going through another license amendment; LBP-12-25, 76 NRC 540 (2012)

licensee may take reasonable action that departs from a license condition or a TS in an emergency when the action is immediately needed to protect the public health and safety and no action consistent with license conditions and TSs that can provide adequate or equivalent protection is immediately apparent; DD-11-6, 74 NRC 420 (2011)

licensee must notify NRC as soon as practical and in all cases within 1 hour of the occurrence, of any deviation from a plant's TS; DD-11-6, 74 NRC 420 (2011)

licensee must request a license amendment if the proposed action requires that existing TSs be changed; LBP-13-7, 77 NRC 307 (2013)

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licensees must obtain NRC approval before implementing changes to the facility or facility procedures that do not meet certain criteria; DD-13-3, 78 NRC 571 (2013)

limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility; DD-13-3, 78 NRC 571 (2013)

limits for safety system settings and control settings, limiting conditions for operation, surveillance requirements, design features, and administrative controls must be included; DD-13-3, 78 NRC 571 (2013)

NRC has authority to determine, and to prescribe by rule or regulation, what additional information should be included in TSs to ensure public health and safety; LBP-12-25, 76 NRC 540 (2012); LBP-13-7, 77 NRC 307 (2013)

NRC revised 10 C.F.R. 50.36 in 1995 and established clearer criteria as to what constitutes a TS that must be in the license; LBP-12-25, 76 NRC 540 (2012)

NRC's original rule governing TSs, 10 C.F.R. 50.36, was promulgated in 1968 and lacked well-defined criteria as to what requirements need to be a TS and what provisions need not be in the license; LBP-12-25, 76 NRC 540 (2012)

overall integrated leakage rate must not exceed the allowable leakage rate with margin, as specified in the Technical Specifications; LBP-15-26, 82 NRC 163 (2015)

petitioner must explain, with specificity, particular safety or legal reasons why moving a requirement from the license into a licensee-controlled document would be improper; LBP-12-25, 76 NRC 540 (2012)

petitioners' reliance on loss of future opportunities to challenge by adjudicatory intervention licensee-initiated changes in the low-level effluent monitoring details fell short of an admissible contention; LBP-12-25, 76 NRC 540 (2012)

proximity presumption applied where petitioners' contention concerned a license amendment to move the schedule for the withdrawal of reactor vessel material specimens from the TSs to the updated safety analysis report; LBP-15-17, 81 NRC 753 (2015)

reactor operating licenses must include TSs that include specific characteristics of the facility and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization of special nuclear material will provide adequate protection to the health and safety of the public; LBP-13-7, 77 NRC 307 (2013)

request for enforcement action to modify operating licenses or require licensee to submit amendment requests to revise TSs for spent fuel pool instrumentation denied; DD-13-3, 78 NRC 571 (2013)

request that applicability for TS be revised to include secondary containment, secondary containment isolation dampers, standby gas treatment system, control room emergency ventilation, and control room air conditioning system, whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

request that applicability for TS be revised to include spent fuel storage pool water level and AC and DC sources and distribution systems for shutdown whenever irradiated fuel is stored in the spent fuel pool instead of only when irradiated fuel assemblies are being moved in the SFP or secondary containment is denied; DD-13-3, 78 NRC 571 (2013)

request that NRC modify the administrative controls section of the standard TSs for each operating reactor design to reference the approved EOP technical guidelines for that plant design is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)

request that TS for control room emergency ventilation system instrumentation be changed to require that the control building air intake radiation-high function be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

request that TS for secondary containment isolation instrumentation be changed to require the reactor building exhaust radiation-high function to be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

revisions to TSs that are necessary to allow licensee to operate safely with the replacement steam generators after they have been installed require a license amendment; LBP-13-11, 78 NRC 177 (2013)

safety limits for nuclear reactors are limits on important process variables that are found to be necessary to reasonably protect the integrity of the physical barriers that guard against the uncontrolled release of radioactivity; DD-13-3, 78 NRC 571 (2013)

technical requirements that are incorporated in an NRC license are the TSs; LBP-12-25, 76 NRC 540 (2012)

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to amend a license, including TSs in the license, an application for amendment must be filed, fully describing the changes desired; CLI-15-22, 82 NRC 310 (2015)
TSs derived from the analyses and evaluations included in the safety analysis report are required; DD-13-3, 78 NRC 571 (2013)
updated final safety analysis reports can be modified without a license amendment as long as the modifications do not involve a change to the TSs or an unreviewed safety question; LBP-13-7, 77 NRC 307 (2013)

TECHNICAL SUPPORT CENTER

NRC Staff found acceptable combined license applicant's plan to use a single technical support center for existing and proposed units, to be collocated in the basement of the new nuclear operations building, between the protected areas of the three units, which is a departure from the AP1000 DCD; CLI-12-9, 75 NRC 421 (2012)

relocation of a technical support center requires separate NRC approval; CLI-12-9, 75 NRC 421 (2012)

TEMPERATURE

alternate pressurized thermal shock rule changes how licensees derive projected reference temperatures for the components of their reactor pressure vessels; LBP-15-17, 81 NRC 753 (2015)

application to use alternate pressurized thermal shock rule must contain the projected embrittlement reference temperatures along various portions of the reactor pressure vessel, from the present to a future point, compared to the alternate screening criteria; LBP-15-17, 81 NRC 753 (2015)

embrittlement model projects the reference temperatures for various parts of the reactor pressure vessel at the end of life of the plant; LBP-15-17, 81 NRC 753 (2015)

in calculating embrittlement reference temperatures, licensee must calculate neutron flux through the reactor pressure vessel using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases; LBP-15-17, 81 NRC 753 (2015)

licensee can use a set of generic mean nil-ductility reference temperature values if measured values are not available; LBP-15-17, 81 NRC 753 (2015)

licensee must establish the nil-ductility reference temperature for the reactor pressure vessel material in the annealed state, before the reactor was operational, for various key points along the RPV; LBP-15-17, 81 NRC 753 (2015)

licensees have to verify that their reference temperature calculations at the time of the application match up with surveillance data; LBP-15-17, 81 NRC 753 (2015)

reactor pressure vessel temperature data from other plants are included, and licensees must consider these data under certain circumstances; CLI-15-22, 82 NRC 310 (2015)

reference temperature shift is the difference in reference temperature from the unirradiated to the post-irradiated states; LBP-15-17, 81 NRC 753 (2015)

reference temperature values are compared to the alternate screening criteria to determine whether the reactor pressure vessel is safe to operate; LBP-15-17, 81 NRC 753 (2015)

requirements of 10 C.F.R. 50.61 are compared with new rule in section 50.61a to predict future reference temperatures across the reactor pressure vessel; CLI-15-22, 82 NRC 310 (2015)

surveillance data must be used in the consistency check when it is a heat-specific match for one or more of the materials for which the reference temperature is being calculated and three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 753 (2015)

updated embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data; CLI-15-22, 82 NRC 310 (2015)

TEMPERATURE LIMITS

alternate screening criteria consist of eighteen different reference temperature limits that depend on reactor pressure vessel wall thickness and the part of the RPV under consideration; LBP-15-17, 81 NRC 753 (2015)

COL application included a request for a departure from the wet-bulb noncoincident temperature, which is considered Tier 1 information and part of the certified design and thus a regulatory exemption is required; CLI-12-9, 75 NRC 421 (2012)

"exigent circumstances" determination seems compelled by the fact that violation of the technical specifications limit for the plant, whatever the cause of the temperature increase, requires a dual-unit shutdown; LBP-15-13, 81 NRC 456 (2015)

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high temperature in the engineered safety feature switchgear rooms is discussed; DD-14-5, 80 NRC 205 (2014)

if the reference values projected at specific areas of the reactor pressure vessel for the end of life of the plant surpass the current screening criteria, licensee must submit a safety analysis and obtain NRC approval to continue to operate; LBP-15-17, 81 NRC 753 (2015)

request that NRC take enforcement action until licensee completes an independent root-cause assessment for the rise in ultimate heat sink temperature is denied; DD-15-10, 82 NRC 201 (2015)

when the reference temperature of a reactor pressure vessel is above the screening limit, the RPV is considered to have an unreasonably high risk of fracture from a pressurized thermal shock event; LBP-15-17, 81 NRC 753 (2015)

TEMPORARY STORAGE RULE

all final decisions for licenses that relied on the Waste Confidence Decision and Temporary Storage Rule were suspended; CLI-15-4, 81 NRC 221 (2015)

NRC's Waste Confidence Decision Update and Temporary Storage Rule were invalidated because there was not even a prospective site for a repository, let alone progress toward the actual construction of one; LBP-14-16, 80 NRC 183 (2014)

regulation governing the storage and disposal of spent nuclear fuel was vacated; LBP-14-15, 80 NRC 151 (2014)

TERMINATION OF LICENSE

agreement state license termination regulations are not less protective than or incompatible with NRC's in making the terms of restricted release considerably more difficult than those for unrestricted release; CLI-11-12, 74 NRC 460 (2011)

ALARA principle as a general regulatory principle or as used in NRC's license termination rule does not incorporate or call for any comparative analysis of doses from restricted and unrestricted release; CLI-11-12, 74 NRC 460 (2011)

ALARA principle has been incorporated into the restricted-use portion of the license termination rule to screen out sites that should be removing contamination to achieve unrestricted use; CLI-11-12, 74 NRC 460 (2011)

ALARA requirement in section 20.1101(b) applies to the dose criteria for license termination; CLI-11-12, 74 NRC 460 (2011)

because New Jersey has adopted more stringent criteria for license termination under restricted release than for unrestricted release, as well as more conservative criteria than NRC's, New Jersey's regulations are compatible with NRC's agreement-state policy; CLI-13-6, 78 NRC 155 (2013)

despite having passed the initial eligibility test for restricted release, if licensee cannot satisfy dose criteria, its site will not be considered acceptable for license termination under restricted conditions; CLI-13-6, 78 NRC 155 (2013)

dose limit for license termination is a constraint within the public dose limit of 25 mrem per year to members of the public; CLI-11-12, 74 NRC 460 (2011)

nothing in NRC license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 155 (2013)

NRC explicitly expressed a preference for unrestricted release in adopting its license termination rule; CLI-11-12, 74 NRC 460 (2011)

NRC prefers that licensees satisfy radiation dose criteria for license termination through unrestricted-release decommissioning if it is cost-beneficial to do so; CLI-13-6, 78 NRC 155 (2013)

sites will be considered acceptable for license termination under restricted conditions if licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of section 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; CLI-13-6, 78 NRC 155 (2013)

termination for restricted use relies on legally enforceable institutional controls to achieve the 25-mrem dose limit; CLI-11-12, 74 NRC 460 (2011)

termination for unrestricted use allows no dependence on governmental monitoring of engineered barriers and land-use restrictions to achieve a maximum dose of 25 mrem per year to a member of the public; CLI-11-12, 74 NRC 460 (2011)

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unrestricted release and restricted release are both available as independent regulatory options that would provide adequate protection to the public health and safety if the applicable dose and other criteria are met; CLI-11-12, 74 NRC 460 (2011)

TERMINATION OF PROCEEDING

adjudicatory proceeding on license amendment is not terminated by issuance of the amendment; CLI-15-17, 82 NRC 33 (2015)

adjudicatory proceedings terminate if intervenor either settles or abandons all of its contentions; LBP-11-22, 74 NRC 259 (2011)

as a consequence of Commission ruling that board should have terminated the proceeding once it resolved all contentions, all of the board's earlier interlocutory orders become ripe for appellate review; CLI-12-14, 75 NRC 692 (2012)

because previous licensing board terminated the adjudicatory proceeding that was convened to consider challenges to the operating license renewal application, challengers must satisfy the stringent requirements for reopening; LBP-12-10, 75 NRC 633 (2012)

boards may continue the adjudicatory proceeding until the deadlines for filing proposed new contentions have expired and the board has resolved all admitted and proposed contentions filed within the deadlines; LBP-11-22, 74 NRC 259 (2011)

if a board grants summary disposition of a foreign ownership contention, it could terminate the proceeding or move ahead with a pending environmental contention; LBP-12-19, 76 NRC 184 (2012)

licensing board's dismissal of all pending contentions on mootness grounds due to new information ordinarily would terminate the proceeding, but new contentions could be filed on new information before termination; LBP-11-22, 74 NRC 259 (2011)

licensing board's termination of the contested portion of a proceeding after granting summary disposition on the only pending contentions was not compelled by either precedent or regulation; LBP-11-22, 74 NRC 259 (2011)

motion to withdraw application without prejudice is granted and proceeding is terminated; CLI-14-8, 80 NRC 71 (2014)

NRC practice of closing the hearing record after resolution of the last live contention, and of holding new contentions to the higher reopening standard, has been upheld by higher courts; CLI-12-14, 75 NRC 692 (2012)

NRC Staff's unopposed motion to terminate the proceeding is granted; LBP-11-12, 73 NRC 531 (2011)

NRC's transfer of regulatory authority to the State of New Jersey is now final and the licensing board no longer has the jurisdiction it had retained over the proceeding, and the board terminates the proceeding; LBP-15-10, 81 NRC 399 (2015)

once all contentions have been decided, the contested proceeding is terminated; CLI-12-14, 75 NRC 692 (2012); CLI-14-6, 79 NRC 445 (2014); LBP-12-19, 76 NRC 184 (2012); LBP-15-9, 81 NRC 396 (2015); LBP-15-30, 82 NRC 339 (2015)

operating license renewal proceeding is terminated following Commission reversal of board's decision admitting three contentions; LBP-15-25, 82 NRC 161 (2015)

proceeding is terminated because applicants have failed to provide information to show that they have changed their ownership situation so as to satisfy foreign ownership, control, and domination requirements; LBP-12-22, 76 NRC 443 (2012)

proceeding is terminated following Commission reversal of board decision admitting one contention; LBP-15-31, 82 NRC 358 (2015)

terminating an adjudication has significant implications for the rights of intervenors under Atomic Energy Act § 189a; LBP-11-22, 74 NRC 259 (2011)

termination with prejudice bars relitigation of similar issues; LBP-15-21, 82 NRC 1 (2015)

with board's termination of the proceeding, interlocutory rulings on contention admissibility became ripe for appeal; CLI-11-9, 74 NRC 233 (2011)

TERRORISM

any changes in NRC rules post-9/11 that might bear on license renewal reviews could be addressed via late-filed contentions; CLI-11-5, 74 NRC 141 (2011)

applicants should rely on the generic environmental impact statement for terrorism-related issues in a license renewal application; CLI-11-11, 74 NRC 427 (2011)

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- as an alternative ground for excluding a NEPA terrorism contention, NRC Staff's determination in the generic environmental impact statement that the environmental impacts of a terrorist attack were bounded by those resulting from internally initiated events is sufficient to address the environmental impacts of terrorism; CLI-11-11, 74 NRC 427 (2011)
- based on his education and experience, intervenors' witness was found qualified to testify but not specifically on issues related to nuclear engineering, such as events at the Fukushima Dai-ichi plant, core damage frequency calculations, and effectiveness of SAMDAs; LBP-11-38, 74 NRC 817 (2011)
- board applied the late-filing standards to a post-9/11 contention related to the risk of a terrorist attack on the ISFSI and found the contention timely but denied admission of both the safety and environmental aspects; CLI-11-5, 74 NRC 141 (2011)
- Commission has determined that there is no relationship between NRC licensing actions and terrorism; LBP-12-21, 76 NRC 218 (2012)
- Commission responses to requests for suspension of reactor licensing reviews and associated adjudications in the wake of the Three Mile Island accident and 9/11 terrorist attacks are discussed; LBP-11-37, 74 NRC 774 (2011)
- issues are dependent upon the actions and decisions of the President, Congress, international organizations, and officials of other nations, and constitute issues of international policy unrelated to NRC's licensing criteria; LBP-12-21, 76 NRC 218 (2012)
- licensing boards applied existing procedural rules to new contentions and motions to reopen filed in response to the September 11, 2001, terrorist attacks; CLI-12-13, 75 NRC 681 (2012)
- NEPA does not require NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; CLI-11-11, 74 NRC 427 (2011); LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)
- NRC has analyzed terrorist acts in connection with license renewal and concluded that the core damage and radiological release from such acts would be no worse than the damage and release expected from internally initiated events; LBP-11-2, 73 NRC 28 (2011)
- NRC is required to analyze potential terrorist attacks as part of its NEPA review with regard to facilities located in the Ninth Circuit; CLI-11-11, 74 NRC 427 (2011); LBP-12-21, 76 NRC 218 (2012); LBP-14-6, 79 NRC 404 (2014)
- petition for suspension of proceeding following 9/11 attack was denied because even if the licensing, construction, and shipping processes went forward as planned, no radiological materials would be present onsite for at least 2 years, so there was no immediate threat to public safety; CLI-11-5, 74 NRC 141 (2011)
- petitioners asserted that NRC actions following the events of September 11, 2001, and the accident at Fukushima Dai-ichi were insufficient to satisfy NRC's general obligation under the Atomic Energy Act to protect public health and safety; CLI-15-4, 81 NRC 221 (2015)
- post-9/11 abeyance of a proceeding was denied where the proceeding was at an early stage, there was no risk of immediate threat to public health and safety, there were non-terrorism-related contentions to be considered, and the only harm to petitioner would be inevitable litigation costs; CLI-11-5, 74 NRC 141 (2011)
- post-9/11 suspension was neither necessary nor appropriate where shipments of spent fuel to the facility were at least 2 years down the road; CLI-11-5, 74 NRC 141 (2011)
- protecting against the threat of air attacks is not within licensees' responsibilities because a private security force cannot reasonably be expected to defend against such attacks and adequate protection is ensured through the actions of other federal agencies with defense capabilities and air-safety expertise; CLI-11-4, 74 NRC 1 (2011)
- TESTIMONY**
- at the request of any party a court must order witnesses excluded so that they cannot hear other witnesses' testimony; LBP-12-21, 76 NRC 218 (2012)
- courts exclude witnesses prior to their testimony to discourage or expose outright fabrication and restrain the natural tendency of witnesses to tailor their testimony to that of earlier witnesses; LBP-12-21, 76 NRC 218 (2012)
- expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-15-23, 82 NRC 321 (2015)

