

NUREG-0750  
Vol. 41  
Index 2

# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January - June 1995



U.S. NUCLEAR REGULATORY COMMISSION

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# INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

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**U.S. NUCLEAR REGULATORY COMMISSION**

Prepared by the  
Division of Freedom of Information and Publications Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(301/415-6844)

## Foreword

Digests and indexes for issuances of the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM) 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 Board Panel (LBP), the Administrative Law Judge (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM).

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 alpha-numerical 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**

The 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.

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- CLI-95-1 CURATORS OF THE UNIVERSITY OF MISSOURI, Docket Nos. 70-00270-MLA, 30-02278-MLA (TRUMP-S Project) (Byproduct License No. 24-00513-32, Special Nuclear Materials License No. SNM-247); MATERIALS LICENSE AMENDMENT; February 28, 1995; MEMORANDUM AND ORDER
- A The Commission considers appeals from both the Initial Decision and a Reconsideration Order issued by the Presiding Officer in this Subpart L proceeding involving two materials license amendment applications filed by the University of Missouri. In those two orders, the Presiding Officer concluded that the University's possession and use of the materials at issue were consistent with the public health and safety, did not harm the common defense and security, and therefore satisfied the requirements of the AEA. However, in order to decrease further the risks associated with such possession and use, the Presiding Officer imposed certain additional safety conditions on the Licensee.
- B The University appealed to the Commission the Presiding Officer's imposition of these additional conditions. The intervenors appealed the Presiding Officer's rulings that the license amendments satisfied the requirements of the AEA; questioned his authority to issue the order on reconsideration; challenged numerous of his procedural rulings; and appealed his decision to exclude three of their proffered areas of concern.
- C For the most part, the Commission reaches the same conclusions as the Presiding Officer, but in some instances follows a line of reasoning different from his. The Commission affirms LBP-91-31, 34 NRC 29 (1991), and LBP-91-34, 34 NRC 159 (1991) with certain modifications, and thereby approves the University's license amendment applications, subject to certain conditions. More specifically, the Commission concludes that the Presiding Officer had jurisdiction to issue his order on reconsideration; affirms his conclusions regarding all procedural issues raised on appeal as well as his decision to exclude three areas of concern; concludes that the risk of dispersion of radioactive material from the TRUMP-S experiments is acceptably small; and both modifies and supplements the fire safety conditions that the Presiding Officer imposed upon the University.
- D A presiding officer has jurisdiction to consider a timely motion for reconsideration filed after the issuance of an initial decision but before the timely filing of appeals.
- E For the Commission to grant a materials license or license amendment, it must find that (1) the applicant's proposed equipment and facilities are adequate to protect health and minimize danger to life or property; and (2) the applicant is qualified by training and experience to use the material for the purpose requested in such a manner as to protect health and minimize danger to life or property and to comply with the Commission's regulations. The test for the grant or denial of such a license or amendment is not simply whether there is a deficiency or omission in the application.
- F A plainly deficient application calls into question an applicant's competence and bona fides — matters that certainly pertain to the question whether to approve the application.
- G NUREGs and Regulatory Guides, by their very nature, serve merely as guidance and cannot prescribe requirements. Although conformance with regulatory guides will likely result in compliance with specific regulatory requirements, nonconformance with such guides does not equate to noncompliance with the regulations.
- H The Commission does not require that proposed safety procedures to protect health and minimize danger to life or property be included in a materials license amendment application if they have already been submitted to the Commission in previous applications associated with the same NRC license. Sections 70.21(a)(3) and 30.32(a) of the Commission's regulations expressly permit an applicant to incorporate

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by reference any information contained in previous applications, statements, or reports filed with the Commission.

