

NUREG-0750
Vol. 19
Index 1

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January - March 1984



U. S. NUCLEAR REGULATORY COMMISSION

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NUREG-0750
Vol. 19
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**INDEXES TO
NUCLEAR REGULATORY
COMMISSION ISSUANCES**

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U. S. NUCLEAR REGULATORY COMMISSION

Foreword

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

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

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

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

1. Case Name Index

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

2. Digests and Headers

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

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

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

3. Legal Citations Index

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

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

4. Subject Index

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

5. Facility Index

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

CASE NAME INDEX

ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE
FACILITY LICENSE RENEWAL; ORDER, Docket No. 50-170 (ASLBP No. 81-451-01-LA);
LBP-84-15A, 19 NRC 852 (1984)

BOSTON EDISON COMPANY
REQUEST FOR ACTION; INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
Docket No. 50-293, DD-84-5, 19 NRC 542 (1984)

CAROLINA POWER AND LIGHT COMPANY
OPERATING LICENSE AMENDMENT; ORDER DISMISSING PROCEEDING; Docket No.
50-261-OLA (ASLBP No. 83-484-03-LA); LBP-84-11, 19 NRC 533 (1984)

CAROLINA POWER AND LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL
POWER AGENCY
OPERATING LICENSE; MEMORANDUM AND ORDER; Docket Nos. 50-400, 50-401 (ASLBP
No. 82-468-01-OL), LBP-84-7, 19 NRC 432 (1984); LBP-84-15, 19 NRC 837 (1984)

CINCINNATI GAS AND ELECTRIC COMPANY, et al.
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No.
50-358, DD-84-3, 19 NRC 480 (1984)

CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.
OPERATING LICENSE; MEMORANDUM AND ORDER; Docket Nos. 50-440-OL, 50-441-OL;
LBP-84-3, 19 NRC 282 (1984)

REQUEST FOR IMMEDIATE ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
Docket No. 50-440; DD-84-1, 19 NRC 471 (1984)

COMMONWEALTH EDISON COMPANY
OPERATING LICENSE; INITIAL DECISION, Docket Nos. STN 50-454-OL, STN 50-455-OL
(ASLBP No. 79-411-04-OL); LBP-84-2, 19 NRC 36 (1984)

COMMONWEALTH EDISON COMPANY (AND ALL LIGHT-WATER REACTORS)
IMMEDIATE ACTION REQUEST; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket
No. 50-373; DD-84-6, 19 NRC 891 (1984)

CONSUMERS POWER COMPANY
CONSTRUCTION PERMIT; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R.
§ 2.206; Docket Nos. 50-329, 50-330; DD-84-2, 19 NRC 478 (1984)

OPERATING LICENSE; MEMORANDUM AND ORDER; Docket Nos. 50-329-OM&OL,
50-330-OM&OL; ALAB-764, 19 NRC 633 (1984)

DUQUESNE LIGHT COMPANY, et al.
DISMISSAL OF PROCEEDING; REPORT AND ORDER ON SPECIAL PREHEARING
CONFERENCE HELD PURSUANT TO 10 C.F.R. § 2.751a; Docket No. 50-412 (ASLBP No.
83-490-04-OL); LBP-84-6, 19 NRC 393 (1984)

GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION
SPECIAL PROCEEDING; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No.
50-320; DD-84-4, 19 NRC 535 (1984)

HOUSTON LIGHTING AND POWER COMPANY, et al.
OPERATING LICENSE; PARTIAL INITIAL DECISION; Docket Nos. STN 50-498-OL, STN
50-499-OL (ASLBP No. 79-421-07-OL); LBP-84-13, 19 NRC 659 (1984)

KANSAS GAS AND ELECTRIC COMPANY, et al.
EMERGENCY PLANNING; MEMORANDUM AND ORDER; Docket No. 50-482 (ASLBP No.
81-453-03-OL); LBP-84-1, 19 NRC 29 (1984)

CASE NAME INDEX

OPERATING LICENSE; MEMORANDUM AND ORDER; Docket No. 50-482 (ASLBP No. 81-453-03-OL); LBP-84-17, 19 NRC 878 (1984)

MAINE YANKEE ATOMIC POWER COMPANY
OPERATING LICENSE AMENDMENT; ORDER; Docket No. 50-309-OLA (ASLBP No. 80-437-02-LA); LBP-84-14, 19 NRC 834 (1984)

METROPOLITAN EDISON COMPANY
SPECIAL PROCEEDING; MEMORANDUM AND ORDER; Docket No. 50-289-SP; CLI-84-3, 19 NRC 555 (1984)

PACIFIC GAS AND ELECTRIC COMPANY
OPERATING LICENSE; ORDER; Docket Nos. 50-275, 50-323; CLI-84-1, 19 NRC 1 (1984)
OPERATING LICENSE; MEMORANDUM AND ORDER; Docket No. 50-275; CLI-84-2, 19 NRC 3 (1984)
OPERATING LICENSE; DECISION; Docket Nos. 50-275, 50-323; ALAB-763, 19 NRC 751 (1984)
OPERATING LICENSE SUSPENSION REQUEST; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-275; DD-84-8, 19 NRC 924 (1984)

PHILADELPHIA ELECTRIC COMPANY
OPERATING LICENSE; MEMORANDUM AND ORDER; Docket Nos. 50-352, 50-353; ALAB-765, 19 NRC 645 (1984); LBP-84-16, 19 NRC 857 (1984)

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.
OPERATING LICENSE; DECISION; Docket Nos. 50-443-OL, 50-444-OL; ALAB-758, 19 NRC 7 (1984)
OPERATING LICENSE; MEMORANDUM AND ORDER; Docket Nos. 50-443-OL, 50-444-OL; ALAB-762, 19 NRC 565 (1984)

PUBLIC SERVICE ELECTRIC AND GAS COMPANY, et al.
DISQUALIFICATION; MEMORANDUM AND ORDER; Docket No. 50-354-OL; ALAB-759, 19 NRC 13 (1984)
OPERATING LICENSE AMENDMENT; ORDER DISMISSING PROCEEDING; Docket No. 50-272-OLA; LBP-84-5, 19 NRC 391 (1984)

TENNESSEE VALLEY AUTHORITY
CONSTRUCTION PERMIT; MEMORANDUM AND ORDER; Docket Nos. STN 50-519, STN 50-521; ALAB-760, 19 NRC 26 (1984)

TEXAS UTILITIES ELECTRIC COMPANY, et al.
OPERATING LICENSE; MEMORANDUM AND ORDER; Docket Nos. 50-445, 50-446; LBP-84-10, 19 NRC 509 (1984)

TEXAS UTILITIES GENERATING COMPANY, et al.
OPERATING LICENSE; MEMORANDUM; Docket Nos. 50-445, 50-446; LBP-84-8, 19 NRC 466 (1984)

UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY
CONSTRUCTION PERMIT; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-537-CP; DD-84-3, 19 NRC 480 (1984)
CONSTRUCTION PERMIT; MEMORANDUM OF FINDINGS; Docket No. 50-537-CP (ASLBP No. 75-291-12); LBP-84-4, 19 NRC 288 (1984)
CONSTRUCTION PERMIT; MEMORANDUM AND ORDER; Docket No. 50-537-CP; ALAB-761, 19 NRC 487 (1984)

WASHINGTON PUBLIC POWER SUPPLY SYSTEM
CONSTRUCTION PERMIT AMENDMENT; MEMORANDUM AND ORDER; Docket No. 50-460-CPA (ASLBP No. 83-485-02-CPA); LBP-84-9, 19 NRC 497 (1984)
REQUEST FOR SHOW-CAUSE PROCEEDING; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-397; DD-84-7, 19 NRC 899 (1984)

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

CLI-84-1 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323; OPERATING LICENSE; January 16, 1984; ORDER

A The Commission denies the intervenors' request for a stay of fuel loading and pre-criticality testing at the Diablo Canyon plant.

CLI-84-2 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Unit 1), Docket No. 50-275; OPERATING LICENSE; January 25, 1984; MEMORANDUM AND ORDER

A Acting on the applicant's request, the Commission authorizes further pre-criticality tests (hot system testing) at the Diablo Canyon plant on the ground that the tests will provide valuable information regarding plant design, construction and operation without presenting any significant public health and safety concerns.

CLI-84-3 METROPOLITAN EDISON COMPANY (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP; SPECIAL PROCEEDING; March 28, 1984; MEMORANDUM AND ORDER

A In response to an Appeal Board memorandum (ALAB-724, 17 NRC 559 (1983)), concerning the treatment to be accorded the issues raised in a Board Notification (BN-83-47), the Commission decides that the issue of whether the power-operated relief valve should be safety-grade, because of the potential for using it to mitigate the consequences of design basis steam generator tube accidents, has no reasonable nexus to the TMI-2 accident and is, therefore, outside the scope of the proceeding. The Commission also decides that the information in the Board Notification is not significant enough to warrant reopening the record sua sponte, even if it were within the scope of the proceeding.

B The following technical issue is discussed: Uses of power-operated relief valve in depressurization in the event of a steam generator tube rupture.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS

ALAB-758 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL, 50-444-OL; OPERATING LICENSE; January 24, 1984; DECISION

A The Appeal Board affirms, on different grounds, the Licensing Board's denial of an untimely petition for leave to intervene in this operating license proceeding.

B It is the responsibility of the Director of Nuclear Reactor Regulation, and not the Licensing Board, to make the finding required by 10 C.F.R. 50.57(a)(1) as a precondition to the issuance of an operating license for a nuclear plant. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 410-11 (1974).

ALAB-759 PUBLIC SERVICE ELECTRIC AND GAS COMPANY, et al. (Hope Creek Generating Station, Unit 1), Docket No. 50-354-OL; DISQUALIFICATION; January 25, 1984; MEMORANDUM AND ORDER

A Upon consideration of an order (referred to it by an administrative judge) denying an intervenor's motion that he recuse himself from further service as a member of the Licensing Board for this operating license proceeding, the Appeal Board rules that the judge must be replaced on the Licensing Board by another member of the Licensing Panel.

B Licensing Board members are governed by the same disqualification standards that apply to federal judges. Houston Lighting and Power Co. (South Texas Project, Units 1 & 2), CLI-82-9, 15 NRC 1363, 1365-67 (1982).

C An administrative trier of fact is subject to disqualification if he has a direct, personal, substantial pecuniary interest in a result; if he has a "personal bias" against a participant; if he has served in a prosecutive or investigative role with regard to the same facts as are in issue; if he has prejudged factual — as distinguished from legal or policy — issues; or if he has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 65 (1973).

D The current statutory foundation for the Commission's disqualification standards is found in 28 U.S.C. 144 and 455.

E The current Section 455(a) of 28 U.S.C. imposes an objective standard for recusal; i.e., whether a reasonable person knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1366, citing Fredonia Broadcasting Corp. v. RCA Corp., 569 F.2d 251, 257 (5th Cir. 1978). And, as a general proposition, recusal under this section must rest upon extrajudicial conduct. 15 NRC at 1367.

F 28 U.S.C. 455(b)(2) requires a judge to disqualify himself in circumstances where, *inter alia*, in private practice the judge served as a lawyer "in the matter in controversy." Disqualification in such circumstances may not be waived. See 28 U.S.C. 455(e); SCA Services Inc. v. Morgan, 557 F.2d 110, 117 (7th Cir. 1977).

G The doctrines of *res judicata* and collateral estoppel apply in operating license proceedings. See Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, modified on other grounds, CLI-74-12, 7 AEC 203 (1974).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS

ALAB-760 TENNESSEE VALLEY AUTHORITY (Hartsville Nuclear Plant, Units 1B and 2B), Docket Nos. STN 50-519, STN 50-521; CONSTRUCTION PERMIT; January 27, 1984; MEMORANDUM AND ORDER

- A On motion of the applicant following the cancellation of Units 1B and 2B of its proposed four-unit (1A, 2A, 1B and 2B) Hartsville Nuclear Plant, the Appeal Board terminates, with respect to those two cancelled units, the limited jurisdiction previously retained over this construction permit proceeding involving all four units.

ALAB-761 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537-CP; CONSTRUCTION PERMIT; February 29, 1984; MEMORANDUM AND ORDER

- A Acting on appeals by two intervenors from Licensing Board actions (following termination of the Clinch River project and the Licensing Board's dismissal of the intervenors from the proceeding for a construction permit (CP) for the project) that, inter alia, limited the intervenors' participation in the Limited Work Authorization (LWA) proceeding (on remand to consider issues of site redress) to giving limited appearance statements, the Appeal Board vacates the Licensing Board action limiting LWA participation and denies the remainder of the appeals.

- B Under 10 C.F.R. § 50.10(e), an applicant for a construction permit may seek early approval of certain types of site preparation activity by requesting issuance of an LWA.

- C A licensing board is required to issue an initial decision in a case involving an application for a construction permit even if the proceeding is uncontested. 10 C.F.R. § 2.104(b)(2) and (3).

- D Licensing boards have the authority to regulate the course of a proceeding and to limit an intervenor's participation to issues in which it is interested. 10 C.F.R. §§ 2.718, 2.714(e) and (f).

- E Parties may not dart in and out of proceedings on their own terms and at their convenience and expect to enjoy the benefits of full participation without responsibilities. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982).

ALAB-762 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al. (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL, 50-444-OL; OPERATING LICENSE; March 16, 1984; MEMORANDUM AND ORDER

- A Finding the standard for interlocutory review of a licensing board ruling not met, the Appeal Board denies an intervenor's request for directed certification of the Licensing Board's denial of its motion for dismissal of the operating license application for Unit 2 of the Seabrook facility sought on the ground that that Unit is only 22 percent completed.

- B In the exercise of its directed certification authority conferred by 10 C.F.R. 2.718(i), an appeal board will step into a proceeding still pending below only upon a clear and convincing showing that the licensing board ruling under attack either (1) threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal or (2) affects the basic structure of the proceeding in a pervasive or unusual manner. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC 380, 383 (1983); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

- C The Commission's regulations are devoid of any specific requirement that the reactor reach a particular stage of completion before the filing of an operating license application.

ALAB-763 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275, 50-323; OPERATING LICENSE; March 20, 1984; DECISION

- A Following the conduct of evidentiary hearings by the Appeal Board on the adequacy of the applicant's efforts to verify the design of the Diablo Canyon facility, the Appeal Board decides that the actions taken by the applicant provided adequate confidence that Unit 1's structures, systems and components are designed to perform satisfactorily in service and that any significant design deficiencies in that unit resulting from defects in the applicant's design quality assurance program have been remedied. The Appeal Board thus concludes that there is reasonable assurance that Unit 1 can be operated without endangering the health and safety of the public.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS

- B** The Appeal Board withholds decision with respect to the adequacy of the design verification program for Unit 2.
- C** In order for the applicant to prevail on each factual issue, its position must be supported by a preponderance of the evidence. See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 360 (1978), reconsideration denied, ALAB-467, 7 NRC 459 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 405 n.19 (1976).
- D** To determine that an applicant's verification programs are sufficient to verify the adequacy of a plant's design, the applicant's efforts must be measured against the same standard as that set forth in the Commission's quality assurance criteria, 10 C.F.R. Part 50, Appendix B: whether the verification program provides "adequate confidence that a [safety-related] structure, system or component will perform satisfactorily in service." If the applicant's verification efforts meet this standard, then there will be reasonable assurance with respect to the design of the facility that it can be operated without endangering the health and safety of the public.
- E** The Commission's regulations do not require that all pertinent quality assurance or quality control documents be consolidated and integrated into a single manual or set of manuals.
- F** The following technical issues are discussed: Sampling Techniques (statistical and judgmental) and Scope; Instrument Tubing Supports; Containment Uplifting; Modeling for Seismic Analysis (including the use of soil springs, fixed-base analysis, response of one building as input into model of another, lumped mass-spring model, finite element models, degrees of freedom); Soil Analysis (Seismic Refraction Tests and Cross-hole; and Up-hole Testing Techniques); Seismic Response Spectra; Fire Protection; Jet Impingement Analysis; Circuit Breakers (nameplate rating); Design Drawings and Analyses (conformance with plant as built); Component Cooling Water System Heat Removal Capacity; Small Bore Piping and Support Design (computer-based analysis and span criteria); Design Error Rate (adequate confidence versus perfection); Hosgri Fault; Westinghouse Quality Assurance Program; Causes of Quality Assurance Failures.
- ALAB-764 CONSUMERS POWER COMPANY** (Midland Plant, Units 1 and 2), Docket Nos. 50 329-OM&OL, 50-330-OM&OL; OPERATING LICENSE; March 30, 1984; MEMORANDUM AND ORDER
- A** The Appeal Board affirms the Licensing Board's refusal to quash subpoenas aimed at employees of a nonparty to this operating license proceeding.
- B** A nonparty to an operating license proceeding may appeal immediately an otherwise interlocutory discovery order. Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 686 n.1 (1979).
- C** A board may issue a subpoena upon a showing of only "general relevance" and "shall not attempt to determine the admissibility of evidence." See 10 C.F.R. § 2.720; see also 10 C.F.R. § 2.740(b)(1).
- D** That the press enjoys a qualified privilege not to reveal its sources in certain circumstances is beyond doubt. *Branzburg v. Hayes*, 408 U.S. 665, 709-10 (1972) (Powell, J., concurring); *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980), cert. denied, 449 U.S. 1126 (1981); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 436-37 (10th Cir. 1977); *Carey v. Hume*, 492 F.2d 631, 636 (D.C. Cir.), cert. dismissed, 417 U.S. 938 (1974); *Baker v. F&F Investment*, 470 F.2d 778, 783 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973).
- E** Courts traditionally have been loath to create a new testimonial privilege or to extend an existing one, "since such privileges obstruct the search for truth." *Branzburg v. Hayes*, supra, 408 U.S. at 690 n.29. See *Herbert v. Lando*, 441 U.S. 153, 175 (1979).
- F** All citizens have a "general duty . . . to provide evidence when necessary to further the system of justice." *Wright v. Jeep Corp.*, 547 F. Supp. 871, 875 (E.D. Mich. 1982). See *Branzburg v. Hayes*, supra, 408 U.S. at 688.
- G** The qualified First Amendment privilege of the press has been consistently and strictly limited to those reasonably characterized as part of the media. Compare, e.g., the following cases where the privilege has been recognized: *United States v. Cuthbertson*, supra; *Silkwood v.*

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS

Kerr-McGee Corp., supra; Baker v. F&F Investment, supra; Solargen Electric Motor Car Corp. v. American Motor Corp., 506 F. Supp. 546 (N.D.N.Y. 1981); In re Consumers Union of the United States, Inc. (Starks v. Chrysler Corp.), 32 Fed. R. Serv. 2d 1373 (S.D.N.Y. 1981); Apicella v. McNeil Laboratories, Inc., 66 F.R.D. 78 (E.D.N.Y. 1975); with Wright v. Patrolmen's Benevolent Ass'n, 72 F.R.D. 161 (S.D.N.Y. 1976).

H The "scholar's privilege" — an alleged outgrowth of the journalist's First Amendment privilege — is of doubtful validity under modern case law, at least as applied to non-scholars. See Wright v. Jeep Corp., supra, 547 F. Supp. at 875-76. See also In re Dinnan, 661 F.2d 426, 427-31 (5th Cir. 1981), cert. denied, 457 U.S. 1106 (1982).

I Where the courts have recognized a journalist's privilege, they have balanced "the potential harm to the free flow of information that might result against the asserted need for the requested information." Bruno & Stillman, Inc. v. Globe Newspaper Co., 633 F.2d 583, 596 (1st Cir. 1980) (footnote omitted). See Branzburg v. Hayes, supra, 408 U.S. at 710; United States v. Cuthbertson, supra, 630 F.2d at 148; Carey v. Hume, supra, 492 F.2d at 636-39; Solargen Electric Motor Car Corp. v. American Motor Corp., supra, 506 F. Supp. at 550.

J The principal factors to consider in determining to give recognition to the journalist's privilege are whether the requested information is relevant and goes to the heart of the matter at hand, and whether the party seeking the information has tried to obtain it from other possible sources. Silkwood v. Kerr-McGee Corp., supra, 563 F.2d at 438; Baker v. F&F Investment, supra, 470 F.2d at 783.

K Boards assume protective orders will be obeyed unless a concrete showing to the contrary is made. One who violates a protective order risks serious sanction. See Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 25 (1983).

L Imposition of a protective order can be a pragmatic accommodation of the need for discovery and the protection of the asserted interests of the persons against whom discovery is directed.

ALAB-765 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352, 50-353; OPERATING LICENSE; March 30, 1984; MEMORANDUM AND ORDER

A The Appeal Board affirms (1) the Licensing Board's assertion of jurisdiction over an intervenor's contentions concerning the applicant's 10 C.F.R. Part 70 application for a license to receive and store new, unirradiated fuel outdoors at the Limerick site, and (2) dismissal of the contentions for lack of basis and specificity.

B A Special Nuclear Materials License is required for a person to "receive title to, own, acquire, deliver, receive, possess, use, or transfer special nuclear material." 10 C.F.R. § 70.3. Such authorization is essentially subsumed within a license to operate a commercial power reactor, issued pursuant to 10 C.F.R. Part 50.

C If a utility wants (or needs) to receive and store new fuel before an operating license is issued, the utility must obtain a Part 70 license.

D Under the Commission's Rules of Practice, licensing boards may "preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, and to perform such other adjudicatory functions as the Commission deems appropriate." 10 C.F.R. § 2.721(a).

E Appeal boards are delegated authority to perform the Commission's review functions in Part 50 and other licensing proceedings specified by the Commission. 10 C.F.R. § 2.785(a).

F Under 10 C.F.R. § 2.721(a), only the Commission can define the scope of a proceeding before a licensing board, or decide that a formal adjudicatory-type proceeding should be instituted.

G Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239a, mandates a hearing for any licensing action where requested by a person "whose interest may be affected." But a formal, "on the record" adjudicatory-type hearing under Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554 — like those conducted by licensing boards — is not required for so-called materials licenses. See Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 244-62 (1982), aff'd sub nom. City of West Chicago v. NRC, 701 F.2d 632 (7th

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARDS

Cir. 1983). The Commission can delegate authority to adjudicate such matters informally to an agency official, such as the Director of the Office of Nuclear Material Safety and Safeguards. See, e.g., Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-21, 16 NRC 401 (1982).

- H Licensing boards may assert jurisdiction over Part 70 issues raised in conjunction with an ongoing Part 50 licensing proceeding. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2), CLI-76-1, 3 NRC 73, 74 (1976). See also, e.g., Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-83-38, 18 NRC 61, 63 (1983); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228-30 (1979).
- I It is not clear what, if any, notice requirements pertain to materials license cases. See Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 157-59 (1982).
- J Section 2.714(b) of 10 C.F.R. requires an intervenor in a proceeding to set forth the bases for its contention(s) with reasonable specificity. Where the laws of physics deprive a proposed contention of any credible basis, the contention will not be admitted. Compare Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).
- K Parties in Commission proceedings have a duty to alert the Boards and all other parties of any significant new information related to the proceeding. See Tennessee Vailey Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1394 (1982).
- L Under Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), all five factors enumerated in 10 C.F.R. § 2.714(a)(1) must be considered and balanced before an untimely intervention petition may be granted or a late-filed contention admitted. This is so even where a party has succeeded in making a strong showing on the first of those factors (good cause).
- M The following technical issues are discussed: Criticality Potential of New Fuel; Handling and Storage of New Fuel at the Reactor Site; Radiation Hazard from New Fuel.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

LBP-84-1 KANSAS GAS & ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit 1), Docket No. 50-482 (ASLBP No. 81-453-03-OL); EMERGENCY PLANNING; January 5, 1984; MEMORANDUM AND ORDER

- A The Licensing Board issues a memorandum and order which, inter alia, grants Intervenor's motion to add a contention out-of-time.
- B As to late-filed contentions, all five factors in 10 C.F.R. § 2.714(a)(1) should be applied by a Licensing Board, including the Appeal Board's three-part test for good cause.
- C While the basis of a contention must be set forth with reasonable specificity, the contention need not allege noncompliance with a regulation and need not specify how that regulation has been violated in the absence of any explanation by, as here, emergency planning authorities that determinations had been made in compliance with the regulation.
- D It is not the function of a licensing board to reach the merits of a contention at the time the admissibility of a contention is being considered.
- E A basis for a contention is set forth with reasonable specificity if the applicants are sufficiently put on notice so that they will know, at least generally, what they will have to defend against or oppose, and if there has been sufficient foundation assigned to warrant further exploration of the proposed contention.

