

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD #03 FEB 15 10:17

In the Matter of)	
ARMED FORCES RADIOBIOLOGY)	Docket No. 30-6931
RESEARCH INSTITUTE)	Renewal of Byproducts
(Cobalt-60 Storage Facility))	Material License No. 19-08330-03

OFFICE OF SECRETARY
REGULATING & SERVICE
BRANCH

LICENSEE'S REPLY TO CNRS'
SUPPLEMENT TO PETITION FOR
LEAVE TO INTERVENE

I. INTRODUCTION

The Citizens for Nuclear Reactor Safety (CNRS) filed on January 6, 1983, a Supplement to its Petition for Leave to Intervene in the above Byproducts Material License Proceeding.¹ There are two practical effects of approving some or all of the contentions propounded by CNRS in its Supplement. First, approval of at least one contention will allow intervention in the Byproducts Material License Proceedings. As a consequence of the Atomic Safety and Licensing Appeal Board's ruling of July 16, 1982 (ALAB 682, 16 NRC ___ (1982)), as well as old-fashioned common sense, approval of one or more of the contentions included in CNRS' Supplement will add a corresponding number of issues to a related and older reactor license renewal proceeding (Docket 50-170).

¹/ The Licensing Board and the parties are all well aware of the lengthy history associated with the establishment of this proceeding. That history does not need to be recapitulated here.

D503

CNRS' Supplement includes a total of seven proposed contentions: two concern security, two concern accidents, one concerns emergency planning, one concerns siting, and one concerns the National Environmental Policy Act (NEPA).

II. DISCUSSION

For ease of discussion, the seven proposed contentions can be divided into three groups. The first group includes both security contentions, one of the accident contentions, the emergency planning and siting contentions. The second group contains the NEPA contention. The third group consists of the remaining accident contention.

Specifically, within the first group of proposed contentions, the security contentions invite the Board to engage in rulemaking. An examination of 10 CFR Part 30 fails to disclose any provisions of the NRC's regulations which purport to establish requirements for security at a byproducts material facility. Moreover, even though the general injunction is included to "protect the public health and welfare," the NRC has not deemed it necessary to issue a Regulatory Guide for security in this context. Hence, whether the terrorists postulated by CNRS might in fact carry the CO⁶⁰ away or severely damage the facility as CNRS apparently postulates, the NRC has not deemed it necessary to adopt rules concerning security and therefore

under Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) Docket 50-271, ALAB 057, June 20, 1972, this Board is not required to create them.

The accident contention, the gist of which is that the Licensee has not hypothesized a series of "possible" accidents, suffers a similar deficiency. There is no requirement in 10 CFR Part 30 to develop "accident scenarios" in a manner similar to that required for reactors. Hence, the Board is being asked once again to engage in rulemaking.

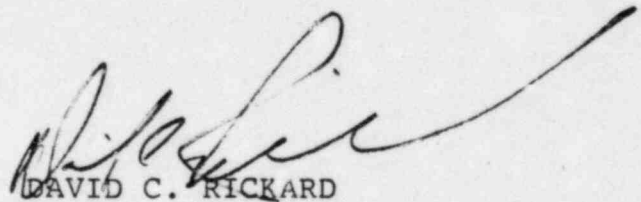
Similarly, the emergency planning requirement CNRS would impose in its emergency planning contention is not required by 10 CFR Part 30. Nor are there any standards set forth for siting--even assuming, arguendo, that at the time of license renewal one must address the continuing propriety of geographic location.

The second group of proposed contentions consists of the National Environmental Policy Act (NEPA) contention. The Licensee does not believe that this contention should properly apply here since, from the Licensee's point of view, application for renewal of an existing license does not constitute a "major federal action significantly affecting the quality of the human environment." It would also appear that the NRC considers by-products materials licenses to be environmentally insignificant (see 10 CFR 51.5(a) and 10 CFR 51.5(d)(3)). If the Board decides to proceed with the NEPA contention it is the Licensee's view that the Board will be engaged in rulemaking.

The third and final group consists of the first part of the proposed "accident" contention which in reality describes the malfunction of an elevator during an experiment on April 22, 1981. While this contention is artfully drawn so as to leave the impression that extremely serious risk to the public health and safety was occasioned by a simple source elevator malfunction, CNRS is well aware (based on Licensee's First Supplemental Response to CNRS' Interrogatories on Docket 50-170) that this was not a significant event in terms of risk to the general public. That such an event could escalate is a matter of such unmitigated speculation (without basis in fact) as to render this proposed contention inadmissible.

CONCLUSION

The Licensee therefore respectfully requests that the Board reject each of CNRS' proposed contentions, deny it Intervenor Status, and close this Byproducts Material Proceeding.



DAVID C. RICKARD
Deputy General Counsel
Defense Nuclear Agency
Counsel for Licensee

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
ARMED FORCES RADIOBIOLOGY) Docket No. 30-6931
RESEARCH INSTITUTE) Renewal of Byproducts
(Cobalt-60 Storage Facility)) Material License No.
19-08330-03

CERTIFICATE OF SERVICE OF DUPLICATE SIGNED
COPIES OF 7 FEBRUARY 1983 FILING

I hereby certify that true and correct copies of the foregoing "LICENSEE'S REPLY TO CNRS' SUPPLEMENT TO PETITION FOR LEAVE TO INTERVENE were mailed this 7th day of February, 1983, by United States Mail, First Class, to the following:

Judge Helen Hoyt
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Ernest E. Hill
Administrative Judge
Lawrence Livermore Laboratory
University of California
P.O. Box 808, L-123
Livermore, CA 94550

Dr. David R. Schink
Administrative Judge
Department of Oceanography
Texas A&M University
College Station, TX 77840

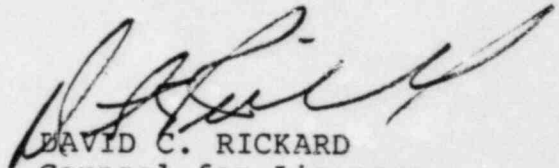
Mr. Richard G. Bachmann, Esq.
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Elizabeth B. Entwisle, Esq.
237 Hunt Road
Pittsburgh, PA 15215

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

Atomic Safety and Licensing Appeal Panel (5)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Secretary (3)
U.S. Nuclear Regulatory Commission
ATTN: Chief, Docketing and Service Section
Washington, D.C. 20555



DAVID C. RICKARD
Counsel for Licensee