- I A rule has retroactive effect if an act lawful at the time it was done is rendered unlawful and the actor called to account for a completed, now-condemned deed in the halls of justice. Although the issue of "retroactivity" generally arises in situations where the government attempts to apply a statute or regulation prior to its enactment date or promulgation date, the issue is logically just as relevant to situations in which the government or a party attempts to apply a new regulation to events that transpired prior to the regulation's effective date.
- J The Commission did not intend for 10 C.F.R. §§ 30.32(i) and 70.22(i) to be applied retroactively so as to require the rejection of previously filed applications that did not contain the newly required emergency plan information.
- K A regulation should not be applied retroactively if the agency indicates a contrary intent.
- L The rule of statutory construction that a court is to apply the law in effect at the time it renders its decision does not alter the well-settled presumption against application of the class of new statutes that would have genuinely "retroactive" effect.
- M The Commission may ignore arguments inadequately briefed on appeal.
- N The Commission's regulations and practice do not preclude an applicant from submitting post-application affidavits into the record of a materials licensing proceeding. Such affidavits fall within the types of documents that the Presiding Officer has the discretion to allow into the record pursuant to section 2.1233(d), viz., "additional documentary data, informational material, or other written evidence." The Commission's practice of permitting the licensee to file such supplemental supporting evidence in a Subpart G proceeding applies equally well to a Subpart L proceeding.
- O Affidavits submitted during a hearing are explanatory material offered to aid in the understanding of the underlying applications; they do not constitute amendments to the applications.
- P The Presiding Officer in a Subpart L proceeding has broad discretion to determine the point at which the intervenors have been accorded sufficient opportunity to respond to all issues of importance raised by the licensee. If the Presiding Officer needs information to compile an adequate record, he may obtain it by posing questions pursuant to section 2.1233(a).
- Q The Commission's intent in promulgating Subpart L was to decrease the cost and delay for the parties and the Commission and to empower presiding officers to manage and control the parties' written submissions.
- R Subpart L does not accord intervenors the right to speak last regarding the issues in a materials license proceeding. Section 2.1233(a) of Subpart L expressly accords the Presiding Officer the discretion both to determine the sequence in which the parties present their arguments, documentary data, informational material, and other supporting written evidence, and to offer individual parties the opportunity to provide further data, material, and evidence in response to the Presiding Officer's questions.
- S A Subpart L proceeding satisfies the Atomic Energy Act's requirement for an agency hearing.
- T Section 7(c) of the Administrative Procedure Act does not apply to informal hearings conducted pursuant to Subpart L. Instead, the intervenors are entitled only to some sort of procedures for notice, comment, and a statement of reasons for the agency action.
- U Generalized health, safety, and environmental concerns do not rise to the level of liberty or property interests that are protected by the due process clause.
- V The parties to a Subpart L proceeding have no right to require a formal hearing. Rather, the Commission alone has the authority to require such a hearing. 10 C.F.R. § 2.1209(k). Under Subpart L's procedures, the Commission will generally exercise this authority only in situations where the Presiding Officer requests permission to conduct a formal adjudication using the rules of Subpart G. However, Subpart L contemplates that a presiding officer would only rarely request permission to conduct a formal adjudication.
- W Appeals lie only from unfavorable actions by the Presiding Officer, not from dictum in an initial decision with which the party disagrees but which has no operative effect.
- X In promulgating Subpart L, the Commission contemplated that the Presiding Officer would base his decision on a written record. Consequently, the Commission accorded the Presiding Officer wide discretion to decide whether oral presentations are necessary to create an adequate record. 10 C.F.R. § 2.1235(a). The

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Commission anticipated that, in the vast majority of situations, the Presiding Officer would not allow oral presentations.