LBP-84-2 COMMONWEALTH EDISON COMPANY (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. STN 50-454-OL, STN 50-455-OL (ASLBP No. 79-411-04-OL); OPERATING LICENSE; January 13, 1984; INITIAL DECISION

- A When governing statutes or regulations require a licensing board to make particular findings before granting an applicant's requests, a board may not delegate its obligations to the Staff. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-298, 2 NRC 730, 737 (1975). The post-hearing approach should be employed only in clear cases — for example, where minor procedural deficiencies are involved (Consolidated Edison Co. of New York (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974)), but not where the issue involved is a very extensive quality assurance reinspection program for which the Staff and the applicant have yet to agree on a full set of standards.
- B The remedy most responsive to the circumstances of this case where, though construction nears completion, the Board finds that the Applicant has not demonstrated that it has met its quality assurance obligations, and the remedy least harsh to the Applicant, yet still appropriate, is to decide the issue now. This permits the parties to test immediately on appeal the quality of the decision. To reserve jurisdiction and to postpone final decision, in face of the impending completion of construction, would impose unilaterally upon the parties, particularly the Applicant, the Board's own view of the facts, law and appropriate remedy. Unless Applicant could mount a difficult interlocutory appeal from such a determination (to postpone the decision), it would have been denied due process.
- C The Board avoided describing the reach of the denial of license on quality assurance grounds, as res judicata or collateral estoppel with respect to the quality assurance issues because neither concept, as ordinarily understood, neatly fits the unusual situation to be found in the continuum of a licensing proceeding with many aspects. The Board did not foreclose future proceedings on the quality assurance issue and had no jurisdiction to do so.
- D The Board did not agree with the Applicant that its intentional overestimation of assumed traffic times under adverse weather conditions in an emergency and intentional underestimation

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

of average generic sheltering values of the structures in the EPZ are conservative. Therefore the Board required the Applicant to make realistic estimates of these factors. Any variance from realistic estimates of these factors could lead a decisionmaker away from actions affording radiological dose savings.

- E The following technical issues are discussed: Quality assurance program, Steam generator tube integrity, Flow-induced vibrations, Bubble-collapse water hammer, Occupational radiation exposure As Low As Reasonably Achievable (ALARA), Linear hypothesis about health effects of radiation, Supralinear hypothesis about health effects of radiation, Severe accident analysis, Groundwater contamination, Groundwater velocity, Seismic design, Capability of faults, Strain gage tests, Emergency plans, Evacuation times, Average generic sheltering values.
- LBP-84-3 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL, 50-441-OL; OPERATING LICENSE; January 20, 1984; MEMORANDUM AND ORDER
- A The Licensing Board denies intervenor's motion to reopen the record.
- B The purpose of reopening the record is for a party to submit or to develop evidence. A motion not made for that purpose does not provide grounds for reopening the record.
- C A licensing board will not conduct its own investigation of quality assurance allegations without proof that Staff offices are unable to conduct such an investigation adequately. Boards are primarily responsible for conducting hearings and should not readily undertake investigative functions.
- D Newspaper allegations of quality assurance deficiencies, unaccompanied by evidence, ordinarily are not sufficient grounds for reopening an evidentiary record. Such articles do not demonstrate the existence of a "significant safety issue" or a "breakdown of the quality assurance program."
- LBP-84-4 UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY (Clinch River Breeder Reactor Plant), Docket No. 50-537-CP (ASLBP No. 75-291-12), CONSTRUCTION PERM. T; January 20, 1984; MEMORANDUM OF FINDINGS
- A In a Memorandum of Findings the Licensing Board concludes that:
- (1) the suitability of the proposed site for the Clinch River Breeder Reactor Plant (CRBRP) for a reactor of the general size and type proposed has been reaffirmed;
 - (2) from the evidence of record, the CRBRP can be constructed and operated in a manner that would have satisfied the NRC's mandate that the CRBRP achieve a level of safety comparable with that of light water reactor plants. Further, core disruptive accidents need not be included within the spectrum of design basis accidents for the CRBRP;
 - (3) a comprehensive and detailed quality assurance program was in place and functioning (prior to the termination of the CRBRP program) in accordance with the requirements of Appendix B to 10 C.F.R. Part 50; and
 - (4) environmental and emergency planning matters were appropriately addressed.
- LBP-84-5 PUBLIC SERVICE ELECTRIC & GAS COMPANY (Salem Nuclear Generating Station, Unit 1), Docket No. 50-272-OLA; OPERATING LICENSE AMENDMENT; January 25, 1984; ORDER DISMISSING PROCEEDING
- LBP-84-6 DUQUESNE LIGHT COMPANY, et al. (Beaver Valley Power Station, Unit 2), Docket No. 50-412 (ASLBP No. 83-490-04-OL); DISMISSAL OF PROCEEDING; January 27, 1984; REPORT AND ORDER ON SPECIAL PREHEARING CONFERENCE HELD PURSUANT TO 10 C.F.R. § 2.751a
- A In this Report and Order the Licensing Board concludes that a hearing is not required and dismisses the proceeding.
- B As an independent regulatory agency, the Nuclear Regulatory Commission is not subject to the requirements of Exec. Order No. 11,988, Floodplain Management, 42 Fed. Reg. 26,591 (1977).
- C The Licensing Board cannot decide the validity of actions that are yet to happen. Speculation concerning what the NRC Staff may do in an environmental impact statement that has not been issued does not provide an adequately specific basis for an admissible contention.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D In order for an organization to obtain representational standing on the basis of the interests of a member, it must be established that the member has authorized the organization to represent his interests in the proceeding. It is unwarranted for the Licensing Board to infer such authorization when the affidavit of the member is devoid of any statement that he wants the organization to represent him.
- E The filing and acceptance of the petition of the State of Pennsylvania pursuant to 10 C.F.R. § 2.715(c) permits it to participate in the adjudicatory hearing only if one is held. When no petitioner has submitted a litigable contention so as to necessitate the holding of a hearing, the filing and acceptance of the Pennsylvania petition to participate under the provisions of § 2.715(c) does not trigger a hearing.
- F When none of the concerns sought to be litigated by a petitioner for intervention are within the scope of an operating license proceeding, the petitioner has failed to submit an admissible contention, and his petition for intervention will be denied.
- LBP-84-7 CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (Shearon Harris Nuclear Plant, Units 1 and 2), Docket Nos. 50-400, 50-401 (ASLBP No. 82-468-01-OL); OPERATING LICENSE; January 27, 1984; MEMORANDUM AND ORDER
- A The Licensing Board rules on several motions for summary disposition concerning health effects associated with normal operation of a nuclear power plant, granting them in part and denying them in part. The Board found that under the circumstances they would be warranted in calling their own expert witness to the evidentiary hearing in order to ensure substantive consideration of the issues.
- B Because the proponent of a motion for summary disposition has the burden of demonstrating the absence of a genuine issue of material fact, it does not necessarily follow that a motion supported by affidavits will automatically prevail over an opposition not supported by affidavits. The Board must scrutinize the motion to determine whether the movant's burden has been met.
- C An opponent of a summary disposition motion must set forth specific facts showing that there is a genuine issue of fact. It would frequently not be sufficient for an opponent to rely on quotations from or citations to published work of researchers who have apparently reached conclusions at variance with the movant's affiants. Such public work is typically produced with other objectives in mind and may not focus directly on the precise issue in contention. While a licensing board may, in its discretion, consider publications referenced in opposition to (or in support of) a motion for summary disposition to determine whether a movant has met its burden, it is under no obligation to do so.
- D The Commission's decision in Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264 (1980) has the effect of differentiating health effects contentions from other contentions in the summary disposition context. An opponent of summary disposition in the health effects area must have some new (post-1975) and substantial evidence that casts doubt on the BEIR Report estimates. Furthermore, he must be prepared to present that evidence through qualified witnesses at the hearing.
- E Adjudicatory boards should give the Staff every opportunity to explain, correct, or supplement its testimony before resorting to outside experts of their own, and must articulate good reason to suspect the validity and completeness of the Staff's work. A board must be satisfied that it has no realistic alternative to call in a board witness, that it simply cannot otherwise reach an informed decision on the issue involved.
- F The following technical issue is discussed: Cancer Risk Estimates.
- LBP-84-8 TEXAS UTILITIES GENERATING COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; January 30, 1984; MEMORANDUM

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-84-9 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project No. 1), Docket No. 50-460-CPA (ASLBP No. 83-485-02-CPA); CONSTRUCTION PERMIT AMENDMENT; February 1, 1984; MEMORANDUM AND ORDER
- A In a proceeding to determine whether Applicant has demonstrated "good cause" for the construction completion date in the construction permit to be extended, the Licensing Board grants Applicant's and NRC Staff's motions for summary disposition in Applicant's favor.
 - B Where the Applicant has demonstrated valid reasons for delaying construction, the Board will permit the construction completion date to be extended without reaching a judgment on the advisability of completing the plant.
 - C The reasonableness of the period of the requested construction completion date extension cannot be challenged on grounds of insufficiency.
 - D A consideration of the health, safety or environmental effects of delaying construction cannot be heard at the construction permit extension proceeding, but must await the operating license stage.
- LBP-84-10 TEXAS UTILITIES ELECTRIC COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445, 50-446; OPERATING LICENSE; February 3, 1984; MEMORANDUM AND ORDER
- A Based on a review of the history of the case, the Licensing Board concludes that Applicant had a fair opportunity to prove its case concerning quality assurance for design and that there is no reason to correct a previous decision to clarify that the Board's conclusions were based on the record.
 - B Criterion XVI of Appendix B to Part 50 requires the prompt identification of design deficiencies, but it does not require that those deficiencies be called "nonconformances." No particular terminology is mandated.
 - C Criterion XVI of Appendix B to Part 50 is consonant with 10 C.F.R. § 50.55(e). The former requires a system for promptly identifying deficiencies, including design deficiencies. The latter requires the prompt reporting to the NRC of serious deficiencies.
 - D Absent some special procedural consideration, proposed findings of fact may make new arguments about record evidence. Allegedly contrary precedent is not persuasive.
 - E Motions for reconsideration are for the purpose of pointing out an error the Board has made. Unless the Board has relied on an unexpected ground, new factual evidence and new arguments are not relevant in such a motion.
 - F Applicant is not subject to the same standards for reopening the record as are intervenors. It is neither logical nor proper to close down a multi-billion-dollar nuclear plant because of a deficiency of proof. However, repeated failures of proof would jeopardize intervenor's right to due process and would require the denial of a license.
 - G The following technical issues are discussed: Pipe support stability; U-bolts cinched up around pipes; U-bolts made of SA-36 steel, clamping force; Local pipe stresses from pipe supports; U-bolts, overtensioning; Relationship of ASME Code and AWS Code, pipe supports; Richmond Inserts, axial torsion.
- LBP-84-11 CAROLINA POWER & LIGHT COMPANY (H.B. Robinson Steam Electric Plant, Unit 2), Docket No. 50-261-OLA (ASLBP No. 83-484-03-LA); OPERATING LICENSE AMENDMENT; February 10, 1984; ORDER DISMISSING PROCEEDING
- A The Licensing Board dismisses this proceeding finding that the withdrawal of all remaining contentions by the sole intervenor has eliminated the basis for which the adjudicatory hearing was ordered.
- LBP-84-13 HOUSTON LIGHTING AND POWER COMPANY, et al. (South Texas Project, Units 1 and 2), Docket Nos. STN 50-498-OL, STN 50-499-OL (ASLBP No. 79-421-07-OL); OPERATING LICENSE; March 14, 1984; PARTIAL INITIAL DECISION
- A The Licensing Board issues a Partial Initial Decision which resolves various quality assurance/quality control issues raised by the Commission in CLI-80-32, 12 NRC 281 (1980), together with Intervenor's contentions related to those QA/QC issues. The Board also denies a motion to reopen the record. The Board rules that, subject to possible modification in later

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

phases of the proceeding, there is currently no basis for concluding (1) that the reasonable assurance findings contemplated by 10 C.F.R. § 50.57 cannot be made, or (2) that HL&P currently lacks managerial competence or character sufficient to preclude an eventual award of operating licenses for the facility. The Board is requiring a report in Phase II of the proceeding concerning QA/QC activities performed following the assumption of duties by a new architect-engineer/construction manager and a new construction contractor.

- B** Character and competence are fundamental requirements for an operating license applicant. They are implicit in, and hence stem from the Atomic Energy Act, specifically Sections 103 and 182a, 42 U.S.C. §§ 2133(b)(2) and 2232(a).
- C** There is a marked distinction between the competence and character requirements for an operating license applicant. Although the factors which comprise character or competence may overlap, they nevertheless constitute separate and distinct (and cumulative) requirements.
- D** Issues which may bear upon management competence include: (1) whether an applicant's staff and management have sufficient technical and managerial expertise and experience (i.e., demonstrated knowledge, judgment, and skill) to construct the plant properly and operate it safely, (2) whether an applicant's staff and management are organizationally structured so as to permit and encourage the unhindered application of their expertise and experience, and (3) whether an applicant's programs and procedures require the application of that expertise and experience and are consistent with goals of the Commission's regulations and the Atomic Energy Act. That third issue may also be characterized as the adequacy of an applicant's written quality assurance/quality control program(s).
- E** Character is, among other things, a measure of the likelihood that an applicant will apply its technical competence to effect the Commission's health and safety (or environmental) standards.
- F** The character of an operating license applicant is comprised of many traits relevant to the construction or operation of a nuclear plant. Among those traits are truthfulness and candor, the manner in which the applicant has reacted to construction noncompliances or nonconformances, its assumption of responsibility for the facility under construction, and the degree to which it attempts to stay informed about the facility.
- G** In evaluating an applicant's character and competence, all relevant circumstances must be considered, including reformation of character and improvement in competence.
- H** Failure of one or more individuals to demonstrate adequate competence or character does not per se indicate a lack of organizational competence or character (and vice versa). In evaluating the competence or character of an organization, such factors as the role of particular individuals in the organization, the responsibilities they exercise, the seriousness and frequency of any deficiencies attributable to them, and the steps taken by the organization when deficiencies are discovered must be balanced.
- I** The presence or absence of intent, or of knowledge of falsity of a statement, is irrelevant to the technical question of whether or not a material false statement has been made. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 483, 486-87 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978). On the other hand, such intent and knowledge are pertinent to the effect of false statements on an applicant's character.
- J** The circumstance that a deficiency was properly reported under 10 C.F.R. § 50.55(e) is not relevant to whether the deficiency represented a violation of the quality assurance requirements of 10 C.F.R. Part 50, Appendix B.
- K** The quality assurance criteria of 10 C.F.R. Part 50, Appendix B, particularly Criteria II and V, apply to construction activities such as surveying.
- L** The quality assurance criteria of 10 C.F.R. Part 50, Appendix B, control implementation as well as the establishment of a QA program. A failure in implementation may constitute a violation of Appendix B.
- M** To the extent that surveying represents a construction activity rather than a test, it is not governed by 10 C.F.R. Part 50, Appendix B, Criterion XI ("Test Control").
- N** A motion to reopen a record must be timely and must address significant safety (or environmental) issues. Where the record of a proceeding (or at least of a major phase thereof) is

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

closed, the information sought to be included in the record must be material and significant — i.e., to have at least the potential for altering a result which might otherwise be reached. To meet this standard, the proponent must offer new and significant factual information. The "timeliness" test is subsidiary to that of materiality or significance.

LBP-84-14 MAINE YANKEE ATOMIC POWER COMPANY (Maine Yankee Atomic Power Station), Docket No. 50-309-OLA (ASLBP No. 80-437-02-LA); OPERATING LICENSE AMENDMENT; March 9, 1984; ORDER

A Upon review of an Agreement reached among the parties, the Licensing Board grants intervenors' motions to withdraw their contentions and requests for hearing, and authorizes the issuance of a license amendment.

LBP-84-15 CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (Shearon Harris Nuclear Plant, Units 1 and 2), Docket Nos. 50-400, 50-401 (ASLBP No. 82-468-01-OL); OPERATING LICENSE; March 15, 1984; MEMORANDUM AND ORDER

A On requests for reconsideration, the Licensing Board rejects certain health effects contentions relating to estimates of genetic damage and cancer caused by radiation because a previously expected Board witness had become unavailable and because it appeared that the Intervenor's proposed witnesses could not shed any additional light on the contentions. The Board also rules on several other contentions and procedural questions.

LBP-84-15A ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE (TRIGA-Type Research Reactor), Docket No. 50-170 (ASLBP No. 81-451-01-LA); FACILITY LICENSE RENEWAL; (Cobalt-60 Storage Facility), Docket No. 30-6931 (ASLBP No. 82-469-01-SP); BYPRODUCTS MATERIAL LICENSE RENEWAL; March 15, 1984; ORDER

A In this Order, the Licensing Board grants the joint motions of Licensee, NRC Staff and Intervenor resolving all remaining issues and dismisses the proceeding.

LBP-84-16 PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL, 50-353-OL; OPERATING LICENSE; March 16, 1984; MEMORANDUM AND ORDER

A In a written confirmation of an oral ruling, the Board, exercising jurisdiction over a proposed Part 70 license, denies a motion to admit contentions, a motion to stay receipt of new fuel at the Limerick site, and a petition to intervene and request for hearing addressed to the Director of Nuclear Material Safety and Safeguards.

B Licensing boards established to conduct hearings on operating licenses also have jurisdiction over issues arising under applications for Part 70 licenses to receive and store unirradiated fuel at the nuclear power plant. This jurisdiction can be asserted on the grounds of 10 C.F.R. § 2.717(b), which grants the presiding officer in an operating license proceeding the power to modify "as appropriate for the purpose of the proceeding" any Staff order "related to the subject matter of the pending proceeding." Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226 (1979). In affirming the Diablo Canyon Licensing Board's assertion of jurisdiction over a materials license proceeding, the Commission said, "that license is integral to the Diablo Canyon project Given that Board's familiarity with the Diablo Canyon project, it made good practical sense for it to hear and decide the related issues raised by the Part 70 materials license application." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-76-1, 3 NRC 73, 74 n.1 (1976).

C Section 2.717(b), which grants the presiding officer in an operating license proceeding the power to modify "as appropriate for the purpose of the proceeding" any Staff order "related to the subject matter of the pending proceeding," does not postpone the board's jurisdiction over the related order until the Staff has actually issued the order. The purpose of Section 2.717(b) clearly is to permit integration of an operating license proceeding with Staff orders on matters related to that proceeding. Common sense says that this integration can take place, indeed is often more efficient if it takes place, before the Staff issues an order on a related matter. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-38, 18 NRC 61, 63 (1983).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- D Though it is unusual for a judicial body to exercise jurisdiction where it is not sought by the petitioner, a board's exercise of jurisdiction over a petition addressed to the Director of Nuclear Material Safety and Safeguards to intervene on a proposed Part 70 license is not an act of Constitutional dimensions. It makes sense for the board to rule on the petition, for it knows the parties and the circumstances of the case. If the board were to decline jurisdiction now and let the petition follow the path the intervenor intended it to, it would, given past practice, likely be the licensing board delegated the responsibility of conducting a hearing on the subject of the petition.
- E The admissibility of the Intervenor's Part 70 motions, though filed several months after the Applicant filed for a Part 70 license, and years after the start of the operating license hearings, is not to be measured by the criteria for late-filed contentions in 10 C.F.R. § 2.714(a)(1) and *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, CLI-83-19, 17 NRC 1041 (1983), for the Applicant did not comply with a standing order in this proceeding to serve all relevant papers on the Board and parties. An intervenor should be expected to foresee that an Applicant would have to receive unirradiated fuel before low-power testing and that such fuel would have to be outside at the site for a finite time, but not that the Applicant would request that a fuel license be issued before a low-power operating license, or that the fuel might be stored outside for months, or that there would have to be a security plan tailored to such storage because the normal facility security plan would not be implemented as a prerequisite.
- F Despite a standing Board order to serve on the Board and parties papers related to the operating license hearing, the Applicant did not serve its new fuel license application and amendments thereto, thus delaying the Intervenor's responses to the application. The delay has enabled the Applicant to argue that the Intervenor's responses were late-filed. Had the Applicant's argument been accepted, the Applicant, by merely delaying the service of relevant information, would in effect have tightened the standards for admitting contentions. Thus the circumstance here is an exception to the Commission's general belief that manipulation of the availability of licensing documents (here the device of limited service contrary to expectations) was unlikely to occur. See *Catawba*, supra, 17 NRC at 1047.
- G Staff counsel did not learn of the Applicant's application for a Part 70 license until an amended application was filed months later. Staff counsel then informed the Board and the Intervenor of the amended application, thus giving the Intervenor their first information about the original application, but by then the Applicant was already in a position to argue that the Intervenor's filings in response to the original application were late. It may sometimes be difficult for Staff counsel to be relevantly informed. However, the Staff appears before us in these proceedings as one body. Counsel should be informed when its client is considering a Part 70 application. Indeed, the Staff should assure that the Board and all parties in a nuclear facility proceeding, as well as its own counsel, are given prompt notice that a Part 70 license related to the facility is being considered.
- H Section 50.91(a)(4), which makes the issuance of an operating license amendment effective before any required hearing only if no significant hazards considerations are involved, does not imply that an intervenor's petition for a hearing on a proposed amendment to a new fuel license could, by virtue of its being filed, stay the effectiveness of any Staff issuance of the amendment.
- I Final orders on motions related to Part 70 licenses to receive and store unirradiated fuel issued during an operating license hearing are appealable upon issuance. *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, CLI-76-1, 3 NRC 73, 74 (1976). Appeals should be directed to the Commission, unless the Commission specifically delegates appellate jurisdiction to the Appeal Board. *Id.* at 74 n.1; 10 C.F.R. § 2.785.
- J The following technical issues are discussed: New Fuel Stored Outside — Criticality Accidents, Criticality Monitoring, Non-Criticality Accidents, Security Plan.
- LBP-84-17 KANSAS GAS & ELECTRIC COMPANY, et al. (Wolf Creek Generating Station, Unit No. 1), Docket No. 50-482 (ASLBP No. 81-453-03-OL); OPERATING LICENSE, March 26, 1984; MEMORANDUM AND ORDER
- A The Licensing Board denies an admittedly untimely petition for leave to intervene filed during the course of a hearing which was being held to consider the sole controverted issue of

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

emergency planning. After balancing the factors set forth in 10 C.F.R. § 2.714(a)(1), the Board concluded that the petition, seeking to raise quality assurance/quality control matters, should not be granted.

