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Natural Resources
Defense Council

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'89 DEC -4 P 8:03

November 22, 1989

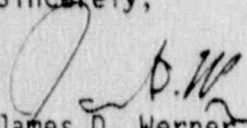
Administrative Judge
Peter B. Bloch
Presiding Officer
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Docket No. 70-25-ML; ASLBP No. 89-594-01

Dear Judge Bloch:

Per your recommendation today on the telephone, I am enclosing a copy of our "Response to Information Request from Presiding Officer," which was originally mailed with certified service on October 6, 1989. I am also sending copies to the parties on the certification of service list to whom copies were originally sent on that date.

Sincerely,


James D. Werner
Project Engineer

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Natural Resources
Defense Council

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'89 DEC -4 P 8:03

In the Matter of:
ROCKWELL INTERNATIONAL
CORPORATION
Rocketdyne Division

(Special Nuclear Materials
License No. SNM-21)

DOCKET NO. 70-25
ASLBP NO. 89-594-01
SEPTEMBER 29, 1989

**PETITION OF THE NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND THE LOS ANGELES CHAPTER OF THE PHYSICIANS
FOR SOCIAL RESPONSIBILITY TO INTERVENE AS A PARTY**

In response to the Federal Register Notice from Judge Peter B. Bloch¹, the Natural Resources Defense Council (NRDC) and the Los Angeles Chapter of the Physicians for Social Responsibility (LAPSR) hereby petition to intervene in the proceeding to consider renewal of the Special Nuclear Materials handling license (No. SNM-21) for the Rockwell Hot Lab facility at the Santa Susana Field Laboratory. By letter dated September 19, 1989, NRDC requested, on behalf of itself and LAPSR, an opportunity to present a petition to intervene as a party in the above-captioned proceeding.

NRDC is a national environmental organization with more than 100,000 members and contributors and a staff of about 120

¹ 54 Fed. Reg. 38578, September 19, 1989.

A. STANDING: NRDC AND LAPSR MEET THE TESTS FOR INTERVENING AS A PARTY

The presiding officer must consider three factors in determining whether a petitioner may intervene as an interested party under 10 CFR Subpart L:²

1. The nature of the petitioner's right under the Atomic Energy Act to be made a party;
2. The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and
3. The possible effect of any order entered on the petitioner's interest.

Two practical tests are used by NRC in reviewing a petitioner's intervention request.³ First, whether the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding. Second, whether the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

NRDC and LAPSR clearly meet both tests. NRDC and LAPSR each have one or more members residing within 2 miles of the Hot Lab at the Santa Susana Field Laboratory.⁴ The reissuance of the license at the Hot Lab could affect the physical and psychological health as well as the economic interests of these members as well as others near the facility. Individuals could

² 10 CFR 2.1205(g). Because this provision appears to be similar to 10 CFR 2.714, implementation should be similar.

³ Nuclear Engineering (Sheffield, Illinois Low Level Radioactive Waste Site) ALAB 473, 7 NRC 737 (1978).

⁴ Mr. Jon Scott is an NRDC member residing at 6 Roundup Road, Bell Canyon, CA 94307.

the nearest resident was 1.3 miles (2.1 km) from the site⁹, and that the 50-year dose commitment to the nearest resident from an accident would be approximately 0.1 rem to the whole body and 2.0 rem to the thyroid. Although these dose estimates are below the EPA Protective Action Guides (PAG),¹⁰ which were in effect at the time, they are four times and 25 times the emission standard established by EPA in 1985 for both NRC licensees and Department of Energy facilities for whole body and critical organ doses, respectively.¹¹ This data demonstrates that injury in fact could occur as an outcome of the NRDC proceedings on Rockwell's license renewal.

The second test of establishing a petitioner's standing for intervening in an NRC proceeding is whether the petitioner's interests are within the zone of interests protected by the statute involved. The NRC proceeding is governed by the Atomic

⁹ Within the same document, however (NUREG-1077, at 4-9) NRC staff used yet another distance, 1.4 miles (2.3 km), for calculating the impacts to the nearest resident of a release from the facility. A third NRC document released earlier in 1981 indicated that the nearest resident was 1.2 miles (2.0 km) from the facility. (Jamison, J.D. and E.C. Watson, Environmental Consequences of Postulated Plutonium Releases From Atomic International's Nuclear Materials Development Facility, Santa Susana, California, as a Result of Severe Natural Phenomena, Pacific Northwest Laboratory, Richland, Washington, PNL, UC-41, November 1981, at 13.)