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written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in most common types of hearings, licensing boards themselves, not the parties, orally examine the witnesses; LBP-12-21, 76 NRC 218 (2012)

TESTING

acceptance criteria for Type A leak rate limits embodied in the technical specification are established to ensure that, in the event of a design-basis accident, the dose received by a member of the public will not exceed the regulatory limits; LBP-15-26, 82 NRC 163 (2015)

although licensee can change from one proven test to another without prior NRC approval, it would need to follow the screening process under 10 C.F.R. 50.59 to ensure that it doesn't affect safety of the plant; LBP-13-13, 78 NRC 246 (2013)

Commission placed no historical-event restriction on reactors electing to comply with Appendix J through performance-based testing; LBP-15-26, 82 NRC 163 (2015)

even if licensee chooses to satisfy a license condition by incorporating the condition into its inservice testing program, it still must comply with 10 C.F.R. 50.55a(f)(4) throughout the life of the plant; CLI-12-9, 75 NRC 421 (2012)

if a different state-of-the-art test is developed prior to the time of the actual testing, applicant is allowed the flexibility to use the state-of-the-art test, subject to a prescreening for whether NRC approval is required; LBP-13-13, 78 NRC 246 (2013)

inservice testing and inspection program for squib valves in combined license applications is discussed; CLI-15-13, 81 NRC 555 (2015)

intervenors opposed renewal of the nuclear power plant license, and proposed new contentions for increased ultrasonic testing of sand bed epoxy coating integrity; LBP-15-1, 81 NRC 15 (2015)

intervenors' requests for more testing, more methods of testing, and more information, without an explanation of why the current program is inadequate, do not create a genuine dispute with a license renewal application; LBP-15-1, 81 NRC 15 (2015)

licensees may make changes in the procedures described in the updated final safety analysis report and conduct tests or experiments not otherwise described in the UFSAR, without obtaining a license amendment; CLI-14-4, 79 NRC 249 (2014)

licensees must conduct periodic containment leakage tests to ensure that leakage does not exceed the allowable rates specified in the technical specifications and the containment will perform its design function following an accident up to and including the plant design-basis accident; LBP-15-26, 82 NRC 163 (2015)

no reduction in the amount of fracture toughness testing is allowed without NRC approval; CLI-15-23, 82 NRC 321 (2015)

NRC could require modifications to the inservice testing program pursuant to compliance backfit provisions; CLI-12-2, 75 NRC 63 (2012)

purpose of the testing program for squib valves is to ensure that the valves operate as intended under design conditions; CLI-15-13, 81 NRC 555 (2015)

required Type A containment leakage tests measure total leakage rate from all potential paths, including containment liner welds, valves, fittings, and components that penetrate the containment; LBP-15-26, 82 NRC 163 (2015)

simply referencing a study without explaining the information's significance relative to the potential containment leakage monitored by the testing at issue does not establish its materiality; LBP-15-26, 82 NRC 163 (2015)

to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to a testing program for squib valves; CLI-12-9, 75 NRC 421 (2012)

Type B pneumatic tests detect and measure local leakage rates across pressure-retaining, leakage-limiting boundaries other than valves; LBP-15-26, 82 NRC 163 (2015)

Type C pneumatic tests measure containment isolation valve leakage rates; LBP-15-26, 82 NRC 163 (2015)

See also Surveillance Testing

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TESTS

- any operation of that might result in in-plane vibrations due to fluid elastic instability is inconsistent with the analyses or descriptions in the UFSAR is the type of test or experiment that triggers the obligation to seek a license amendment; LBP-13-7, 77 NRC 307 (2013)
- licensee must seek a license amendment before implementing a test or experiment that will result in a departure from a method of evaluation described in the updated final safety analysis report used in establishing the design basis or in the safety analysis; LBP-13-7, 77 NRC 307 (2013)
- licensees must periodically update their final safety analysis reports to reflect changes to the facility, make changes in the procedures as described in the UFSAR, and conduct tests or experiments not described in the UFSAR; LBP-13-7, 77 NRC 307 (2013)
- "tests or experiments not described in the UFSAR" constitute any activity where any structure, system, or component is utilized or controlled in a manner that is either outside the reference bounds of the design bases as described in the UFSAR or inconsistent with the analyses or descriptions in the UFSAR; LBP-13-7, 77 NRC 307 (2013)

THEFT

- applicant's preliminary material control and accounting program satisfactorily demonstrates the ability to rapidly assess the validity of alleged thefts; LBP-14-1, 79 NRC 39 (2014)
- capability to rapidly assess the validity of alleged thefts is aimed at the rapid determination of whether an actual loss of 5 or more formula kilograms occurred; LBP-14-1, 79 NRC 39 (2014)
- capability to resolve alarms within approved time periods is most clearly aimed at the prompt investigation of anomalies potentially indicative of SSNM losses; LBP-14-1, 79 NRC 39 (2014)
- contention challenging applicant's ability to rapidly assess the validity of alleged thefts is decided; LBP-14-1, 79 NRC 39 (2014)
- contention that applicant's revised material control and accounting plan fails to show how confirmation and verification of theft of plutonium will be carried out in the specified timelines is inadmissible; CLI-15-9, 81 NRC 512 (2015)
- licensee must be able to rapidly assess the validity of alleged thefts; CLI-15-9, 81 NRC 512 (2015)
- licensees are not required to conduct assessments of alleged thefts without the use of their records systems, or by first verifying the integrity and accuracy of those records systems; LBP-14-1, 79 NRC 39 (2014)
- no requirement to quantify the potential for an adversary to take measures to conceal any abnormalities in MMIS and PLC mapping can reasonably be found in (or implied by) the language of 10 C.F.R. 74.55(b)(1); LBP-14-1, 79 NRC 39 (2014)
- "power of detection" means the probability that the critical value of a statistical test will be exceeded when there is an actual loss of a specific quantity of strategic special nuclear material; CLI-15-9, 81 NRC 512 (2015)
- rapid determination of SSNM theft assessment should be completed within an 8- or 72-hour timeline; LBP-14-1, 79 NRC 39 (2014)

THREE MILE ISLAND ACCIDENT

- Commission responses to requests for suspension of reactor licensing reviews and associated adjudications in the wake of the TMI accident and 9/11 terrorist attacks are discussed; LBP-11-37, 74 NRC 774 (2011)
- Commission temporarily suspended the immediate effectiveness rule following the TMI accident; CLI-11-5, 74 NRC 141 (2011)
- following the accident, NRC set safety goals with respect to severe accidents; LBP-12-18, 76 NRC 127 (2012)
- licensing boards applied existing procedural rules to new contentions and motions to reopen filed in response to the TMI accident; CLI-12-13, 75 NRC 681 (2012)
- petitioner's challenge to applicant's use of TMI data constitutes a genuine dispute on a material issue and is within the scope of the license renewal proceeding because it challenges the adequacy of the environmental report; LBP-12-8, 75 NRC 539 (2012)
- where the time for filing contentions had expired in a given case, no new TMI-related contentions would be accepted absent a showing of good cause and a balancing of the late-filing factors; CLI-11-5, 74 NRC 141 (2011)

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TIME LIMITED AGING ANALYSES

aging management review is required only for equipment that performs its intended function without moving parts or without a change in configuration or property; LBP-15-6, 81 NRC 314 (2015)

applicants must reassess any TLAAs to show either that the analyses will remain valid throughout the period of extended operation or that the effects of aging on the subject component will be managed during that time period; CLI-15-6, 81 NRC 340 (2015)

contention that does not actually challenge any specific part of the integrated plant assessment or TLAAs fails to demonstrate the existence of a genuine dispute with applicant; LBP-15-6, 81 NRC 314 (2015)

license renewal applicants are required to reassess any TLAAs that were based upon a particular time period, such as an assumed service life of a specific number of years or some period of operation defined by the original 40-year license term; LBP-13-13, 78 NRC 246 (2013)

license renewal safety review is limited to licensee's management of aging for certain systems, structures, and components, and review of TLAAs; LBP-15-5, 81 NRC 249 (2015)

operating license renewal applicants must reassess TLAA made during the original license term and based upon the length of the original license term; LBP-11-21, 74 NRC 115 (2011)

reassessment of TLAAs must show that the earlier analysis will remain valid for the extended operation period or modify and extend the analysis to apply to a longer term, such as 60 years, or otherwise demonstrate that the effects of aging will be adequately managed in the renewal term; LBP-13-13, 78 NRC 246 (2013)

relay switches and snubbers are not subject to an aging management review; LBP-15-6, 81 NRC 314 (2015)

to evaluate an operating license renewal application, the NRC reviews the management of aging effects and TLAA of particular safety-related functions of the plant's systems, structures, and components pursuant to 10 C.F.R. Part 54 and the environmental impacts and alternatives to the proposed action in accordance with Part 51; LBP-11-17, 74 NRC 11 (2011); LBP-15-5, 81 NRC 249 (2015)

TIME LIMITS

licensees must activate the emergency response data system as soon as possible but not later than 1 hour after declaring an Emergency Class of alert, site area emergency, or general emergency; CLI-15-20, 82 NRC 211 (2015)

licensees shall resolve the nature and cause of any MC&A alarm within approved time periods; LBP-14-1, 79 NRC 39 (2014)

material control and accounting alarms are not required to be resolved within any particular time frame, only that a time period be approved by NRC Staff; LBP-14-1, 79 NRC 39 (2014)

NRC must be notified within 24 hours of failure to resolve an alarm within the approved time period; LBP-14-1, 79 NRC 39 (2014)

petitioner provides no support for the proposition that applicant must demonstrate that each individual resolution method can be completed, by itself, within the approved time period; LBP-14-1, 79 NRC 39 (2014)

rapid determination of strategic special nuclear material theft assessment should be completed within an 8- or 72-hour timeline; LBP-14-1, 79 NRC 39 (2014)

there is no time limit on when a licensee can seek an amendment to the license conditions relating to its decommissioning trust fund; LBP-15-24, 82 NRC 68 (2015)

TOTAL EFFECTIVE DOSE EQUIVALENT

dose limit for individual members of the public from a licensed activity is 100 millirem per year; CLI-11-12, 74 NRC 460 (2011)

for license termination under restricted conditions, licensee must provide legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year; CLI-13-6, 78 NRC 155 (2013)

sites will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a Total Effective Dose Equivalent to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable; CLI-13-6, 78 NRC 155 (2013)

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TRAINING

- license applications will be approved if, in addition to other requirements met, applicant is qualified by training and experience to use the material for the purpose requested in such manner as to protect health and minimize danger to life or property; DD-14-4, 79 NRC 506 (2014)
- licensee is banned from engaging in NRC-licensed activities, including performing, supervising, or assisting in any industrial radiographic operations and must complete a formal radiation safety officer training course; LBP-15-21, 82 NRC 1 (2015)
- petitioner's concern that information provided by licensee concerning training received by its employees was not accurate and in violation was not substantiated; DD-14-4, 79 NRC 506 (2014)
- request that NRC order licensees to conduct periodic training and exercises for multiunit and prolonged station blackout scenarios until rulemaking is complete is addressed; DD-14-2, 79 NRC 489 (2014)
- request that NRC order licensees to modify the technical guidelines to include emergency operations procedures, severe accident mitigation guidelines, and extensive damage mitigation guidelines in an integrated manner, specify clear command and control strategies for their implementation, and stipulate appropriate qualification and training for those who make decisions during emergencies is being addressed through rulemaking; DD-14-2, 79 NRC 489 (2014)
- whether exercise frequency is adequate to maintain personnel knowledge and skill to implement emergency responsibilities for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

TRANSBOUNDARY IMPACTS

- First Nations in Canada must receive invitations to participate in the environmental impact statement scoping process when there are transboundary environmental impacts from a project; LBP-12-12, 75 NRC 742 (2012)
- NEPA regulations do not apply to any environmental effects that NRC's domestic licensing and related regulatory functions may have upon the environment of foreign nations; LBP-12-12, 75 NRC 742 (2012)

TRANSCRIPTS

- transcript of Atomic Safety and Licensing Board hearings will be available for inspection in the agency's public records system; LBP-11-5, 73 NRC 131 (2011)

TRANSFER OF CONTROL

- NRC approval is required for transfer of control of ownership and/or operating authority responsibilities within the facility operating license; DD-15-8, 82 NRC 107 (2015)
- NRC's transfer of regulatory authority to the State of New Jersey is now final and the licensing board no longer has the jurisdiction it had retained over the proceeding, and the board terminates the proceeding; LBP-15-10, 81 NRC 399 (2015)

TRANSFORMERS

- board compared transformers with other types of components listed in 10 C.F.R. 54.21(a)(1)(i) as expressly subject to or excluded from aging management review; CLI-15-6, 81 NRC 340 (2015)
- board examined how a transformer performs its intended function to determine whether it undergoes a change in configuration or properties; CLI-15-6, 81 NRC 340 (2015)
- transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters which have been excluded from aging management review; CLI-15-6, 81 NRC 340 (2015)

TRANSMISSION LINES

- adequacy of NRC Staff's review of transmission-corridor impacts might be appropriate for the board's consideration sua sponte; CLI-15-1, 81 NRC 1 (2015)
- agency's consideration of three alternative routes is sufficient to meet its NEPA obligations to consider reasonable transmission line route alternatives; LBP-11-6, 73 NRC 149 (2011)
- although NRC takes the position that it lacks authority to impose environmental restrictions on transmission corridors, those impacts should have been analyzed as a direct effect of the NRC action even under NRC's new interpretation; LBP-14-9, 80 NRC 15 (2014)
- approval of permits to a nuclear power plant was conditioned on the rerouting of two offsite transmission lines to avoid environmental impacts on marshlands, tree species, and migratory waterfowl; LBP-14-9, 80 NRC 15 (2014)

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building of transmission lines is excluded from the definition of construction; LBP-14-9, 80 NRC 15 (2014)

by 1974, NRC had adopted an aggressive approach to its environmental responsibilities in the context of transmission line siting; LBP-14-9, 80 NRC 15 (2014)

excluding the transmission corridor from the scope of the proposed action also removes it from the limitation on actions; LBP-14-9, 80 NRC 15 (2014)

for an action such as a transmission corridor that will not be constructed by or expressly permitted by the federal agency preparing an environmental impact statement, there must be sufficient federal control and responsibility that the action qualifies as a federal action; LBP-14-9, 80 NRC 15 (2014)

for construction of a transmission corridor to constitute a connected action, three requirements must be met; LBP-14-9, 80 NRC 15 (2014)

impacts of the possible routes that applicant will use for its transmission lines must be analyzed for applicant to give the NRC the requisite information to make an informed decision on its license application; LBP-11-6, 73 NRC 149 (2011)

in ruling that NRC had appropriately interpreted the Atomic Energy Act to include regulatory authority over attendant transmission lines, the court did not decide whether NEPA is an independent source of substantive jurisdiction; LBP-14-9, 80 NRC 15 (2014)

in the 2007 limited work authorization rule, NRC decided that the building of transmission lines to serve a nuclear power plant would no longer be classified as a construction activity and would no longer require authorization from NRC; LBP-14-9, 80 NRC 15 (2014)