- B** In order to determine whether an untimely petition for leave to intervene should be allowed, the Board must balance the five factors set forth in 10 C.F.R. § 2.714(a)(1).
- C** "Good cause" for a late filing depends wholly upon the substantiality of the reasons assigned for not having filed at an earlier date. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981).
- D** If the controlling facts relating to the excuse for the untimely filing are not controverted by the petitioner's affidavits, the Board must take them as true. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 13 (1977), aff'd, CLI-78-12, 7 NRC 939 (1978).
- E** Petitioners for leave to intervene, as well as intervenors, are required to diligently uncover and apply all publicly available information. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117, aff'd, ALAB-743, 18 NRC 387 (1983).
- F** If it is the petitioner's position that its newly acquired organizational existence was sufficient to justify belated intervention, such an explanation for the tardy filing cannot carry the day because the necessary consequence would be that parties to the proceeding would never be determined with certainty until the final curtain fell. No adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979).
- G** Where no good excuse is tendered for the tardy filing, the petitioner's demonstration on the four other factors in 10 C.F.R. § 2.714(a)(1) must be particularly strong. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977).
- H** The second and fourth factors in 10 C.F.R. § 2.714(a)(1) are of relatively minor importance in the weighing process. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).
- I** It is the petitioner's ability to contribute sound evidence — rather than asserted legal skills — that is of significance in considering a late-filed petition to intervene. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982).
- J** Even though we are told that four of its co-counsel actively participated in the construction hearings, we cannot conclude that the petitioner's participation could reasonably be expected to assist in developing a sound record since the issue that it would litigate here bears no resemblance to any contested issue that confronted the Licensing Board in the construction permit proceeding. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 401 (1983).

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DD-84-1 CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al. (Perry Nuclear Power Plant, Unit 1), Docket No. 50-440; REQUEST FOR IMMEDIATE ACTION; January 9, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement denies a petition requesting an independent analysis of a crane accident during construction of Perry Unit 1, access by the general public to the plant, and initiation of show-cause proceedings to revoke the construction permit. The Director found that adequate analyses of the accident had been performed and that appropriate corrective actions had been taken.

B The staff will not initiate immediate action to grant the relief requested in a § 2.206 petition in the absence of a demonstration that an imminent hazard to public health and safety exists which warrants immediate relief.

C Show-cause proceedings may be initiated if a substantial health and safety issue is raised, but the Commission will not institute such proceedings to explore the purely economic impacts of licensed activities.

DD-84-2 CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2), Docket Nos. 50-329, 50-330; CONSTRUCTION PERMIT; January 12, 1984; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement grants a portion of a petition granted in part and denied in part on October 6, 1983 (DD-83-16, 18 NRC 1123).

DD-84-3 CINCINNATI GAS & ELECTRIC COMPANY, et al. (William H. Zimmer Nuclear Power Station, Unit 1), Docket No. 50-358; REQUEST FOR ACTION; January 13, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement denies a petition submitted by Thomas Devine of the Government Accountability Project on behalf of the Miami Valley Power Project requesting action with respect to the William H. Zimmer Nuclear Power Station.

DD-84-4 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Three Mile Island Nuclear Station, Unit 2), Docket No. 50-320; SPECIAL PROCEEDING; February 17, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition submitted by Marvin Lewis requesting that the Commission postpone the lifting of the reactor pressure vessel head at the Three Mile Island Nuclear Station, Unit 2.

B Based upon the staff's reviews and experience to date, there does not appear to be an undue risk to public health and safety from the possible formation of pyrophoric materials in the pressure vessel.

DD-84-5 BOSTON EDISON COMPANY (Pilgrim Nuclear Power Station), Docket No. 50-293; REQUEST FOR ACTION; February 27, 1984; INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement grants in part and denies in part a petition submitted by the Massachusetts Public Interest Research Group requesting that the NRC take action with respect to the state of emergency planning at Pilgrim facility. Among the specific relief requested was the initiation of the 4-month period specified by the Commission's regulations within which to correct the alleged deficiencies at the Pilgrim facility and consideration by the Commission as to whether the state of emergency preparedness in conjunction

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

with the alleged poor safety record at the Pilgrim facility warrants immediate shutdown or operation of the facility at reduced power.

- B** The Federal Emergency Management Agency takes the lead in offsite emergency planning and reviews and assesses State and local emergency plans for adequacy. The NRC assesses the licensee's site emergency plans for adequacy and makes decisions with regard to the overall state of emergency preparedness.
- C** The Commission's regulations preclude an Emergency Planning Zone (EPZ) radius significantly in excess of 10 miles. An EPZ of about 10 miles is considered large enough to provide a response base which would support activity outside the planning zone should this ever be needed.
- D** The Commission has adopted an approach to emergency planning in which evacuation is only one of several possible responses to an emergency. It is unlikely that evacuation of the entire plume EPZ would be required in the event of an accident. Pending a final determination regarding the adequacy of evacuation time estimates, it is reasonable to conclude that the public health and safety will be reasonably assured in the interim by continued licensee compliance with Commission requirements regarding emergency planning and other health and safety requirements aimed at keeping the probability of serious accidents very low.
- DD-84-6 COMMONWEALTH EDISON COMPANY (AND ALL LIGHT-WATER REACTORS)**
(LaSalle County Station, Units 1 and 2). Docket No. 50-373; IMMEDIATE ACTION REQUEST; March 16, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A** The Director of the Office of Nuclear Reactor Regulation denies petitions by Edward M. Gogol alleging that there are severe errors, defects and loopholes in the integrated leak rate testing (ILRT) methodology now in use. The petitions sought a variety of relief including requests for immediate action such as placing the LaSalle Unit 1 of the Commonwealth Edison Company in cold shutdown, ceasing further construction and licensing activities with respect to LaSalle Unit 2 and Byron Unit 1 and shutting down reactors with insufficient evidence of adequate containment leak rate testing.
- B** Should a petitioner pursuant to 10 C.F.R. § 2.206 wish to initiate a rulemaking, the procedures set forth in 10 C.F.R. § 2.802 should be followed.
- C** The Director will not institute proceedings in response to a petition under 10 C.F.R. § 2.206 to consider an issue the Commission is treating generically through rulemaking.
- D** The Commission's requirements for integrated leak rate testing are set out in 10 C.F.R. § 50.54(o) and Appendix J to 10 C.F.R. Part 50. While the Commission's requirements for integrated leak rate testing continue to provide reasonable assurance that the public health and safety is adequately protected, the NRC Staff has under way a review of leak rate testing requirements to see whether modifications to these requirements are appropriate. The Commission has placed leak rate testing for water-cooled power reactors on its Regulatory Agenda.
- DD-84-7 WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS Nuclear Project No. 2).**
Docket No. 50-397; REQUEST FOR SHOW-CAUSE PROCEEDING; March 19, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A** The Director of the Office of Inspection and Enforcement denies a petition of the Coalition for Safe Power requesting that the Nuclear Regulatory Commission institute show-cause proceedings pursuant to 10 C.F.R. § 2.202 to determine whether the construction permit for the Washington Public Power Supply System Nuclear Project No. 2 (WNP-2) should be revoked, a stay of construction imposed, the pending application for an operating license denied, and hearings instituted before an Atomic Safety and Licensing Board. The petition alleged as its supporting bases deficiencies primarily in the construction and management of the WNP-2 facility.
- B** It would be unreasonable to hinge the grant of an NRC operating license upon a demonstration of error-free construction. What is required is a careful consideration of whether all ascertained construction errors have been cured and whether the errors indicate that there has been a breakdown in quality assurance procedures of sufficient dimension to raise legitimate doubt as to the overall integrity of the facility and its safety-related structures and components. Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983).
- C** An order to show cause is appropriate in those instances in which the NRC concludes, based upon alleged violations by the licensee or potentially hazardous conditions or other facts,

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

that enforcement action should be taken but that a basis could reasonably exist for not taking the enforcement action proposed. See 10 C.F.R. § 2.202(a)(1) and 10 C.F.R. Part 2, Appendix C, § IV.

D Sufficient grounds must be present for the NRC to institute a show-cause proceeding. The standard to be applied in determining whether to issue a show-cause order is whether substantial health or safety issues have been raised.

DD-84-8 PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Unit 1), Docket No. 50-275; OPERATING LICENSE SUSPENSION REQUEST; March 26, 1984, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Inspection and Enforcement denies a petition under 10 C.F.R. § 2.206 filed by the joint intervenors in the Diablo Canyon operating license proceeding. The joint intervenors contended that the low-power license for Diablo Canyon Unit 1 should be revoked or at least remain suspended on the basis of the licensee's failure to report a 1977 audit of the quality assurance program of the licensee's prime piping contractor. Although the Director finds that the failure to report the audit constituted a material false statement under the Atomic Energy Act, the Director did not find revocation or suspension of the license to be an appropriate remedy for the reporting failure.

B Section 50.55(e) does not require the reporting of every design or construction deficiency, but requires holders of construction permits to evaluate identified deficiencies and report significant deficiencies as defined by the regulation.

C The licensee is found to have made a material false statement by not reporting an audit of its prime piping contractor's quality assurance program where quality assurance was an issue being heard in the operating license proceeding and the audit on its face appeared to contradict the licensee's testimony in the proceeding.

D The fact that an item is not reportable under 10 C.F.R. § 50.55(e) may not obviate reporting under the "full disclosure" standards of section 186 of the Atomic Energy Act.

E Not every violation of Commission requirements mandates the severe sanction of license revocation. The choice of sanctions for violations of NRC requirements rests within the sound discretion of the Commission.

F In view of the minimal significance of the material false statement (*i.e.*, failure to report) here, and upon consideration of enforcement actions for other material false statements, a Notice of Violation is the most appropriate enforcement action for the failure to report the quality assurance audit.

LEGAL CITATIONS INDEX
CASES

- Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 156-61 (1970)
burden on proponent of motion for summary disposition; LBP-84-7, 19 NRC 435 (1984)
- Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2)*, ALAB-182, 7 AEC 210,
modified on other grounds, CLI-74-12, 7 AEC 203 (1974)
application of res judicata and collateral estoppel to operating license proceedings; ALAB-759, 19
NRC 25 n.40 (1984)
- Apicella v. McNeil Laboratories, Inc.*, 66 F.R.D. 78, 84 (E.D.N.Y. 1975)
limits on application of First Amendment privilege of the press; ALAB-764, 19 NRC 640 (1984)
- Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3)*, ALAB-742, 18
NRC 380, 383 (1983)
showing necessary to invoke appellate directed certification authority; ALAB-762, 19 NRC 568
n.9 (1984)
- Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility)*, ALAB-682, 16 NRC 150,
157-59 (1982) (Eliperin, concurring)
regulations and statutes requiring notice of materials license actions; ALAB-765, 19 NRC 652
n.10 (1984)
- Atlantic Research Corp.*, ALAB-594, 11 NRC 841, 856-59 (1980)
NRC enforcement policy on application of penalties; DD-84-8, 19 NRC 933 n.13 (1984)
- Atlantic Research Corp.*, CLI-80-7, 11 NRC 413, 421-22, 424 (1980)
responsibility of licensee for reporting knowledge of information in possession of its contractors;
DD-84-8, 19 NRC 932 (1984)
- Baker v. F&F Investment*, 470 F.2d 778, 783 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973)
applicability of First Amendment privilege to organization gathering confidential information
about safety problems at nuclear plant; ALAB-764, 19 NRC 639, 640, 641 (1984)
- Branzburg v. Hayes*, 408 U.S. 665, 690 n.29 (1972)
court attitude toward extension of testimonial privileges; ALAB-764, 19 NRC 639 (1984)
- Branzburg v. Hayes*, 408 U.S. 665, 709-10 (1972) (Powell, J., concurring)
applicability of First Amendment privilege to organization gathering confidential information
about safety problems at nuclear plant; ALAB-764, 19 NRC 639, 641 (1984)
- Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 596 (1st Cir. 1980)
factors balanced in recognition of journalist's privilege; ALAB-764, 19 NRC 641 (1984)
- Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 598 (1st Cir. 1980)
means for protecting interests found not to be privileged; ALAB-764, 19 NRC 643 (1984)
- Cape May Green, Inc. v. Warren*, 698 F.2d 179, at 191-93
nuclear power plant siting in a floodplain; LBP-84-6, 19 NRC 404 (1984)
- Carey v. Hume*, 492 F.2d 631, 636 (D.C. Cir.), cert. dismissed, 417 U.S. 938 (1974)
applicability of First Amendment privilege to organization gathering confidential information
about safety problems at nuclear plant; ALAB-764, 19 NRC 639 (1984)
- Carey v. Hume*, 492 F.2d 631, 636-39 (D.C. Cir.), cert. dismissed, 417 U.S. 938 (1974)
factors balanced in recognition of journalist's privilege; ALAB-764, 19 NRC 641 (1984)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4)*,
ALAB-526, 9 NRC 122, 124 (1979)
newly acquired organizational status as cause for late intervention; LBP-84-17, 19 NRC 887 n.9
(1984)

LEGAL CITATIONS INDEX
CASES

- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), LBP-79-19, 10 NRC 37, 51 (1979), aff'd and modified, ALAB-557, 11 NRC 18, CLI-80-12, 11 NRC 514 (1980)
factors considered in judging an applicant's character; LBP-84-13, 19 NRC 676 n.25 (1984)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), LBP-79-19, 10 NRC 37, 56-94 (1979)
issues which bear on an applicant's character and competence; LBP-84-13, 19 NRC 672 nn.13 & 16 (1984)
- Carr v. Fife, 156 U.S. 494, 498 (1894)
need for disqualification of a judge because of prior associations with parties to a proceeding; ALAB-759, 19 NRC 24 n.35 (1984)
- Chemicals in Aggregate Shipments — Midland, Mich. to the East, 326 I.C.C. 657, 665 (1965)
characterization of Memorandum of Findings; ALAB-761, 19 NRC 494 n.24 (1984)
- Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), LBP-79-24, 10 NRC 226, 228-30 (1979)
Licensing Board authority to act on requests to raise Part 70 issues; ALAB-765, 19 NRC 652 (1984); LBP-84-16, 19 NRC 862 (1984)
- Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 770, 773 (1983)
post-hearing resolution of issues by NRC Staff; LBP-84-2, 19 NRC 210-12, 252 (1984)
- Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 776 (1983)
passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-82-48, 15 NRC 1549 (1982)
passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 737 (1975)
Licensing Board delegation of its responsibilities to NRC Staff; LBP-84-2, 19 NRC 210 (1984)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752-54 (1977)
burden on proponent of motion for summary disposition; LBP-84-7, 19 NRC 435 (1984)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), DD-83-17, 18 NRC 1289 (1983)
classification of material false statements by severity level; DD-84-8, 19 NRC 93435 (1984)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-38, 18 NRC 61, 63 (1983)
Licensing Board authority to act on requests to raise Part 70 issues; ALAB-765, 19 NRC 652 (1984); LBP-84-16, 19 NRC 864 (1984)
- Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), DD-81-5, 13 NRC 728 (1981), aff'd sub nom. Rockford League of Women Voters v. NRC, 679 F.2d 1218 (7th Cir. 1982)
institution of proceedings to consider economic impacts of construction activities or deficiencies; DD-84-1, 19 NRC 475 (1984)
- Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36 (1984)
basis of Board findings; LBP-84-10, 19 NRC 511 n.4 (1984)
effect of applicant's corrective actions on evaluation of its character and competence; LBP-84-13, 19 NRC 721 n.46 (1984)
- Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 410-11 (1974)
responsibility for making 50-57(a)(1) findings as a precondition to operating license issuance; ALAB-758, 19 NRC 11 n.18 (1984); ALAB-762, 19 NRC 567 (1984)
- Commonwealth Edison Co. (Zion Station, Units 1 and 2), LBP-73-35, 6 AEC 861, 892-93, 898-99 (1973), modified on other grounds, ALAB-226, 8 AEC 381 (1974)
factors considered in judging an applicant's character; LBP-84-13, 19 NRC 676 nn.25 & 26 (1984)

**LEGAL CITATIONS INDEX
CASES**

- Consolidated Edison Co. of New York (Indian Point, Unit 2), CLI-74-23, 7 AEC 947, 951-52 & n.8 (1974)
post-hearing resolution of issues by NRC Staff; LBP-84-2, 19 NRC 210-12, 252 (1984)
- Consolidated Edison Co. of New York (Indian Point, Unit 2), CLI-83-16, 17 NRC 1006 (1983)
risk to public health and safety pending determination of adequacy of evacuation time estimates for Pilgrim facility; DD-84-5, 19 NRC 553 (1984)
- Consolidated Edison Co. of New York (Indian Point, Unit 2), LBP-73-33, 6 AEC 751, 756 (1973), aff'd, ALAB-188, 7 AEC 323, 336 (1974)
factors considered in judging an applicant's character; LBP-84-13, 19 NRC 676 n.26 (1984)
- Consolidated Edison Co. of New York (Indian Point, Unit 3), CLI-74-28, 8 AEC 7, 8-9 (1974)
application of rule against delegation of Licensing Board responsibilities to NRC Staff to issues raised sua sponte; LBP-84-2, 19 NRC 211 (1984)
- Consolidated Edison Co. of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 176 (1975)
standard applied in determining whether to issue a show-cause order; DD-84-7, 19 NRC 923 n.16 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 65 (1973)
summary of disqualification standards applicable to Licensing Board members; ALAB-759, 19 NRC 20 n.24 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-106, 6 AEC 182, 184 (1973)
relationship between competence and character; LBP-84-13, 19 NRC 671, 672, 676, 687 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 332-33 (1973)
Licensing Board discretion to make findings and conclusions; LBP-84-13, 19 NRC 703 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982)
responsibilities of parties regarding participation; ALAB-761, 19 NRC 493 n.20 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 914 (1982), review declined, CLI-83-2, 17 NRC 69 (1983)
responsibilities of parties to inform Board and parties of significant new information; ALAB-765, 19 NRC 657 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-3, 7 AEC 7, 11 (1974)
weight given to truthfulness of an operating license applicant; LBP-84-13, 19 NRC 674 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69, 70 (1983)
importance of an applicant's truthfulness to character determination; LBP-84-13, 19 NRC 675 (1984)
- Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-50, 18 NRC 242, 247-49 (1983)
weight given to timeliness of motion to reopen a record; LBP-84-13, 19 NRC 716 (1984)
- Consumers Union of the United States, Inc. (Starks v. Chrysler Corp.), 32 Fed. R. Serv. 2d 1373 (S.D.N.Y. 1981)
limits on application of First Amendment privilege of the press; ALAB-764, 19 NRC 640 (1984)
- Darlington v. Studebaker-Packard Corp., 261 F.2d 903, 906-07 (7th Cir.), cert. denied, 359 U.S. 992 (1959)
need for disqualification of a judge because of prior associations with parties to a proceeding; ALAB-759, 19 NRC 24 n.35 (1984)
- Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982)
importance given to factors 2 and 4 of 10 C.F.R. 2.714(a)(1); LBP-84-17, 19 NRC 887 n.11 (1984)
- Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17 (1983)
intervenor not penalized for failure to file proposed findings of fact; LBP-84-13, 19 NRC 681 n.35 (1984)
- penalty for failure to file proposed findings on an issue; ALAB-763, 19 NRC 577 (1984)
- Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979)
satisfaction of interest requirement for intervention through geographical proximity; LBP-84-6, 19 NRC 410 (1984)

LEGAL CITATIONS INDEX
CASES

- In re Dinnan, 661 F.2d 426, 427-31 (5th Cir. 1981), cert. denied, 457 U.S. 1106 (1982)
application of scholar's privilege; ALAB-764, 19 NRC 640 n.10 (1984)
- Duffield v. Charleston Area Medical Center, Inc., 503 F.2d 512, 517 (4th Cir. 1974)
disqualification standards applicable to Licensing Board members; ALAB-759, 19 NRC 20 n.23
(1983)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 405 n.19 (1976)
burden of proof on applicant; ALAB-763, 19 NRC 577 n.22 (1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467-70 (1982),
modified, CLI-83-19, 17 NRC 1041 (1983)
litigation of concerns based on unavailable materials; ALAB-758, 19 NRC 12 n.19 (1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982)
need for particularization of contentions; LBP-84-6, 19 NRC 412 (1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982)
factors considered in admission of late-filed contentions; LBP-84-1, 19 NRC 31 (1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983)
factors considered in admission of late-filed contentions; LBP-84-1, 19 NRC 31 (1984)
inapplicability of late-filing criteria to late-filed Part 70 contentions; ALAB-765, 19 NRC 656
(1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983)
prematurity of contentions; LBP-84-6, 19 NRC 406 (1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1047 (1983)
applicability of late-filing criteria to contentions addressing unnoticed application for Part 70
license; LBP-84-16, 19 NRC 866, 867 (1984)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983)
responsibilities of intervenors regarding information-gathering; LBP-84-17, 19 NRC 887 n.8
(1984)
- Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-745, 18 NRC 746 (1983)
termination of limited appellate jurisdiction; ALAB-760, 19 NRC 27 (1984)
- Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977)
weight given to other factors where good cause is not established for late intervention;
LBP-84-17, 19 NRC 887 n.10 (1984)
- Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 407
(1973)
factors considered in judging an applicant's character; LBP-84-13, 19 NRC 676 nn.25 & 26 (1984)
- Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623,
625-26 (1973)
responsibility of parties to inform Boards of relevant new information; DD-84-8, 19 NRC 928,
932 (1984)
- Duquesne Light Co. (Beaver Valley Power Station, Unit 1), LBP-76-3, 3 NRC 44, 50-51 (1976)
factors considered in judging an applicant's character; LBP-84-13, 19 NRC 676 nn.25 & 26 (1984)
- FCC v. WOKO, Inc., 329 U.S. 223 (1946)
penalty for material false statement; LBP-84-13, 19 NRC 674, 676, 678 (1984)
- Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 13
(1977), aff'd, CLI-78-12, 7 NRC 939 (1978)
standard for determining whether good cause exists for a late filing; LBP-84-17, 19 NRC 886 n.7
(1984)
- Fredonia Broadcasting Corp. v. RCA Corp., 569 F.2d 251, 257 (5th Cir. 1978)
subjective standard for determining a judge's impartiality; ALAB-759, 19 NRC 22 n.29 (1984)
- Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977)
criteria for accepting a contention based on a generic issue; LBP-84-6, 19 NRC 418 (1984)
- Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 775 (1977)
Staff responsibilities concerning generic unresolved safety issues; LBP-84-2, 19 NRC 53 (1984)
- Hall v. Geiger-Jones Co., 242 U.S. 539, 553 (1917)
definition of "character" relative to an operating license applicant; LBP-84-13, 19 NRC 673
(1984)

LEGAL CITATIONS INDEX
CASES

- Hamlin Testing Laboratories, Inc., 2 AEC 423, 428-29 (1964)
willful misrepresentations as grounds for license denial; LBP-84-13, 19 NRC 678 n.31 (1984)
- Herbert v. Lando, 441 U.S. 153, 175 (1979)
court attitude toward extension of testimonial privileges; ALAB-764, 19 NRC 639 (1984)
- Herbert v. Lando, 441 U.S. 153, 177 (1979)
right of applicant to learn nature of questions about quality assurance at its facility; ALAB-764,
19 NRC 644 (1984)
- Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station), ALAB-535, 9 NRC 377,
393 (1979)
failure to demonstrate representational standing; LBP-84-6, 19 NRC 407 (1984)
- Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11
NRC 239, 243 n.8 (1980)
use of status as a ratepayer to establish interest and standing for purpose of intervention;
LBP-84-6, 19 NRC 429 (1984)
- Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11
NRC 542 (1980)
dismissal of contention for lack of credible basis; ALAB-765, 19 NRC 654 n.13 (1984)
- Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15
NRC 508, 513 n.14 (1982)
contribution that is of significance in considering a late-filed petition to intervene; LBP-84-17, 19
NRC 888 n.12 (1984)
- Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-672, 15 NRC 677,
683-85 & n.19 (1982), rev'd on other grounds, CLI-82-9, 15 NRC 1363 (1982)
authority to rule on recusal motions; ALAB-759, 19 NRC 21 n.26 (1984)
- Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363,
1365-67 (1982)
disqualification standards applicable to Licensing Board members; ALAB-759, 19 NRC 20 n.23,
22 n.29, 25 n.42 (1983)
- Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439,
443-44 (1979)
satisfaction of interest requirement for intervention through geographical proximity; LBP-84-6,
19 NRC 410 (1984)
- Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338
(1978)
criteria to be satisfied by reopening motions; LBP-84-3, 19 NRC 283 n.4 (1984)
- Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 244-62 (1982), aff'd
sub nom. City of West Chicago v. NRC, 701 F.2d 632, 639 (7th Cir. 1983)
need for a hearing on Part 70 issues; ALAB-765, 19 NRC 651, 652 (1984)
- Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-21, 16 NRC 401 (1982)
delegation of Commission authority to adjudicate materials license cases; ALAB-765, 19 NRC
651 (1984)
- Leflore Broadcasting Company v. FCC, 636 F.2d 454 (D.C. Cir. 1980)
penalty for material false statement; LBP-84-13, 19 NRC 674, 678 (1984)
- Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 850
(1973)
challenges to NRC assessments of the effects of low-level radiation; LBP-84-7, 19 NRC 438
(1984)
- Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387 (1983)
factors considered in admission of late-filed contentions; LBP-84-1, 19 NRC 31 (1984)
- Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 401
(1983)
inability of late intervention petitioner to contribute to a sound record; LBP-84-17, 19 NRC 888
n.13 (1984)