¹⁰ U.S. Environmental Protection Agency, Manual of Protective Action Guides and Protective Actions for Nuclear Incidents, EPA-520/1-75-001, Washington, DC, revision of June 1980.

¹¹ "Emissions of radionuclides to air from facilities...shall not exceed those amounts that cause a dose equivalent of 25 mrem/y to the whole body or 75 mrem/y to the critical organ of any member of the public." 40 CFR 61.103.

B. A NUMBER OF CRUCIAL ISSUES DESERVE NRC CONSIDERATION

NRDC and LAPSR have petitioned to intervene because we believe a number of serious issues must be resolved before the NRC reissues the Special Nuclear Materials handling license (SNM-21) for the Rockwell site at the Santa Susana Field Laboratory. Among these issues are the increased population density around the Santa Susana Facility, the questionable technical assumptions used for estimating the radiation hazards from the facility, and the cumulative impacts of numerous adjacent radioactive and hazardous chemical waste disposal sites inside and out of the NRC-licensed area.

First, at the heart of the issue facing the NRC decision to reissue the materials handling license is whether nuclear practices that were considered safe in the San Fernando Valley during the 1950s or even the 1970s can be considered to be safe today, or in the year 2000 when the reissued license would expire. The NRC should consider the dramatic increase in population density that has occurred since the facility was first established in the 1950s when Ventura County had a population of only 117,000 people compared to the population projected for the year 2000 - 800,000 people.¹⁵ The population within five miles of the facility has undergone a comparable boom increasing from

¹⁵ Wood, Steven, Ventura County Planning Department, personal communication with Mr. Randy Booker, NRDC, September 22, 1989.

of fire in any accident is particularly important, given the frequency of brush fires that sweep across these mountains. In this case, a failure in the integrity of the HEPA filters could cause a release resulting in an off-site dose four times higher than the estimate given in the 1984 Environmental Appraisal. Hence, EPA's current emission standards for radionuclides, as well as the PAG guidelines use in the 1984 Appraisal would be exceeded.

Third, several waste disposal sites have recently been identified at the Rockwell but have not yet been fully characterized.¹⁹ While some significant waste disposal sites such as the B/886 Burn Pit are located outside the Energy Department's Energy Technology Center (ETEC) and the lease-option area at the Rockwell facility, several waste sites are located nearby within this area. We respect the view expressed by Judge Bloch, that while "10 CFR 70.11 appears to exempt from licensing any work done for the Department of Energy...[t]his does not appear to exempt Rockwell's Department of Energy activities from scrutiny in this proceeding should those activities be relevant to the pending request."²⁰ In addition, several areas of reasonably well-characterized ground water contamination have

¹⁹ Adler, K. & P. Olson, Phase II CERCLA Investigation of the Santa Susana Laboratory, May 1987. Rockwell International/Rocketdyne Division; DOE U.S. Department of Energy, Office of Environmental Audit, Environmental Survey Preliminary Report, Washington, D.C., May 1987.

²⁰ Block, J.P.B., Memorandum & Order (Request for Information and Argument) Bethesda, MD. at 2, September 18, 1989.

TABLE 1

SELECTED NRDC INVOLVEMENT IN ISSUES BEFORE THE NUCLEAR
REGULATORY COMMISSION AND PREDECESSOR AGENCIES

- A. RULEMAKING
1. Application of Energy Research and Development Administration, Project Management Corporation and Tennessee Valley Authority (Clinch River Breeder Reactor Plant) No. 50-537 (Nuclear Regulatory Commission, filed 1975).
 2. Generic Environment Statement on Mixed Oxide Fuel (GESMO) No. RM-50-1 (Nuclear Regulatory Commission, initiated 1976).
 3. Petition of NRDC (Emergency Safeguards For Nuclear Facilities) Nos. 70-8, et al. (Nuclear Regulatory Commission, filed 1976).
 4. Petition of NRDC (Radiation Protection Standards for Hot Particles) (Atomic Energy Commission, Environmental Protection Agency, filed 1974).
 5. Petition of NRDC (Exposure of Individuals to Radiation in Restricted Areas) (Nuclear Regulatory Commission, Environmental Protection Agency, filed 1975).
- B. RADIOACTIVE WASTES
6. Petition of NRDC (Low-Level Radioactive Waste No. PRM-20-7 (Nuclear Regulatory Commission, filed 1976).
 7. Petition of NRDC (Uranium Mill Tailings) No. PRM-40-21 (Nuclear Regulatory Commission, filed 1975).
- C. POWER PLANTS
8. NRDC v. Nuclear Regulatory Commission, 547 F.2d 633 (D.C. Cir. 1976), cert. granted sub nom. Vermont Yankee Vermont Yankee Nuclear Power Corp. v. NRDC, 429 U.S. 1090 (1977).
 9. NRDC v. Nuclear Regulatory Commission, 547 F.2d 633 (D.C. Cir. 1976) (Generic rulemaking on radioactive wastes).
 10. Application of Offshore Power Systems (Floating Nuclear Power Plants) No. STN-50-437 (Atomic Energy Commission, NRDC intervention 1974).