Limited Work Authorization Rule expressly excludes transmission lines from the delineated construction activities that would require NRC approval before being undertaken; CLI-15-1, 81 NRC 1 (2015)

NEPA's requirement to discuss alternatives to the proposed action does not extend to the construction of transmission line corridors, because it is not "construction" as defined in 10 C.F.R. 50.10; LBP-11-6, 73 NRC 149 (2011)

NRC authority to review offsite impacts of transmission lines goes beyond merely factoring them into a final cost-benefit balance and includes as well authority where necessary to impose license conditions to minimize those impacts; LBP-11-6, 73 NRC 149 (2011)

NRC can, as a condition of licensure, insist that offsite transmission lines built solely to serve a nuclear facility be designed to minimize environmental disturbance; LBP-14-9, 80 NRC 15 (2014)

NRC has authority to impose environmental restrictions on new transmission lines intended to serve new nuclear power plants; LBP-14-9, 80 NRC 15 (2014)

NRC has long interpreted its statutory authority under the Atomic Energy Act to include conditioning approval of nuclear power plant licenses on environmentally acceptable routing of transmission lines; LBP-14-9, 80 NRC 15 (2014)

NRC's decision to include transmission lines that serve a nuclear power plant within the definition of "utilization facility" in NEPA, 42 U.S.C. § 2014(cc), was upheld; LBP-14-9, 80 NRC 15 (2014)

power plants without transmission lines are like airplanes that can't fly; LBP-14-9, 80 NRC 15 (2014)

proposed transmission-line corridor is discussed; CLI-15-13, 81 NRC 555 (2015)

regulation of offsite transmission lines is within NRC's authority under section 101 of the Atomic Energy Act and nothing in the AEA precludes NRC from implementing, through issuance of conditional licenses, NEPA's environmental mandate; LBP-14-9, 80 NRC 15 (2014)

shared transmission corridor is an offsite transmission line excluded from environmental impact analysis; LBP-15-5, 81 NRC 249 (2015)

where increased air pollution in California resulting from two export turbines at a Mexican plants was a direct effect of the new transmission lines, DOE was required to evaluate the air pollution impacts under NEPA; LBP-14-9, 80 NRC 15 (2014)

TRANSMISSION SERVICES

member transmission providers are owners of transmission facilities, with the regional transmission organization exercising functional control over those facilities, calculating available transmission capability, and receiving, approving, and scheduling transmission service; LBP-12-15, 76 NRC 14 (2012)

regional transmission organization status was granted to provide open access to an electricity transmission system to all member utilities in 15 Midwestern states and one Canadian province; LBP-12-15, 76 NRC 14 (2012)

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TRANSPARENCY

NRC has a strong policy in favor of openness and transparency; LBP-11-5, 73 NRC 131 (2011)

TRANSPORTATION OF RADIOACTIVE MATERIALS

every environmental report prepared for the construction permit stage, the early site permit stage, or the combined license stage of a light-water-cooled nuclear power reactor must contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor; LBP-12-12, 75 NRC 742 (2012)

section 51.52(b) does not establish limits on power or on fuel enrichment, but instead requires applicant to perform an analysis if the conditions of section 51.52(a) are not met; LBP-12-12, 75 NRC 742 (2012)

TRANSPORTATION OF SPENT FUEL

cask certification for transportation poses such a minimal environmental impact that it merits a categorical exclusion from NEPA; LBP-14-6, 79 NRC 404 (2014)

post-9/11 suspension was neither necessary nor appropriate where shipments of spent fuel to the facility were at least 2 years down the road; CLI-11-5, 74 NRC 141 (2011)

TREATIES

Indian tribe's treaty-based claims of ownership of mining site and international treaty-based claims cannot support the admission of environmental assessment contention; LBP-15-11, 81 NRC 401 (2015)

TRITIUM

dose limits from tritium in groundwater for individual members of the public were never approached; DD-11-1, 73 NRC 7 (2011)

NRC established reasonable assurance that the dose consequence attributable to tritium in groundwater remains well below the ALARA dose objectives; DD-11-1, 73 NRC 7 (2011)

petition requesting that the NRC not allow restart after scheduled refueling outage until completion of all environmental remediation work and relevant reports on leaking tritium at the plant is denied; DD-11-1, 73 NRC 7 (2011)

petitioners' request for cold shutdown because of radiological contamination of groundwater from tritium is denied; DD-11-3, 73 NRC 375 (2011)

TRUST RELATIONSHIP DOCTRINE

allegation that the Continued Storage Rule and generic environmental impact statement fail to address the trust responsibility the NRC owes an Indian tribe represents a collateral attack on the Continued Storage Rule and GEIS; LBP-14-16, 80 NRC 183 (2014)

applicant is not required to discuss the federal government's trust responsibility to Indian tribes in its environmental report; LBP-12-24, 76 NRC 503 (2012)

applicant owes no duty to address the federal government's trust responsibility in its environmental report; LBP-14-6, 79 NRC 404 (2014)

contention that NRC has not fulfilled its trust responsibility in its analysis and conclusion of the cumulative impacts on historic and cultural resources from the reasonably foreseeable expansion of an independent spent fuel storage installation is admissible; LBP-14-6, 79 NRC 404 (2014)

federal government owes a trust responsibility to Indian tribes; LBP-12-24, 76 NRC 503 (2012)

federal trust responsibility to Indian tribes extends not just to the Interior Department, but attaches to the federal government as a whole; LBP-12-24, 76 NRC 503 (2012)

federal trust responsibility to Indian tribes rests solely with the federal government and cannot be discharged by applicants; LBP-12-24, 76 NRC 503 (2012)

for federal agencies that do not manage, control, or supervise Indian affairs, unless there is a specific duty that has been placed on the agency with respect to Indians, this responsibility is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes; LBP-14-6, 79 NRC 404 (2014)

government fulfills its trust duties by executing federal law, not by waiving federal law; LBP-14-16, 80 NRC 183 (2014)

government's trust responsibility is at its apex when it comes to managing tribal resources and preventing confiscation or environmental degradation of those resources; LBP-14-16, 80 NRC 183 (2014)

NRC considered Indian tribe's trust responsibility concerns during its rulemaking; LBP-14-16, 80 NRC 183 (2014)

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NRC exercises its fiduciary duty in the context of its authorizing statutes, including the Atomic Energy Act, and implements any fiduciary responsibility by ensuring that tribal members receive the same protections under implementing regulations that are available to other persons; LBP-14-16, 80 NRC 183 (2014)

TURBINE BUILDING

request that NRC immediately shut down plants until all turbine building high-energy line break concerns are identified and those important to safety were corrected is granted in part; DD-14-5, 80 NRC 205 (2014)

U.S. ARMY CORPS OF ENGINEERS

contention alleging deficiencies in compensatory mitigation methods under the Clean Water Act lack alleged facts or expert opinions; LBP-15-23, 82 NRC 55 (2015)

contention asserting that draft environmental impact statement must include the CWA 404 permit analysis in order to satisfy NEPA fails to raise a material issue; LBP-15-23, 82 NRC 55 (2015)

NRC Staff's environmental review was conducted in cooperation with aCE, with NRC acting as lead agency and ACE as cooperating agency under a memorandum of understanding because applicants also needed permits from ACE to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

petitioner's demand for compliance with U.S. Army Corps of Engineers requirements is not within the scope of a combined license proceeding, because it is not the province of the NRC to enforce another agency's regulations; LBP-11-6, 73 NRC 149 (2011)

Uniform Mitigation Assessment Method code and Wetland Assessment Technique for Environmental Review code methods reflect the Corps' preferred approach to compensatory mitigation under the Clean Water Act; LBP-15-23, 82 NRC 55 (2015)

U.S. CONSTITUTION

equal protection principles require that all persons similarly situated shall be treated alike; LBP-11-15, 73 NRC 629 (2011)

Supreme Court is permitted to decide legal questions only in the context of actual cases or controversies; CLI-13-9, 78 NRC 551 (2013)

the equal protection component of the Fifth Amendment's Due Process Clause applies to federal action, and the Equal Protection Clause of the Fourteenth Amendment applies to state action; LBP-11-15, 73 NRC 629 (2011)

UNCERTAINTIES

because need-for-power assessments necessarily entail forecasting power demands in light of substantial uncertainty and the duty of providing adequate and reliable service to the public, they are inherently conservative; LBP-11-7, 73 NRC 254 (2011)

Commission requests briefing from NRC Staff on the level of uncertainty that NRC Staff considers acceptable for the implementation cost portion of the cost-benefit analysis, and why; CLI-15-3, 81 NRC 217 (2015)

decisionmakers must weigh the cost of uncertainty; LBP-15-3, 81 NRC 65 (2015)

NEPA does not require agencies to resolve all uncertainties, including uncertainties associated with the NUREG-1150 values used in the severe accident mitigation alternatives analysis; LBP-13-13, 78 NRC 246 (2013)

UNCONTESTED ISSUES

because the scope of intervenors' participation in adjudications is limited to their admitted contentions, they are barred from participation in the uncontested portion of the hearing; LBP-14-9, 80 NRC 15 (2014)

licensing board role is not confined to arbitration of those environmental controversies as may happen to have been placed before them by the litigants in the particular case; LBP-14-9, 80 NRC 15 (2014)

NRC must conduct a hearing on the uncontested environmental and safety aspects of the proposed plant; LBP-13-4, 77 NRC 107 (2013)

UNCONTESTED LICENSE APPLICATIONS

boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)

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boards may entertain oral and written limited appearance statements from members of the public in connection with a mandatory uncontested proceeding; LBP-11-26, 74 NRC 499 (2011)

for mandatory proceeding on a uranium enrichment facility license, a licensing board is to conduct a simple sufficiency review rather than a de novo review on both safety and environmental issues; LBP-11-26, 74 NRC 499 (2011)

function of uncontested hearings is only to review the adequacy of NRC Staff's work, not to make a de novo inquiry into NEPA issues; LBP-14-9, 80 NRC 15 (2014)

in operating license proceeding, the Commission would informally review the Staff recommendations, and the license would issue only after Commission action; CLI-11-5, 74 NRC 141 (2011)

licensing board must narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-26, 74 NRC 499 (2011)

NRC has a duty to ensure, among other things, that it has adhered to its obligations under the National Environmental Policy Act; CLI-15-1, 81 NRC 1 (2015)

NRC needs to conduct only a single licensing action and adjudicatory proceeding to authorize construction and operation and a mandatory hearing regarding the application and the Staff's associated safety and environmental reviews, despite the absence of a petitioner challenging applicant's request; LBP-11-26, 74 NRC 499 (2011)

NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 499 (2011)

uncontested early site permit proceeding is subject to mandatory hearing requirements; LBP-11-10, 73 NRC 424 (2011)

UNRESOLVED SAFETY ISSUES

applicant can only make a change in its procedures if screening demonstrates that 10 C.F.R. 50.59 does not apply or if the review under this regulation demonstrates that there are no remaining unreviewed safety questions; LBP-13-13, 78 NRC 246 (2013)

UNRESTRICTED RELEASE

agreement state license termination regulations are not less protective than or incompatible with NRC's in making the terms of restricted release considerably more difficult than those for unrestricted release; CLI-11-12, 74 NRC 460 (2011)

ALARA principle as a general regulatory principle or as used in NRC's license termination rule does not incorporate or call for any comparative analysis of doses from restricted and unrestricted release; CLI-11-12, 74 NRC 460 (2011)

ALARA principle has been incorporated into the restricted-use portion of the license termination rule to screen out sites that should be removing contamination to achieve unrestricted use; CLI-11-12, 74 NRC 460 (2011)

board provides textual analysis and additional clarifying explanation of its interpretation of 10 C.F.R. 20.1403(a); CLI-13-6, 78 NRC 155 (2013)

doses yielded by restricted-release and unrestricted-release decommissioning options are not susceptible to being compared meaningfully because of the significantly different risks and uncertainties associated with each option; CLI-13-6, 78 NRC 155 (2013)

if no radiological hazards exist at the site, the license can be terminated, and the site can be considered an unrestricted area; CLI-13-1, 77 NRC 1 (2013)

nothing in NRC license termination regulations, including the ALARA principle incorporated into section 20.1403(a), calls for a comparison of doses of the restricted-release and unrestricted-release decommissioning options; CLI-13-6, 78 NRC 155 (2013)

NRC explicitly expressed a preference for unrestricted release in adopting its license termination rule; CLI-11-12, 74 NRC 460 (2011)

NRC regulations neither explicitly nor implicitly require a comparison of the levels of protection afforded by the unrestricted and restricted decommissioning options; CLI-11-12, 74 NRC 460 (2011)

one of the benefits of removing enough radioactivity to cross the 25-mrem threshold is that the value of the affected property is likely to increase, and it is in this sense that NRC guidelines contemplate, as

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- part of the ALARA analysis, a comparison between restricted release and unrestricted release; CLI-13-6, 78 NRC 155 (2013)
- “reductions in residual radioactivity” refers only to dose reductions to the public that can be accomplished solely through the steps associated with unrestricted-release decommissioning, i.e., removal of contaminated material or decontamination; CLI-13-6, 78 NRC 155 (2013)
- sites will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a Total Effective Dose Equivalent to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable; CLI-13-6, 78 NRC 155 (2013)
- terminating a license for unrestricted use allows no dependence on governmental monitoring of engineered barriers and land-use restrictions to achieve a maximum dose of 25 mrem per year to a member of the public; CLI-11-12, 74 NRC 460 (2011)
- unrestricted release and restricted release are both available as independent regulatory options that would provide adequate protection to the public health and safety if the applicable dose and other criteria are met; CLI-11-12, 74 NRC 460 (2011)
- ### URANIUM ENRICHMENT FACILITIES
- all credible accident sequences must be identified in the ISA Summary as well as items relied on for safety and necessary safety controls; LBP-12-21, 76 NRC 218 (2012)
- along with the requirement to perform an integrated safety analysis is the requirement for applicant to provide the NRC Staff with an ISA summary, the content of which is specified in 10 C.F.R. 70.65(b); LBP-11-11, 73 NRC 455 (2011)
- analysis of potential volcanic hazard at applicant’s site raises the question of whether the probability of such an event is sufficiently low to be considered “highly unlikely”; LBP-11-11, 73 NRC 455 (2011)
- applicant and NRC Staff treatment of need for the construction and operation of uranium enrichment facilities should explain why the proposed action is needed, describe the underlying need for the proposed action, but should not be written merely as a justification of the proposed action or to alter the choice of alternatives; LBP-11-26, 74 NRC 499 (2011)
- applicant for a Part 70 license is required to establish and maintain a safety program, which includes performing an integrated safety analysis; LBP-11-11, 73 NRC 455 (2011)
- applicant is not required by NRC to submit a redress plan relative to preconstruction activities or, absent state or local requirements, take any remedial action regarding preconstruction activities if it decides not to complete the project or is denied agency authorization to construct and operate the facility; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)
- applicant is required to evaluate and reduce the risk of events that could have significant impacts on workers or the public; LBP-12-21, 76 NRC 218 (2012)
- applicant is required to prepare an environmental report; LBP-12-21, 76 NRC 218 (2012)
- applicant is to provide an items-relied-on-for-safety boundary package to verify that a facility is constructed in accord with all license requirements; LBP-11-11, 73 NRC 455 (2011)
- applicant must establish and maintain a configuration management system to evaluate, implement, and track changes to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel; LBP-12-21, 76 NRC 218 (2012)
- applicant must indicate the period of time for which a Part 70 license is requested; LBP-11-11, 73 NRC 455 (2011)
- applicant seeking a specific license for a facility is required to submit a decommissioning funding plan consistent with 10 C.F.R. 70.25(e); CLI-11-4, 74 NRC 1 (2011)
- applicant seeks an exemption from regulations to permit it to begin certain preconstruction activities at the site before completion of NRC’s environmental review under Part 51; LBP-11-11, 73 NRC 455 (2011)
- applicant seeks authorization to provide financial assurance for decommissioning funding on a forward-looking, incremental basis; LBP-11-11, 73 NRC 455 (2011)
- applicant’s commitment to monitoring and the corrective action program provides reasonable assurance that public health and safety will be protected and applicant has a program in compliance with the regulations; LBP-12-21, 76 NRC 218 (2012)