LEGAL CITATIONS INDEX
CASES

- Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117, aff'd, ALAB-743, 18 NRC 387 (1983)
applicability of late-filing criteria to intervention and contentions; LBP-84-17, 19 NRC 887 n.8 (1984)
- Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1089, 1090 (1983)
evaluation of a witness' potential contribution on the basis of prior testimony; LBP-84-7, 19 NRC 439 (1984)
- Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103 (1983)
post-hearing verification of quality assurance issues; LBP-84-2, 19 NRC 212 (1984)
- Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-04 (1983)
post-hearing resolution of emergency planning issues; LBP-84-2, 19 NRC 251 (1984)
- Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324, 1328 (1983)
cause for denial of motion to reopen the record where initial decision has issued; LBP-84-13, 19 NRC 716 n.43 (1984)
- Machin v. Zuckert, 316 F.2d 336 (D.C. Cir.), cert. denied, 375 U.S. 896 (1963)
means for protecting interests found not to be privileged; ALAB-764, 19 NRC 643 n.15 (1984)
- Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), DD-83-3, 17 NRC 327, 329 (1983)
NRC policy concerning institution of show-cause proceedings on issues that are the subject of rulemaking; DD-84-6, 19 NRC 897 (1984)
- Mester v. United States, 70 F. Supp. 118, 122 (E.D.N.Y. 1947)
definition of "character" relative to an operating license applicant; LBP-84-13, 19 NRC 673 (1984)
- Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 195 (1983)
weight given to Department of Justice conclusions in absence of their testimony in NRC proceedings; LBP-84-13, 19 NRC 718 (1984)
- Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-5, 11 NRC 408, 410 (1980)
issues which bear on management competence; LBP-84-13, 19 NRC 672 (1984)
- Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-22, 18 NRC 299, 307-09 (1983)
need for adherence to NUREG-0654 by applicant; LBP-84-2, 19 NRC 252 n.85 (1984)
- Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 21 (1978)
cause for denial of motion to reopen the record where initial decision has issued; LBP-84-13, 19 NRC 716 n.43 (1984)
- Metropolitan Edison Co. v. People Against Nuclear Energy, 75 L. Ed. 2d 534 (1983)
litigability of psychological stress issues; LBP-84-7, 19 NRC 441 (1984)
- Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973)
need to judge merits of a contention at the admission stage; LBP-84-1, 19 NRC 34 (1984)
- Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982)
weight given to other factors where good cause is not established for late intervention; LBP-84-17, 19 NRC 887 n.10 (1984)
- Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), LBP-74-64, 8 AEC 339, aff'd, ALAB-232, 8 AEC 635 (1974)
issues which bear on an applicant's character and competence; LBP-84-13, 19 NRC 672 n.16 (1984)

LEGAL CITATIONS INDEX
CASES

- National Auto Brokers v. Gen. Motors Corp., 572 F.2d 953, 958 (2d Cir. 1978), cert. denied, 439 U.S. 1972 (1979)
 need for disqualification of a judge because of prior associations with parties to a proceeding; ALAB-759, 19 NRC 24 n.35 (1984)
- New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984)
 cause for reopening a record; LBP-84-17, 19 NRC 881 (1984)
- New Hampshire v. AEC, 406 F.2d 170 (1st Cir.), cert. denied, 395 U.S. 962 (1969)
 need to consider thermal discharge issues as part of licensing process; ALAB-759, 19 NRC 17 n.12 (1984)
- Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 216 (1983)
 means for establishing the need for a hearing; LBP-84-6, 19 NRC 426 (1984)
- Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-76, 5 AEC 312 (1972)
 recusal of Licensing Board judge on ground of prior consultant relationship with electric utility; ALAB-759, 19 NRC 23 n.30 (1984)
- Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974)
 criteria to be satisfied by reopening motions; LBP-84-3, 19 NRC 283 n.4 (1984)
- Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433-34 (1978), aff'd sub nom. Porter County Chapter of the Izaak Walton League, Inc. v. NRC, 606 F.2d 1363 (D.C. Cir. 1979)
 cause for initiation of show-cause proceedings; DD-84-1, 19 NRC 475 (1984)
- Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 864-70 (1974), reconsideration denied, ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975)
 participation by former intervenors on site redress issue; ALAB-761, 19 NRC 492 n.17 (1984)
- Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 54 (1978)
 Licensing Board issuance of advisory opinions; LBP-84-4, 19 NRC 293 (1984)
- Northern States Power Co. (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 527 (1980)
 means for establishing the need for a hearing; LBP-84-6, 19 NRC 426 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-334, 3 NRC 809, 817-20 (1976)
 conditions which must be met before unirradiated fuel can go critical; ALAB-765, 19 NRC 652 (1984); LBP-84-16, 19 NRC 870 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 962-65 (1981), petitions for review denied, CLI-82-12A, 16 NRC 7 (1982)
 use of tau-filtered spectra; ALAB-763, 19 NRC 609 n.195 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 994-95 (1981)
 burden on proponent of motion to reopen a record; LBP-84-13, 19 NRC 716, 719 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340 (1983)
 criteria to be satisfied by reopening motions; LBP-84-3, 19 NRC 283 n.4 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1345 (1983)
 degree of conformance required of designs; LBP-84-10, 19 NRC 528 n.59 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-76-1, 3 NRC 73, 74 (1976)
 Appeal Board authority over Part 70 licenses; ALAB-765, 19 NRC 650 n.6 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-76-1, 3 NRC 73, 74 n.1 (1976)
 Licensing Board jurisdiction over Part 70 matters; LBP-84-16, 19 NRC 862, 863 (1984)

LEGAL CITATIONS INDEX
CASES

- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981)
criteria to be satisfied by reopening motions; LBP-84-3, 19 NRC 283 n.4 (1984)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-1, 15 NRC 225 (1982)
application of Notice of Violation as penalty for material false statement; DD-84-8, 19 NRC 935 (1984)
- Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 686 n.1 (1979)
interlocutory appeals by nonparties to operating license proceedings; ALAB-764, 19 NRC 636 n.1 (1984)
- Pacific Gas and Electric Co. v. State Energy Resources, Conservation and Development Commission, 103 S. Ct. 1713 (1983)
litigability of waste disposal issues; LBP-84-6, 19 NRC 413 (1984)
- Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 405-06 (1978)
enforcement action appropriate for material false statement; DD-84-8, 19 NRC 933 (1984)
- Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 418 (1978)
weight given to truthfulness of an operating license applicant; LBP-84-13, 19 NRC 675 (1984)
- Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755 (1983)
passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755, 757 (1983)
Licensing Board exercise of jurisdiction over petition directed to Nuclear Material Safety and Safeguards Director; LBP-84-16, 19 NRC 864 (1984)
- Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-6, 17 NRC 153 (1983)
litigability of waste disposal issues; LBP-84-6, 19 NRC 413 (1984)
- Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974)
reason for basis-with-specificity requirement for contentions; LBP-84-1, 19 NRC 34 (1984)
- Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-701, 16 NRC 1517 (1982)
calculation of cancer risk estimates; LBP-84-15, 19 NRC 841 (1984)
- Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-701, 16 NRC 1517, 1526 (1982)
need to project radiation doses into the far future; LBP-84-7, 19 NRC 458 (1984)
- Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-83-14, 17 NRC 745 (1983); ALAB-701, 16 NRC 1517 (1982); litigability of the health effects of radon gas emissions; LBP-84-6, 19 NRC 416 (1984)
- Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974)
litigability of contentions that are or are about to become the subject of rulemaking; LBP-84-6, 19 NRC 417 (1984)
- Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392 (1976)
full-party participation by a State; LBP-84-6, 19 NRC 427 (1984)
- Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976)
standing requirements for intervention by an organization; LBP-84-6, 19 NRC 410 (1984)
- Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977)
showing necessary to invoke appellate directed certification authority; ALAB-762, 19 NRC 568 n.9 (1984)

• LEGAL CITATIONS INDEX
CASES

- Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1198-99 (1983)
good cause for untimeliness of recusal motion; ALAB-759, 19 NRC 16 n.5 (1984)
- Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 n.7 (1982)
particularity required of bases for contentions; LBP-84-1, 19 NRC 33 (1984)
- Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264 (1980)
precondition to hearing on health effects issues which challenge BEIR estimates; LBP-84-15, 19 NRC 838 (1984)
- Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 277 (1980)
burden on opponent of summary disposition motion; LBP-84-7, 19 NRC 434, 436 (1984)
- Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-605, 12 NRC 153 (1980)
treatment of application for construction extension date when there is a finding of abandonment; LBP-84-9, 19 NRC 505 (1984)
- Punnett v. Carter, 621 F.2d 578, 583-86 (3d Cir. 1980)
challenges to NRC assessments of the effects of low-level radiation; LBP-84-7, 19 NRC 438 (1984)
- Reporters Committee for Freedom of the Press v. American Telephone & Telegraph Co., 593 F.2d 1030, 1050 n.67 (D.C. Cir. 1978), cert. denied, 440 U.S. 949 (1979)
need for creation of new First Amendment privileges; ALAB-764, 19 NRC 642 n.12 (1984)
- Richards of Rockford, Inc. v. Pacific Gas & Electric Co., 71 F.R.D. 388, 389 & n.2, 390 (N.D. Cal. 1976)
application of scholar's privilege; ALAB-764, 19 NRC 640 n.10 (1984)
- In re Rodgers, 537 F.2d 1196 (4th Cir. 1976)
determination of whether construction permit proceeding and operating license proceeding are the same matter for disqualification purposes; ALAB-759, 19 NRC 24 n.34 (1984)
standard for recusal of a judge; ALAB-759, 19 NRC 25 n.41 (1984)
- Rulemaking Hearing, Acceptance Criteria for Emergency Core Cooling Systems for Light-Water-Cooled Nuclear Power Reactors, CLI-73-39, 6 AEC 1085, 1087 (1973)
treatment of steam generator tube ruptures as small-break, loss-of-coolant accidents; CLI-84-3, 19 NRC 560 (1984)
- Saginaw Transfer Co. v. United States, 275 F. Supp. 585, 588 (E.D. Mich. 1967)
characterization of Memorandum of Findings; ALAB-761, 19 NRC 494 n.24 (1984)
- SCA Services Inc. v. Morgan, 557 F.2d 110, 113 (7th Cir. 1977)
basis for resolving close cases involving disqualification; ALAB-759, 19 NRC 24 n.36 (1984)
- SCA Services Inc. v. Morgan, 557 F.2d 110, 117 (7th Cir. 1977)
circumstances in which disqualification may not be waived; ALAB-759, 19 NRC 23 n.31 (1984)
- Schwartz v. Board of Bar Examiners of New Mexico, 353 U.S. 232, 239 (1957)
traits to be considered in determining an operating license applicant's character; LBP-84-13, 19 NRC 673 n.20 (1984)
- Sierra Club v. Morton, 405 U.S. 727 (1972)
showing necessary to be admitted as a party intervenor; LBP-84-6, 19 NRC 428 (1984)
- Silkwood v. Kerr-McGee Corp., 104 S. Ct. 615 (1984)
risk to the public from unirradiated fuel; LBP-84-16, 19 NRC 870 (1984)
- Silkwood v. Kerr-McGee Corp., 563 F.2d 433, 436-37 (10th Cir. 1977)
applicability of First Amendment privilege to organization gathering confidential information about safety problems at nuclear plant; ALAB-764, 19 NRC 639, 640 (1984)
- Silkwood v. Kerr-McGee Corp., 563 F.2d 433, 438 (10th Cir. 1977)
factors balanced in recognition of journalist's privilege; ALAB-764, 19 NRC 641 (1984)
- Solargen Electric Motor Car Corp. v. American Motor Corp., 506 F. Supp. 546, 550 (N.D.N.Y. 1981)
factors balanced in recognition of journalist's privilege; ALAB-764, 19 NRC 641 (1984)

LEGAL CITATIONS INDEX
CASES

- Solargen Electric Motor Car Corp. v. American Motor Corp., 506 F. Supp. 546, 552 (N.D.N.Y. 1981)
limits on application of First Amendment privilege of the press; ALAB-764, 19 NRC 640 (1984)
refusal of deponents to appear; ALAB-764, 19 NRC 638 n.5 (1984)
- Somer v. Johnson, 704 F.2d 1473, 1479 n.6 (11th Cir. 1983)
need for creation of new First Amendment privileges; ALAB-764, 19 NRC 642 n.12 (1984)
- South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-633, 14 NRC
1140, 1163 (1981), aff'd, ALAB-710, 17 NRC 25 (1983)
circumstances appropriate for Board-conducted investigations; LBP-84-3, 19 NRC 285 n.11 (1984)
- South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC
881, 887 n.5 (1981)
standard for determining whether good cause exists for a late filing; LBP-84-17, 19 NRC 886 n.6
(1984)
- South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC
1140, 1156 (1981)
limitations on Board authority to call its own witnesses; LBP-84-7, 19 NRC 442 (1984)
- Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717,
17 NRC 346, 380 n.57 (1983)
post-hearing resolution of issues by NRC Staff; LBP-84-2, 19 NRC 210-12, 252 (1984)
- Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CL1-83-10,
17 NRC 528 (1983)
Commission guidance concerning requirements of 10 C.F.R. 50.47(b)(12); LBP-84-2, 19 NRC
264 (1984)
- Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39,
15 NRC 1163, 1177-84 (1982), aff'd, ALAB-717, 17 NRC 346 (1983)
expansion of emergency planning zone beyond 10-mile radius; DD-84-5, 19 NRC 550 (1984)
- Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC
1387, 1394 (1982)
rebuke of licensee for failure to notify Board and parties of filing of Part 70 license application;
ALAB-765, 19 NRC 656 (1984)
responsibility of parties to inform Boards of relevant new information; DD-84-8, 19 NRC 928 n.6
(1984)
- Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC
341, 352 (1978)
material which may be cited in support of arguments in proposed findings of fact; LBP-84-10, 19
NRC 517 n.18 (1984)
- Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7
NRC 341, 360 (1978), reconsideration denied, ALAB-467, 7 NRC 459 (1978)
burden of proof on applicant; ALAB-763, 19 NRC 577 n.22 (1984)
- Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-752, 18 NRC 1318
(1983)
termination of limited appellate jurisdiction; ALAB-760, 19 NRC 27 (1984)
- Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421
n.4 (1977)
satisfaction of interest requirement for intervention through geographical proximity; LBP-84-6,
19 NRC 410 (1984)
- Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9
NRC 728, 730 (1979)
satisfaction of interest requirement for intervention through geographical proximity; LBP-84-6,
19 NRC 410 (1984)
- Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81,
18 NRC 1410, 1414 (1983)
relationship between the reporting of a deficiency and whether the deficiency represented a QA
violation; LBP-84-13, 19 NRC 704 (1984)

LEGAL CITATIONS INDEX
CASES

- Toledo Edison Co. (Davis-Besse Nuclear Power Station), 4 AEC 571, 585 (1971)
challenges to NRC assessments of the effects of low-level radiation; LBP-84-7, 19 NRC 438 (1984)
- Trustees of Columbia University in the City of New York, ALAB-50, 4 AEC 849, 859 (1972), *aff'd* sub nom. Morningside Renewal Council, Inc. v. AEC, 842 F.2d 234 (2d Cir. 1973), cert. denied, 417 U.S. 951 (1974)
Board opinion on witness attempting to challenge NRC assessments of the effects of low-level radiation in NRC proceedings; LBP-84-7, 19 NRC 438 (1984)
- Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983)
criteria to be satisfied by reopening motions; LBP-84-3, 19 NRC 283 n.4 (1984)
quality required of construction to enable grant of an operating license; DD-84-7, 19 NRC 906 (1984)
- Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 349-50 (1983)
presentation of new arguments in proposed findings of fact; LBP-84-10, 19 NRC 515, 517 (1984)
- Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205 (1983)
circumstances appropriate for Board-conducted investigations; LBP-84-3, 19 NRC 285 n.11 (1984)
- United States Department of Energy (Clinch River Breeder Reactor Plant), LBP-83-8, 17 NRC 158, 222 (1983)
evaluation of a witness' potential contribution on the basis of prior testimony; LBP-84-7, 19 NRC 439 (1984)
- United States v. Cuthbertson, 630 F.2d 139, 147 (3d Cir. 1980), cert. denied, 449 U.S. 1126 (1981)
applicability of First Amendment privilege to organization gathering confidential information about safety problems at nuclear plant; ALAB-764, 19 NRC 639, 640 (1984)
- United States v. Cuthbertson, 630 F.2d 139, 148 (3d Cir. 1980), cert. denied, 449 U.S. 1126 (1981)
factors balanced in recognition of journalist's privilege; ALAB-764, 19 NRC 641 (1984)
- United States v. Doe (In re Popkin), 460 F.2d 328 (1st Cir. 1972), cert. denied, 411 U.S. 909 (1973)
application of scholar's privilege; ALAB-764, 19 NRC 640 n.10 (1984)
- United States v. Doe (In re Falk), 332 F. Supp. 938, 941 (D. Mass. 1971)
application of scholar's privilege; ALAB-764, 19 NRC 640 n.10 (1984)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 360, 361-62, 366-67 & n.4 (1973)
Licensing Board delegation of its responsibilities to NRC Staff; LBP-84-2, 19 NRC 210, 212 (1984)
- Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973)
criteria to be satisfied by reopening motions; LBP-84-3, 19 NRC 283 n.4 (1984)
weight given to timeliness of motion to reopen a record; LBP-84-13, 19 NRC 716 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 248 (1978)
criteria for accepting a contention based on a generic issue; LBP-84-6, 19 NRC 418 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979)
satisfaction of interest requirement for intervention through geographical proximity; LBP-84-6, 19 NRC 429 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979)
need for organizational intervention petitioner to submit authorizing affidavit; LBP-84-6, 19 NRC 407 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), *aff'd*, 571 F.2d 1289 (4th Cir. 1978)
definition of truthfulness relative to an operating license applicant; LBP-84-13, 19 NRC 674 (1984)

LEGAL CITATIONS INDEX
CASES

- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 483, 486-87 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978)
relevance of presence or absence of intent to question of whether a material false statement has been made; LBP-84-13, 19 NRC 682-83 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 486 (1976), aff'd sub nom. Virginia Electric and Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978)
responsibility of licensee for reporting knowledge of information in possession of its contractors; DD-84-8, 19 NRC 932 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 486, 488, 491 (1976), aff'd sub nom. Virginia Electric and Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978)
omission of information as a material false statement; DD-84-8, 19 NRC 930-32 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-75-54, 2 NRC 498, 504-06, 523 (1975)
responsibility of licensee for reporting knowledge of information in possession of its contractors; DD-84-8, 19 NRC 932 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-75-54, 2 NRC 498, 523, 532-33 (1975)
omission of information as a failure to inform Boards of relevant information and as a material false statement; DD-84-8, 19 NRC 931, 932 (1984)
- Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-77-68, 6 NRC 1127, 1151 (1977)
describing an applicant's character; LBP-84-13, 19 NRC 672, 676 (1984)
- Virginia Electric and Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978)
penalty for material false statement; LBP-84-13, 19 NRC 674 n.23 (1984)
- Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973)
Licensing Board delegation of its responsibilities to NRC Staff; LBP-84-2, 19 NRC 210 (1984)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-83-66, 18 NRC 780, 797-98 (1983)
factors considered in determining reasonableness of construction extension date; LBP-84-9, 19 NRC 506 (1984)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 552 (1983)
interpretation of good cause showing necessary for extension of construction completion date; LBP-84-9, 19 NRC 502 (1984)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 167 (1983)
factors considered in admission of late-filed contentions; LBP-84-1, 19 NRC 31 (1984)
- Washington Public Power Supply System (WPPSS Nuclear Project Nos. 4 & 5), DD-82-6, 15 NRC 1761, 1766 n.9 (1982)
enforcement action appropriate for material false statement; DD-84-8, 19 NRC 933 (1984)
- Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928, 930 (1974)
delay of a licensing proceeding pending disposition of a case presented to a State authority; LBP-84-6, 19 NRC 401 (1984)
- Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), CLI-73-4, 6 AEC 6, 7, 11, 13, 16 (1973)
post-hearing resolution of issues by NRC Staff; LBP-84-2, 19 NRC 210, 211 (1984)
- Worth v. Seldin, 422 U.S. 490 (1975)
showing necessary to be admitted as a party intervenor; LBP-84-6, 19 NRC 428 (1984)
- Wright v. Jeep Corp., 547 F. Supp. 871, 875 (E.D. Mich. 1982)
duty of citizens to provide evidence; ALAB-764, 19 NRC 639 (1984)

LEGAL CITATIONS INDEX
CASES

Wright v. Jeep Corp., 547 F. Supp. 871, 875-76 (E.D. Mich. 1982)
application of scholar's privilege, ALAB-764, 19 NRC 640 n.10 (1984)
Wright v. Patrolmen's Benevolent Ass'n, 72 F.R.D. 161 (S.D.N.Y. 1976)
limits on application of First Amendment privilege of the press, ALAB-764, 19 NRC 640 (1984)