- Y** Parties have no fundamental right to cross-examination even in a formal Subpart G proceeding. The Commission has made clear that, in a Subpart L proceeding, the responsibility for the examination of all witnesses rests with the Presiding Officer, not with the parties.
- Z** As a general matter, the Commission's licensing boards and presiding officers have no authority to direct the Staff in the performance of its safety reviews.
- AA** Because the licensee rather than the Staff bears the burden of proof in a licensing proceeding, the adequacy of Staff's safety review is, in the final analysis, not determinative of whether the application should be approved. Consequently, it would be pointless for the presiding officer to rule upon the adequacy of Staff's review.
- BB** The Commission itself has the authority to vacate licensing actions or ask for further Staff review, and has exercised that authority on appropriate occasions.
- CC** The NRC Staff has no obligation either to provide an explanation of its determination to approve a materials license amendment application or to make findings of fact in support of that determination.
- DD** The NRC Staff is not required to prepare a safety evaluation report prior to approving a materials license amendment application.
- EE** Although the NRC Staff must prepare an environmental impact statement (EIS) addressing any major action taken by the Commission that may significantly affect the quality of the human environment (42 U.S.C. § 4332(2)(C) (1988); 10 C.F.R. Part 51), neither NEPA nor the Commission's regulations require the Staff to prepare an EIS if the federal action's effect on the environment is not significant.
- FF** Although an argument that a regulatory exemption contravenes NEPA constitutes a prohibited collateral attack on the regulation at issue, a party to a Subpart L proceeding may file a petition for waiver of the bar on collateral attacks against the Commission's regulations (10 C.F.R. § 2.1239(b)).
- GG** The Commission is not a general fire safety or occupational health agency. Its responsibility is directed to the hazards associated with nuclear materials rather than to all questions of fire safety at licensed facilities.
- HH** The Commission's Subpart L procedural regulations impose upon the intervenors the burden of showing that an area of concern is germane to the subject matter of the proceeding (10 C.F.R. § 2.1205(g)), i.e., it must fall within the range of matters that are properly subject to challenge in a proceeding.
- II** An intervenor arguing that an activity would be "inimical to the common defense and security" is not limited to arguing that the project would contravene a particular regulatory guidance, regulation, statute, or treaty. An intervenor is not entitled, however, to litigate this area of concern unless the specific "common defense and security" risk asserted is reasonably related to, and would arise as a direct result of, the specific license amendments that the applicant asks the Commission to approve.
- JJ** Sections 30.35(a) and 70.25(a) of the Commission's regulations generally require a materials license applicant to submit a decommissioning funding plan if the amount of unsealed byproduct material or unsealed special nuclear material to be licensed exceeds certain levels. However, sections 30.35(c)(2) and 70.25(c)(2) provide specific exceptions to the requirements of sections 30.35(a) and 70.25(a) for any holder of a license issued on or before July 27, 1990. Such a licensee has a choice of either (1) filing a decommissioning plan on or before July 27, 1990, or (2) filing a Certification of Financial Assurance on or before that date and then filing a decommissioning funding plan in its next license renewal application.
- KK** If a materials licensee is a governmental entity, then sections 30.35(f)(4) and 70.25(f)(4) dictate the terms of its decommissioning Certification of Financial Assurance. Both of these sections state that financial assurance for decommissioning may be provided, "[i]n the case of . . . State . . . government licensees, [by] a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in paragraph (d) of this section, and indicating that funds for decommissioning will be obtained when necessary." The Commission expressly intended that this provision apply to state universities.
- LL** The following technical issues are discussed: Accident dose estimates; Americium; Curie content (disclosure of); Emergency plan (sufficiency); Emergency Planning and Community Right-to-Know Act; Emergency procedures; Emergency support operations; Entrapment of radionuclides; Financial qualifications (decommissioning); Fire detection measures; Fire protection measures; Fire suppression measures; Hazardous chemicals; NUREG-1140; NUREG/CR-5055; Occupational radiation exposures; Projected occu-

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pational doses; Plutonium; Plutonium processing and fuel fabrication plant; Qualifications of licensee's staff; Radioactive waste storage; Radiological monitoring; Radiological releases; Reactor control room staffing; Regulatory Guide 1.145; Regulatory Guide 10.3; Regulatory Guide 10.5; Regulatory Guide 2.6; Regulatory Guide 3.66; Release of radioactive materials to unrestricted area; Requirement to describe curie content of materials in SNM license amendment application; Requirement to describe weight content of materials in SNM license amendment application; Risk of dispersion of radioactive materials; Safety standards; Waste disposal; "TRU" waste.

CLI-95-2 SEQUOYAH FUELS CORPORATION, Docket No. 40-08027-MLA (Source Material License No. SUB-1010); MATERIALS LICENSE AMENDMENT; March 9, 1995; MEMORANDUM AND ORDER

A The Commission considers the appeal of a licensing board decision, LBP-93-25, 38 NRC 304 (1993), which permitted the Sequoyah Fuels Corporation (SFC) to withdraw its license renewal application, and terminated the administrative proceeding in progress on that application. The Commission concludes that SFC did not require a license renewal to continue limited and previously authorized decommissioning-oriented activities. Accordingly, the Commission denies the appeal and affirms the licensing board's order.

B The Presiding Officer's function in a license renewal proceeding is to decide whether renewal is appropriate and, if so, to determine what activities can continue in the renewal term.

C Pursuant to the former 10 C.F.R. § 40.42(e) (1994), a source material license may remain automatically in effect beyond its expiration date to allow a licensee to continue decommissioning and security activities authorized under the license. Section 40.42(e) has been superseded by a new automatic license extension provision, 10 C.F.R. § 40.42(c), which became effective in August 1994.

D The automatic license extension provision under 10 C.F.R. § 40.42(c) may extend a license regardless of the nature of the source material remaining on site.

E The "necessary" provision (which appears in both the former section 40.42(e) and the new section 40.42(c)) simply means that the limited regulatory license extension comes into play only when decommissioning cannot be completed prior to the license's expiration date.

F The automatic license extension provision grants the licensee no sweeping powers, but permits only limited activities related to decommissioning and to control of entry to restricted areas. Such activities also must have been approved under the licensee's license. To implement an activity not previously authorized by license, and thus not previously subject to challenge, the licensee must first obtain a license amendment.

G Licensees need only submit the final radiological survey showing that the site or area is suitable for release in accordance with NRC regulations after decommissioning has been completed.