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applicant's commitment to use a letter of credit issued by a financial institution whose operations are regulated and examined by a federal or state agency complies with the regulatory requirements for decommissioning financial assurance; LBP-11-26, 74 NRC 499 (2011)

applicant's integrated safety analysis must consider potential accident sequences caused either by deviations in the processes that will be conducted at the proposed facility or by credible external events, including natural phenomena; LBP-11-11, 73 NRC 455 (2011)

applicant's radiological measurements and monitoring program is subject to scrutiny; LBP-11-26, 74 NRC 499 (2011)

application of 10 C.F.R. 40.38(a) and 70.40 is limited to USEC alone, so that they have no relevance to any other enrichment facility applicant; LBP-11-11, 73 NRC 455 (2011)

applications are required to contain a description of the security program to protect against unauthorized disclosure of classified matter in accord with Part 95; LBP-11-11, 73 NRC 455 (2011)

applications must identify radiological and chemical hazards, facility hazards that could affect safety of licensed materials, potential accident sequences and their consequences and likelihood of occurrence, and each item relied on for safety; LBP-12-21, 76 NRC 218 (2012)

as part of its NEPA analysis, NRC must provide information that addresses the purpose and need for the proposed action; LBP-11-26, 74 NRC 499 (2011)

basic regulatory framework that governs the licensing is found in 10 C.F.R. Part 70, but Parts 19, 20, 21, 25, 30, 40, 51, 71, 73, 74, 95, 140, 170, 171, are also applicable; LBP-11-11, 73 NRC 455 (2011)

because the application for a facility is governed by AEA §§ 53 and 63, 42 U.S.C. § 2073, 2093, foreign ownership and control issues would be evaluated under sections 57 and 69; LBP-11-11, 73 NRC 455 (2011)

change requests are reviewed against the criteria in the license application and the criteria in 10 C.F.R. 70.72 to determine whether NRC approval is required prior to implementing the change; LBP-12-21, 76 NRC 218 (2012)

consequences of loss of offsite power are discussed; LBP-11-11, 73 NRC 455 (2011)

construction inspection program is discussed; LBP-11-26, 74 NRC 499 (2011)

credibility of hazard from wildfires is discussed; LBP-11-11, 73 NRC 455 (2011)

deferral of execution of the financial instruments for decommissioning funding until after the license has issued is not allowed; CLI-11-4, 74 NRC 1 (2011)

depleted uranium and the other waste generated by uranium enrichment facilities are not spent fuel, transuranic waste, or 11e(2) byproduct material or specific kinds of wastes such as irradiated fuel and the liquid and solid wastes resulting from the processing of irradiated fuel, and thus are classified as low-level waste; LBP-12-21, 76 NRC 218 (2012)

design of new facilities must provide for adequate protection against natural phenomena, fires and explosions, chemical risks produced from licensed material, facility conditions, and hazardous chemicals produced from licensed material; LBP-12-21, 76 NRC 218 (2012)

deviations from the original design must be evaluated against the criteria in 10 C.F.R. 70.72 to determine if a license amendment is required or if applicant could make the change without NRC approval; LBP-12-21, 76 NRC 218 (2012)

each decommissioning funding plan must include a signed original of the instrument obtained to provide financial assurance for decommissioning at the time the plan is submitted; CLI-11-4, 74 NRC 1 (2011)

ensuring continued availability of diverse, reliable sources of domestic enrichment services to provide low-enriched uranium for domestic power reactors supports a finding of need for the facility; LBP-11-26, 74 NRC 499 (2011)

Environmental Protection Agency possesses authority to set numerical standards for air pollutants from emission sources; LBP-11-26, 74 NRC 499 (2011)

evidence of significant actual utility commitments provides a compelling showing in support of the need for uranium enrichment facility; LBP-11-26, 74 NRC 499 (2011)

examples of need for the proposed facility include a benefit provided if the proposed action is granted or descriptions of the detriment that will be experienced without approval of the proposed action; LBP-11-26, 74 NRC 499 (2011)

facilities are to be licensed pursuant to Atomic Energy Act §§ 53 and 63; LBP-12-21, 76 NRC 218 (2012)

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facility security clearance requires a determination that granting the clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made; LBP-11-11, 73 NRC 455 (2011)

factor bolstering need for a facility is the recognized margin level that exists in the existing enrichment market to offset potential supply problems as well as maintain a level of reasonable market competition; LBP-11-26, 74 NRC 499 (2011)

for proposed nuclear materials-related activity, including uranium enrichment, commencement of construction prior to a favorable Staff conclusion regarding the NEPA cost-benefit balance is grounds for denial of the authorization to conduct that activity; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

fugitive dust generation from preconstruction activities is discussed; LBP-11-26, 74 NRC 499 (2011)

Fukushima accident does not provide a seriously different picture of the environmental impact of a proposed uranium enrichment facility from what was previously envisioned; LBP-11-26, 74 NRC 499 (2011)

guidance documents do not have the force of law, but the Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility has benefited from extensive consideration within the agency, with which the Commission has never expressed disagreement; LBP-12-21, 76 NRC 218 (2012)

high-consequence events are required to be highly unlikely and intermediate-consequence events to be unlikely; LBP-12-21, 76 NRC 218 (2012)

highly site-specific seismic hazard analysis reflects consideration not only of the location and magnitude of historic earthquakes, but also the nature of the bedrock and the style of faulting in the surrounding region; LBP-11-11, 73 NRC 455 (2011)

holders of a Parts 40/70 uranium enrichment facility license are required to maintain adequate nuclear liability insurance, with proof of such insurance necessary prior to a license being issued; LBP-11-11, 73 NRC 455 (2011)

in mandatory hearings, Commission discussion regarding alternative site review supplements the environmental impact statement; LBP-11-26, 74 NRC 499 (2011)

integrated safety analysis requirements for licensing are detailed; LBP-12-21, 76 NRC 218 (2012)

integrated safety analysis summary must accompany the license application and contain a general description of the site and the facility with emphasis on factors that could affect safety and description of each process analyzed in the ISA; LBP-12-21, 76 NRC 218 (2012)

items relied on for safety should be described in sufficient detail to allow a Staff reviewer to understand the IROFS's functions in relation to the performance standards in section 70.61, which specifies limitations on the levels of risk for credible high- and intermediate-consequence accidents and nuclear criticality accidents; LBP-11-11, 73 NRC 455 (2011)

items relied on for safety that are a central focus of the integrated safety analysis process are the subject of three proposed license conditions; LBP-11-11, 73 NRC 455 (2011)

license applications must contain the place at which the activity is to be performed and the general plan for carrying out the activity as well as a description of equipment and facilities that will be used by applicant to protect health and minimize danger to life or property; LBP-12-21, 76 NRC 218 (2012)

license must have a condition requiring licensee to maintain and follow a source material control and accounting program and maintain records of any MC&A program changes made without Commission approval for 5 years from the date of the change; LBP-11-11, 73 NRC 455 (2011)

licensee must provide semiannual radiological release reports to NRC; LBP-12-21, 76 NRC 218 (2012)

licensee must submit an annual update of the integrated safety analysis summary; LBP-12-21, 76 NRC 218 (2012)

licensee must submit biannual reports to the NRC specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous 6 months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases; LBP-12-21, 76 NRC 218 (2012)

licensee must survey radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in section 20.1301; LBP-12-21, 76 NRC 218 (2012)

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licensee's radiological surveys must be as necessary and reasonable for compliance, and must include magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiological hazards; LBP-12-21, 76 NRC 218 (2012)

minimum detectable concentrations for gaseous effluent and evaporator condensate must be 5% or less of the concentrations listed in Part 20, App. B, tbl. 2; LBP-11-26, 74 NRC 499 (2011)

NRC has a clear statutory mandate to regulate the construction and operation of a facility; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

NRC is required to verify through inspection that the facility has been constructed in accordance with the requirements of the license; LBP-12-21, 76 NRC 218 (2012)

NRC may deny applicant a license based on foreign ownership, control, or domination concerns to the extent it concludes granting such a license would be inimical to the common defense and security or the health and safety of the public; LBP-11-11, 73 NRC 455 (2011)

NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011)

NRC Staff authorization permitting applicant to defer execution of any final letters of credit for decommissioning financial assurance until after a license is issued but before receipt of licensed material might be problematic; LBP-11-26, 74 NRC 499 (2011)

NRC Staff granted an exemption from 10 C.F.R. 74.33(c)(5) subject to license conditions that require applicant to submit, for the Staff's prior review and approval, detailed analyses of such potentially credible diversion scenarios and the processes and management measures best suited to address them; LBP-12-21, 76 NRC 218 (2012)

NRC Staff imposed a license condition to ensure that clearances are obtained before classified matter is processed, stored, reproduced, transmitted, handled, or accessed; LBP-11-11, 73 NRC 455 (2011)

Part 70 applicants are required to establish a radiological monitoring program to monitor and report the release of radiological gaseous and liquid effluents to the environment; LBP-11-26, 74 NRC 499 (2011)

Part 70 establishes the basic regulatory framework that governs the licensing of an enrichment facility; LBP-11-26, 74 NRC 499 (2011)

Pentapartite Agreement between the United States and four European governments to prevent new restricted data from being disseminated to European nationals will be a prerequisite to the NRC Staff issuing a facility clearance; LBP-11-11, 73 NRC 455 (2011)

previously recognized availability policy for domestic enrichment services supports a NEPA finding of a need for the construction and operation of uranium enrichment facilities; LBP-11-26, 74 NRC 499 (2011)

process designs should be described in a level of detail in the integrated safety analysis that is sufficient to allow a Staff reviewer to understand the theory of operation for the process; LBP-11-11, 73 NRC 455 (2011)

qualitative benefits and costs in the cost-benefit analysis for the uranium enrichment facility are estimated to be small, moderate, or large, using the same general definitions found in the regulations of Part 51; LBP-12-21, 76 NRC 218 (2012)

relationship between the uranium enrichment facility's product and production of high-level waste is too attenuated to show the requirement of a reasonably close causal relationship required by NEPA; LBP-12-21, 76 NRC 218 (2012)

relative to foreign ownership or control, NRC imposes restrictions on the physical security and control of information at licensed facilities to safeguard restricted data and national security information; LBP-11-11, 73 NRC 455 (2011)

reports to the agency regarding unapproved changes made to the material control and accounting program must be filed within no more than 6 months after the changes; LBP-11-11, 73 NRC 455 (2011)

seismic avoidance areas are discussed; LBP-11-26, 74 NRC 499 (2011)

to perform an appropriate integrated safety analysis, NUREG-1520 standard review plan guidance for fuel cycle facilities indicates that applicant should identify the process designs, accident sequences, and items relied upon for safety that are associated with the facility; LBP-11-11, 73 NRC 455 (2011)

under 10 C.F.R. 40.41(g) and 70.32(k), a uranium enrichment facility cannot be operated until the agency verifies through inspection that the facility has been constructed in accordance with the license; LBP-11-11, 73 NRC 455 (2011)

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under risk-informed performance-based requirements, applicants must ensure that each item relied on for safety will be available and reliable to perform its function when needed; LBP-11-11, 73 NRC 455 (2011)

visual impact of operation of a facility on the quality of recreational experience is discussed; LBP-11-26, 74 NRC 499 (2011)

Waste Confidence Rule on its face does not apply to uranium enrichment facilities; LBP-12-21, 76 NRC 218 (2012)

whether exercise frequency is adequate to maintain personnel knowledge and skill to implement emergency responsibilities for proposed uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)

winter weather- and earthquake-related site selection criteria are discussed; LBP-11-26, 74 NRC 499 (2011)

URANIUM ENRICHMENT FACILITY PROCEEDINGS

after a licensing board in an uncontested proceeding determines that Staff's NEPA review is adequate, it must then independently consider the final balance among conflicting factors that is struck in the Staff's recommendation; LBP-12-21, 76 NRC 218 (2012)

although safety issues are reviewed under the adequacy and sufficiency standard, licensing boards conducting mandatory hearings must independently consider the final balance among the conflicting costs and benefits when reviewing NEPA issues; LBP-12-21, 76 NRC 218 (2012)

based on Staff's and applicant's written responses to board questions, and on the resumes, CVs, and SPQs admitted as part of the evidentiary record to respond to the questions, the board considers safety issues resolved for the proceeding; LBP-11-11, 73 NRC 455 (2011)

boards are to make independent environmental judgments with respect to certain NEPA findings, though even then they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-26, 74 NRC 499 (2011)

even if no intervention petitions are received, the Commission must still conduct adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility; LBP-11-11, 73 NRC 455 (2011)

financial qualifications of applicant to fund construction are discussed; LBP-11-11, 73 NRC 455 (2011)

for mandatory proceedings, licensing boards are to conduct a simple sufficiency review rather than a de novo review on both AEA and NEPA issues; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011); LBP-12-21, 76 NRC 218 (2012)

giving appropriate deference to NRC Staff technical expertise, boards are to probe the logic and evidence supporting NRC Staff findings and decide whether those findings are sufficient to support license issuance; LBP-12-21, 76 NRC 218 (2012)

in mandatory hearing, licensing boards are to make independent environmental judgments with respect to certain NEPA findings; LBP-11-11, 73 NRC 455 (2011)

in mandatory hearing, licensing boards are to determine whether the environmental review conducted by NRC Staff has been adequate, but they need not rethink or redo every aspect of the NRC Staff's environmental findings or undertake their own fact-finding activities; LBP-11-11, 73 NRC 455 (2011)

in mandatory hearing, licensing boards must narrow their inquiry to topics or sections in NRC Staff documents that they deem most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance; LBP-11-11, 73 NRC 455 (2011); LBP-11-26, 74 NRC 499 (2011)

level of detail required for a licensing decision does not require a final facility design or an absolutely complete identification of all items relied on for safety and accident sequences, but instead sufficient information must be provided to understand the process and functions of items relied on for safety and to afford reasonable assurance that the integrated safety analysis is complete; LBP-12-21, 76 NRC 218 (2012)

license conditions imposed on applicant as a result of NRC Staff's review process and applicant-requested exemptions from agency regulatory requirements that are granted by Staff have a strong potential to fall into a "non-routine matter" category; LBP-11-11, 73 NRC 455 (2011)

licensing boards conducting mandatory hearings on uncontested issues are expected to take an independent hard look at NRC Staff safety and environmental findings but are not to replicate NRC Staff work; LBP-12-21, 76 NRC 218 (2012)

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licensing board's role in mandatory hearings is to carefully probe Staff findings by asking appropriate questions and by requiring supplemental information when necessary, but the NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-11, 73 NRC 455 (2011)

NRC needs to conduct only a single licensing action and adjudicatory proceeding to authorize construction and operation and a mandatory hearing regarding the application and the Staff's associated safety and environmental reviews, despite the absence of a petitioner challenging applicant's request; LBP-11-26, 74 NRC 499 (2011)

NRC shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of the facility; LBP-12-21, 76 NRC 218 (2012)

NRC Staff's underlying technical and factual findings are not open to board reconsideration unless, after a review of the record, the board finds the NRC Staff review inadequate or its findings insufficient; LBP-11-26, 74 NRC 499 (2011)

NRC will hold a hearing under 10 C.F.R. Part 2, Subparts A, C, G, and I, on each application for issuance of a license for construction and operation of a uranium enrichment facility and will publish public notice of the hearing in the Federal Register at least 30 days before the hearing; LBP-12-21, 76 NRC 218 (2012)

nuclear nonproliferation issues span a host of factors far removed from and far afield from the NRC's decision whether to license a uranium enrichment facility; LBP-12-21, 76 NRC 218 (2012)

terrorism and nuclear nonproliferation issues are dependent upon the actions and decisions of the President, Congress, international organizations, and officials of other nations, and constitute issues of international policy unrelated to NRC's licensing criteria; LBP-12-21, 76 NRC 218 (2012)

URANIUM FUEL CYCLE

all fuel cycle and waste management issues, including low-level waste storage and disposal, mixed waste storage and disposal, onsite spent fuel storage, and transportation, are Category 1 issues with a small impact; LBP-11-2, 73 NRC 28 (2011)

for power reactors, NRC Staff review should encompass emissions from the uranium fuel cycle as well as from construction and operation of the facility to be licensed; LBP-11-26, 74 NRC 499 (2011)

URANIUM MILL TAILINGS

"byproduct material" refers to the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content; LBP-15-16, 81 NRC 618 (2015)

URANIUM MINING AND MILLING

admissibility of contention that final environmental assessment failed to conduct the required hard look at impacts of the proposed mine associated with restoration standards and difficulty and cost in achieving them and the use of the alternative standards permitted under the proposed rules is decided; LBP-15-15, 81 NRC 598 (2015)

although 10 C.F.R. Part 40 applies to ISL mining, some of the specific requirements in Part 40, such as many of those in Appendix A, address hazards posed only by conventional uranium milling operations; LBP-15-16, 81 NRC 618 (2015)

although the Part 40, Appendix A criteria were developed for conventional uranium milling facilities, they have since been applied in limited fashion to ISR facilities; LBP-15-3, 81 NRC 65 (2015)

applicant must establish a preoperational monitoring program that must be conducted to provide complete baseline data on a milling site and its environs; LBP-15-16, 81 NRC 618 (2015)

applicant must provide complete baseline data on a milling site and its environs; LBP-15-16, 81 NRC 618 (2015)

as distance increases from the in situ recovery facility, petitioner with an upgradient water source must expect to provide the board with some analysis as to how any contamination will affect any wells alleged to be impacted by the facility; LBP-12-3, 75 NRC 164 (2012)