LEGAL CITATIONS INDEX
REGULATIONS

- 5 C.F.R. 737.5(c)(4)
 - test of a judge's impartiality; ALAB-759, 19 NRC 24 n.38 (1984)
- 10 C.F.R. 1.11
 - extent of Board authority concerning operating licenses; ALAB-758, 19 NRC 10 (1984)
- 10 C.F.R. 1.61
 - authority for issuance of an operating license; ALAB-758, 19 NRC 10 (1984)
- 10 C.F.R. 2.104
 - determination of whether an operating license proceeding is a continuation of a construction permit proceeding; ALAB-759, 19 NRC 24 n.39 (1984)
 - need to notice Part 70 license application; ALAB-765, 19 NRC 651 n.10 (1984)
- 10 C.F.R. 2.104(b)(2) and (3)
 - need for Licensing Board issuance of initial decision for uncontested construction permit proceeding; ALAB-761, 19 NRC 489 n.6 (1984)
- 10 C.F.R. 2.104(c)(4)
 - litigability of effects of disposal costs on an applicant's financial capability to operate a nuclear power plant; LBP-84-6, 19 NRC 414 (1984)
- 10 C.F.R. 2.105
 - determination of whether an operating license proceeding is a continuation of a construction permit proceeding; ALAB-759, 19 NRC 24 n.39 (1984)
 - need to notice Part 70 license application; ALAB-765, 19 NRC 651 n.10 (1984)
- 10 C.F.R. 2.201
 - application of Notice of Violation as penalty for material false statement; DD-84-8, 19 NRC 935 (1984)
 - enforcement action taken for procedural deficiencies associated with crane accident at Perry Plant; DD-84-1, 19 NRC 476 (1984)
 - violations requiring corrective action; DD-84-7, 19 NRC 904 (1984)
- 10 C.F.R. 2.202
 - request for initiation of show-cause proceeding; DD-84-1, 19 NRC 476 (1984)
- 10 C.F.R. 2.202(a)
 - denial of petition to institute show-cause proceedings sought on the basis of construction and management deficiencies; DD-84-7, 19 NRC 900 (1984)
- 10 C.F.R. 2.202(a)(1)
 - circumstances in which an order to show cause is appropriate; DD-84-7, 19 NRC 922 (1984)
- 10 C.F.R. 2.206
 - denial of petition for suspension or revocation of license on basis of material false statement; DD-84-8, 19 NRC 925 (1984)
 - denial of petition requesting action on issue that is the subject of rulemaking; DD-84-6, 19 NRC 892, 897 (1984)
 - denial of petition requesting postponement of lifting of reactor pressure vessel head at TMI-2; DD-84-4, 19 NRC 535 (1984)
 - denial of request for independent analysis of crane accident at Perry Plant; DD-84-1, 19 NRC 472 (1984)
 - remedies available to the public regarding concerns over licensees' data or evaluations; DD-84-6, 19 NRC 896 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- request for action to remedy emergency response deficiencies at Pilgrim facility; DD-84-5, 19 NRC 542 (1984)
- request for management audit because of violation of construction permit condition granted; DD-84-2, 19 NRC 478 (1984)
- treatment of letter requesting action as a petition under; DD-84-3, 19 NRC 481 n.1 (1984)
- 10 C.F.R. 2.206(b)
issuance of formal decision on petition for show-cause proceeding; DD-84-7, 19 NRC 901 (1984)
- 10 C.F.R. 2.704(c)
motion for disqualification of Licensing Board judge; ALAB-759, 19 NRC 15 (1984)
- 10 C.F.R. 2.707
action taken on failure to file a pleading within the prescribed time; LBP-84-6, 19 NRC 428 (1984)
- 10 C.F.R. 2.710
late filing of response to motion to resume discovery; LBP-84-7, 19 NRC 464 (1984)
- 10 C.F.R. 2.713
penalty for violation of protective orders; ALAB-764, 19 NRC 643 n.14 (1984)
- 10 C.F.R. 2.714
participation as an interested state following withdrawal as a party; LBP-84-4, 19 NRC 295 (1984)
- satisfaction of interest requirement for intervention through geographical proximity; LBP-84-6, 19 NRC 410, 411, 429 (1984)
- 10 C.F.R. 2.714(a)(1)
applicability of admission criteria to late-filed Part 70 contentions; ALAB-765, 19 NRC 656, 657 (1984)
- applicability of late-filing criteria to contentions addressing unnoticed application for Part 70 license; LBP-84-16, 19 NRC 865, 868 (1984)
- balancing of factors in determining admissibility of late-filed emergency planning contention; LBP-84-1, 19 NRC 31 (1984)
- denial of late intervention petition, based on balancing of five factors of; ALAB-758, 19 NRC 8 n.1 (1984)
- factors balanced in determining a grant of untimely intervention; LBP-84-17, 19 NRC 883 (1984)
- factors evaluated for re-intervention by parties; ALAB-761, 19 NRC 493 n.21 (1984)
- 10 C.F.R. 2.714(a)(1)(i)-(v)
applicability of late-filing criteria to contentions addressing unnoticed application for Part 70 license; LBP-84-16, 19 NRC 866 (1984)
- 10 C.F.R. 2.714(a)(2)
showing necessary to be admitted as a party intervenor; LBP-84-6, 19 NRC 428 (1984)
- 10 C.F.R. 2.714(b)
contention requirement for intervention; LBP-84-6, 19 NRC 406, 429 (1984)
- criteria for qualifying as a party intervenor; LBP-84-6, 19 NRC 395 (1984)
- dismissal of contention alleging inadequacies in security plan for new fuel storage; ALAB-765, 19 NRC 653 (1984)
- requirements for admission of contentions; LBP-84-6, 19 NRC 408 (1984)
- 10 C.F.R. 2.714(e) and (f)
Licensing Board authority to limit participation by intervenors; ALAB-761, 19 NRC 492, 495 (1984)
- 10 C.F.R. 2.715
authorization for former intervenors to make limited appearance statements regarding site redress issues; ALAB-761, 19 NRC 490 (1984)
- participation as an interested state following withdrawal as a party; LBP-84-4, 19 NRC 295 (1984)
- submission of limited appearance statement; LBP-84-4, 19 NRC 380 (1984)
- 10 C.F.R. 2.715(c)
participation by an interested state; LBP-84-6, 19 NRC 394, 425, 426, 427 (1984)
- 10 C.F.R. 2.717(a)
jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- 10 C.F.R. 2.717(b)
Licensing Board jurisdiction over Part 70 matters; LBP-84-16, 19 NRC 862, 863 (1984)
- 10 C.F.R. 2.718
Board authority to deny operating license on basis of material false statement; LBP-84-13, 19 NRC 677 n.29 (1984)
Licensing Board authority to limit participation by intervenors; ALAB-761, 19 NRC 492 n.18 (1984)
- 10 C.F.R. 2.718(i)
petition for review of denial of motion concerning prematurity of operating license application;
ALAB-762, 19 NRC 568 (1984)
- 10 C.F.R. 2.720
showing necessary for Board issuance of a subpoena; ALAB-764, 19 NRC 636 n.2 (1984)
- 10 C.F.R. 2.720(f)
provisions of protective order; ALAB-764, 19 NRC 637 (1984)
- 10 C.F.R. 2.720(g)
enforcement action taken following refusal of deponents to appear; ALAB-764, 19 NRC 638 n.5 (1984)
- 10 C.F.R. 2.721
Licensing Board jurisdiction over Part 70 issues; ALAB-765, 19 NRC 650 (1984)
- 10 C.F.R. 2.721(a)
jurisdiction of Licensing Boards; ALAB-765, 19 NRC 650 (1984)
limitations on Board jurisdiction; ALAB-758, 19 NRC 11 (1984)
- 10 C.F.R. 2.730(f)
petition for review of denial of motion concerning prematurity of operating license application;
ALAB-762, 19 NRC 568 n.6 (1984)
- 10 C.F.R. 2.740(b)(1)
right of applicant to learn nature of questions about quality assurance at its facility; ALAB-764, 19 NRC 644 (1984)
showing necessary for Board issuance of a subpoena; ALAB-764, 19 NRC 636 n.2 (1984)
- 10 C.F.R. 2.740(c)
provisions of protective order; ALAB-764, 19 NRC 637 (1984)
evaluation of significance and materiality of information proffered as basis for reopening the record;
LBP-84-13, 19 NRC 717 (1984)
- 10 C.F.R. 2.743(i)
official notice taken of date of report that was not a part of the record of the proceeding; LBP-84-13, 19 NRC 781 n.49 (1984)
- 10 C.F.R. 2.749
cause for dismissal of proceeding contesting application for construction extension date; LBP-84-9, 19 NRC 507 (1984)
summary disposition of health effects contentions; LBP-84-7, 19 NRC 437 (1984)
- 10 C.F.R. 2.749(b)
burden on opponent of summary disposition motion; LBP-84-7, 19 NRC 435 (1984)
- 10 C.F.R. 2.754
penalty for failure to file proposed findings on an issue; ALAB-763, 19 NRC 577 (1984)
- 10 C.F.R. 2.758
petition to waive regulation pertaining to litigation of need-for-power issues; LBP-84-6, 19 NRC 396, 402 (1984)
- 10 C.F.R. 2.758(a)
litigability of adequacy of new fuel shipping containers; ALAB-765, 19 NRC 655 n.15 (1984)
- 10 C.F.R. 2.758(c)
admissibility of contention concerning need for power and alternative energy sources; LBP-84-6, 19 NRC 403 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- 10 C.F.R. 2.759
 - Board authority to make suggestions for resolution of issues; LBP-84-15, 19 NRC 847 (1984)
 - need for NRC to establish regulations implementing Floodplain Management Order and Guidelines; LBP-84-6, 19 NRC 405 (1984)
 - settlement of controversies outside of adjudicatory hearings; LBP-84-14, 19 NRC 836 (1984)
- 10 C.F.R. 2.760
 - passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- 10 C.F.R. 2.760(a)
 - extent of Board authority concerning operating licenses; ALAB-758, 19 NRC 10 (1984)
- 10 C.F.R. 2.760a
 - matters which must be addressed in an operating license proceeding; LBP-84-13, 19 NRC 703 (1984)
- 10 C.F.R. 2.762
 - limitation on number of briefs filed in response to applicant's briefs; LBP-84-13, 19 NRC 833 (1984)
 - passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- 10 C.F.R. 2.762(c) and (f)
 - correction of briefs; ALAB-764, 19 NRC 639 n.6 (1984)
- 10 C.F.R. 2.771
 - passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- 10 C.F.R. 2.780
 - applicability of ex parte considerations to meeting between NRC Regional Administrator and Commission; DD-84-3, 19 NRC 484 n.3 (1984)
- 10 C.F.R. 2.785
 - appealability of final order on Part 70 license; LBP-84-16, 19 NRC 876 (1984)
 - passing of jurisdiction over proceeding withholding authorization for an operating license; LBP-84-2, 19 NRC 279 (1984)
- 10 C.F.R. 2.785(a)
 - functions performed by Appeal Boards; ALAB-765, 19 NRC 650 n.6 (1984)
 - post-hearing resolution of issues by NRC Staff; LBP-84-2, 19 NRC 211 (1984)
- 10 C.F.R. 2.802
 - means for changing NRC regulatory requirements; DD-84-6, 19 NRC 897 (1984)
 - need for NRC to establish regulations implementing Floodplain Management Order and Guidelines; LBP-84-6, 19 NRC 405 (1984)
- 10 C.F.R. 2, Appendix C
 - NRC policy on application of sanctions; DD-84-8, 19 NRC 933 (1984)
- 10 C.F.R. 2, Appendix C, IV
 - circumstances in which an order to show cause is appropriate; DD-84-7, 19 NRC 922 (1984)
- 10 C.F.R. 2, Appendix C, IV.C(3)
 - cause for initiation of show-cause proceedings; DD-84-1, 19 NRC 476 (1984)
- 10 C.F.R. 20
 - ability of Byron plant design basis to keep radiation levels as low as reasonably achievable; LBP-84-2, 19 NRC 52, 85, 86 (1984)
 - adequacy of modeling of radiation doses from internal emitters; LBP-84-7, 19 NRC 448 (1984)
 - quantities of airborne strontium-90 expected to be present in Byron Station; LBP-84-2, 19 NRC 94 (1983)
 - radiation hazard from unirradiated, noncritical fuel; ALAB-765, 19 NRC 654 (1984)
 - scope and purpose of guidelines governing radiation doses; LBP-84-4, 19 NRC 355 (1984)
 - topics addressed in; LBP-84-2, 19 NRC 88 (1984)
- 10 C.F.R. 20.1(c)
 - requirements concerning personnel exposure to radiation; LBP-84-2, 19 NRC 52, 85 n.27, 87, & n.27 (1984)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 20.101(a)
example of permissible radiation doses to employees; LBP-84-2, 19 NRC 87 (1984)
- 10 C.F.R. 20.196(a)
showing necessary in FSAR concerning groundwater contamination by radionuclides; LBP-84-2, 19 NRC 220, 226 (1984)
- 10 C.F.R. 20.401
means for maintaining and extent of radiation dosimetric records on Byron employees; LBP-84-2, 19 NRC 95 (1984)
- 10 C.F.R. 20, Appendix B
application of radionuclide limits of; LBP-84-2, 19 NRC 87 (1984)
- 10 C.F.R. 20, Appendix B, Table II, col. 2
showing necessary in FSAR concerning groundwater contamination by radionuclides; LBP-84-2, 19 NRC 220 (1984)
- 10 C.F.R. 21
reportability of quality assurance audit; DD-84-8, 19 NRC 928, 930 n.9 (1984)
- 10 C.F.R. 50
assessment of plant response to design basis accidents; LBP-84-4, 19 NRC 346 (1984)
means to obtain authorization to receive and store new fuel; ALAB-765, 19 NRC 649 n.2 (1984)
- 10 C.F.R. 50.10(e)
means for seeking approval for early site preparation; ALAB-761, 19 NRC 489 n.1 (1984)
- 10 C.F.R. 50.10(e)(2)
findings necessary for issuance of Limited Work Authorization; LBP-84-4, 19 NRC 293 (1984)
- 10 C.F.R. 50.10(e)(2)(ii)
suitability of proposed Clinch River Breeder Reactor site; LBP-84-4, 19 NRC 376 (1984)
- 10 C.F.R. 50.19(a)(4)
effectiveness of amendments to Part 70 licenses where hearing has been requested; LBP-84-16, 19 NRC 875 (1984)
- 10 C.F.R. 50.33(g)
particularity required of late-filed contentions concerning adequacy of emergency planning zone; LBP-84-1, 19 NRC 34 (1984)
- 10 C.F.R. 50.34
deadline for completion of probabilistic risk assessment for Clinch River Project; LBP-84-4, 19 NRC 340 (1984)
need for retention of records concerning safety-related items; DD-84-6, 19 NRC 895 (1984)
- 10 C.F.R. 50.34(a)
adequacy of Byron plant monitoring of employee exposures to radiation; LBP-84-2, 19 NRC 51, 85 (1984)
- 10 C.F.R. 50.34(a)(7)
contents of preliminary safety analysis report; LBP-84-2, 19 NRC 111 (1984)
- 10 C.F.R. 50.34(b)
content of Final Safety Analysis Report; ALAB-763, 19 NRC 587 n.68 (1984)
- 10 C.F.R. 50.34(b)(4)
adequacy of Staff characterization of groundwater system under Byron; LBP-84-2, 19 NRC 218-20, 238 (1984)
- 10 C.F.R. 50.35(a)
findings necessary for issuance of Limited Work Authorization; LBP-84-4, 19 NRC 386 (1984)
- 10 C.F.R. 50.36(a)
adequacy of Byron plant monitoring of employee exposures to radiation; LBP-84-2, 19 NRC 51, 85 (1984)
- 10 C.F.R. 50.40
limitations on a Board's authority relevant to findings on an applicant's character; LBP-84-13, 19 NRC 677 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- 10 C.F.R. 50.40(b)
competence requirement for an operating license applicant; LBP-84-13, 19 NRC 671 n.12 (1984)
review of technical and management competence of WPPSS to operate WNP-2; DD-84-7, 19 NRC 921 (1984)
- 10 C.F.R. 50.47(a)
reason for Commission amendment of; LBP-84-2, 19 NRC 252 (1984)
- 10 C.F.R. 50.47(a)(1)
emergency planning findings necessary for issuance of an operating license; LBP-84-2, 19 NRC 253 (1984)
post-hearing verification of quality assurance issues; LBP-84-2, 19 NRC 212 (1984)
- 10 C.F.R. 50.47(a)(1) (1982)
post-hearing resolution of emergency planning issues; LBP-84-2, 19 NRC 251 (1984)
- 10 C.F.R. 50.47(b)
adequacy of Clinch River preliminary emergency plan; LBP-84-4, 19 NRC 373 (1984)
limitation on emergency planning findings; LBP-84-2, 19 NRC 252 (1984)
- 10 C.F.R. 50.47(b) n.1
need for adherence to NUREG-0654 by applicant; LBP-84-2, 19 NRC 252 n.85 (1984)
- 10 C.F.R. 50.47(b)(1)
adequacy of communications between Byron emergency response organizations; LBP-84-2, 19 NRC 275 (1984)
- 10 C.F.R. 50.47(b)(10)
analysis of evacuation time study for Byron; LBP-84-2, 19 NRC 253 (1984)
means of response to an emergency; DD-84-5, 19 NRC 552 (1984)
sufficiency of protective actions offered by Byron emergency plan; LBP-84-2, 19 NRC 267-68 (1984)
- 10 C.F.R. 50.47(b)(12)
adequacy of Byron emergency planning for medical facilities; LBP-84-2, 19 NRC 263, 267 (1984)
Commission guidance concerning requirements of; LBP-84-2, 19 NRC 264 (1984)
- 10 C.F.R. 50.47(c)(2)
expansion of emergency planning zone beyond 10-mile radius; DD-84-5, 19 NRC 549 (1984)
- 10 C.F.R. 50.54(f)
enforcement action taken to improve quality assurance program at WNP-2; DD-84-7, 19 NRC 902 (1984)
responsiveness of WPPSS management to NRC concerns; DD-84-7, 19 NRC 919 (1984)
- 10 C.F.R. 50.54(o)
requirements for integrated leak rate testing; DD-84-6, 19 NRC 893 (1984)
- 10 C.F.R. 50.54(s)(2)(ii)
request for initiation of 4-month period for correction of emergency response deficiencies at Pilgrim facility; DD-84-5, 19 NRC 543 (1984)
- 10 C.F.R. 50.55
interpretation of good-cause showing necessary for extension of construction completion date; LBP-84-9, 19 NRC 502 (1984)
- 10 C.F.R. 50.55(b)
showing necessary for extension of construction completion date; LBP-84-9, 19 NRC 498, 499 (1984)
- 10 C.F.R. 50.55(e)
failure of applicant to report design deficiencies; LBP-84-10, 19 NRC 512 (1984)
introduction of deficiency reports as evidence; LBP-84-13, 19 NRC 800 (1984)
need for improvement in implementation of corrective actions for construction deficiencies at WNP-2; DD-84-7, 19 NRC 915 (1984)
record of Houston Lighting & Power Company in reporting deficiencies under; LBP-84-13, 19 NRC 747, 757, 766 (1984)
relationship between the reporting of a deficiency and whether the deficiency represented a QA violation; LBP-84-13, 19 NRC 704, 707 (1984)
report of deficiencies in standby service water system; DD-84-7, 19 NRC 907 (1984)

