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

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LBP-94-20

Administrative Judges
James P. Gleason, Presiding Officer
Jerry R. Kline, Special Assistant

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In the Matter of)	Docket No. 40-8724-MLA
CHEMETRON CORPORATION)	ASLBP No. 94-695-03-MLA
(Bert Avenue, Harvard Avenue, and McGean-Rohco Sites - Newburgh Heights and Cuyahoga Heights, Ohio))	(Source Material License No. SUB-1357)
)	July 7, 1994

MEMORANDUM AND ORDER
(Request for Hearing)

This informal adjudicatory proceeding, convened under 10 C.F.R. Part 2, Subpart L, involves an application by the Chemetron Corporation (Licensee) for a license amendment. The proposed amendment concerns the decommissioning of the Licensee's Bert Avenue site in Newburgh Heights, Ohio, and its Harvard Avenue site and associated buildings at the McGean-Rohco property in Cuyahoga Heights, Ohio.

A request for hearing on the application has been submitted by Chris Trepal on behalf of the Earth Day Coalition (Coalition), which is referred to as a non-profit environmental organization serving northeast Ohio. Responses in opposition to the

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Coalition's hearing request have been filed by the Staff and the Chemetron Corporation.¹

BACKGROUND

The amendment at issue here authorizes the Licensee to decommission the sites listed above in accordance with a remediation plan submitted to the NRC. Notice of an opportunity for a hearing on the amendment application, for any person whose interest may be affected by the proceeding, was published in the Federal Register. See 59 Fed. Reg. 17124, April 11, 1994.

Under informal hearing procedures authorized by the Commission's rules, a petitioner for a materials license amendment hearing is called upon to describe areas of concerns about the proposed licensing action and how the petitioner's interest may be affected by the results thereof. The presiding officer is required to determine that the concerns listed are germane to the subject matter and that the petition is filed on a timely basis. Finally, the requestor must meet the Agency's judicial requirements for standing. See 10 C.F.R. § 2.1205(d)(g). These standing requirements, identical to contemporaneous standards in other judicial proceedings, require some demonstration that the challenged action could cause an injury-in-fact and that such injury is within the zone of interests protected by statute. See Sacramento Municipal Utility

¹ Staff Notice of Participation and Response to Petitioner's Request for Hearing (June 10, 1994) (Staff Response); Licensee Chemetron Corporation's Answer to Request for Hearing by Earth Day Coalition (June 9, 1994) (Licensee Answer).

District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992).

There are several flaws to be noted in the requestor's petition which may, or may not, prove fatal to its request for a hearing on Licensee's amendment application. First, the hearing request does not make clear whom the petitioner represents. An organization may meet the injury-in-fact standing test by demonstrating an effect upon its organizational interest or injury to its members. See Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646 (1979). Or it can represent a member of the organization who has a threatened interest if the representation is authorized by the member. See Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 530 (1991).

Based on the petition's recital, the Coalition purports to involve itself in this proceeding as a focal point for residents of the area to raise concerns about the proceeding on their behalf. In this context, it does not appear to be an authorized representative of those residents; nor does it allege any potential injury to its own organizational interests. As pointed out in responses filed by both the Staff and Licensee, an institutional interest in providing information to the public is insufficient for standing; and for representational purposes, the petitioner fails to identify at least one resident who could suffer injury from the challenged action and who has provided

authorization for representation to the Coalition. Accordingly, petitioner fails herein to cite any injury, actual or threatened, to either its organizational interests or those of its members. And with respect to acting for the area's residents generally, nothing in the Commission's regulations authorizes requestors to undertake to represent the general public as if they were private attorneys general. See Babcock and Wilcox Company, (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 50 (1994). Also see Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1) LBP-77-11, 5 NRC 481, 484 (1977).

The petitioner sets forth ten areas of concern about the proposed license amendment but herein, the second flaw in the Coalition's request for a hearing makes its appearance. Under the Commission's informal proceeding rules in Subpart L, the Presiding Officer is charged with determining whether the areas of concern submitted by the petitioner are germane to the proceeding's subject matter. To exercise this responsibility, the basis for the Presiding Officer's determination can only originate from information supplied by the requestor in its hearing petition. The petitioner's enumerated areas of concern, however, fail to demonstrate the connection existing between such areas and the license amendment in this proceeding. This is not to conclude that such connections do not exist, but merely that they are not manifest from the Coalition's filing. It would serve no purpose to review the ten concerns individually at this

time since most, if not all, suffer from the same deficiency -- inadequate information to ground a determination that the Coalition's concerns are germane to the subject matter of the proceeding. It is not necessary in the proceeding for a petitioner to set forth at this point all of the concerns it has about the proceeding as the Commission recognizes that such a requirement would be inequitable without access to a hearing file.² However, as indicated, there exists the necessity for linking the concerns registered in its hearing petition to the matter under consideration.