"byproduct material" is categorized as tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; LBP-15-11, 81 NRC 401 (2015)

for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway

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connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 164 (2012)

grounds for license denial exist if, prior to issuance of a license to possess and use source and byproduct materials for uranium milling, there is commencement of construction by an applicant; LBP-12-3, 75 NRC 164 (2012)

NRC could consider adopting, at least for the initial construction/operation authorization of in situ recovery facilities, a standing regime by which persons living or having substantial contacts within a 50-mile radius of the facility are afforded standing; LBP-12-3, 75 NRC 164 (2012)

organizational interest in protecting natural resources with a focus on groundwater contamination from uranium mining is insufficient to establish organizational standing; LBP-13-6, 77 NRC 253 (2013)

petitioner whose property is upgradient but nonetheless located in close proximity to a proposed in situ recovery facility may be able to establish its plausible pathway with a less particularized showing; LBP-12-3, 75 NRC 164 (2012)

petitioners considerably upgradient of a mining area must provide scientific or technical support for how contaminated material from an in situ recovery site might plausibly enter their drinking water to fulfill the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)

standing was found for petitioner fishing a river 60 miles downstream from a proposed in situ recovery facility expansion alleged to allow drainage into the river from operations; LBP-12-3, 75 NRC 164 (2012)

surface water contamination has played a significant role in standing determinations in in situ recovery cases; LBP-12-3, 75 NRC 164 (2012)

the in situ recovery process, which is also referred to as the in situ leach process, is described; LBP-12-3, 75 NRC 164 (2012)

when an ore zone and petitioner's water source exist in separate aquifers, the injury/causation question is whether there is an interconnection between those aquifers; LBP-12-3, 75 NRC 164 (2012)

See also In Situ Leach Mining

UTILIZATION FACILITY

NRC's decision to include transmission lines that serve a nuclear power plant within the definition of "utilization facility" in NEPA, 42 U.S.C. § 2014(cc), was upheld; LBP-14-9, 80 NRC 15 (2014)

VACATUR

because the Commission's vacatur order does not address the merits, it need not address an argument that NRC Staff impermissibly raises objections to the merits of the Board's decision without filing a petition for review; CLI-13-9, 78 NRC 551 (2013)

Commission decision to vacate an unreviewed board decision does not intimate any opinion on the soundness of the board's decision; CLI-13-9, 78 NRC 551 (2013); CLI-13-10, 78 NRC 563 (2013)

decisions that have been vacated also should not be used for guidance; CLI-13-9, 78 NRC 551 (2013)

denial of vacatur is merely one application of the principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks; CLI-13-9, 78 NRC 551 (2013)

in issuing the suspension of final licensing decisions in proceedings, NRC recognized that it could not move forward without first addressing the D.C. Circuit's remand because the vacatur left a regulatory gap in the Part 51 regulations that undergird licensing reviews in those matters; CLI-14-7, 80 NRC 1 (2014)

it is the Commission's customary practice to vacate a challenged licensing board decision when, during the pendency of an appeal, the proceeding becomes moot; CLI-13-10, 78 NRC 563 (2013)

regulation governing the storage and disposal of spent nuclear fuel was vacated; LBP-14-15, 80 NRC 151 (2014)

stare decisis is not implicated where the board decision is unreviewed and therefore not binding on future tribunals, but as a prudential matter, the Commission vacates such decisions when appellate review is cut short by mootness; CLI-13-9, 78 NRC 551 (2013)

vacatur is designed to eliminate confusion and disagreement over what an unreviewed board decision may mean or what effect it may have in the resolution of safety or environmental issues in a future proceeding; CLI-13-9, 78 NRC 551 (2013)

vacatur is not automatic, but will depend on the nature and character of the conditions that have caused the case to become moot; CLI-13-9, 78 NRC 551 (2013)

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where the reviewing court vacates a rule without reinstating the old rule, failure to reinstate the old rule creates a temporary regulatory vacuum; CLI-14-8, 80 NRC 71 (2014)

VALIDATION

agency's failure to adequately validate a quantitative model on which it relies may lead the reviewing court to conclude that the agency's decision is arbitrary, capricious, or contrary to law; LBP-15-20, 81 NRC 829 (2015)

VALVES

after the rulemaking is completed, licensees for new reactors will be required to comply with the ASME code preservice and inservice surveillance provisions for squib valves; CLI-15-13, 81 NRC 555 (2015)
although the Commission found NRC Staff's review of combined license applications rigorous, it imposed a condition requiring implementation of a squib-valve surveillance program prior to fuel load; CLI-15-13, 81 NRC 555 (2015)

basis of NRC Staff's reasonable assurance finding on combined license applicant's squib valve inspection program for which the current version of the ASME code is insufficient is explained; CLI-12-2, 75 NRC 63 (2012)

in the event of a severe accident in an AP1000, squib valves, which are explosively activated, reduce pressure and inject water as needed into the reactor vessel; CLI-15-13, 81 NRC 555 (2015)

inservice testing and inspection program for squib valves in combined license applications is discussed; CLI-15-13, 81 NRC 555 (2015)

licensing board imposes a license condition directing implementation of a surveillance program for explosively actuated valves prior to fuel load; CLI-12-2, 75 NRC 63 (2012)

purpose of the testing program for squib valves is to ensure that the valves operate as intended under design conditions; CLI-15-13, 81 NRC 555 (2015)

to reach a finding of reasonable assurance that the public health and safety will be protected, the Commission imposed a license condition relating to testing program for squib valves; CLI-12-9, 75 NRC 421 (2012)

See also Containment Isolation Valves; Safety Relief Valves

VENTILATION SYSTEMS

applicant need not submit information regarding control room habitability and ventilation system design in the site safety analysis report portion of an early site permit application; LBP-11-16, 73 NRC 645 (2011)

request that NRC immediately revoke prior preapproval of the hardened vent system or direct torus vent system at GE BWR Mark I units has been addressed by an order modifying licenses; DD-15-1, 81 NRC 193 (2015)

request that technical specification for control room emergency ventilation system instrumentation be changed to require that the control building air intake radiation-high function be applicable whenever irradiated fuel is stored in the spent fuel pool is denied; DD-13-3, 78 NRC 571 (2013)

VENTING

assertions of a need to implement filtered vented containment are outside the scope of license renewal proceedings; LBP-11-35, 74 NRC 701 (2011)

existing containment vent systems at BWRs with Mark I containments provide a capability to vent the containment under design-basis conditions; DD-15-1, 81 NRC 193 (2015)

licensees of boiling water reactors with Mark I and II containments are required to design and install a venting system that provides venting capability from the wetwell during severe accident conditions; DD-15-1, 81 NRC 193 (2015)

request that NRC order licensees to include a reliable hardened vent in boiling-water reactor Mark I and Mark II containments is addressed; DD-14-2, 79 NRC 489 (2014)

VERIFICATION

accuracy is an integral component of the regulatory requirement that addresses item presence verification; CLI-15-9, 81 NRC 512 (2015)

any statistical sampling plan for verifying the presence and integrity of strategic special nuclear material items must have at least 99 percent power of detecting item losses that total 5 formula kg or more, plantwide, within 30 calendar days for Category IA items and 60 calendar days for Category IB items contained in a vault or in a permanently controlled access area isolated from the rest of the material access area; CLI-15-9, 81 NRC 512 (2015)

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- applicant's strategic special nuclear material item monitoring approach, as enhanced by an item verification procedure, provides reasonable assurance that the quantitative accuracy of the MMIS/PLC data is sufficient to enable the procedures employing those data to meet the regulatory requirements; LBP-14-1, 79 NRC 39 (2014)
- applicant's verification of the integrity of the strategic special nuclear material vault boundaries on a daily basis exceeds the regulatory requirement to verify the integrity of the items every 30 or 60 days; LBP-14-1, 79 NRC 39 (2014)
- by verifying integrity of storage area boundaries, applicant can verify the integrity of all strategic special nuclear material items in storage within the required 30- and 60-day time frames; LBP-14-1, 79 NRC 39 (2014)
- consistency check compares mean and slope of the embrittlement model curve against surveillance data and checks to confirm that outliers fall within acceptable residual values provided in the regulation; LBP-15-17, 81 NRC 753 (2015)
- consistency check is required if three or more surveillance data points measured at three or more different neutron fluences exist for a specific material; LBP-15-17, 81 NRC 753 (2015)
- consistency check seeks to compare, for a specific material type, the model's projected embrittlement with the actual embrittlement values at the same fluence provided by material samples; LBP-15-17, 81 NRC 753 (2015)
- contention that applicant's revised material control and accounting plan fails to show how confirmation and verification of theft of plutonium will be carried out in the specified timelines is inadmissible; CLI-15-9, 81 NRC 512 (2015)
- if fewer than three surveillance data points exist for a specific material, then the embrittlement model must be used without performing the consistency check; LBP-15-17, 81 NRC 753 (2015)
- licensees have to verify that their reference temperature calculations at the time of the application match up with surveillance data; LBP-15-17, 81 NRC 753 (2015)
- licensees must verify on a statistical sampling basis, the presence and integrity of strategic special nuclear material items; CLI-15-9, 81 NRC 512 (2015)
- meaning of "verify" in the context of strategic special nuclear material item presence verification is discussed; CLI-15-9, 81 NRC 512 (2015)
- neither the plain language of 10 C.F.R. 74.55(b)(1) nor its regulatory history suggests that verifications of strategic special nuclear material item integrity must be in any way physical; LBP-14-1, 79 NRC 39 (2014)
- purpose of the consistency check is to determine if the surveillance data show a significantly different trend than the embrittlement model predicts; LBP-15-17, 81 NRC 753 (2015)
- section 50.59 is not a process for verifying design adequacy, and required design control measures for verifying adequacy of design are expected to be implemented before entering the section 50.59 process; DD-15-7, 82 NRC 257 (2015)
- section 74.55 is not rendered superfluous by a reading that verifying the integrity of a storage area boundary will suffice to verify the integrity of the strategic special nuclear material items contained therein; LBP-14-1, 79 NRC 39 (2014)
- surveillance data used in the consistency check need not come from the same reactor pressure vessel that is the subject of the license amendment request; CLI-15-22, 82 NRC 310 (2015)
- three or more samples are required to conduct a consistency check; LBP-15-17, 81 NRC 753 (2015)
- updated embrittlement model is used to predict future reference temperatures across the reactor pressure vessel, which is then verified by existing surveillance data; CLI-15-22, 82 NRC 310 (2015)
- when fluence of a material sample is known, it must be used in the consistency check if it is of the appropriate chemical composition; CLI-15-22, 82 NRC 310 (2015)
- VIOLATIONS**
- agencies violate NEPA when their EIS fails to adequately respond to the critical opinions of their own experts; LBP-12-18, 76 NRC 127 (2012)
- alleged violations of state law are outside the scope of, and not material to, an adjudicatory proceeding; LBP-15-24, 82 NRC 68 (2015)
- allowing agencies to avoid a NEPA violation through a subsequent, conclusory statement that it would not have reached a different result even with the proper analysis would significantly undermine the statutory scheme; LBP-12-17, 76 NRC 71 (2012)

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- although petitioner's inadvertent publication of protected information was a serious offense that exposed movant to potential economic harm and undermined integrity of the adjudicative proceeding, the significance of petitioner's misconduct is alleviated to some degree by the immediate corrective action taken by petitioner; LBP-13-2, 77 NRC 71 (2013)
- board denies a motion seeking sanctions against petitioner for violating the governing protective order and non-disclosure agreement, but imposes a document review requirement upon petitioner in light of its misconduct and to enhance future compliance with the proceeding's protective order; LBP-13-2, 77 NRC 71 (2013)
- contention alleging that licensee had a repeated pattern of violations which could undermine its ability to manage aging during the period of extended operations is not within the scope of license renewal; LBP-13-8, 78 NRC 1 (2013)
- effect of a pattern of quality assurance violations is not necessarily to show that particular safety-related information is false, but to erode confidence that NRC can reasonably have in, and create substantial uncertainty about the quality of, the work that is tainted by the alleged QA violations; LBP-12-23, 76 NRC 445 (2012)
- failure to provide an appropriate basis for a determination that the change in the method of evaluation did not require a license amendment prior to implementing the change constitutes a violation of 10 C.F.R. 50.59(d)(1); DD-15-7, 82 NRC 257 (2015)
- licensee is cited for use of unapproved operator manual actions to mitigate safe shutdown equipment malfunctions caused by a fire-induced single spurious actuation in lieu of protecting the equipment; DD-12-3, 76 NRC 416 (2012)
- licensee's operation of primary coolant pumps contrary to plant licensing and the FSAR is a violation of 10 C.F.R. Part 50, Appendix B, Criterion III; DD-15-3, 81 NRC 713 (2015)
- NRC has discretion in specifying the level of foreign ownership that would constitute a violation of the Atomic Energy Act; LBP-12-19, 76 NRC 184 (2012)
- NRC Staff violated requirements for initial disclosure of all relevant documents; LBP-14-2, 79 NRC 131 (2014)
- NRC Staff will disposition violations as part of its ongoing reactor oversight process, and evidentiary hearings before NRC at the request of third parties are not a part of this process; DD-12-3, 76 NRC 416 (2012)
- NRC violated the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-12-16, 76 NRC 63 (2012)
- NRC's adjudicatory process is not the proper forum for investigating alleged violations that are primarily the responsibility of other federal, state, or local agencies; LBP-11-6, 73 NRC 149 (2011)
- party moving for sanctions has the burden of establishing by a preponderance of the evidence that petitioner violated the protective order; LBP-13-2, 77 NRC 71 (2013)
- past violations of NRC regulations would indicate a deficiency in an application only if they are directly germane to the licensing action, rather than being of simply historical interest; CLI-12-2, 75 NRC 63 (2012)
- possession of depleted uranium at multiple installations without an NRC license and performance of decommissioning at a military installation without proper NRC authorization is a violation of 10 C.F.R. 40.3; DD-11-5, 74 NRC 399 (2011)
- rule that excluded certain environmental impacts from NEPA consideration and deferred totally to environmental quality standards devised and administered by other agencies violated NEPA; LBP-15-23, 82 NRC 55 (2015)
- when considering whether a disclosure of proprietary information was an isolated incident or part of a pattern of behavior, licensing boards may consider the circumstances underlying the disclosure, the corrective action taken, and petitioner's representation that no disclosure will occur in the future; LBP-13-2, 77 NRC 71 (2013)
- where there was no reasonable likelihood that a change in the method of evaluation would have required a license amendment, the change was a minor violation; DD-15-7, 82 NRC 257 (2015)
- See also Notice of Violation
- VOLCANOES**
- analysis of potential hazard at proposed uranium enrichment facility site raises question whether probability of event is low enough to be considered "highly unlikely"; LBP-11-11, 73 NRC 455 (2011)

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WAIVER

agency waives the deliberative process privilege for a document when it discloses the same document or one containing equivalent text; LBP-13-5, 77 NRC 233 (2013)

arguments not raised before the board or not clearly articulated in the petition for review are deemed waived; LBP-15-5, 81 NRC 249 (2015)

because the Equal Access to Justice Act operates as a waiver of sovereign immunity, it must be narrowly construed to avoid creating a waiver that Congress did not intend; LBP-11-8, 73 NRC 349 (2011)

Equal Access to Justice Act renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity, and any such waiver must be strictly construed in favor of the United States; LBP-11-8, 73 NRC 349 (2011)

if licensee or other person to whom an order is issued consents to its issuance, or the order confirms actions agreed to by the licensee or such other person, that consent or agreement constitutes a waiver by the licensee or such other person of a right to a hearing and any associated rights; LBP-14-4, 79 NRC 319 (2014)

NRC regional office has the discretion to grant a waiver for retesting on a passed test for a senior reactor operator applicant who has failed only one part of the test if it determines that sufficient justification is presented; LBP-14-2, 79 NRC 131 (2014)

once Congress has waived sovereign immunity over certain subject matter, a court should be careful not to assume the authority to narrow the waiver that Congress intended; LBP-11-8, 73 NRC 349 (2011)

senior reactor operator applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused from reexamination on the portions of the examination or test that the applicant has passed; LBP-14-2, 79 NRC 131 (2014)