LEGAL CITATIONS INDEX
REGULATIONS

- report of surveying error under; LBP-84-13, 19 NRC 810 (1984)
reporting of breakdowns in quality assurance program; LBP-84-2, 19 NRC 132, 134 & n.56 (1984)
tardy reporting of plant problems; LBP-84-2, 19 NRC 116 (1984)
threshold for reporting deficiencies; DD-84-8, 19 NRC 933 (1984)
- 10 C.F.R. 50.55(e)(1)
fulfillment of requirement to report significant deficiencies; LBP-84-10, 19 NRC 515 (1984)
reportability of quality assurance audit; DD-84-8, 19 NRC 928, 930 (1984)
- 10 C.F.R. 50.55(e)(2)
time limit for reporting deficiencies; LBP-84-2, 19 NRC 134 (1984)
- 10 C.F.R. 50.55a
significance of ASME N-symbol; LBP-84-2, 19 NRC 122 (1984)
- 10 C.F.R. 50.57
adequacy of applicant's character and competence to operate South Texas Project; LBP-84-13, 19 NRC 697 (1984)
limitations on a Board's authority relevant to findings on an applicant's character; LBP-84-13, 19 NRC 677 (1984)
post-hearing resolution of issues by NRC Staff; LBP-84-2, 19 NRC 210 (1984)
- 10 C.F.R. 50.57(a)(1)
authority of Boards to make determinations required under; ALAB-758, 19 NRC 11 (1984)
criteria that applicant's design verification program must meet; ALAB-763, 19 NRC 587 n.68 (1984)
filing of operating license application for unit that is only 22% complete as a violation of; ALAB-758, 19 NRC 9 (1983)
findings required as a precondition to issuance of an operating license; ALAB-762, 19 NRC 567 (1984)
requisites for issuance of operating license; LBP-84-2, 19 NRC 52 (1984)
- 10 C.F.R. 50.57(a)(1) and (2)
findings required by; LBP-84-13, 19 NRC 702 (1984)
- 10 C.F.R. 50.57(a)(3)
"character" finding necessary for operating license issuance; LBP-84-13, 19 NRC 674 n.22 (1984)
adequacy of Byron seismic design; LBP-84-2, 19 NRC 238-39 (1984)
assurances that must be provided prior to issuance of operating licenses; LBP-84-2, 19 NRC 71, 73, 85, 102 (1984)
- 10 C.F.R. 50.57(a)(3)(i)
adequacy of Staff characterization of groundwater system under Byron; LBP-84-2, 19 NRC 218-20, 238 (1984)
- 10 C.F.R. 50.57(a)(3)(ii)
effect of potential for steam generator tube degradation on ability to make required findings of; LBP-84-2, 19 NRC 51 (1984)
- 10 C.F.R. 50.57(a)(4)
competence requirement for an operating license applicant; LBP-84-13, 19 NRC 671 n.12 (1984)
- 10 C.F.R. 50.57(a)(6)
adequacy of Staff characterization of groundwater system under Byron; LBP-84-2, 19 NRC 218-20, 238 (1984)
effect of potential for steam generator tube degradation on ability to make required findings of; LBP-84-2, 19 NRC 51 (1984)
- 10 C.F.R. 50.57(c)
assurances that must be provided prior to issuance of operating licenses; LBP-84-2, 19 NRC 102 (1984)
- 10 C.F.R. 50.70
denial of request for public access and inspection of steam separator and reactor vessel; DD-84-1, 19 NRC 476 (1984)
- 10 C.F.R. 50.70(a)
NRC access to licensee records; DD-84-6, 19 NRC 895 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- 10 C.F.R. 50.71
need for retention of records concerning safety-related items; DD-84-6, 19 NRC 895 (1984)
- 10 C.F.R. 50.91(a)(4)
effectiveness of amendments to Part 70 fuel licenses; LBP-84-16, 19 NRC 873-75 (1984)
- 10 C.F.R. 50.92(c)
effectiveness of amendments to Part 70 licenses where hearing has been requested; LBP-84-16, 19 NRC 875 (1984)
- 10 C.F.R. 50, Appendix A
conformance of WNP-2 with General Design Criteria; DD-84-7, 19 NRC 918 (1984)
criteria applied for defense-in-depth design of Clinch River Breeder Reactor; LBP-84-4, 19 NRC 300 (1984)
exclusion of accidents attributable to external and man-made actions, from Byron analysis; LBP-84-2, 19 NRC 107 (1984)
- 10 C.F.R. 50, Appendix A, GDC 2
extent of investigations required to protect against seismic events; LBP-84-2, 19 NRC 239 (1984)
reporting of faults revealed during excavations; LBP-84-4, 19 NRC 370 (1984)
- 10 C.F.R. 50, Appendix A, GDC 4
analysis for and protection from jet impingement effects; ALAB-763, 19 NRC 602 n.146 (1984)
requirements concerning protection against water hammer events; LBP-84-2, 19 NRC 71, 73, 81 (1984)
requirements for protection of reactor systems; LBP-84-2, 19 NRC 52 (1984)
- 10 C.F.R. 50, Appendix A, GDC 14, 30, 31 and 32
requisites for issuance of operating license; LBP-84-2, 19 NRC 52 (1984)
- 10 C.F.R. 50, Appendix A, GDC 44
safety of Diablo Canyon's component cooling water system; ALAB-763, 19 NRC 617 n.249 (1984)
- 10 C.F.R. 50, Appendix B
ability of Byron applicant to provide quality assurance services; LBP-84-2, 19 NRC 42 (1984)
ability or willingness of Byron applicant to comply with quality assurance requirements; LBP-84-2, 19 NRC 111, 213 (1984)
adequacy of Byron applicant's description of its operational quality assurance program; LBP-84-2, 19 NRC 126 (1984)
adequacy of Diablo Canyon's quality assurance program; ALAB-763, 19 NRC 616 (1984)
adequacy of pipe support design process at Comanche Peak; LBP-84-10, 19 NRC 530 (1984)
adequacy of quality assurance program for Clinch River; LBP-84-4, 19 NRC 323, 364-65 (1984)
adequacy of South Texas Project's construction QA/QC organizations and practices; LBP-84-13, 19 NRC 699, 700, 703 (1984)
allegations of failures in quality assurance program at WNP-2; DD-84-7, 19 NRC 905 (1984)
criteria against which the sufficiency of applicant's design verification efforts must be measured; ALAB-763, 19 NRC 578, 583 (1984)
definition of "quality assurance" and "quality control"; LBP-84-4, 19 NRC 361 (1984)
failure to comply with quality assurance requirements as basis for reopening record; ALAB-763, 19 NRC 576 (1984)
fundamental aspects of NRC regulatory program; LBP-84-13, 19 NRC 736 (1984)
need for compliance with regulations promulgated after design work has been completed; ALAB-763, 19 NRC 608 (1984)
quality of implementation of QA program at South Texas Project; LBP-84-13, 19 NRC 764 (1984)
- 10 C.F.R. 50, Appendix B, Introduction
level of confidence to be provided by a quality assurance program; ALAB-763, 19 NRC 593 n.86 (1984)
- 10 C.F.R. 50, Appendix B, I
delegation of quality assurance program to contractors; LBP-84-2, 19 NRC 43, 128, 135 (1984)
responsibility of licensee for reporting knowledge of information in possession of its contractors; DD-84-8, 19 NRC 932 (1984)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 50, Appendix B, I-VI, X, XI, XIII, XV, XVI-XVIII
discussion of regulatory requirements for QA organization; LBP-84-2, 19 NRC 112 (1984)
- 10 C.F.R. 50, Appendix B, II
harassment of QA inspectors as violation of; LBP-84-13, 19 NRC 711, 712 (1984)
scope of quality assurance plan for surveying; LBP-84-13, 19 NRC 705, 706, 811 (1984)
- 10 C.F.R. 50, Appendix B, III
conformance of WNP-2 licensee with design control requirements; DD-84-7, 19 NRC 906, 908 (1984)
- 10 C.F.R. 50, Appendix B, III and VI
demonstration that applicant's reconciliation of design documents is in conformity with requirements of; ALAB-763, 19 NRC 605 n.169 (1984)
- 10 C.F.R. 50, Appendix B, III and IX
harassment of QA inspectors as violation of; LBP-84-13, 19 NRC 711, 712, 826 (1984)
inadequate verification and approval of design changes as violations of; LBP-84-13, 19 NRC 710, 711, 809, 819, 820, 821 (1984)
- 10 C.F.R. 50, Appendix B, VI
culpability of management in employee's falsification of construction records; LBP-84-13, 19 NRC 714, 829, 830 (1984)
- 10 C.F.R. 50, Appendix B, VI and XVII
loss of field document relating to cadwelds as a violation of; LBP-84-13, 19 NRC 708, 709, 710, 809, 815 (1984)
- 10 C.F.R. 50, Appendix B, IX and X
cadweld documentation deficiencies as violation of; LBP-84-13, 19 NRC 710, 818 (1984)
voids in reactor containment building walls as violation of; LBP-84-13, 19 NRC 707, 809, 813 (1984)
- 10 C.F.R. 50, Appendix B, X, XI
absence of a survey inspection procedure as a violation of; LBP-84-13, 19 NRC 704, 706, 809, 811 (1984)
- 10 C.F.R. 50, Appendix B, X, XV and XVI
damage to containment membrane seals as a violation of; LBP-84-13, 19 NRC 709, 809, 816 (1984)
steel reinforcement bars missing from parts of containment structure as a violation of; LBP-84-13, 19 NRC 709, 809, 817 (1984)
- 10 C.F.R. 50, Appendix B, X, XVI, XVII
relationship between the reporting of a deficiency and whether the deficiency represented a QA violation; LBP-84-13, 19 NRC 704 (1984)
- 10 C.F.R. 50, Appendix B, XVI
label given to reports of design deficiencies; LBP-84-10, 19 NRC 511, 512 (1984)
- 10 C.F.R. 50, Appendix B, XVII
failure to document activities affecting quality as a violation of; LBP-84-13, 19 NRC 727 (1984)
need for retention of records concerning safety-related items; DD-84-6, 19 NRC 895 (1984)
- 10 C.F.R. 50, Appendix B, XVII, XVIII
violations of, by Byron contractor; LBP-84-2, 19 NRC 195 (1984)
- 10 C.F.R. 50, Appendix E, II
adequacy of Clinch River preliminary emergency plan; LBP-84-4, 19 NRC 373 (1984)
- 10 C.F.R. 50, Appendix E, IV C & nn. 1, 4
need for adherence to NUREG-0654 by applicant; LBP-84-2, 19 NRC 252 n.85 (1984)
- 10 C.F.R. 50, Appendix E, IV F 1
public participation in emergency response exercises; LBP-84-6, 19 NRC 423 (1984)
- 10 C.F.R. 50, Appendices G and H
testing requirements to determine reactor pressure vessel integrity; LBP-84-6, 19 NRC 420 (1984)
- 10 C.F.R. 50, Appendix I
adequacy of modeling of radiation doses from internal emitters; LBP-84-7, 19 NRC 448, 453 (1984)
assessment of offsite doses from design basis accidents at Clinch River Breeder Reactor; LBP-84-4, 19 NRC 316 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- individual responses taken into account in evaluating compliance with; LBP-84-4, 19 NRC 360 (1984)
- scope and purpose of guidelines governing radiation doses; LBP-84-4, 19 NRC 355 (1984)
- 10 C.F.R. 50, Appendix I, II
 - guidelines for assessing dose consequences of accidents at Clinch River; LBP-84-4, 19 NRC 354 (1984)
- 10 C.F.R. 50, Appendix J
 - calculation of mean containment temperature; DD-84-6, 19 NRC 894 (1984)
 - modification of, concerning integrated leak rate testing; DD-84-6, 19 NRC 897 (1984)
 - requirements for integrated leak rate testing; DD-84-6, 19 NRC 893 (1984)
- 10 C.F.R. 50, Appendix R
 - need to consider open pipe chase in auxiliary feedwater pumproom as a deviation from fire protection criteria; ALAB-763, 19 NRC 602 n.145 (1984)
- 10 C.F.R. 51, Table S-3
 - litigability of waste disposal issues; LBP-84-6, 19 NRC 413 (1984)
- 10 C.F.R. 51.20(a) and (d)
 - adequacy of assessment of risk of severe accidents at Byron Station; LBP-84-2, 19 NRC 100, 101 (1984)
- 10 C.F.R. 51.21 and 51.23(e)
 - demonstration of need for power at the operating license stage; LBP-84-9, 19 NRC 504 (1984)
- 10 C.F.R. 51.23(e)
 - basis for evaluating impacts of fuel cycle particulates; LBP-84-7, 19 NRC 460 n.2 (1984)
- 10 C.F.R. 51.53
 - limitations on a Board's authority relevant to findings on an applicant's character; LBP-84-13, 19 NRC 677 (1984)
- 10 C.F.R. 51.53(c)
 - challenge to; LBP-84-6, 19 NRC 396, 399 (1984)
 - litigability of costs of radioactive waste disposal at operating license stage; LBP-84-6, 19 NRC 413 (1984)
- 10 C.F.R. 70
 - dismissal of contentions concerning application to receive and store new fuel outside the Limerick facility; ALAB-765, 19 NRC 648 (1984)
 - Licensing Board jurisdiction over licenses under; LBP-84-16, 19 NRC 860
- 10 C.F.R. 70.3
 - means to obtain authorization to receive and store new fuel; ALAB-765, 19 NRC 649 n.2 (1984)
- 10 C.F.R. 70.22(i), 70.23(a)(11)
 - need for an emergency plan to be in place to obtain a Part 70 license; ALAB-765, 19 NRC 655 (1984)
- 10 C.F.R. 70.24(d)
 - request for exemption from criticality monitoring systems requirement for unirradiated fuel; LBP-84-16, 19 NRC 874 (1984)
- 10 C.F.R. 71
 - adequacy of new fuel shipping containers; ALAB-765, 19 NRC 655 n.15 (1984)
 - radiation hazard from unirradiated, noncritical fuel; ALAB-765, 19 NRC 655 (1984)
- 10 C.F.R. 72.34
 - need to notice Part 70 license application; ALAB-765, 19 NRC 651 n.10 (1984)
- 10 C.F.R. 73
 - exclusion of accidents attributable to external and man-made actions, from Byron analysis; LBP-84-2, 19 NRC 107 (1984)
- 10 C.F.R. 73.55(b) through (h)
 - potential for sabotage by temporary workers at Byron; LBP-84-2, 19 NRC 99 (1984)
- 10 C.F.R. 100
 - assessment of offsite doses from design basis accidents at Clinch River Breeder Reactor; LBP-84-4, 19 NRC 316, 317 (1984)

**LEGAL CITATIONS INDEX
REGULATIONS**

- capability of faults in vicinity of Clinch River Project; LBP-84-4, 19 NRC 326, 370, 372, 373 (1984)
- challenge to thyroid dose assessment for Clinch River Project; LBP-84-4, 19 NRC 359, 381, 384 (1984)
- guidelines to assess Clinch River containment adequacy in the event of a core melt accident; LBP-84-4, 19 NRC 353 (1984)
- most probable core disruptive accidents for which doses could exceed guidelines of; LBP-84-4, 19 NRC 356, 358 (1984)
- need for DOE reactors to meet guidelines of; LBP-84-4, 19 NRC 387 (1984)
- need to consider capability of TMI to limit doses to ensure compliance with; CLI-84-3, 19 NRC 558 n.3 (1984)
- objective of Reliability Assurance Program for Clinch River Project; LBP-84-4, 19 NRC 340 (1984)
- restriction of primary-to-secondary leakage in steam generator to avoid exceeding dose criteria; CLI-84-3, 19 NRC 561 (1984)
- scope and purpose of guidelines governing radiation doses; LBP-84-4, 19 NRC 355 (1984)
- 10 C.F.R. 100.11
 - specification of dose guidelines for design basis accidents; LBP-84-4, 19 NRC 317, 346 (1984)
- 10 C.F.R. 100, Appendix A
 - adequacy of seismic design of Byron plant; LBP-84-2, 19 NRC 48 (1984)
 - capability of faults in vicinity of Clinch River Project; LBP-84-4, 19 NRC 369 (1984)
 - definition of a capable fault; LBP-84-2, 19 NRC 244 (1984)
 - reporting of faults revealed during excavations; LBP-84-4, 19 NRC 370 (1984)
- 10 C.F.R. 100, Appendix A, II
 - departure from criteria established by GDC 2; LBP-84-2, 19 NRC 240 (1984)
- 10 C.F.R. 100, Appendix A, III(c) and (d)
 - guides for determining structural requirements of a nuclear facility, relative to seismic activity; LBP-84-2, 19 NRC 239-40 (1984)
- 10 C.F.R. 100, Appendix A, III(g)
 - definition of a capable fault; LBP-84-2, 19 NRC 240 (1984)
- 10 C.F.R. 100, Appendix A, IV(a) and (b)
 - capability of faults in vicinity of Clinch River Project; LBP-84-4, 19 NRC 372 (1984)
- 10 C.F.R. 100, Appendix A, V(a)(2)
 - basis for determining a facility's maximum vibratory ground acceleration; LBP-84-2, 19 NRC 240 (1984)
- 44 C.F.R. 350
 - description of committee reviewing radiological emergency plans; DD-84-5, 19 NRC 577 n.3 (1984)

LEGAL CITATIONS INDEX
STATUTES

- Administrative Procedure Act, 554, 5 U.S.C. 554
need for a hearing on Part 70 issues; ALAB-765, 19 NRC 651 (1984)
- Administrative Procedure Act, 556, 5 U.S.C. 556
means for Commission fulfillment of mandate to conduct adjudicatory proceedings impartially;
ALAB-759, 19 NRC 20 n.23 (1983)
- Atomic Energy Act, as amended January 4, 1983, 12(a), Pub. L. 97-415
effectiveness of amendments to Part 70 fuel licenses; LBP-84-16, 19 NRC 873 (1984)
- Atomic Energy Act, 103, 182a, 42 U.S.C. 2133(b)(2), 2232(a)
character and competence requirements for license issuance; LBP-84-13, 19 NRC 669, 672 (1984)
- Atomic Energy Act, 182c, 42 U.S.C. 2232c
need to notice Part 70 license application; ALAB-765, 19 NRC 651 n.10 (1984)
- Atomic Energy Act, 185, 42 U.S.C. 2235
need to relitigate health, safety and environmental questions between construction permit
authorization and operating license stages; LBP-84-9, 19 NRC 507 (1984)
showing necessary for extension of construction completion date; LBP-84-9, 19 NRC 498, 502
(1984)
- Atomic Energy Act, 186
reportability of quality assurance audit; DD-84-8, 19 NRC 928, 930 (1984)
- Atomic Energy Act, 186a, 42 U.S.C. 2236(a)
penalty for material false statement; LBP-84-13, 19 NRC 674 n.23 (1984)
- Atomic Energy Act, 189a, 42 U.S.C. 2239(a)
determination of whether an operating license proceeding is a continuation of a construction permit
proceeding; ALAB-759, 19 NRC 24 n.39 (1984)
need for a hearing on Part 70 issues; ALAB-765, 19 NRC 651 (1984)
- Energy Reorganization Act of 1974, 88 Stat. 1242, 42 U.S.C. 5801
"agency" status of NRC; LBP-84-6, 19 NRC 405 (1984)
- Low Level Waste Policy Act of 1980, 42 U.S.C. 2021(b) et seq.
state responsibilities concerning radioactive waste disposal; LBP-84-6, 19 NRC 415 (1984)
- National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.
adequacy of Staff characterization of groundwater system under Byron; LBP-84-2, 19 NRC 219
(1984)
- National Environmental Policy Act, 102(2)(C)
applicability of floodplain management requirements to NRC; LBP-84-6, 19 NRC 404 (1984)
- Nuclear Waste Policy Act of 1982, 42 U.S.C. 10,101 et seq.
funding for radioactive waste disposal; LBP-84-6, 19 NRC 413 (1984)

LEGAL CITATIONS INDEX
OTHERS

- 1972 ABA Code of Judicial Conduct Canon 3(c)
standard for disqualification of a judge; ALAB-759, 19 NRC 24 n.37 (1984)
- K. Davis, Administrative Law Treatise § 7.01 (1958)
presentation of new arguments in proposed findings of fact; LBP-84-10, 19 NRC 515 n.14 (1984)
- Webster's Third New International Dictionary 376 (unabridged ed. 1976)
definition of character relative to an operating license applicant; LBP-84-13, 19 NRC 673 n.19
(1984)
- Webster's Third New International Dictionary 463 (unabridged ed. 1976)
definition of "competence" relative to an operating license applicant; LBP-84-13, 19 NRC 672 n.14
(1984)
- 8 Wigmore, Evidence § 2285 (J. McNaughton rev. 1961)
claim of privilege by organization gathering confidential information; ALAB-764, 19 NRC 639
(1984)
- 8 Wigmore, Evidence §§ 2285, 2286 (J. McNaughton rev. 1961)
cause for quashing of subpoenas; ALAB-764, 19 NRC 642 (1984)
- Wright, Miller & Kane, Federal Practice and Procedure, § 2722 (1983)
support necessary in opposing summary disposition motions; LBP-84-7, 19 NRC 436 (1984)

SUBJECT INDEX

ACCIDENT(S)

- at Clinch River, dose consequences of; LBP-84-4, 19 NRC 288 (1984)
- core disruptive, definition of and analysis of, relative to Clinch River Breeder Reactor; LBP-84-4, 19 NRC 288 (1984)
- criticality and noncriticality, from unirradiated fuel stored outside, risk of; LBP-84-16, 19 NRC 857 (1984)
- degraded core, technical discussion of; LBP-84-2, 19 NRC 36 (1984)
- design basis, definition of, and analysis of, relative to Clinch River Breeder Reactor; LBP-84-4, 19 NRC 288 (1984)
- fuel handling, at Clinch River, radioactive releases from; LBP-84-4, 19 NRC 288 (1984)
- protected loss-of-heat-sink, at Clinch River, description of; LBP-84-4, 19 NRC 288 (1984)
- severe, at Byron Station, environmental costs of; LBP-84-2, 19 NRC 36 (1984)
- small-break, loss-of-coolant, characteristics of; CLI-84-3, 19 NRC 555 (1984)
- with crane at Perry plant, denial of 2.206 petition requesting independent analysis of; DD-84-1, 19 NRC 471 (1984)

AGREEMENT

- between parties, termination of intervention on basis of; LBP-84-15A, 19 NRC 852 (1984)

ALARA

- as related to steam generators at Byron Station; LBP-84-2, 19 NRC 36 (1984)

ALTERNATIVES

- to nuclear power plants; LBP-84-6, 19 NRC 393 (1984)

AMENDMENT

- of new fuel license, stay of effectiveness of; LBP-84-16, 19 NRC 857 (1984)
- See also Operating License Amendment

APPEAL BOARD

- jurisdiction of; ALAB-765, 19 NRC 645 (1984)
- jurisdiction over Part 70 licenses; LBP-84-16, 19 NRC 857 (1984)

APPEAL, INTERLOCUTORY

- by nonparty to operating license proceeding; ALAB-764, 19 NRC 633 (1984)

APPLICANT

- for an operating license, managerial character and competence requirements for; LBP-84-13, 19 NRC 659 (1984)
- standards for reopening the record by; LBP-84-10, 19 NRC 509 (1984)

ASME CODE

- work at Zimmer, adequacy of means for verification of; DD-84-3, 19 NRC 480 (1984)

AUXILIARY BUILDING

- at Diablo Canyon, adequacy of modeling of soil springs for; ALAB-763, 19 NRC 571 (1984)

AUXILIARY FEEDWATER PUMPS

- at Diablo Canyon, adequacy of fire protection for; ALAB-763, 19 NRC 571 (1984)

AUXILIARY FEEDWATER SYSTEM

- verification of design of, at Diablo Canyon; ALAB-763, 19 NRC 571 (1984)

AWS CODE

- compliance with, at Comanche Peak; LBP-84-10, 19 NRC 509 (1984)

BACKFILL

- at Diablo Canyon, adequacy of soils analyses of; ALAB-763, 19 NRC 571 (1984)

SUBJECT INDEX

BOARDS

See Appeal Board, Licensing Boards

CABLES

See Electrical Cables

CADWELDS

at South Texas Project, loss of documents relating to; LBP-84-13, 19 NRC 659 (1984)

CANCER

and genetic risk estimates, rejection of contentions relating to; LBP-84-15, 19 NRC 837 (1984)

mortality data, influences on; LBP-84-15, 19 NRC 837 (1984)

radiation-induced, litigability of pain and suffering aspects of; LBP-84-7, 19 NRC 432 (1984)

risk from exposure to low levels of radiation; LBP-84-2, 19 NRC 36 (1984)

risk to the public from normal operation of Clinch River Breeder Reactor; LBP-84-4, 19 NRC 288 (1984)

See also Health Effects

CERTIFICATION

See Directed Certification

CHARACTER

legal standards for determining; LBP-84-13, 19 NRC 659 (1984)

managerial, of an operating license applicant, discussion of; LBP-84-13, 19 NRC 659 (1984)

CHINA SYNDROME

description of; LBP-84-4, 19 NRC 288 (1984)

COAL

particulate emissions, adequacy of Staff consideration of environmental impacts of; LBP-84-7, 19 NRC 432 (1984)

CODE

See ASME Code, AWS Code

COLLATERAL ESTOPPEL

application of, in NRC proceedings, ALAB-759, 19 NRC 13 (1984); LBP-84-2, 19 NRC 36 (1984)

COMMENT, PUBLIC

on review of Zimmer implementation of Course of Action, means provided for; DD-84-3, 19 NRC 480 (1984)

COMMUNICATIONS

with Byron emergency response organizations, adequacy of; LBP-84-2, 19 NRC 36 (1984)

COMPETENCE

legal standards for determining; LBP-84-13, 19 NRC 659 (1984)

managerial, of an operating license applicant, discussion of; LBP-84-13, 19 NRC 659 (1984)

COMPONENT COOLING WATER SYSTEM

at Diablo Canyon, adequacy of heat removal capacity of; ALAB-763, 19 NRC 571 (1984)

COMPUTERIZATION

of deficiency records for construction at Comanche Peak, regulatory compliance of; LBP-84-8, 19 NRC 466 (1984)

CONCRETE

pour-cards, allegations of falsification of, at South Texas Project; LBP-84-13, 19 NRC 659 (1984)

production at Byron, allegations concerning quality of; LBP-84-2, 19 NRC 36 (1984)

structures at WNP-2, allegations of discrepancies in; DD-84-7, 19 NRC 899 (1984)

See also Voids

CONFLICT OF INTEREST

through applicant's interrelationships with its vendors and financiers, potential for; LBP-84-6, 19 NRC 393 (1984)

CONSTRUCTION

completion date, need to consider health, safety, and environmental effects of; LBP-84-9, 19 NRC 497 (1984)

deficiency records at Comanche Peak, adequacy of computerization of; LBP-84-8, 19 NRC 466 (1984)

of WNP-2 facility, allegations of deficiencies in; DD-84-7, 19 NRC 899 (1984)

SUBJECT INDEX

- quality assurance programs at South Texas Project, adequacy of; LBP-84-13, 19 NRC 659 (1984)
- quality necessary for grant of an operating license; DD-84-7, 19 NRC 899 (1984)
- CONSTRUCTION PERMIT**
 - audit of management performance ordered as a result of violation of; DD-84-2, 19 NRC 478 (1984)
 - good cause for extension of completion date in; LBP-84-9, 19 NRC 497 (1984)
- CONSTRUCTION PERMIT PROCEEDINGS**
 - need for Licensing Board to issue initial decision on uncontested proceedings; ALAB-761, 19 NRC 487 (1984)
- CONTAINMENT**
 - allegations of rebar missing from; LBP-84-13, 19 NRC 659 (1984)
 - Diablo Canyon, potential for uplifting of; ALAB-763, 19 NRC 571 (1984)
 - for breeder reactor, description of; LBP-84-4, 19 NRC 288 (1984)
 - South Texas Project, adequacy of membrane seals in; LBP-84-13, 19 NRC 659 (1984)
 - South Texas Project, existence of voids in walls of; LBP-84-13, 19 NRC 659 (1984)
- CONTAMINATION**
 - of groundwater by radionuclides; LBP-84-2, 19 NRC 36 (1984)
- CONTENTION(S)**
 - elimination of the basis for hearing through withdrawal of; LBP-84-11, 19 NRC 533 (1984)
 - health effects, summary disposition of; LBP-84-7, 19 NRC 432 (1984)
 - late-filed, factors evaluated for admission of; LBP-84-1, 19 NRC 29 (1984); LBP-84-17, 19 NRC 878 (1984)
 - opposing the laws of physics, admissibility of; ALAB-765, 19 NRC 645 (1984)
 - prematurity of; LBP-84-6, 19 NRC 393 (1984)
 - requirement for intervention; LBP-84-6, 19 NRC 393 (1984)
 - specificity required of; LBP-84-1, 19 NRC 29 (1984)
 - that are or are about to become the subject of rulemaking, litigability of; LBP-84-6, 19 NRC 393 (1984)
 - untimely, admissibility of, where good cause is shown for lateness; ALAB-765, 19 NRC 645 (1984)
- CONTRACTORS**
 - construction, at Byron plant, quality assurance oversight of; LBP-84-2, 19 NRC 36 (1984)
- CONTROL ROOM**
 - ventilation and pressurization system, verification of design of, at Diablo Canyon; ALAB-763, 19 NRC 571 (1984)
- COOLANT**
 - leakage of, from primary to secondary system; LBP-84-2, 19 NRC 36 (1984)
 - See also Component Cooling Water System
- COOLING SYSTEMS**
 - See Component Cooling Water System, Coolant
- CORRECTIVE ACTIONS**
 - compliance of WNP-2 with quality assurance criteria for; DD-84-7, 19 NRC 899 (1984)
- CORROSION**
 - See Denting, Intergranular Stress Corrosion Cracking, Pitting
- CRITICALITY**
 - accidents, risk of, from unirradiated fuel stored outside; LBP-84-16, 19 NRC 857 (1984)
 - potential of new fuel, technical discussion of; ALAB-765, 19 NRC 645 (1984)
- CYANIDE**
 - contamination of Byron site groundwater by; LBP-84-2, 19 NRC 36 (1984)
- DECAY HEAT**
 - removal at Clinch River, description of; LBP-84-4, 19 NRC 288 (1984)
 - See also Heat Removal
- DECISION, INITIAL**
 - on uncontested construction permit proceedings, need for Licensing Board issuance of; ALAB-761, 19 NRC 487 (1984)
 - See also Opinions, Orders