As a result of the foregoing therefore, the petition presented does not provide sufficient information for a determination that standing requirements have been met or that the concerns submitted are germane to the proceeding. The Coalition petition does reveal, however, a background of concern by the organization in the subject matter -- it alleges a "substantial interest in the site(s)," a "history of work and public interest advocacy on radioactive waste issues" and also a past participation "on behalf of residents" concerning the site. This familiarity, interest and involvement in the activities concerning the site combine to create a reflection that, provided the opportunity, the potential exists for the Coalition to clarify its petition and to establish standing as well as the relevancy of its concerns. Contemplation also needs to be given

²See Commission's Statement of Consideration, 54 Fed. Reg. 8272.

to the consideration that a civic organization like the Coalition, which does not appear to be represented by counsel, may not be aware of all of the Agency's informal hearing procedural requirements. Accordingly, it would appear to be inappropriate to deny its hearing request at this point. The Presiding Officer's action on this petition will therefore be deferred to permit the Coalition to supplement its petition to provide further information to remedy the deficiencies outlined above.³ The petitioner is granted a three-week period, dating from the receipt of this Order to provide any additional information it cares to provide in support of its hearing request. And the Staff and Licensee will have a two-week period thereafter to respond.

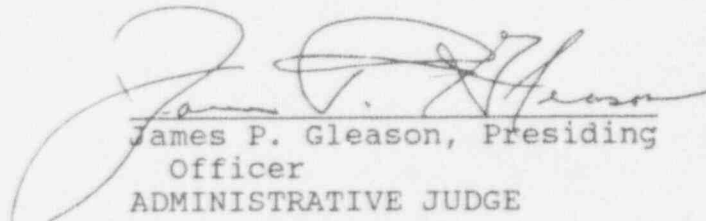
The Licensee, but not the Staff, raises lateness objections to the Coalition's petition on grounds that the petition was filed one to three days late and the grant of the hearing request would cause undue prejudice and injury to the Chemetron Corporation. Based on the papers filed, it is not clear when the requestor's petition was filed. It is dated May 9, 1994, one day prior to the expiration of the thirty days allowed by the Federal Register notice, supra. NRC's practice reflects that filing is deemed complete as of the time it is deposited in the mail -- not postmarked. 10 C.F.R. § 2.701(c). Due to the uncertainty

³As the Appeal Board has pointed out, reasonable opportunities to cure defects in petitions should be provided. See Virginia Electric and Power Company, (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 634 (1973).

concerning the actual filing date, which does not in any event involve an inordinate amount of time, and with the ruling herein granting additional time to supplement its hearing request in mind, it does not appear pertinent to dwell on whether the petitioner's request meets the Agency's lateness criteria. The Licensee's own response to the hearing request was substantially late in meeting filing requirements and any small delay encountered here should not, in light of the present circumstances of the case, be represented as constituting an untimely filing.

ORDER

1. Action is deferred on the Earth Day Coalition request for a hearing.
2. A supplement to the Coalition's request may be filed within a period of three weeks after receipt of this Order.
3. The Staff and the Chemetron Corporation may file a response within a two-week period after service of any supplement.


James P. Gleason, Presiding
Officer
ADMINISTRATIVE JUDGE

Bethesda, Maryland

July 7, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
CHEMETRON CORPORATION

(Source Material License
No. SUB-1357)

Docket No.(s) 40-8724-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-94-20) (REQUEST..) 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.

Office of Commission Appellate
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Washington, DC 20555

Administrative Judge
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Presiding Officer
Atomic Safety and Licensing Board
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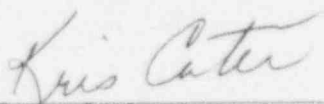
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Dated at Rockville, Md. this
7 day of July 1994


Office of the Secretary of the Commission