DOCKETED

DEC -4 1989

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:
ROCKWELL INTERNATIONAL
CORPORATION
Rocketdyne Division

(Special Nuclear Materials
License No. SNM-21)

DOCKET NO. 70-25-ML

ASLBP NO. 89-594-01

OCTOBER 6, 1989

RESPONSE TO INFORMATION REQUEST FROM PRESIDING OFFICER

On September 29, 1989 Judge Peter B. Bloch requested that the Natural Resources Defense Council (NRDC) and the Los Angeles Chapter of Physician's for Social Responsibility (LAPSR) submit information no later than October 6, 1989 regarding the following three questions:

- (1) Does a conflict of interest exist between James D. Werner's participation in the above-captioned proceeding and his previous employment as a subcontractor to the Department of Energy (DOE)?
- (2) What issue(s) do NRDC and LAPSR wish to pursue in this proceeding?
- (3) Which individuals reside close enough to be potentially affected by the Rockwell Hot Lab who are NRDC and LAPSR members,

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in addition to the person named in the petition, who is an independent party to the proceeding?

1. CONFLICT OF INTEREST

Judge Bloch has asked NRDC and LAPSR to address the question of whether there exists a conflict of interest between James D. Werner's previous position as a subcontractor for the U.S. Department of Energy (DOE) and his current participation in the license renewal proceeding for Rockwell International Corporation's Hot Lab at the Santa Susanna Field Laboratory (SSFL). No current or potential conflict of interest is presented by this situation because Mr. Werner was a contractor for DOE and not a government employee.

As Mr. Werner represented at the prehearing conference on September 29, he was employed by a consulting firm, ICF Technology, from April 1984 to August 1984 and September 1985 to January 1989. In May 1988, Mr. Werner visited the SSFL for two weeks as part of his work on a contract with DOE, Office of Environment Safety and Health, Washington, DC, which resulted in the preparation of Section 4.5 of the Environmental Survey Preliminary Report (DOE/EV/OEV-33-P, May 1989). During that Survey visit Mr. Werner toured the inside and outside of the Hot Lab for approximately two hours with a Rockwell International escort. At that time Mr. Werner had a "Q"/level-3 security clearance that enabled him to enter the Hot Lab.

The only potentially applicable law governing this conflict of interest question is set forth in DOE regulations at 10 C.F.R. § 1010.303.¹ In essence, these regulations bar former government employees from representing third parties on any matter in which they were substantially involved and in which the United States is a party or has an interest. This prohibition lasts for a year following the termination of the employee's involvement in the particular matter.

These DOE regulations restrict the activities of former government employees. Mr. Werner was an employee of a DOE subcontractor, and therefore is not subject to the regulation. Moreover, even in the unlikely event that Mr. Werner could be

¹ Section 1010.303(a) provide that after government employment has ceased, no former employee may:

(1) Knowingly act as an agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has an interest and in which the former employee participated personally and substantially for the Government through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise, and

(2) Appear personally before any Government court, department or agency as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has an interest and which was within the bounds of the former employee's Government service, for a period of one year after termination of the employee's official responsibility for that matter.

considered an "employee" of the Department of Energy, his work for DOE was unrelated to this licensing proceeding,² and occurred more than a year before the licensing proceeding was begun, or even noticed.