WAIVER OF OBJECTION

Category 1 issues in section 51.53(c)(3)(i) are excluded from site-specific review absent a waiver of the rule; CLI-12-19, 76 NRC 377 (2012)

objection not timely made is considered to be waived; LBP-15-20, 81 NRC 829 (2015)

WAIVER OF RULE

absent a rule waiver, NRC Staff is not expected to revisit the impact determinations made in the Continued Storage GEIS as part of its site-specific NEPA reviews; CLI-15-10, 81 NRC 535 (2015)

absent a waiver, contentions challenging applicable statutory requirements or NRC regulations are not admissible; LBP-11-21, 74 NRC 115 (2011)

absent a waiver, contentions that raise a direct or indirect challenge to a Commission regulation must be rejected; LBP-15-4, 81 NRC 156 (2015); LBP-15-20, 81 NRC 829 (2015)

absent a waiver, no rule or regulation of the Commission, or any provision thereof, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to 10 C.F.R. Part 2; CLI-14-6, 79 NRC 445 (2014); CLI-15-19, 82 NRC 151 (2015); LBP-11-35, 74 NRC 701 (2011); LBP-13-12, 78 NRC 239 (2013); LBP-15-24, 82 NRC 68 (2015); LBP-15-26, 82 NRC 163 (2015)

absent demonstration that petitioner's alleged special circumstances are unique to the facility rather than common to a large class of facilities, the request for waiver of regulations excluding spent fuel pool issues from license renewal proceedings is denied; LBP-11-35, 74 NRC 701 (2011)

all four factors in 10 C.F.R. 2.335(b) must be met; LBP-13-1, 77 NRC 57 (2013); LBP-14-15, 80 NRC 151 (2014); LBP-14-16, 80 NRC 183 (2014)

all four of the *Millstone* rule waiver requirements derive from the language and purpose of section 2.335(b); LBP-14-16, 80 NRC 183 (2014)

any request for a rule waiver or exception must be accompanied by an affidavit that identifies the subject matter of the proceeding as to which the application of the regulation would not serve the purposes for which the regulation was adopted, and the affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested; LBP-11-16, 73 NRC 645 (2011)

board admitted a contention on a conditional basis, pending Commission ruling on merits of petition for waiver of NRC regulations; CLI-11-11, 74 NRC 427 (2011)

board denies petition for rule waiver but refers the decision to the Commission because the legal issue presented by the petition is novel and worthy of the Commission's immediate attention; LBP-13-1, 77 NRC 57 (2013)

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case law test for rule waiver establishes an appreciably higher burden for would-be waiver seekers than does 10 C.F.R. 2.335(b); LBP-14-16, 80 NRC 183 (2014)

Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. 2.335, because they involve environmental effects that are essentially similar for all plants and need not be assessed repeatedly on a site-specific basis; LBP-15-5, 81 NRC 249 (2015)

challenge to a Commission rule or regulation is outside the scope of an adjudicatory hearing unless the petitioner first obtains a waiver; CLI-12-19, 76 NRC 377 (2012); CLI-15-21, 82 NRC 295 (2015); LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

challenges to Category 1 findings based on new and significant information require a waiver of 10 C.F.R. Part 51, Subpart A, Appendix B, in order to be litigated in a license renewal adjudication; CLI-13-7, 78 NRC 199 (2013)

Commission approval of a rule waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist; CLI-15-6, 81 NRC 340 (2015)

Commission remands license renewal proceeding to the board for the limited purpose of considering a rule waiver petition; CLI-12-19, 76 NRC 377 (2012)

conditions necessary for grant of a rule waiver are outlined; LBP-15-6, 81 NRC 314 (2015)

even a properly supported request for a waiver cannot be granted when it seeks to exempt circumstances that are common to a large class of facilities rather than unique; LBP-13-12, 78 NRC 239 (2013)

even proximity to a nuclear power facility or independent spent fuel storage installation is hardly unique in context of a rule waiver request; LBP-14-16, 80 NRC 183 (2014)

four-factor test for grant of a waiver is presented; CLI-12-6, 75 NRC 352 (2012); LBP-14-16, 80 NRC 183 (2014)

four-factor test for showing of special circumstances demonstrating that application of a rule would not serve the purpose for which it was adopted is outlined; CLI-12-19, 76 NRC 377 (2012)

four-factor test is applied to rule waiver requests; CLI-15-21, 82 NRC 295 (2015)

generic environmental analysis is incorporated into NRC regulations, and thus Category 1 generic findings may not be challenged in individual licensing proceedings unless accompanied by a petition for rule waiver; CLI-15-6, 81 NRC 340 (2015)

government fulfills its trust duties by executing federal law, not by waiving federal law; LBP-14-16, 80 NRC 183 (2014)

in extraordinary situations where special circumstances can be demonstrated, waivers may be granted; LBP-13-12, 78 NRC 239 (2013)

intervenor in adjudicatory proceedings are prohibited from challenging regulations unless they first obtain a waiver by showing special circumstances; LBP-14-15, 80 NRC 151 (2014)

licensing board erred in concluding that it is impossible to waive the exception in a rule; CLI-13-7, 78 NRC 199 (2013)

licensing board initially determines, based on the record, whether a prima facie showing has been made by petitioner for its rule waiver request, and then the board must certify the matter directly to the Commission for a final determination; LBP-14-16, 80 NRC 183 (2014)

Millstone rule waiver decision, which aggregates cases interpreting the waiver standard, is an example of a uniform, permissible interpretation of NRC regulations; CLI-13-7, 78 NRC 199 (2013)

no NRC rule or regulation or provision thereof is subject to attack in an adjudicatory proceeding unless a waiver is granted by the Commission; LBP-14-16, 80 NRC 183 (2014)

NRC case law has given meaning to the "special circumstances" requirement for rule waiver; CLI-13-7, 78 NRC 199 (2013)

NRC has endorsed a four-pronged test for grant of a rule waiver, all factors of which must be met; LBP-11-35, 74 NRC 701 (2011)

participant may petition that a Commission rule or regulation be waived with respect to the license application under consideration; CLI-11-3, 73 NRC 613 (2011); CLI-11-11, 74 NRC 427 (2011)

participant may request waiver of a current rule or regulation in a specific proceeding under special circumstances as an exception to the prohibition against challenging NRC rules or regulations in adjudicatory proceedings; CLI-14-7, 80 NRC 1 (2014); LBP-14-16, 80 NRC 183 (2014)

parties seeking a rule waiver must attach an affidavit that, among other things, states with particularity the special circumstances claimed to justify the waiver or exception requested; CLI-12-6, 75 NRC 352

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(2012); CLI-13-7, 78 NRC 199 (2013); LBP-13-12, 78 NRC 239 (2013); LBP-14-16, 80 NRC 183 (2014)

party can petition for waiver of a specific NRC regulation, based on a showing of special circumstances such that application of the rule would not serve the purposes for which it was adopted; CLI-12-6, 75 NRC 352 (2012); CLI-15-6, 81 NRC 340 (2015); LBP-15-3, 81 NRC 65 (2015); LBP-15-5, 81 NRC 249 (2015); LBP-15-17, 81 NRC 753 (2015)

petitioner for waiver of a specific NRC regulation must satisfy a four-factor test; LBP-15-17, 81 NRC 753 (2015)

petitioner cannot use one regulation to challenge another without first obtaining a waiver by showing special circumstances; LBP-15-4, 81 NRC 156 (2015)

petitioner who believes a regulation should not be applied in a particular proceeding may seek a waiver of that regulation; LBP-13-1, 77 NRC 57 (2013)

petitioners are not required to demonstrate that their complaint is unique to the facility in question or that their complaint reflects a significant safety issue; LBP-13-1, 77 NRC 57 (2013)

petitioners face a substantial burden; CLI-13-7, 78 NRC 199 (2013)

petitioners must demonstrate that applying the rule would not serve its intended purpose; CLI-13-7, 78 NRC 199 (2013)

petitioners, not just parties, may request a rule waiver in NRC adjudicatory proceedings; CLI-12-19, 76 NRC 377 (2012)

possibility that new SAMA candidates may become available cannot be the basis for a successful petition to waive 10 C.F.R. 51.53(c)(3)(ii)(L), because the Commission knew that SAMA technology would change, but was confident that processes, other than the SAMA analysis process, would adequately address any such developments; LBP-13-1, 77 NRC 57 (2013)

presiding officers must dismiss any petition for waiver that does not make a prima facie showing of special circumstances with respect to the subject matter of the particular proceeding; LBP-11-35, 74 NRC 701 (2011)

prima facie showing on a rule waiver request is not a final determination on the merits, but merely requires presentation of enough information to allow the board to infer, absent disproof, that special circumstances exist; LBP-14-16, 80 NRC 183 (2014)

procedure for obtaining a rule waiver is set out in 10 C.F.R. 2.335(a)-(d); CLI-12-19, 76 NRC 377 (2012)

replies to waiver petitions are allowed; CLI-11-3, 73 NRC 613 (2011)

request for waiver of 10 C.F.R. 51.22(c)(15) is denied; CLI-11-3, 73 NRC 613 (2011)

role of the board when a rule waiver request is filed is limited to determining whether petitioner has made a prima facie showing that it has satisfied 10 C.F.R. 2.335(b), and if not, the board may not further consider the matter; LBP-13-1, 77 NRC 57 (2013)

rule waiver petitions are reviewed under section 2.335 as well as case law; CLI-13-7, 78 NRC 199 (2013)

rule waiver requests must demonstrate that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted; CLI-15-21, 82 NRC 295 (2015)

rule waiver should not be granted unless the petition relates to a significant safety problem; LBP-14-16, 80 NRC 183 (2014)

rule waiver test applies equally to safety and significant environmental concerns; LBP-14-16, 80 NRC 183 (2014)

rule waiver would be necessary to litigate the issue of potentially new and significant information pertaining to bird collisions; CLI-13-7, 78 NRC 199 (2013)

ruling on petitions for waiver of application of the waste confidence rule in independent spent fuel storage installation license renewal proceeding is deferred and held it in abeyance; LBP-12-24, 76 NRC 503 (2012)

showing of special circumstances demonstrating that application of the rule would not serve the purpose for which it was adopted is required for rule waiver; CLI-12-19, 76 NRC 377 (2012); LBP-12-24, 76 NRC 503 (2012)

showing of uniqueness is necessary to justify setting aside a regulation for the purposes of a specific proceeding; CLI-13-7, 78 NRC 199 (2013)

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- sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted; CLI-11-11, 74 NRC 427 (2011); CLI-13-7, 78 NRC 199 (2013); LBP-11-35, 74 NRC 701 (2011); LBP-13-1, 77 NRC 57 (2013); LBP-14-16, 80 NRC 183 (2014)
- special circumstances for rule waiver are present only if the petition properly pleads one or more facts, not common to a large class of applicants or facilities, that were not considered either explicitly or by necessary implication in the proceeding leading to the rule sought to be waived; LBP-14-16, 80 NRC 183 (2014)
- to challenge a Category I issue such as public health, petitioner must request a waiver and show that unique circumstances warrant a site-specific determination; LBP-15-5, 81 NRC 249 (2015)
- to challenge generic application of a rule, petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply; CLI-13-7, 78 NRC 199 (2013)
- to determine whether a petitioner has demonstrated that application of a regulation would not serve the purposes for which it was adopted, a board must first determine the purpose of rule or regulation for which waiver is sought; LBP-13-1, 77 NRC 57 (2013)
- to litigate a SAMA-related contention in adjudicatory proceedings where the SAMA-analysis exception applies, petitioner must obtain a rule waiver as well as satisfy the contention admissibility criteria in section 2.309(f)(1); CLI-13-7, 78 NRC 199 (2013)
- to meet the waiver standard, the party seeking a waiver must attach an affidavit that, among other things, states with particularity the special circumstances claimed to justify the waiver or exception requested; CLI-11-11, 74 NRC 427 (2011); LBP-15-5, 81 NRC 249 (2015)
- to the extent that petitioner challenges the generic environmental impact statement, its remedy is a petition for rulemaking or a petition for a waiver of the rules based on circumstances; CLI-11-11, 74 NRC 427 (2011)
- to waive a Part 110 rule or regulation, petitioner must show special circumstances concerning the subject of the hearing such that application of the rule or regulation would not serve the purposes for which it was adopted; CLI-11-3, 73 NRC 613 (2011)
- to waive the generic assessment in NRC regulations to permit adjudication of issues involving the environmental impact of spent fuel pool accidents in a license renewal proceeding, the Commission must conclude that the rule's strict application would not serve the purpose for which it was adopted; CLI-11-11, 74 NRC 427 (2011)
- ubiquitous issue that clearly applies to a large class of people or facilities is ineligible for a waiver; LBP-11-16, 73 NRC 645 (2011)
- uniqueness factor of the waiver test is discussed; LBP-11-35, 74 NRC 701 (2011)
- use of "and" in the list of requirements for rule waiver means that all four factors must be met; CLI-11-11, 74 NRC 427 (2011)
- waiver of a rule pertaining to the agency's environmental responsibilities is possible; CLI-13-7, 78 NRC 199 (2013)
- waiver petition would permit consideration of an issue in an adjudicatory proceeding that would otherwise impermissibly challenge an NRC rule or regulation; CLI-14-7, 80 NRC 1 (2014)
- waiver should be granted only if the rule's strict application would not serve the purposes for which it was adopted, movant has alleged special circumstances that were not considered either explicitly or by necessary implication in the rulemaking proceeding, those circumstances are unique to the facility rather than common to a large class of facilities, and waiver is necessary to reach a significant safety problem; LBP-12-24, 76 NRC 503 (2012)
- where petitioner has successfully made a prima facie showing for rule waiver, the board shall, before ruling on the petition, certify the matter directly to the Commission, and the Commission shall determine whether to grant or deny the waiver request; LBP-13-1, 77 NRC 57 (2013)
- where the circumstances on which the proponent relies are common to a large class of applicants or facilities, the waiver will not be granted; LBP-11-16, 73 NRC 645 (2011)
- where the rules in question, as well as the contention itself, address compliance with NEPA and not safety issues under the Atomic Energy Act, the rule waiver is needed to address a significant environmental issue instead of a significant safety issue; LBP-14-16, 80 NRC 183 (2014)

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WASTE

See Radioactive Waste

WASTE CONFIDENCE RULE

all final decisions for licenses that relied on the Waste Confidence Decision and Temporary Storage Rule were suspended; CLI-15-4, 81 NRC 221 (2015)

as an exercise of its inherent supervisory authority over adjudications, the Commission directed that waste confidence contentions and any related contentions that may be filed in the near term be held in abeyance pending further order; LBP-12-24, 76 NRC 503 (2012); LBP-13-1, 77 NRC 57 (2013); LBP-14-6, 79 NRC 404 (2014)

because waste confidence undergirds certain agency licensing decisions, the Commission held that the NRC should not issue licenses affected by the Waste Confidence Decision until the remanded issues are resolved; CLI-14-3, 79 NRC 31 (2014)

Commission believes that there is reasonable assurance that sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time; LBP-11-16, 73 NRC 645 (2011)

Commission directed licensing boards to reject pending waste confidence contentions after adopting a generic environmental impact statement to identify and analyze environmental impacts of continued storage of spent nuclear fuel beyond the licensed life of nuclear reactors; LBP-15-5, 81 NRC 249 (2015)

Commission directed that licensing boards hold waste disposal contentions in abeyance pending further Commission order, which would be issued in conjunction with a then to-be-determined agency response to the District of Columbia Circuit's ruling; CLI-14-8, 80 NRC 71 (2014); LBP-14-12, 80 NRC 138 (2014)

contention challenging the Waste Confidence Rule may not be admitted absent a waiver or exception; LBP-11-16, 73 NRC 645 (2011)

in its Waste Confidence Decision, NRC failed to consider environmental impacts of a repository never becoming available, its analysis of spent fuel pool leaks was not forward-looking, and it had not sufficiently considered the consequences of spent fuel pool fires; CLI-15-4, 81 NRC 221 (2015)

in light of the vacatur of the Waste Confidence Decision and Temporary Storage Rule, environmental reports consider the reasonably foreseeable impacts of permanent storage of spent fuel, and contentions concerning the failure of the ER to do so must be held in abeyance; LBP-12-24, 76 NRC 503 (2012)

in view of the special circumstances presented by waste confidence, the Commission directed that those contentions and any related contentions filed in the near term be held in abeyance pending its further order; CLI-14-3, 79 NRC 31 (2014)

it is in the public interest for adjudications to proceed, except for contentions associated with waste confidence issues; CLI-12-16, 76 NRC 63 (2012)

licensing boards are directed to reject pending waste confidence contentions that had been held in abeyance; LBP-14-15, 80 NRC 151 (2014)

licensing boards were instructed to hold in abeyance any contentions on Waste Confidence matters until after the Commission's issuance of a new generic environmental impact statement; LBP-14-16, 80 NRC 183 (2014)

motion to admit a new waste-confidence-related contention is being held in abeyance; CLI-13-7, 78 NRC 199 (2013)