SUBJECT INDEX

DEFICIENCIES

- in construction and management of WNP-2 facility, allegations of; DD-84-7, 19 NRC 899 (1984)
 - in design of Diablo Canyon; ALAB-763, 19 NRC 571 (1984)
 - in design quality assurance, terminology relative to; LBP-84-10, 19 NRC 509 (1984)
 - report obligations for, under section 50.55(e); DD-84-8, 19 NRC 924 (1984)
- See also Noncompliances, Nonconformances

DEFICIENCY REPORTS

- under 10 C.F.R. 50.55(e), relationship of, to quality assurance requirements; LBP-84-13, 19 NRC 659 (1984)

DEFINITIONS

- of rad and rem; LBP-84-4, 19 NRC 288 (1984)

DELAY

- of a licensing proceeding pending disposition of a case being presented to a State authority; LBP-84-6, 19 NRC 393 (1984)

DENTING

- of steam generator tubes, description of, and remedy for; LBP-84-2, 19 NRC 36 (1984)

DESIGN

- changes at South Texas Project, adequacy of verification and approval of; LBP-84-13, 19 NRC 659 (1984)
 - control criteria, conformance of standby service water system at WNP-2 with; DD-84-7, 19 NRC 899 (1984)
 - defense-in-depth, approach to Clinch River Breeder Reactor Project; LBP-84-4, 19 NRC 288 (1984)
 - drawings, conformance of Diablo Canyon as-built with; ALAB-763, 19 NRC 571 (1984)
 - of Diablo Canyon facility, adequacy of applicant's efforts to verify; ALAB-763, 19 NRC 571 (1984)
 - of nuclear power plants, standard for determining adequacy of; ALAB-763, 19 NRC 571 (1984)
- See also Seismic Design

DIESEL FUEL

- tanks, buried, at Diablo Canyon, adequacy of soils analyses for; ALAB-763, 19 NRC 571 (1984)

DIRECTED CERTIFICATION

- showing necessary for Appeal Board exercise of its authority for; ALAB-762, 19 NRC 565 (1984)

DISCOVERY

- order, interlocutory appeal of, by nonparty to operating license proceeding; ALAB-764, 19 NRC 633 (1984)

DISQUALIFICATION

- of Licensing Board judge because of prior consultant relationship with nuclear power plant applicant; ALAB-759, 19 NRC 13 (1984)
- of Licensing Board members, standards governing; ALAB-759, 19 NRC 13 (1984)

DOCUMENTS

- quality assurance/quality control, need for consolidation of; ALAB-763, 19 NRC 571 (1984)
- relating to cutwelds at South Texas Project, loss of; LBP-84-13, 19 NRC 659 (1984)

DOSE(S)

- consequences of accidents at Clinch River; LBP-84-4, 19 NRC 288 (1984)
 - distinction between dose commitment and; LBP-84-4, 19 NRC 288 (1984)
 - from radionuclides, over millions of years, consideration of; LBP-84-15, 19 NRC 837 (1984)
 - modeling, mathematical, of radionuclides in the environment; LBP-84-7, 19 NRC 432 (1984)
- See also Radiation Doses

EARTHQUAKE

- See Safe Shutdown Earthquake

ECONOMIC IMPACTS

- of licensed activities, institution of show-cause proceedings to explore; DD-84-1, 19 NRC 471 (1984)

ECONOMICS

- of safe disposal of radioactive wastes; LBP-84-6, 19 NRC 393 (1984)

EFFECTIVENESS

- of amendment to new fuel license, say of; LBP-84-16, 19 NRC 857 (1984)

ELECTRIC DISTRIBUTION SYSTEM

- verification of design of, at Diablo Canyon; ALAB-763, 19 NRC 571 (1984)

SUBJECT INDEX

ELECTRICAL CABLES

at WNP-2, correction of discrepancies in separation and installation of; DD-84-7, 19 NRC 899 (1984)

EMERGENCY PLANNING

adequacy of, at Beaver Valley; LBP-84-6, 19 NRC 393 (1984)

at Pilgrim facility, denial of request for action respecting the state of; DD-84-5, 19 NRC 542 (1984)
estimation of traffic times and average generic sheltering values for purposes of; LBP-84-2, 19 NRC 36 (1984)

for Clinch River Project, feasibility of; LBP-84-4, 19 NRC 288 (1984)

issues, treatment given by Licensing Board to; LBP-84-2, 19 NRC 36 (1984)

See also Evacuation, Federal Emergency Management Agency, Medical Services

EMERGENCY PLANNING ZONE

extension of; DD-84-5, 19 NRC 542 (1984)

for Wolf Creek facility, litigability of late-filed contention questioning adequacy of; LBP-84-1, 19 NRC 29 (1984)

EMERGENCY POWER SUPPLY

at Diablo Canyon, requirements for protection of; ALAB-763, 19 NRC 571 (1984)

EMERGENCY RESPONSE ORGANIZATIONS

for Byron plant, adequacy of communications between; LBP-84-2, 19 NRC 36 (1984)

EMISSIONS, RADIOACTIVE

from Byron plant, adequacy of monitoring of; LBP-84-2, 19 NRC 36 (1984)

See also Radioactive Releases, Radon

EMPLOYEES

transient, at Byron Station, occupational radiation exposure to; LBP-84-2, 19 NRC 36 (1984)

ENVIRONMENTAL COSTS

of severe accidents at Byron Station; LBP-84-2, 19 NRC 36 (1984)

ENVIRONMENTAL EFFECTS

of extension of construction completion date, need to consider; LBP-84-9, 19 NRC 497 (1984)

ENVIRONMENTAL IMPACT

of coal particulate emissions, adequacy of Staff consideration of; LBP-84-7, 19 NRC 432 (1984)

EQUIPMENT, SAFETY-GRADE

litigability of contention concerning interactions between auxiliary equipment and; LBP-84-6, 19 NRC 393 (1984)

EQUIPMENT, SAFETY-RELATED

mechanical, methods for checking at Diablo Canyon; ALAB-763, 19 NRC 571 (1984)

EVACUATION

aberrational behavioral aspects during; LBP-84-2, 19 NRC 36 (1984)

of schoolchildren and their parents, adequacy of Byron plans for; LBP-84-2, 19 NRC 36 (1984)

time estimates for Pilgrim facility, adequacy of; DD-84-5, 19 NRC 542 (1984)

time study for Byron plant, analysis of; LBP-84-2, 19 NRC 36 (1984)

EVIDENCE

duty of citizens to provide; ALAB-764, 19 NRC 633 (1984)

EXEMPTION

from requirement for criticality monitoring system; LBP-84-16, 19 NRC 857 (1984)

EXTENSION

of construction completion date, good cause for; LBP-84-9, 19 NRC 497 (1984)

FAULT(S)

activity in vicinity of Clinch River; LBP-84-4, 19 NRC 288 (1984)

Copper Creek and Whiteoak Mountain, proximity of, to Clinch River Breeder Reactor plant; LBP-84-4, 19 NRC 288 (1984)

proximity of, to Byron site; LBP-84-2, 19 NRC 36 (1984)

See also Sandwich Fault, Seismicity

FEDERAL EMERGENCY MANAGEMENT AGENCY

responsibilities of, regarding emergency planning for nuclear power plants; DD-84-5, 19 NRC 542 (1984)

SUBJECT INDEX

- FINANCIAL CAPABILITIES**
of applicants to cover radioactive waste disposal, litigability of, in operating license proceedings; LBP-84-6, 19 NRC 393 (1984)
- FINDINGS**
necessary for issuance of Limited Work Authorization; LBP-84-4, 19 NRC 288 (1984)
- FINDINGS OF FACT**
proposed, new arguments in; LBP-84-10, 19 NRC 509 (1984)
- FIRE PROTECTION**
for auxiliary feedwater pump room at Diablo Canyon, deviation from licensing criteria for; ALAB-763, 19 NRC 571 (1984)
See also Pyrophoric Materials
- FISH**
kills from thermal discharges into SHNPP reservoir, adequacy of consideration of; LBP-84-15, 19 NRC 837 (1984)
- FLOODPLAIN MANAGEMENT**
requirements, applicability of, to NRC; LBP 84-6, 19 NRC 393 (1984)
- FUEL**
handling accidents at Clinch River, assessment of radioactive releases from; LBP-84-4, 19 NRC 288 (1984)
handling building at Diablo Canyon, adequacy of modeling of; ALAB-763, 19 NRC 571 (1984)
loading at Diablo Canyon, risk to public from; CLI-84-1, 19 NRC 1 (1984)
unirradiated, stored outside, risk to public from; LBP-84-16, 19 NRC 857 (1984)
See also Diesel Fuel, Spent Fuel
- FUEL, NEW**
criticality potential of; ALAB-765, 19 NRC 645 (1984)
handling and storage of, at the reactor site; ALAB-765, 19 NRC 645 (1984)
- FUNDING**
to cover costs of disposal of radioactive wastes; LBP-84-6, 19 NRC 393 (1984)
- GENERATOR**
See Steam Generator
- GEOLOGY**
of Clinch River setting, analysis of; LBP-84-4, 19 NRC 288 (1984)
- GROUNDFWATER**
under Byron plant, potential contamination of, by radionuclides; LBP-84-2, 19 NRC 36 (1984)
- HEALTH AND SAFETY**
effects of extension of construction completion date, need to consider; LBP-84-9, 19 NRC 497 (1984)
- HEALTH EFFECTS**
contentions, summary disposition of; LBP-84-7, 19 NRC 432 (1984)
issues which challenge BEIR estimates, precondition to hearing on; LBP-84-15, 19 NRC 837 (1984)
of low-level radiation, challenges to NRC assessments of; LBP-84-7, 19 NRC 432 (1984)
See also Cancer
- HEARING(S)**
elimination of the basis for, through withdrawal of all contentions; LBP-84-11, 19 NRC 533 (1984)
requirement for materials licenses; ALAB-765, 19 NRC 645 (1984)
- HEAT REMOVAL**
capacity of component cooling water system at Diablo Canyon, adequacy of; ALAB-763, 19 NRC 571 (1984)
systems at Clinch River, description of; LBP-84-4, 19 NRC 288 (1984)
See also Decay Heat
- HOUSEKEEPING**
at WNP-2, identification and correction of weaknesses in; DD-84-7, 19 NRC 899 (1984)
- INSPECTORS**
See Quality Assurance Inspectors
- INTERGRANULAR STRESS CORROSION CRACKING**
at Byron Station, means for mitigation of; LBP-84-2, 19 NRC 36 (1984)

SUBJECT INDEX

INTERVENORS

limitation on participation by, in Limited Work Authorization proceeding; ALAB-761, 19 NRC 487 (1984)

protection of emergency planning interests of; LBP-84-1, 19 NRC 29 (1984)

INTERVENTION

by an interested state; LBP-84-6, 19 NRC 393 (1984)

contention requirement for; LBP-84-6, 19 NRC 393 (1984)

late, concerning prematurity of operating license application, denial of; ALAB-758, 19 NRC 7 (1984)

late, newly acquired organizational status as justification for; LBP-84-17, 19 NRC 878 (1984)

late, showing necessary on other factors when good cause is not shown for; LBP-84-17, 19 NRC 878 (1984)

termination of, on basis of agreement between parties; LBP-84-15A, 19 NRC 852 (1984)

withdrawal of petition for; LBP-84-5, 19 NRC 391 (1984)

INVESTIGATIONS

conducted by Licensing Boards; LBP-84-3, 19 NRC 282 (1984)

JET IMPINGEMENT

effects on design and qualification of safety-related equipment and piping inside Diablo Canyon containment, adequacy of analysis of; ALAB-763, 19 NRC 571 (1984)

JURISDICTION

of Licensing Boards over Part 70 licenses; ALAB-765, 19 NRC 645 (1984); LBP-84-16, 19 NRC 857 (1984)

of Licensing Boards over Staff orders; LBP-84-16, 19 NRC 857 (1984)

of Licensing Boards relative to operating licenses; ALAB-758, 19 NRC 7 (1984)

JURISDICTION, APPELLATE

following Commission enforcement order conditionally suspending low-power license; ALAB-763, 19 NRC 571 (1984)

generally; ALAB-765, 19 NRC 645 (1984)

over cancelled units, termination of; ALAB-760, 19 NRC 26 (1984)

over Part 70 licenses; LBP-84-16, 19 NRC 857 (1984)

LICENSES

Part 70, Licensing Board jurisdiction over; LBP-84-16, 19 NRC 857 (1984)

Part 70, stay of effectiveness of amendment of; LBP-84-16, 19 NRC 857 (1984)

See also Materials License, Operating License(s)

LICENSING BOARD(S)

authority of, to call witnesses; LBP-84-7, 19 NRC 432 (1984)

authority to limit participation by intervenors; ALAB-761, 19 NRC 487 (1984)

investigation of quality assurance allegations, cause for; LBP-84-3, 19 NRC 282 (1984)

jurisdiction of, over Part 70 licenses; LBP-84-16, 19 NRC 857 (1984)

jurisdiction of, over Staff orders; LBP-84-16, 19 NRC 857 (1984)

jurisdiction of; ALAB-765, 19 NRC 645 (1984)

jurisdiction relative to operating licenses, scope of; ALAB-758, 19 NRC 7 (1984)

members, standards governing disqualification of; ALAB-759, 19 NRC 13 (1984)

responsibility for defining scope and type of proceedings before; ALAB-765, 19 NRC 645 (1984)

LIMITED WORK AUTHORIZATION

findings necessary for issuance of; LBP-84-4, 19 NRC 288 (1984)

proceedings, limitations on intervenor participation in; ALAB-761, 19 NRC 487 (1984)

MAINTENANCE

preventative, at WNP-2, adequacy of; DD-84-7, 19 NRC 899 (1984)

MANAGEMENT

audit ordered at Midland as a result of violation of construction permits; DD-84-2, 19 NRC 478 (1984)

of WNP-2 facility, allegations of deficiencies in; DD-84-7, 19 NRC 899 (1984)

MANAGEMENT CAPABILITY

operational record of Beaver Valley as basis for uncertainty as to; LBP-84-6, 19 NRC 393 (1984)

SUBJECT INDEX

- MATERIAL FALSE STATEMENT(S)**
 - factors relevant to determining the existence of; LBP-84-13, 19 NRC 659 (1984)
 - failure to report audit of quality assurance program as; DD-84-8, 19 NRC 924 (1984)
 - NRC enforcement policy for; DD-84-8, 19 NRC 924 (1984)
- MATERIALS CONTROL**
 - at Byron Station, adequacy of; LBP-84-2, 19 NRC 36 (1984)
 - at WNP-2, discrepancies in; DD-84-7, 19 NRC 899 (1984)
- MATERIALS LICENSE**
 - hearing requirements for; ALAB-765, 19 NRC 645 (1984)
 - notice requirement for; ALAB-765, 19 NRC 645 (1984)
 - under Part 70, need for utility to obtain; ALAB-765, 19 NRC 645 (1984)
- MEDICAL SERVICES**
 - adequacy of Byron emergency plans concerning; LBP-84-2, 19 NRC 36 (1984)
- MODELING**
 - of fuel handling building at Diablo Canyon, adequacy of; ALAB-763, 19 NRC 571 (1984)
 - of soil springs for Diablo Canyon auxiliary building, adequacy of; ALAB-763, 19 NRC 571 (1984)
- MONITORING**
 - criticality, of unirradiated fuel stored outside, exemption from requirement for; LBP-84-16, 19 NRC 857 (1984)
 - of leakage of coolant from primary to secondary system at Byron Station, means for; LBP-84-2, 19 NRC 36 (1984)
 - of radioactive emissions from Byron plant, adequacy of; LBP-84-2, 19 NRC 36 (1984)
 - of radionuclides near research reactor, agreement concerning; LBP-84-15A, 19 NRC 852 (1984)
 - steam generator tube integrity at Byron Station, means for; LBP-84-2, 19 NRC 36 (1984)
- MOTIONS**
 - late-filed, Part 70, admissibility of; LBP-84-16, 19 NRC 857 (1984)
- NEED FOR POWER**
 - challenge to regulation governing litigation of; LBP-84-6, 19 NRC 393 (1984)
- NONCOMPLIANCES**
 - at Byron Station, record of; LBP-84-2, 19 NRC 36 (1984)
- NONCONFORMANCES**
 - documentation of, at Comanche Peak; LBP-84-10, 19 NRC 509 (1984)
 - See also Deficiencies
- NOTICE**
 - requirement for materials licenses; ALAB-765, 19 NRC 645 (1984)
- NOTICE OF VIOLATION**
 - imposition of, for material false statement; DD-84-8, 19 NRC 924 (1984)
- NRC STAFF**
 - delegation of Licensing Board responsibilities to; LBP-84-2, 19 NRC 36 (1984)
 - obligation to inform Board and parties of Staff action; LBP-84-16, 19 NRC 857 (1984)
 - orders, Licensing Board jurisdiction over; LBP-84-16, 19 NRC 857 (1984)
 - post-hearing resolution of issues by; LBP-84-2, 19 NRC 36 (1984)
 - propriety of conduct of, in review of matters related to WNP-2 facility; DD-84-7, 19 NRC 899 (1984)
- NUCLEAR POWER PLANTS**
 - consideration of alternatives to; LBP-84-6, 19 NRC 393 (1984)
- NUCLEAR REACTOR REGULATION DIRECTOR**
 - responsibility of, regarding findings required as precondition to issuance of operating license; ALAB-758, 19 NRC 7 (1984)
- NUCLEAR REGULATORY COMMISSION**
 - applicability of floodplain management requirements; LBP-84-6, 19 NRC 393 (1984)
 - enforcement policy for material false statements; DD-84-8, 19 NRC 924 (1984)
 - rulemaking authority of; DD-84-6, 19 NRC 891 (1984)
- NUCLEAR STEAM SUPPLY SYSTEM**
 - at Diablo Canyon, verification of design of; ALAB-763, 19 NRC 571 (1984)
 - See also Steam Generators

SUBJECT INDEX

OPERATING LICENSE AMENDMENT

authorizing cracking, consolidation, and temporary storage of spent fuel assemblies in cask laydown area; LBP-84-14, 19 NRC 834 (1984)

OPERATING LICENSE PROCEEDINGS

application of res judicata and collateral estoppel in; ALAB-759, 19 NRC 13 (1984)
delay of, pending disposition of a case being presented to a State authority; LBP-84-6, 19 NRC 393 (1984)

OPERATING LICENSE(S)

applicant, character and competence of; LBP-84-13, 19 NRC 659 (1984)
application, degree of completion of reactor required before filing of; ALAB-762, 19 NRC 565 (1984)
application, denial of untimely petition concerning prematurity of application for; ALAB-758, 19 NRC 7 (1984)
construction quality necessary for grant of; DD-84-7, 19 NRC 899 (1984)
denial of, for failure to meet quality assurance obligations; LBP-84-2, 19 NRC 36 (1984)
responsibility for making findings required as precondition to issuance of; ALAB-758, 19 NRC 7 (1984)

OPINIONS

advisory, cause for Licensing Board issuance of; LBP-84-4, 19 NRC 788 (1984)
See also Decision, Orders

ORDERS

Staff, Licensing Board jurisdiction over; LBP-84-16, 19 NRC 857 (1984)
See also Protective Order, Show-Cause Order

PENALTIES, CIVIL

assessed against Byron Station applicant, amount of; LBP-84-2, 19 NRC 36 (1984)

PETITIONS

under 2.206, cause for Staff action on; DD-84-1, 19 NRC 471 (1984)

PIPE(S)

hanger inspection at Byron, adequacy of program for; LBP-84-2, 19 NRC 36 (1984)
large, at Clinch River, features for prevention of rupture of; LBP-84-4, 19 NRC 238 (1984)
support instability at Comanche Peak, issues that need to be considered regarding; LBP-84-10, 19 NRC 509 (1984)

PIPING

small-bore, at Diablo Canyon, design and analysis of; ALAB-763, 19 NRC 571 (1984)

PIPING SPANS

computer analysis of, at Diablo Canyon; ALAB-763, 19 NRC 571 (1984)

PITTING

of steam generator tubes, description of, and remedy for; LBP-84-2, 19 NRC 36 (1984)

PLUM RIVER FAULT

description of, in relation to Byron site; LBP-84-2, 19 NRC 36 (1984)

POWER

See Emergency Power Supply, Need for Power, Nuclear Power Plants

PRESSURIZED THERMAL SHOCK

at Beaver Valley, admissibility of contention concerning probability of; LBP-84-6, 19 NRC 393 (1984)

PRIVILEGE(S)

Court attitudes toward, generally; ALAB-764, 19 NRC 633 (1984)
First Amendment, factors balanced in determining to give recognition to; ALAB-764, 19 NRC 633 (1984)
Scholar's, validity of, in modern case law; ALAB-764, 19 NRC 633 (1984)

PROBABILISTIC RISK ASSESSMENT

application of, to severe-accident analysis for Byron plant; LBP-84-2, 19 NRC 36 (1984)

PROOF, BURDEN OF

on applicant; ALAB-763, 19 NRC 571 (1984)

SUBJECT INDEX

PROTECTIVE ORDER

Board assumption of obedience to; ALAB-764, 19 NRC 633 (1984)
cause for imposition of; ALAB-764, 19 NRC 633 (1984)

PYROPHORIC MATERIALS

in reactor pressure vessel head at TMI-2, risk to public from; DD-84-4, 19 NRC 535 (1984)

QUALIFICATIONS

of engineering, quality assurance and craft personnel at WNP-2, evaluation of; DD-84-7, 19 NRC 899 (1984)

QUALITY ASSURANCE

at Byron, ability and willingness of Applicant to maintain program for; LBP-84-2, 19 NRC 36 (1984)
construction, at South Texas Project, adequacy of; LBP-84-13, 19 NRC 659 (1984)
contentions, denial of untimely petition seeking litigation of, in emergency planning proceeding;
LBP-84-17, 19 NRC 878 (1984)
deficiencies, newspaper allegations of, as grounds for reopening the record; LBP-84-3, 19 NRC 282 (1984)
documents, need for consolidation of, into a manual; ALAB-763, 19 NRC 571 (1984)
for design, regulations applicable to; LBP-84-10, 19 NRC 509 (1984)
for design, terminology relative to deficiencies in; LBP-84-10, 19 NRC 509 (1984)
of design verification program for Diablo Canyon, adequacy of; ALAB-763, 19 NRC 571 (1984)
oversight of construction contractors at Byron; LBP-84-2, 19 NRC 36 (1984)
program at WNP-2 facility, adequacy of; DD-84-7, 19 NRC 899 (1984)
program for Clinch River Breeder Reactor, adequacy of; LBP-84-4, 19 NRC 288 (1984)
program for design of Diablo Canyon, identification of causes of failures in; ALAB-763, 19 NRC 571 (1984)
program, failure to report audit of, as material false statement; DD-84-8, 19 NRC 924 (1984)
requirements applicable to surveying; LBP-84-13, 19 NRC 659 (1984)
requirements, relationship of, to deficiency reports under 10 C.F.R. 50.55(e); LBP-84-13, 19 NRC 659 (1984)

QUALITY ASSURANCE INSPECTORS

at South Texas Project, harassment of; LBP-84-13, 19 NRC 659 (1984)

RAD

definition of; LBP-84-4, 19 NRC 288 (1984)

