

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Charles N. Kelber, Special Assistant

'91 APR 15 P1 52

IN THE MATTER OF)

NUCLEAR METALS, INC.)
Source Material License)
No. SMB-179)

) Docket No. 40-672-MLA

) License Renewal

) ASLBP No. 91-639-02-MLA

MOTION TO EXTEND TIME TO FILE
ANSWER TO PETITION OF CITIZENS CONCERNED ABOUT
NUCLEAR MATERIALS, NATIONAL TOXIC CAMPAIGN FUND
AND NATIONAL TOXICS CAMPAIGN

Pursuant to 10 C.F.R. §§ 2.711(a) and 2.1203(d), Nuclear Metals, Inc. ("Applicant"), hereby moves to extend the time by which it may respond to the Petition of Citizens Concerned About Nuclear Materials, National Toxic Campaign Fund and National Toxics Campaign (collectively the "Petitioners"). The Applicant seeks to file a response to the Petition within twenty-one (21) days after this Board grants leave to extend time, or within such time as the Board may deem appropriate. The reason, therefore, is that the Petitioners' failure to file and serve a Petition properly did not afford the Applicant sufficient notice. In addition, the Petitioners and Applicant are currently engaged in a local proceeding regarding issues raised by the Petition.

By letter dated February 14, 1991, Sanford J. Lewis, Esquire, on behalf of the Petitioners objected to the

relicensing of Nuclear Metals, Inc. The Petitioners addressed their single spaced letter to John Kinneman, USNRC, Region 1, 455 Allendale Road, King of Prussia, PA 19406. Some halfway into the letter, the Petitioners, for the first and only time, mentioned that their desire "to intervene in NMI's current relicensing process and request a hearing." On March 28, 1991, this Board issued a Memorandum and Order to the Applicant and Petitioners. By this Memorandum and Order, the Applicant first learned of an official and formal filing for a Petition to intervene and for hearing. Presumably, the letter dated February 14, 1991 represents the Petition.

The form and service of the Petition was so at variance with Commission regulations as to fail to provide proper notice to the Applicant. By regulation, the Petitioners must file with the Docketing and Service Branch either by delivery to the Office of the Secretary, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. 10 C.F.R. § 2.1203(b). Similarly, the Petitioners must serve the Applicant and the NRC staff, Executive Director for Operations either by delivery at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail to U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. 10 C.F.R. §2.1205(e) and (j). Not only must the Petitioners file and serve the document, the document must contain a proof of service. 10 C.F.R. §§ 2.701(b), 2.712, 2.1203(e). The net effect of fulfilling these requirements is that the Commission,

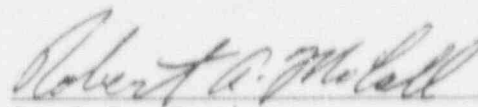
its staff and the Applicant are put on notice of a person's intent to participate formally in the proceedings. Moreover, the document filed by counsel on behalf of the Petitioners does not meet the formal requirements of 10 C.F.R. § 2.708.

Although these defects may be of such a technical nature that the Petition may still be considered filed for the purposes of the Commission, the form is insufficient to put interested persons on notice of the necessity of a response. Indeed, it would be inequitable to deprive a party of an opportunity to respond to the Petition because of its form.

A two week response period is fair and just to both the Petitioners and Applicant.

For the reasons herein stated, Nuclear Metals, Inc., hereby requests that the Board grant it twenty-one days from the date of its order on this motion to file a response to the Petition, or such time as the Board may deem appropriate.

Respectfully Submitted,
NUCLEAR METALS, INC.
By its attorneys,



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CERTIFICATE OF SERVICE

I, Robert A. McCall, do hereby certify that on this ^{7th} day of April, 1991, I served the foregoing document by mailing a copy thereof, postage prepaid, addressed to Nuclear Regulatory Commission Staff, Office of Executive Director of Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to Sanford J. Lewis, Esquire, 42 Davis Road, Suite 3B, Acton, MA 01720.

Robert A. McCall

Robert A. McCall

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U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

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