NRC violated the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-12-16, 76 NRC 63 (2012)

NRC will not issue final licenses dependent upon the Waste Confidence Rule until the court's remand is appropriately addressed; CLI-12-17, 76 NRC 207 (2012); LBP-12-21, 76 NRC 218 (2012)

NRC's current rule concerning the storage and disposal of high-level waste was remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to support the Commission's conclusions or site-specific environmental impact statements in all relevant proceedings; LBP-12-21, 76 NRC 218 (2012)

NRC's Waste Confidence Decision Update and Temporary Storage Rule were invalidated because there was not even a prospective site for a repository, let alone progress toward the actual construction of one; LBP-14-16, 80 NRC 183 (2014)

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on its face, the rule does not apply to uranium enrichment facilities; LBP-12-21, 76 NRC 218 (2012)

pending resolution of issues with NRC's waste confidence rule, waste confidence contentions should be held in abeyance; LBP-13-4, 77 NRC 107 (2013)

public comment will be afforded in advance on any generic waste confidence document that NRC issues on remand, be it a fresh rule, a policy statement, an environmental assessment, or an environmental impact statement; CLI-12-16, 76 NRC 63 (2012)

regarding waste confidence, NRC failed to comply with the National Environmental Policy Act in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule; CLI-14-3, 79 NRC 31 (2014)

rule concerning storage and disposal of high-level waste is vacated and the issue remanded to the Commission to generate either a generic analysis that is forward looking and has enough breadth to support the Commission's conclusions or a site-specific environmental impact statement in all relevant proceedings; LBP-13-13, 78 NRC 246 (2013)

rule expressed the Commission's reasonable assurance that a repository was likely to be available by 2007-2009; LBP-14-16, 80 NRC 183 (2014)

ruling on petitions for waiver of application of the waste confidence rule in independent spent fuel storage installation license renewal proceeding is deferred and held in abeyance; LBP-12-24, 76 NRC 503 (2012)

spent fuel can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation and there is reasonable assurance that sufficient mined geologic repository capacity will be available when necessary; CLI-14-8, 80 NRC 71 (2014)

waste confidence and similar contentions are held in abeyance pending further order from the Commission; LBP-14-8, 79 NRC 519 (2014)

waste confidence undergirds certain agency licensing decisions, in particular new reactor licensing and reactor license renewal; CLI-12-16, 76 NRC 63 (2012)

WASTE DISPOSAL

because petitioner fails to address information in the draft supplemental environmental impact statement and generic EIS that is relevant to the issue it raises, the board must reject arguments relating to liquid waste disposal; LBP-13-9, 78 NRC 37 (2013)

Commission chose to review intervenors' motion along with similar motions in other proceedings and associated petitions to suspend reactor licensing pending issuance of waste confidence safety findings; CLI-15-6, 81 NRC 340 (2015)

contention that draft environmental impact statement fails to take a hard look at impacts of the proposed mine related to air emissions and liquid waste disposal is inadmissible; LBP-13-9, 78 NRC 37 (2013)

contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)

environmental waste confidence contentions are dismissed; CLI-15-6, 81 NRC 340 (2015)

petitions to suspend final reactor licensing decisions pending a waste confidence safety finding were denied; DD-15-9, 82 NRC 274 (2015)

See also Radioactive Waste Disposal

WASTE PROCESSING

key action that will allow incineration of imported low-level-radioactive waste material is the domestic license authorizing such processing, not NRC's grant of an import license; CLI-11-3, 73 NRC 613 (2011)

licensee must provide for ready retrieval of spent fuel from storage for further processing or disposal; LBP-12-24, 76 NRC 503 (2012)

state reviewed the applications and the authorizations and found no technical reason to prohibit processing of imported waste; CLI-11-3, 73 NRC 613 (2011)

WASTE STORAGE

See Radioactive Waste Storage

WASTEWATER

contention that draft EIS is deficient because its evaluation of operation of radial collector wells does not preclude the possibility that they will change the plume dynamics of the industrial wastewater facility/cooling canal contaminant plume is inadmissible; LBP-15-19, 81 NRC 815 (2015)

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contention that final environmental assessment fails to conduct the required hard look at impacts of the proposed mine associated with air emissions and liquid waste disposal is admissible in part; LBP-15-11, 81 NRC 401 (2015)

contention that wastewater contains chemical contaminants that are not discussed in the environmental report, and that when the wastewater is discharged via deep injection wells, the chemicals might migrate to an aquifer is within the scope of a combined license proceeding; LBP-11-6, 73 NRC 149 (2011)

WATER POLLUTION

applicant for a federal discharge permit must provide a certification from the state that the proposed activity will not violate state water pollution control standards; LBP-12-16, 76 NRC 44 (2012)

contention claiming that environmental report's discussion of environmental effects and cumulative impacts of seepage from the cooling basin into groundwater and surface water through undocumented or unplugged oil and gas wells and borings fails to comply with the requirements of this section is admissible; LBP-11-16, 73 NRC 645 (2011)

Corps of Engineers may not issue a 404 permit if there exists a practicable alternative that would have less adverse impact on the aquatic system, the permit would cause significant degradation of the water of the United States, or appropriate and practicable mitigation has not been undertaken; LBP-14-9, 80 NRC 15 (2014)

for petitioners claiming to be using water from the same aquifer as for the uranium ore source, regardless of distance from the facility in question, licensing boards have found that a plausible pathway connecting the proposed mining operation to their water source has been shown so as to establish petitioners' standing; LBP-12-3, 75 NRC 164 (2012)

license renewal applicants must submit documentation of compliance with sections 316(a) and (b) of the Clean Water Act concerning thermal discharges; LBP-12-16, 76 NRC 44 (2012)

potential increases in nutrient concentration or eutrophication as a result of dewatering associated with construction and/or operation of the proposed plant are discussed; LBP-13-4, 77 NRC 107 (2013)

standing was found for petitioner fishing a river 60 miles downstream from a proposed in situ recovery facility expansion alleged to allow drainage into the river from operations; LBP-12-3, 75 NRC 164 (2012)

surface water contamination has played a significant role in standing determinations in in situ recovery cases; LBP-12-3, 75 NRC 164 (2012)

when an ore zone and petitioner's water source exist in separate aquifers, the injury/causation question is whether there is an interconnection between these aquifers; LBP-12-3, 75 NRC 164 (2012)

when petitioners considerably upgradient of the mining area fail to explain how contaminated material from the in situ recovery site might plausibly enter their drinking water, they fail to demonstrate the causation element necessary to establish their standing; LBP-12-3, 75 NRC 164 (2012)

See also Groundwater Contamination; National Pollutant Discharge Elimination System Permit

WATER QUALITY

admissibility of contention that environmental assessment fails to adequately describe and analyze aquifer restoration goals in light of new standards for determining alternative control limits is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that environmental documents and associated monitoring values and restoration goals rely on baseline data calculations that are inadequate and unacceptable is decided; LBP-15-15, 81 NRC 598 (2015)

admissibility of contention that NRC Staff must conduct a new baseline groundwater characterization study of the license renewal area rather than relying on the baseline study conducted during the original license application is decided; LBP-15-11, 81 NRC 401 (2015)

applicant for a uranium ISR license is required to provide data from a groundwater monitoring program that are sufficient to establish a pre-licensing site characterization baseline for assessing the potential effects of facility operations on local groundwater quality; LBP-15-3, 81 NRC 65 (2015)

applicant's monitoring program for establishing existing site characterization baseline values for certain site groundwater constituents need not be conducted so as to also provide background information needed to set Appendix A, Criterion 5B groundwater protection standards; LBP-15-3, 81 NRC 65 (2015)

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- background water quality data are used to establish existing hazardous constituent concentrations in an aquifer, which can then be used to set post-operational concentration limits; LBP-15-16, 81 NRC 618 (2015)
- “baseline” data describe results of applicant’s preoperational or baseline groundwater quality sampling program providing data on project-wide groundwater conditions; LBP-15-16, 81 NRC 618 (2015)
- claim that application fails to adequately present the true extent of historical exploration drilling, borehole abandonment details, R&D testing, changes to groundwater water quality, and interconnections of geologic strata contains no alleged facts to support this opinion and thus does not raise a genuine dispute; LBP-12-3, 75 NRC 164 (2012)
- Commission-approved background cannot be established until after an ISR license has been issued; LBP-15-3, 81 NRC 65 (2015)
- compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality; LBP-15-11, 81 NRC 401 (2015)
- concern about computer modeling methodology used to calculate groundwater quantity impacts is inadmissible as lacking sufficient factual or expert support and as failing to establish a material factual or legal dispute; LBP-12-3, 75 NRC 164 (2012)
- contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that draft environmental impact statement fails to analyze environmental impacts that will occur if applicant cannot restore groundwater to primary or secondary limits is admissible; LBP-13-10, 78 NRC 117 (2013)
- contention that draft environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-13-9, 78 NRC 37 (2013)
- contention that draft environmental impact statement lacks an adequate description of the present baseline (i.e., original or pre-mining) groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner, using proper sampling methodologies is admissible; LBP-13-10, 78 NRC 117 (2013)
- contention that final supplemental environmental impact statement fails to comply with NRC regulations and NEPA because it lacks an adequate description of the present baseline groundwater quality and fails to demonstrate that groundwater samples were collected in a scientifically defensible manner is decided; LBP-15-3, 81 NRC 65 (2015)
- contention that final supplemental environmental impact statement fails to include necessary information for adequate determination of baseline groundwater quality is admissible; LBP-14-5, 79 NRC 377 (2014)
- determination of background groundwater quality to include sampling of wells that are hydraulically upgradient of the waste management area is not required if non-upgradient well sampling will provide an indication of background groundwater quality that is representative, or more representative, than that provided by upgradient wells; LBP-15-3, 81 NRC 65 (2015)
- EPA drinking water maximum contaminant levels continue to be an accepted groundwater restoration standard; LBP-15-3, 81 NRC 65 (2015)
- groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)
- if impacts are unavoidable, applicant shall provide mitigation measures that must be, to the extent practicable, sufficient to replace lost aquatic resource functions; LBP-15-23, 82 NRC 55 (2015)
- in areas with a designated use as aquatic habitat, cooling water intake structures hinder the attainment of water quality standards; LBP-12-16, 76 NRC 44 (2012)
- in exempting an aquifer from MCLs, EPA has to find that the aquifer cannot and will not serve as a source of drinking water because it is mineral producing and can be demonstrated to contain minerals that, considering their quantity and location, are expected to be commercially producible; LBP-15-3, 81 NRC 65 (2015)
- intervenors fail to establish the validity of their various challenges to the adequacy of the FSEIS description of the baseline water quality at the ISR site; LBP-15-3, 81 NRC 65 (2015)

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NRC Staff may rely on the scientific data and inferences drawn by another government agency but need not slavishly defer to that agency's findings or its conclusions about water quality; LBP-13-4, 77 NRC 107 (2013)

purpose of alternate concentration limits is to address situations where restoring groundwater to baseline conditions or MCLs would not be practicable; LBP-13-9, 78 NRC 37 (2013)

samples taken from one well located hydrologically upgradient are part of the groundwater sampling protocol; LBP-15-3, 81 NRC 65 (2015)

three alternative standards for groundwater restoration at ISR facilities are background concentrations, maximum values from chart 5C, or an alternate concentration limit; LBP-13-9, 78 NRC 37 (2013)

waiting until after licensing, although before mining operations begin, to definitively establish the groundwater quality baselines and upper control limits is consistent with industry practice and NRC methodology, given the sequential development of in situ leach wellfields; LBP-15-16, 81 NRC 618 (2015)

WATER RIGHTS

federal government could assert an implied water right on behalf of a wildlife refuge; LBP-11-16, 73 NRC 645 (2011)

to show that it is within the realm of reason that the federal government may assert an implied water right, petitioner must provide some indicia of an attempt, plan, or intention; LBP-11-16, 73 NRC 645 (2011)

WATER SUPPLY

assurance of adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant; LBP-11-16, 73 NRC 645 (2011)

contention alleging that final supplemental environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-14-5, 79 NRC 377 (2014)

contention claiming that the application insufficiently addresses the safety implications of low water availability is inadmissible for failure to raise a genuine dispute with the application because the contention does not provide specific references to relevant sections of the site safety analysis report that address low water considerations; LBP-11-16, 73 NRC 645 (2011)

contention that draft environmental impact statement fails to adequately analyze groundwater quantity impacts is admissible; LBP-13-9, 78 NRC 37 (2013)

contention that environmental assessment has not adequately addressed environmental impacts associated with saltwater intrusion arising from saline water migration from the plant into surrounding waters, and applicant's use of aquifer withdrawals to lower salinity and temperature is admissible; LBP-15-13, 81 NRC 456 (2015)

contention that environmental assessment violates the National Environmental Policy Act in its failure to analyze groundwater quantity impacts of the project is decided; LBP-15-11, 81 NRC 401 (2015)

in analyzing predictions of water availability in a report, NRC Staff consulted with the other government agencies to determine whether data from either of those agencies could be obtained to prepare a new water availability prediction; LBP-13-4, 77 NRC 107 (2013)

intervenor's challenges to adequacy of applicant's environmental report with respect to environmental impacts of dewatering associated with the proposed nuclear plant continue to serve as viable challenges to similar sections of Staff's draft environmental impact statement and thus are not moot; LBP-11-1, 73 NRC 19 (2011)

NRC imposed requirements to provide makeup water independent of offsite power and the normal emergency alternating current power sources to maintain or restore spent fuel pool cooling capability in the event of an accident; DD-15-1, 81 NRC 193 (2015)

request that NRC order licensees to have an installed, seismically qualified means to spray water into the spent fuel pools, including an easily accessible connection to supply the water (e.g., using a portable pump or pumper truck) at grade outside the building is addressed; DD-14-2, 79 NRC 489 (2014)

request that NRC order licensees to provide safety-related AC electrical power for the spent fuel pool makeup system is addressed; DD-14-2, 79 NRC 489 (2014)

to show that it is within the realm of reason that the federal government may assert an implied water right, petitioner must provide some indicia of an attempt, plan, or intention; LBP-11-16, 73 NRC 645 (2011)

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WATER USE

another permitting regime for discharges does not foreclose the department from developing compatible methods of regulating water intakes at cooling water intake structures; LBP-12-16, 76 NRC 44 (2012)

applications for water use permits are evaluated by local governmental agencies; LBP-13-4, 77 NRC 107 (2013)

in areas with a designated use as aquatic habitat, cooling water intake structures hinder the attainment of water quality standards; LBP-12-16, 76 NRC 44 (2012)

intervenor's challenge concerning the DEIS's alleged failure to discuss the Great Lakes Compact's process for regional review of its application for a consumptive water use permit is inadmissible; LBP-12-12, 75 NRC 742 (2012)

NRC's analysis, in its final environmental impact statement, of issues relating to dewatering associated with construction and operation of the proposed plants is adequate and satisfied the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)

potential for increase in frequency of destructive wildfires due to altered natural hydroperiods discussed; LBP-13-4, 77 NRC 107 (2013)

potential increases in nutrient concentration or eutrophication as a result of dewatering associated with construction and/or operation of the proposed plant are discussed; LBP-13-4, 77 NRC 107 (2013)

state water use permit is required for construction and operation of the nuclear units, associated facilities, and transmission lines and corridor; LBP-13-4, 77 NRC 107 (2013)

WEB SITE

nonstatic nature of a website, in the absence of a stand-alone compact disc/digital video disc that would allow the board or parties to run a locked-down version of the website application, prevents consideration as evidence; LBP-15-3, 81 NRC 65 (2015)

WELDS

pressurized thermal shock screening criterion is given for plates, forgings, and axial and circumferential weld materials; LBP-15-17, 81 NRC 753 (2015)