RADIATION

as low as reasonably achievable, regulation of industrial exposure to; LBP-84-2, 19 NRC 36 (1984)
effects of, on living systems; LBP-84-4, 19 NRC 288 (1984)
exposure, sources of activity leading to; LBP-84-2, 19 NRC 36 (1984)
hazard from new fuel; ALAB-765, 19 NRC 645 (1984)

RADIATION DOSES

cumulative, to residents of Beaver Valley area, adequacy of assessment of; LBP-84-6, 19 NRC 393 (1984)
due to normal operation of Clinch River Breeder Reactor, average annual; LBP-84-4, 19 NRC 288 (1984)

See also Doses

RADIATION, LOW-LEVEL

cancer risk from exposure to; LBP-84-2, 19 NRC 36 (1984)
challenges to NRC assessments of health effects of; LBP-84-7, 19 NRC 432 (1984)

RADIOACTIVE RELEASES

during an emergency, capability of Pilgrim licensee to estimate; DD-84-5, 19 NRC 542 (1984)
resulting from fuel handling accidents at Clinch River; LBP-84-4, 19 NRC 288 (1984)

See also Emissions

RADIOACTIVE WASTES

funding to cover costs of disposal of; LBP-84-6, 19 NRC 393 (1984)
low-level, from Beaver Valley, provision for isolation of; LBP-84-6, 19 NRC 393 (1984)

SUBJECT INDEX

RADIONUCLIDES

consideration of doses from, over millions of years; LBP-84-15, 19 NRC 837 (1984)
contamination of groundwater by; LBP-84-2, 19 NRC 36 (1984)
monitoring of, near research reactor, agreement concerning; LBP-84-15A, 19 NRC 852 (1984)

RADON

gas emissions, litigability of health effects of; LBP-84-6, 19 NRC 393 (1984)

REACTOR

pressurized water, at Byron Station, description of; LBP-84-2, 19 NRC 36 (1984)
scram systems at Byron, adequacy of; LBP-84-2, 19 NRC 36 (1984)

REACTOR CORE

meltdown, assessment of consequences of contamination of Byron groundwater system by;
LBP-84-2, 19 NRC 36 (1984)

REACTOR PRESSURE VESSEL

head at TMI-2, denial of request for postponement of lifting of; DD-84-4, 19 NRC 535 (1984)

REACTOR SHUTDOWN SYSTEMS

at Clinch River, description of; LBP-84-4, 19 NRC 288 (1984)

RECONSIDERATION

new arguments in motions for; LBP-84-10, 19 NRC 509 (1984)

RECORD(S)

criteria for reopening; LBP-84-13, 19 NRC 659 (1984)
deficiency, for construction at Comanche Peak, regulatory compliance of; LBP-84-8, 19 NRC 466
(1984)
newspaper allegations of quality assurance deficiencies as grounds for reopening; LBP-84-3, 19 NRC
282 (1984)
quality assurance, at WNP-2, problems with generation of; DD-84-7, 19 NRC 899 (1984)
reopening by applicant, standards for; LBP-84-10, 19 NRC 509 (1984)

REGULATIONS

applicable to quality assurance for design; LBP-84-10, 19 NRC 509 (1984)

REM

definition of; LBP-84-4, 19 NRC 288 (1984)

REPORTS

See Deficiency Reports

RES JUDICATA

application of, in NRC proceedings; ALAB-759, 19 NRC 13 (1984); LBP-84-2, 19 NRC 36 (1984)

RESTART PROCEEDING

for TMI-1, scope of; CLI-84-3, 19 NRC 555 (1984)

RICHMOND INSERTS

testing of, at Comanche Peak; LBP-84-10, 19 NRC 509 (1984)

RISK

estimates, cancer and genetic, rejection of contentions relating to; LBP-84-15, 19 NRC 837 (1984)
of cancer fatalities and genetic defects from normal operation of Clinch River Breeder Reactor;
LBP-84-4, 19 NRC 288 (1984)
of cancer from exposure to low levels of radiation; LBP-84-2, 19 NRC 36 (1984); LBP-84-7, 19
NRC 432 (1984)
See also Probabilistic Risk Assessment

RULEMAKING

initiation of; DD-84-6, 19 NRC 891 (1984)
institution of show-cause proceeding to consider issue that is the subject of; DD-84-6, 19 NRC 891
(1984)

RULES OF PRACTICE

admissibility of contentions opposing the laws of physics; ALAB-765, 19 NRC 645 (1984)
admissibility of late-filed Part 70 motions; LBP-84-16, 19 NRC 857 (1984)
appealability of final orders on motions related to Part 70 licenses; LBP-84-16, 19 NRC 857 (1984)
application of res judicata and collateral estoppel in licensing proceedings; LBP-84-2, 19 NRC 36
(1984)

SUBJECT INDEX

- assumption that protective orders will be obeyed; ALAB-764, 19 NRC 633 (1984)
- burden of proof on applicant; ALAB-763, 19 NRC 571 (1984)
- burden on proponent and opponent of motion for summary disposition; LBP-84-7, 19 NRC 432 (1984)
- cause for imposition of protective order; ALAB-764, 19 NRC 633 (1984)
- cause for Staff action on 2.206 petitions; DD-84-1, 19 NRC 471 (1984)
- circumstances in which an order to show cause is appropriate; DD-84-7, 19 NRC 899 (1984)
- consideration, in response to 2.206 petition, of issue that is the subject of rulemaking; DD-84-6, 19 NRC 891 (1984)
- criteria for reopening a record; LBP-84-3, 19 NRC 282 (1984); LBP-84-13, 19 NRC 659 (1984)
- factors evaluated for admission of late-filed contentions; LBP-84-1, 19 NRC 29 (1984); LBP-84-17, 19 NRC 878 (1984)
- initiation of show-cause proceedings; DD-84-1, 19 NRC 471 (1984)
- interlocutory appeal by nonparty to operating license proceeding; ALAB-764, 19 NRC 633 (1984)
- jurisdiction of Appeal Boards; ALAB-765, 19 NRC 645 (1984)
- jurisdiction of Licensing Boards over Part 70 licenses; ALAB-765, 19 NRC 645 (1984)
- Licensing Board investigation of quality assurance allegations; LBP-84-3, 19 NRC 282 (1984)
- new arguments in motions for reconsideration; LBP-84-10, 19 NRC 509 (1984)
- new arguments in proposed findings of fact; LBP-84-10, 19 NRC 509 (1984)
- newly acquired organizational status as justification for belated intervention; LBP-84-17, 19 NRC 878 (1984)
- responsibilities of parties concerning service of papers; LBP-84-16, 19 NRC 857 (1984)
- responsibilities of parties concerning significant new information; ALAB-765, 19 NRC 645 (1984)
- responsibilities of parties; ALAB-761, 19 NRC 487 (1984)
- responsibility for defining scope and type of a proceeding before a Licensing Board; ALAB-765, 19 NRC 645 (1984)
- showing necessary for Appeal Board to exercise its directed certification authority; ALAB-762, 19 NRC 565 (1984)
- showing necessary for Board issuance of a subpoena; ALAB-764, 19 NRC 633 (1984)
- showing necessary on other factors when good cause is not shown for late intervention; LBP-84-17, 19 NRC 878 (1984)
- specificity required of contentions; LBP-84-1, 19 NRC 29 (1984)
- standards for applicant to reopen the record; LBP-84-10, 19 NRC 509 (1984)
- stay of effectiveness of amendment of new fuel license; LBP-84-16, 19 NRC 857 (1984)
- summary disposition of health effects contentions; LBP-84-7, 19 NRC 432 (1984)
- untimely submission of contentions where good cause is shown; ALAB-765, 19 NRC 645 (1984)
- SAFE SHUTDOWN EARTHQUAKE**
 - concurrent with core compaction reactivity insertion at Clinch River, analysis of; LBP-84-4, 19 NRC 288 (1984)
- SAFETY**
 - at Clinch River, principal design features of importance to; LBP-84-4, 19 NRC 288 (1984)
 - commitment of Byron applicant to; LBP-84-2, 19 NRC 36 (1984)
 - See also Health and Safety
- SANDWICH FAULT**
 - description of, in relation to Byron site; LBP-84-2, 19 NRC 36 (1984)
- SECURITY PLAN**
 - for protection of unirradiated fuel stored outside, need for; LBP-84-16, 19 NRC 857 (1984)
- SEISMIC DESIGN**
 - of Byron plant, adequacy of; LBP-84-2, 19 NRC 36 (1984)
 - standard applied to Diablo Canyon, adequacy of; CLI-84-2, 19 NRC 3 (1984)
- SEISMICITY**
 - of Clinch River site, analysis of; LBP-84-4, 19 NRC 288 (1984)
 - See also Fault(s)
- SHOW-CAUSE ORDER**
 - appropriate circumstance for; DD-84-7, 19 NRC 899 (1984)

SUBJECT INDEX

SHOW-CAUSE PROCEEDINGS

- institution of, to consider issue that is the subject of rulemaking; DD-84-6, 19 NRC 891 (1984)
- institution of, to explore economic impacts of licensed activities; DD-84-1, 19 NRC 471 (1984)

SHUTDOWN

- See Reactor Shutdown Systems, Safe Shutdown Earthquake

SITE

- preparation activities, means for seeking early approval of; ALAB-761, 19 NRC 487 (1984)
- redress, participation in proceeding on; ALAB-761, 19 NRC 487 (1984)

SITE SUITABILITY SOURCE TERM

- calculation of, for Clinch River; LBP-84-4, 19 NRC 288 (1984)

SOIL SPRINGS

- for Diablo Canyon auxiliary building, adequacy of modeling of; ALAB-763, 19 NRC 571 (1984)

SOILS ANALYSES

- for buried diesel fuel tanks at Diablo Canyon, adequacy of; ALAB-763, 19 NRC 571 (1984)

SPENT FUEL

- cask laydown area, temporary storage of spent fuel assemblies in; LBP-84-14, 19 NRC 834 (1984)

SPENT FUEL POOL EXPANSION

- through pin storage; LBP-84-14, 19 NRC 834 (1984)

STANDBY SERVICE WATER SYSTEM

- at WNP-2, conformance of, with design control criteria; DD-84-7, 19 NRC 899 (1984)

STANDARDS

- representational, criteria for obtaining; LBP-84-6, 19 NRC 393 (1984)

STARTUP

- organization at WNP-2, adequacy of qualifications of; DD-84-7, 19 NRC 899 (1984)

STAY

- of effectiveness of amendment of new fuel license; LBP-84-16, 19 NRC 857 (1984)
- of fuel loading and pre-criticality testing at Diablo Canyon; CLI-84-1, 19 NRC 1 (1984)

STEAM GENERATOR TUBE(S)

- at Byron Station, degradation of; LBP-84-2, 19 NRC 36 (1984)
- damage from foreign objects left in generator shell; LBP-84-2, 19 NRC 36 (1984)
- rupture, uses of power-operated relief valve in depressurization in the event of; CLI-84-3, 19 NRC 555 (1984)
- wall thinning, description of, and remedy for; LBP-84-2, 19 NRC 36 (1984)

STEAM GENERATORS

- at Byron Station, ALARA as related to; LBP-84-2, 19 NRC 36 (1984)
- description of; LBP-84-2, 19 NRC 36 (1984)
- restriction of primary-to-secondary leakage in; CLI-84-3, 19 NRC 555 (1984)
- See also Nuclear Steam Supply System

STEEL REINFORCEMENT BARS

- missing from South Texas containment, allegations of; LBP-84-13, 19 NRC 659 (1984)

STRAIN GAGES

- application of, to predicting fault motion; LBP-84-2, 19 NRC 36 (1984)

SUBPOENA

- showing necessary for Board issuance of; ALAB-764, 19 NRC 633 (1984)

SUMMARY DISPOSITION

- burden on proponent and opponent of motion for; LBP-84-7, 19 NRC 432 (1984)
- departure from general principle of law on; LBP-84-15, 19 NRC 837 (1984)
- of health effects contentions; LBP-84-7, 19 NRC 432 (1984)

SURVEYING

- quality assurance requirements applicable to; LBP-84-13, 19 NRC 659 (1984)

TERMINATION

- of intervention, on basis of agreement between parties; LBP-84-15A, 19 NRC 852 (1984)
- of previously retained, limited appellate jurisdiction over cancelled units; ALAB-760, 19 NRC 26 (1984)

TEST

- to determine strength of concrete, description of; LBP-84-2, 19 NRC 36 (1984)

SUBJECT INDEX

TESTING

- hot system, at Diablo Canyon, authorization for and description of; CLI-84-2, 19 NRC 3 (1984)
- integrated leak rate, at LaSalle, allegations of defects in; DD-84-6, 19 NRC 891 (1984)
- precriticality, at Diablo Canyon, risk to public from; CLI-84-1, 19 NRC 1 (1984); CLI-84-2, 19 NRC 3 (1984)
- preoperational, at Byron Station, to prevent bubble collapse water hammer; LBP-84-2, 19 NRC 36 (1984)
- preoperational, at WNP-2, adequacy of procedures for; DD-84-7, 19 NRC 899 (1984)

THERMAL DISCHARGES

- from nuclear power plants, need to consider effects of; ALAB-759, 19 NRC 13 (1984)
- into SHNPP reservoir, adequacy of consideration of fish kills from; LBP-84-15, 19 NRC 837 (1984)

UPLIFTING

- of containment at Diablo Canyon, potential for; ALAB-763, 19 NRC 571 (1984)

VALVE

- power-operated relief, need for safety-grade classification of; CLI-84-3, 19 NRC 555 (1984)

VERIFICATION

- of ASME Code work at Zimmer, adequacy of means for; DD-84-3, 19 NRC 480 (1984)
- seismic and nonseismic programs at Diablo Canyon, adequacy of; ALAB-763, 19 NRC 571 (1984)

VIOLATION

- of Midland construction permits, audit of management performance ordered as a result of; DD-84-2, 19 NRC 478 (1984)

See also Notice of Violation

VOIDS

- in the South Texas Project reactor containment building; LBP-84-13, 19 NRC 659 (1984)

WAIVER

- of regulation governing litigation of need-for-power issue, denial of request for; LBP-84-6, 19 NRC 393 (1984)

WASTE DISPOSAL

- radioactive, economics of; LBP-84-6, 19 NRC 393 (1984)

WASTE STORAGE

- permanent, for high-level, radioactive, availability of; LBP-84-6, 19 NRC 393 (1984)

WASTES

See Radioactive Wastes

WATER

See Groundwater, Standby Service Water System

WATER HAMMER

- bubble collapse, in preheat steam generators at Byron Station, potential for; LBP-84-2, 19 NRC 36 (1984)

WEATHER

- adverse, adequacy of Byron plans for evacuation during; LBP-84-2, 19 NRC 36 (1984)
- adverse, estimation of evacuation traffic times during; LBP-84-2, 19 NRC 36 (1984)

WELD(S)

- inspections at Byron, adequacy of documentation of; LBP-84-2, 19 NRC 36 (1984)
- repair of, at Comanche Peak, by capping; LBP-84-10, 19 NRC 509 (1984)

See also Cadwelds

WITHDRAWAL

- of contentions, elimination of the basis for hearing through; LBP-84-11, 19 NRC 533 (1984)

WITNESSES

- Licensing Board authority to call; LBP-84-7, 19 NRC 432 (1984)

ZONE

- Sandwich Fault, proximity of, to Byron site; LBP-84-2, 19 NRC 36 (1984)
- See also Emergency Planning Zone

FACILITY INDEX

- BEAVER VALLEY POWER STATION, Unit 2; Docket No. 50-412 (ASLBP No. 83-490-04-OL)
DISMISSAL OF PROCEEDING; January 27, 1984; REPORT AND ORDER ON SPECIAL
PREHEARING CONFERENCE HELD PURSUANT TO 10 C.F.R. § 2.751a; LBP-84-5, 19
NRC 393 (1984)
- BYRON NUCLEAR POWER STATION, Units 1 and 2; Docket Nos. STN 50-454-OL, STN
50-455-OL (ASLBP No. 79-411-04-OL)
OPERATING LICENSE; January 13, 1984; INITIAL DECISION; LBP-84-2, 19 NRC 36 (1984)
- CLINCH RIVER BREEDER REACTOR PLANT; Docket No. 50-537-CP (ASLBP No. 75-291-12)
CONSTRUCTION PERMIT; January 20, 1984; MEMORANDUM OF FINDINGS; LBP-84-4,
19 NRC 288 (1984)
CONSTRUCTION PERMIT; February 29, 1984; MEMORANDUM AND ORDER; ALAB-761,
19 NRC 487 (1984)
- COBALT-60 STORAGE FACILITY; Docket No. 30-6931 (ASLBP No. 82-469-01-SP)
BYPRODUCT MATERIALS LICENSE RENEWAL; March 15, 1984; ORDER; LBP-84-15A, 19
NRC 852 (1984)
- COMANCHE PEAK STEAM ELECTRIC STATION, Units 1 and 2; Docket Nos. 50-445, 50-446
OPERATING LICENSE; January 30, 1984; MEMORANDUM; LBP-84-8, 19 NRC 466 (1984)
OPERATING LICENSE; February 8, 1984; MEMORANDUM AND ORDER; LBP-84-10, 19
NRC 509 (1984)
- DIABLO CANYON NUCLEAR POWER PLANT, Unit 1; Docket No. 50-275
OPERATING LICENSE SUSPENSION REQUEST; March 26, 1984; DIRECTOR'S DECISION
UNDER 10 C.F.R. § 2.206, DD-84-8, 19 NRC 924 (1984)
OPERATING LICENSE; January 25, 1984; MEMORANDUM AND ORDER; CL1-84-2, 19
NRC 3 (1984)
- DIABLO CANYON NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-275, 50-323
OPERATING LICENSE; January 16, 1984; ORDER; CL1-84-1, 19 NRC 1 (1984)
OPERATING LICENSE; March 20, 1984; DECISION; ALAB-763, 19 NRC 571 (1984)
- H.B. ROBINSON STEAM ELECTRIC PLANT, Unit 2; Docket No. 50-261-OLA (ASLBP No.
83-484-03-LA)
OPERATING LICENSE AMENDMENT; February 10, 1984; ORDER DISMISSING
PROCEEDING; LBP-84-11, 19 NRC 533 (1984)
- HARTSVILLE NUCLEAR PLANT, Units 1B and 2B; Docket Nos. STN 50-519, STN 50-521
CONSTRUCTION PERMIT; January 27, 1984; MEMORANDUM AND ORDER; ALA 5-760,
19 NRC 26 (1984)
- HOPE CREEK GENERATING STATION, Unit 1; Docket No. 50-354-OL
DISQUALIFICATION; January 25, 1984; MEMORANDUM AND ORDER; ALAB-759, 19
NRC 13 (1984)
- LASALLE COUNTY STATION, Units 1 and 2; Docket No. 50-373
IMMEDIATE ACTION REQUEST; March 16, 1984; DIRECTOR'S DECISION UNDER 10
C.F.R. § 2.206; DD-84-6, 19 NRC 891 (1984)
- LIMERICK GENERATING STATION, Units 1 and 2; Docket Nos. 50-352-OL, 50-353-OL
OPERATING LICENSE; March 16, 1984; MEMORANDUM AND ORDER; LBP-84-16, 19
NRC 857 (1984)
OPERATING LICENSE; March 30, 1984; MEMORANDUM AND ORDER; ALAB-765, 19
NRC 645 (1984)

FACILITY INDEX

- MAINE YANKEE ATOMIC POWER STATION, Docket No. 50-309-OLA (ASLBP No. 80-437-02-LA)
OPERATING LICENSE AMENDMENT; March 9, 1984; ORDER; LBP-84-14, 19 NRC 834 (1984)
- MIDLAND PLANT, Units 1 and 2; Docket Nos. 50-329, 50-330
CONSTRUCTION PERMIT; January 12, 1984; SUPPLEMENTAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-84-2, 19 NRC 478 (1984)
OPERATING LICENSE; March 30, 1984; MEMORANDUM AND ORDER; ALAB-764, 19 NRC 633 (1984)
- PERRY NUCLEAR POWER PLANT, Unit 1; Docket No. 50-440
REQUEST FOR IMMEDIATE ACTION; January 9, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-84-1, 19 NRC 471 (1984)
- PERRY NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-440-OL, 50-441-OL
OPERATING LICENSE; January 20, 1984; MEMORANDUM AND ORDER; LBP-84-3, 19 NRC 282 (1984)
- PILGRIM NUCLEAR POWER STATION; Docket No. 50-293
REQUEST FOR ACTION; February 27, 1984; INTERIM DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-84-5, 19 NRC 542 (1984)
- SALEM NUCLEAR GENERATING STATION, Unit 1; Docket No. 50-272-OLA
OPERATING LICENSE AMENDMENT; January 25, 1984; ORDER DISMISSING PROCEEDING; LBP-84-5, 19 NRC 391 (1984)
- SEABROOK STATION, Units 1 and 2; Docket Nos. 50-443-OL, 50-444-OL
OPERATING LICENSE; January 24, 1984; DECISION; ALAB-758, 19 NRC 7 (1984)
OPERATING LICENSE; March 16, 1984; MEMORANDUM AND ORDER; ALAB-762, 19 NRC 565 (1984)
- SHEARON HARRIS NUCLEAR PLANT, Units 1 and 2; Docket Nos. 50-400, 50-401 (ASLBP No. 82-468-01-OL)
OPERATING LICENSE; January 27, 1984; MEMORANDUM AND ORDER; LBP-84-7, 19 NRC 437 (1984)
OPERATING LICENSE; March 15, 1984; MEMORANDUM AND ORDER; LBP-84-15, 19 NRC 837 (1984)
- SOUTH TEXAS PROJECT, Units 1 and 2; Docket Nos. STN 50-498-OL, STN 50-499-OL (ASLBP No. 79-421-07-OL)
OPERATING LICENSE; March 14, 1984; PARTIAL INITIAL DECISION; LBP-84-13, 19 NRC 659 (1984)
- THREE MILE ISLAND NUCLEAR STATION, Unit 1; Docket No. 50-289-SP
SPECIAL PROCEEDING; March 28, 1984; MEMORANDUM AND ORDER; CLI-84-3, 19 NRC 555 (1984)
- THREE MILE ISLAND NUCLEAR STATION, Unit 2; Docket No. 50-320
SPECIAL PROCEEDING; February 17, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-84-4, 19 NRC 535 (1984)
- TRIGA-TYPE RESEARCH REACTOR; Docket No. 50-170 (ASLBP No. 81-451-01-LA)
FACILITY LICENSE RENEWAL; March 15, 1984; ORDER; LBP-84-15A, 19 NRC 852 (1984)
- WILLIAM H. ZIMMER NUCLEAR POWER STATION, Unit 1; Docket No. 50-358
REQUEST FOR ACTION; January 13, 1984; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-84-3, 19 NRC 480 (1984)
- WGLF CREEK GENERATING STATION, Unit 1; Docket No. 50-482 (ASLBP No. 81-453-03-OL)
EMERGENCY PLANNING; January 5, 1984; MEMORANDUM AND ORDER; LBP-84-1, 19 NRC 29 (1984)
OPERATING LICENSE; March 26, 1984; MEMORANDUM AND ORDER; LBP-84-17, 19 NRC 878 (1984)
- WPPSS NUCLEAR PROJECT NO. 1; Docket No. 50-460-CPA (ASLBP No. 83-485-02-CPA)
CONSTRUCTION PERMIT AMENDMENT; February 1, 1984; MEMORANDUM AND ORDER; LBP-84-9, 19 NRC 497 (1984)

FACILITY INDEX

WPPSS NUCLEAR PROJECT NO. 2; Docket No. 50-397
REQUEST FOR SHOW-CAUSE PROCEEDING; March 19, 1984; DIRECTOR'S DECISION
UNDER 10 C.F.R. § 2.206, DD-84-7, 19 NRC 899 (1984)