Mr. Werner's contractual obligation to comply with the "Organization Conflict of Interest" (OCI) provisions of the Survey contract³ was investigated earlier this year by DOE. DOE's Office of Environment, Safety and Health referred the issue to the DOE Assistant General Counsel's Office of Procurement and Finance for a determination of whether Mr. Werner had violated OCI provisions of the contract.⁴ The DOE Office of General Counsel did not find that Mr. Werner had violated the contract's OCI provisions.

Mr. Werner did not then, does not now, and does not expect in the future, to have any financial or personal interest in the outcome of the proceeding on the renewal of Rockwell's Special Nuclear Materials handling license. Mr. Werner continues to

² The Survey was a three year DOE project to identify existing environmental problems and areas of environmental risk. The DOE headquarters Office of Environment, Safety and Health sponsored this investigation of nearly 40 major DOE facilities. Rockwell's failure to place the May 1989 Survey Report in the NRC docket implicitly suggests that it does not regard the Survey report as supporting documentation for the license renewal application.

³ The Survey was performed under contract no. DE-AC01-87EH79003 awarded to NUS Corporation. ICF Technology served as a subcontractor to NUS Corporation..

⁴ Letter from Lawrence A. Weiner (DOE, EH-24, 202/586-4569) to Richard Burton (DOE, GC-34, 202/586-2440) and Arnold Gjerstad (DOE, MA-453.1, 202/586-1880), May 26, 1989.

respect his obligation not to reveal any classified or proprietary information obtained during the Survey.

2. OTHER ISSUES NRDC AND LAPSR WISH TO RAISE IN THE PROCEEDING

In its September 29, 1989 petition, NRDC and LAPSR raised a number of issues that it may wish to pursue during the above-captioned NRC licensing proceeding. NRDC and LAPSR believe that any or all of these issues may be relevant to the proceeding. In addition, NRDC and LAPSR would like to reserve the opportunity to raise additional issues as they become known through documents not now available to NRDC and LAPSR.

The three primary issues NRDC and LAPSR wish to address are (1) the impact of local population increases on the relative safety of the facility; (2) Rockwell's use of unreasonably optimistic assumptions in analyzing potential accident impacts; and (3) the aggregate impact of the numerous waste disposal sites within the boundaries of, and close to, the NRC-licensed facility area. In their September 19, 1989 Petition, NRDC and LAPSR also identified three other issues that they may wish to pursue in the hearing: worker health and safety; reliability and completeness of information from the applicant; and, transportation risks. Because of inadequate time to review the application docket, NRDC and LAPSR wish to reserve the opportunity to pursue any or all of these additional issues pending a complete review of relevant information.

3. ADDITIONAL NRDC AND LAPSR MEMBERS POTENTIALLY AFFECTED BY THE LICENSING PROCEEDING

Judge Bloch requested that NRDC and LAPSR submit the names and addresses of an alternative member to the individual named in the September 29, 1989 petition. NRDC members Jill and Richard Rubenstein reside at 39 Apaloosa Lane, Bell Canyon, CA 91307, approximately 2.7 miles (4.4 kilometers) from the Rockwell Hot Lab.

Respectfully submitted,



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Environmental Engineer
S. Jacob Scherr
Senior Staff Attorney
Natural Resources Defense Council
1350 New York Avenue, NW, Suite 300
Washington, D.C. 20005
(202) 783-7800

Dated at Washington, D.C.
this 6th day of October, 1989.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKET NO. 70-25-ML
DEC 4 1989 P2:49

In the Matter of:
ROCKWELL INTERNATIONAL
CORPORATION
Rocketdyne Division

(Special Nuclear Materials
License No. SNM-21)

DOCKET NO. 70-25-ML
ASLBP NO. 89-594-01
OCTOBER 6, 1989

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing RESPONSE TO INFORMATION REQUEST FROM PRESIDING OFFICER have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
Gustave A. Linenberger, Jr.
Special Assistant
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

R. T. Lancet
Director
Rockwell International Corporation
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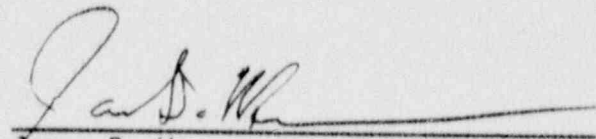
Administrative Judge
Peter B. Bloch
Presiding Officer
Atomic Safety & Licensing Board
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Jon Scott
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Jerome E. Raskins, et al.
c/o 18350 Los Alimos
Northridge, CA 91326

Dated at Washington, D.C. this
6th day of October 1989


James D. Werner