WETLANDS

areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and generally include swamps, marshes, bogs, and similar areas are designated as wetlands; LBP-13-4, 77 NRC 107 (2013)

assertion that final environmental impact statement inadequately addresses, and inappropriately characterizes as small, the plant's dewatering-associated impacts to wetlands, floodplains, special aquatic sites, and other waters is litigated; LBP-13-4, 77 NRC 107 (2013)

combined license applicants must obtain permits from the U.S. Army Corps of Engineers in order to complete construction activities that may potentially affect wetlands; CLI-12-9, 75 NRC 421 (2012)

cumulative impacts of water withdrawals, climate change, and saltwater intrusion are discussed; LBP-13-4, 77 NRC 107 (2013)

ecological effects of seasonal fluctuations and hydroperiods are discussed; LBP-13-4, 77 NRC 107 (2013)

groundwater quality degradation for cooling ponds in salt marshes is a Category 1 issue and thus inadmissible in operating license renewal proceedings; LBP-12-8, 75 NRC 539 (2012)

if impacts are unavoidable, applicant shall provide mitigation measures that must be, to the extent practicable, sufficient to replace lost aquatic resource functions; LBP-15-23, 82 NRC 55 (2015)

impact analysis of passive dewatering is discussed; LBP-13-4, 77 NRC 107 (2013)

intervenor's fail to show that, with respect to terrestrial and wetland mitigation plans, there are data or conclusions in the draft environmental impact statement that differ significantly from the data or conclusions in the applicant's documents; LBP-12-12, 75 NRC 742 (2012)

intervenor's challenges to adequacy of applicant's environmental report with respect to environmental impacts of dewatering associated with the proposed nuclear plant continue to serve as viable challenges to similar sections of Staff's draft environmental impact statement and thus are not moot; LBP-11-1, 73 NRC 19 (2011)

NRC Staff's analysis, in its final environmental impact statement, of issues relating to dewatering associated with construction and operation of the proposed plants is adequate and satisfied the National Environmental Policy Act; LBP-13-4, 77 NRC 107 (2013)

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NRC Staff's environmental review was conducted in cooperation with the U.S. Army Corps of Engineers, with NRC acting as lead agency and ACE as cooperating agency under a memorandum of understanding, because applicants also needed permits from ACE to complete construction activities that may affect wetlands; CLI-12-9, 75 NRC 421 (2012)

proposed plant will impact at least 668 acres of wetlands and therefore its construction and operation will require a permit from U.S. Army Corps of Engineers; LBP-13-4, 77 NRC 107 (2013)

"special aquatic sites" are defined in accordance with guidelines issued by the U.S. Environmental Protection Agency and include six categories of special aquatic sites; LBP-13-4, 77 NRC 107 (2013)
when a proposed project would cause discharge of dredged or fill material into wetlands, applicant must seek a permit from the Corps of Engineers; LBP-15-23, 82 NRC 55 (2015)

WETWELL

licensees of boiling water reactors with Mark I and Mark II containments are required to design and install a venting system that provides venting capability from the wetwell during severe accident conditions; DD-15-1, 81 NRC 193 (2015)

WHISTLEBLOWERS

government may withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of the law; CLI-13-5, 77 NRC 223 (2013)

WILDFIRES

credibility of hazard to uranium enrichment facility is discussed; LBP-11-11, 73 NRC 455 (2011)
potential for increase in frequency of destructive wildfires due to altered natural hydroperiods is discussed; LBP-13-4, 77 NRC 107 (2013)

WIND ENERGY

contention seeking full impacts analysis of the power supply alternative of wind, either alone or in combination with solar and storage, is inadmissible because it fails to adequately demonstrate the capacity to produce baseload power; LBP-12-15, 76 NRC 14 (2012)

failure to provide a direct critique of the environmental report analysis of the potential for offshore power and interconnected wind farms is a failure to identify a genuine dispute with applicant; LBP-15-5, 81 NRC 249 (2015)

petitioners must show concretely that wind could be a reliable, commercially viable source of baseload power during the license renewal period; LBP-15-5, 81 NRC 249 (2015)

technologies as a component of a baseload energy source in combination with compressed air energy storage facility, a natural gas plant, or both, are discussed; LBP-12-17, 76 NRC 71 (2012)

WIND POWER

because a solely wind- or solar-powered facility could not satisfy the project's purpose, there was no need to compare the impact of such facilities to the impact of the proposed nuclear plant; LBP-11-7, 73 NRC 254 (2011)

WITHDRAWAL

if an application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding; CLI-13-10, 78 NRC 563 (2013)

licensing boards may not raise issues sua sponte when the sole intervenor has withdrawn from the proceeding; LBP-11-22, 74 NRC 259 (2011)

motion to withdraw application without prejudice is granted and proceeding is terminated; CLI-14-8, 80 NRC 71 (2014)

request that board impose additional discovery activities as a requirement of withdrawal of license amendment request is too broad because it goes beyond the scope of the admitted contentions and discovery is peculiarly related to particular proceedings and particular contentions; LBP-15-28, 82 NRC 233 (2015)

unconditional withdrawal is generally appropriate if it would cause no prejudice to either the intervenors' or the public's interest; LBP-15-28, 82 NRC 233 (2015)

upon receipt of a motion to withdraw an application, the board may place terms and conditions on the withdrawal, deny the application, or dismiss the application with prejudice; CLI-13-10, 78 NRC 563 (2013)

with license's withdrawal of license amendment request, the proceeding is moot; CLI-13-10, 78 NRC 563 (2013)

See Motions to Withdraw

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WITNESSES

at the request of any party a court must order witnesses excluded so that they cannot hear other witnesses' testimony; LBP-12-21, 76 NRC 218 (2012)

courts exclude witnesses prior to their testimony to discourage or expose outright fabrication and restrain the natural tendency of witnesses to tailor their testimony to that of earlier witnesses; LBP-12-21, 76 NRC 218 (2012)

findings concerning personal knowledge are entirely factual and largely dependent on witness credibility; LBP-11-8, 73 NRC 349 (2011)

written prefiled testimony and exhibits are typically submitted well in advance of the evidentiary hearing, and in most common types of hearings, licensing boards themselves, not the parties, orally examine the witnesses; LBP-12-21, 76 NRC 218 (2012)

WITNESSES, EXPERT

ability of a totally unfunded group to provide testimony from experts is not taken into account in ruling on motions to reopen; LBP-11-20, 74 NRC 65 (2011)

bare assertions and speculation, even by an expert, are insufficient to trigger a full adjudicatory proceeding; CLI-12-15, 75 NRC 704 (2012)

based on his education and experience, intervenors' witness was found qualified to testify but not specifically on issues related to nuclear engineering, such as events at the Fukushima Dai-ichi plant, core damage frequency calculations, and effectiveness of SAMDAs; LBP-11-38, 74 NRC 817 (2011)

"belief" that is not supported by alleged facts or expert opinion renders a contention inadmissible; LBP-15-26, 82 NRC 163 (2015)

boards may appropriately view petitioner's supporting information in a light favorable to the petitioner, but neither mere speculation nor bare or conclusory assertions, even by an expert, will suffice to allow the admission of a proffered contention; LBP-13-10, 78 NRC 117 (2013)

conclusory assertion, even if made by an expert, is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; LBP-11-6, 73 NRC 149 (2011)

contention admission stage is not the appropriate point at which to evaluate witness credibility or to weigh competing evidence, but an expert must provide a reasoned basis or explanation for opinions in support of a contention; LBP-15-17, 81 NRC 753 (2015)

evidence in affidavits supporting a motion to reopen must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; CLI-12-3, 75 NRC 132 (2012); CLI-12-6, 75 NRC 352 (2012)

expert has enough knowledge in the subject area to proffer an expert opinion for the purposes of determining contention admissibility; LBP-15-24, 82 NRC 68 (2015)

expert opinion that merely states a conclusion, e.g., the application is "deficient," "inadequate," or "wrong" without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the board of the ability to make the necessary, reflective assessment of the opinion; CLI-12-5, 75 NRC 301 (2012); CLI-15-23, 82 NRC 321 (2015); LBP-15-26, 82 NRC 163 (2015)

experts must have the requisite education, training, skill, or experience in operation of a nuclear power plant or in probabilistic risk assessment to support a contention; LBP-11-35, 74 NRC 701 (2011)

intervenors have demonstrated their ability to contribute to the development of a sound record where they have put forward in support of those contentions the views of a witness whose expertise has been recognized in other NRC proceedings; LBP-11-9, 73 NRC 391 (2011)

motions to reopen must be supported by an affidavit written by an individual with knowledge of the facts alleged, and the affidavit must explain why each of the criteria has been met; CLI-12-15, 75 NRC 704 (2012)

neither speculation nor conclusory assertions, even by an expert, alleging that a matter fails to satisfy the Atomic Energy Act or National Environmental Policy Act will suffice to allow admission of a contention; LBP-12-3, 75 NRC 164 (2012); LBP-12-15, 76 NRC 14 (2012); LBP-12-27, 76 NRC 583 (2012); LBP-15-1, 81 NRC 15 (2015)

petitioner is obliged to present factual allegations and/or expert opinion necessary to support its contention; LBP-12-27, 76 NRC 583 (2012)

petitioner's assertion that recriticality is demonstrated by the relative quantities of radionuclides released is not self-evident and is clearly of the class of statements that must be supported by expert opinion; LBP-11-23, 74 NRC 287 (2011)

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speculation by an expert cannot form the basis for admission of a contention on the basis of the matter being exceptionally grave; LBP-11-20, 74 NRC 65 (2011)

summary disposition is particularly inappropriate when a licensing board is presented with conflicting expert testimony, for at that stage of a proceeding it is not the role of licensing boards to untangle the expert affidavits and decide which experts are more correct; LBP-11-14, 73 NRC 591 (2011)

supporting affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised; LBP-11-35, 74 NRC 701 (2011)

witness must have enough knowledge in the subject area to allow him to proffer an expert opinion for the purposes of determining contention admissibility; LBP-15-20, 81 NRC 829 (2015)

WRIT OF MANDAMUS

NRC is ordered to promptly resume the licensing process for the high-level radioactive waste repository construction authorization application unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining; CLI-13-8, 78 NRC 219 (2013)

ZERO PRESSURE BOUNDARY

request for enforcement action to prevent reactor restart until applicable adequate protection standards regarding zero pressure boundary leakage and operation of the reactor have been met is denied; DD-11-2, 73 NRC 323 (2011)

ZONE OF INTERESTS

contention alleges errors by NRC Staff in implementation of 10 C.F.R. 73.56(f)(1)-(3) that fall within the zone of interests protected or regulated by those provisions; LBP-14-4, 79 NRC 319 (2014)

in determining standing, boards should determine whether plaintiff's grievance arguably falls within the zone of interests protected or regulated by the statutory provision invoked in the suit; LBP-14-4, 79 NRC 319 (2014)

test for standing is not meant to be especially demanding, there being no indication of congressional purpose to benefit the would-be plaintiff; LBP-14-4, 79 NRC 319 (2014)

to be adversely affected or aggrieved within the meaning of a statute, plaintiff must establish that the injury complained of falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for the complaint; LBP-14-4, 79 NRC 319 (2014)

where plaintiff is not itself the subject of the contested regulatory action, the zone-of-interests test for standing denies a right of review if plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit; LBP-14-4, 79 NRC 319 (2014)

where plaintiff is not itself the subject of the contested regulatory action, the zone-of-interests test denies a right of review if plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit; LBP-14-4, 79 NRC 319 (2014)

whether plaintiff's interest is arguably protected by the statute within the meaning of the zone-of-interests test is to be determined not by reference to the overall purpose of the Act in question, but by reference to the particular provision of law upon which plaintiff relies; LBP-14-4, 79 NRC 319 (2014)

whether the zone-of-interests test has been satisfied does not depend on how concrete or speculative the threat of injury may be; LBP-14-4, 79 NRC 319 (2014)

ZONE OF INTERESTS

statutes articulating the relevant zone of interests in NRC proceedings are the Atomic Energy Act and the National Environmental Policy Act; LBP-11-29, 74 NRC 612 (2011) his or her interests seeks to establish its representational standing, resides within 50 miles of the proposed facility, or has frequent contacts with the area affected by the proposed facility; LBP-11-13, 73 NRC 534 (2011); LBP-11-16, 73 NRC 645 (2011)

the rationale for proximity-based standing is that in construction permit and operating license cases, persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-11-2, 73 NRC 28 (2011); LBP-11-13, 73 NRC 534 (2011)

the record must show movant's right to summary judgment with such clarity as to leave no room for controversy, and must demonstrate that his opponent would not be entitled to prevail under any discernible circumstances; LBP-11-4, 73 NRC 91 (2011)

the rules on contention admissibility are strict by design; LBP-11-16, 73 NRC 645 (2011)

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- the scope of an admitted contention is determined by the bases set forth in support of the contention; LBP-11-14, 73 NRC 591 (2011)
- to be admissible, a newly proffered contention must satisfy either the timeliness standards in 10 C.F.R. 2.309(f)(2) or the standards in 10 C.F.R. 2.309(c)(1) for newly proffered nontimely contentions, and the contention admissibility standards in 10 C.F.R. 2.309(f)(1); LBP-11-15, 73 NRC 629 (2011)
- to become a party, a petitioner must submit at least one admissible contention; LBP-11-16, 73 NRC 645 (2011)
- to demonstrate representational standing, an organization must show that at least one of its members might be affected by the proceeding, identify that member by name and address, and show that the member has authorized the organization to represent him or her and to request a hearing on his or her behalf; LBP-11-6, 73 NRC 149 (2011)
- to determine if a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189a, the Commission has long applied contemporaneous judicial concepts of standing; CLI-11-3, 73 NRC 613 (2011)
- to determine whether the elements for standing are met, boards are to construe the petition in favor of the petitioner; LBP-11-16, 73 NRC 645 (2011)
- to establish standing, an intervention petition must state petitioner's name, address, and telephone number, the nature of the petitioner's right to be made a party, the nature and extent of petitioner's property, financial, or other interest, and the possible effect of any decision or order on petitioner's interest; LBP-11-16, 73 NRC 645 (2011)
- to establish standing, petitioner must allege a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision; CLI-11-3, 73 NRC 613 (2011)
- to justify reopening the record, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition; CLI-11-2, 73 NRC 333 (2011)
- to participate in a proceeding as an intervenor, petitioner must establish standing and proffer at least one admissible contention; LBP-11-2, 73 NRC 28 (2011); LBP-11-6, 73 NRC 149 (2011)
- to the extent that petitioner challenges the board's decision to apply the reopening standards strictly, its challenge constitutes an improper collateral attack on NRC regulations; CLI-11-2, 73 NRC 333 (2011)
- traditional judicial standing concepts require a showing that the individual has suffered or might suffer a concrete and particularized injury that is fairly traceable to the challenged action, is likely redressed by a favorable decision, and is arguably within the zone of interests protected by the governing statutes; LBP-11-2, 73 NRC 28 (2011)
- under the previous contention admissibility rule, a contention could be admitted and litigated based on little more than speculation, with parties attempting to unearth a case through cross-examination; LBP-11-6, 73 NRC 149 (2011)
- understandable misapprehension of the start of the filing period for contentions, leading to inadvertent late filing of new contentions, establishes good cause to excuse missing the filing deadline pursuant to 10 C.F.R. 2.309(c)(1); LBP-11-9, 73 NRC 391 (2011)
- when a contention alleges the need for further study of an alternative, from an environmental perspective, such reasonableness determinations are the merits, and should only be decided after the contention is admitted; LBP-11-2, 73 NRC 28 (2011)
- when presented with conflicting expert opinions, licensing boards should be mindful that summary disposition is rarely proper; LBP-11-7, 73 NRC 254 (2011)
- when ruling on motions for summary disposition, the Commission applies standards analogous to those used by federal courts when ruling on motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure; LBP-11-14, 73 NRC 591 (2011)
- where a municipality seeks to participate in a reactor licensing proceeding that does not involve a facility within the municipality's boundaries, it can, for purposes of establishing standing, rely on the 50-mile proximity presumption to the same extent as an individual or an organization; LBP-11-6, 73 NRC 149 (2011)
- where applicant deletes a material portion of its application and replaces it with a changed explanation of legal compliance, that replacement is materially different information that was previously unavailable and thus can satisfy the requirements of 10 C.F.R. § 2.309(f)(2)(i)-(ii); LBP-11-9, 73 NRC 391 (2011)
- where good cause is not shown for the late filing of a contention, the requestor's demonstration on the other factors must be particularly strong; LBP-11-15, 73 NRC 629 (2011)

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with respect to contentions filed after the initial petition, failure to address the requirements of 10 C.F.R. 2.309(c) and (f)(2) is reason enough to reject the new contentions; LBP-11-7, 73 NRC 254 (2011)

with respect to contentions filed after the initial petition, Intervenors have the burden to show they meet the criteria of 10 C.F.R. 2.309(f)(2); LBP-11-7, 73 NRC 254 (2011)

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