H To make a serious case for conditions, intervenors reasonably can be held to an obligation to offer some indication of their objective. The proponent of litigation bears the burden of explaining which direction the litigation will take.

CLI-95-3 DR. JAMES E. BAUER (Order Prohibiting Involvement in NRC-Licensed Activities), Docket No. IA-94-011; ENFORCEMENT ACTION; April 5, 1995; MEMORANDUM AND ORDER

A The Commission denies a petition filed by Dr. James E. Bauer seeking interlocutory Commission review of the Atomic Safety and Licensing Board's December 9, 1994 Memorandum and Order, LBP-94-40, 40 NRC 323 (1994). That order denied Dr. Bauer's request to eliminate certain of the bases upon which the Staff relied in its May 10, 1994 enforcement order imposing several restrictions on Dr. Bauer.

B Interlocutory review of Atomic Safety and Licensing Board decisions is disfavored.

C The standards set out in 10 C.F.R. § 2.786(g)(1) and (2) — a showing of either "irreparable impact" or a "pervasive or unusual" effect on a proceeding's "basic structure" — reflect the limited circumstances when interlocutory review may be appropriate.

D A legal error, standing alone, does not alter the basic structure of an ongoing proceeding and therefore does not justify interlocutory review. Such errors can be raised on appeal after a final licensing board decision.

CLI-95-4 BABCOCK AND WILCOX COMPANY (Pennsylvania Nuclear Service Operations, Parks Township, Pennsylvania), Docket No. 70-364-ML-Ren; MATERIALS LICENSE RENEWAL; April 26, 1995; ORDER

A Intervenors filed a Petition for Review of the Presiding Officer's Initial Decision (LBP-95-1, 41 NRC 1 (1995)) addressing the application of Babcock & Wilcox for a renewal of its Special Nuclear Materials License No. SNM-414 for its facility in Parks Township, Pennsylvania. The Commission concludes

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that the Petition for Review fails to raise any substantial question justifying Commission review as required under the agency's controlling procedural regulations. The Commission therefore denies the Intervenor's Petition for Review.

- CLI-95-5 GEORGIA POWER COMPANY, et al. (Hatch Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-321, 50-366, 50-424, 50-425 (10 C.F.R. § 2.206) OPERATING LICENSE AMENDMENT; May 11, 1995 (Re-served May 12, 1995); MEMORANDUM
- A The Commission clarifies that nothing in its earlier decision, CLI-93-15, 38 NRC 1 (1993), purported to prohibit the Staff from taking further action on the pending Vogtle and Hatch transfer amendments. In CLI-93-15, the Commission vacated a Partial Director's Decision under 10 C.F.R. § 2.206 and instructed the Staff to defer resolving the section 2.206 petition pending the outcome of the Vogtle transfer proceeding.
- CLI-95-6 KENNETH G. PIERCE (Shorewood, Illinois), Docket No. 55-30662-EA (IA 94-007); ENFORCEMENT ACTION; June 1, 1995; MEMORANDUM AND ORDER
- A The NRC Staff sought Commission review of the Initial Decision on the ground that the Licensing Board made "clearly erroneous" factual findings. The Commission denied Staff's petition for review.
- B Among the factors we consider in exercising our discretion to grant or deny review of a licensing board initial decision is the existence of a substantial question whether a licensing board finding of material fact is "clearly erroneous."
- C The Staff's petition does not show that the Board's own view of the evidence was "clearly erroneous" — i.e., that its findings were not even plausible in light of the record viewed in its entirety. This is fatal to a petition for review resting solely on the "clearly erroneous" argument.
- CLI-95-7 LOUISIANA ENERGY SERVICES (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; June 8, 1995; ORDER
- A The Commission denies a petition filed by Citizens Against Nuclear Trash (CANT) seeking interlocutory Commission review of the Atomic Safety and Licensing Board's March 2, 1995 Memorandum and Order (unpublished). That order denied CANT's petition for waiver of certain regulations contained in 10 C.F.R. Part 61 that pertain to land disposal of waste.
- B Interlocutory review of Atomic Safety and Licensing Board decisions is disfavored unless a party can show that the licensing board's decision threatens "irreparable impact" or has a "pervasive or unusual" effect on the proceeding's basic structure.
- C Licensing board rulings denying waiver requests pursuant to 10 C.F.R. § 2.758, which are interlocutory, are not considered final for purposes of appeal.
- CLI-95-8 CURATORS OF THE UNIVERSITY OF MISSOURI, Docket Nos. 70-00270, 30-02278-MLA (TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); MATERIALS LICENSE AMENDMENT; June 22, 1995; MEMORANDUM AND ORDER (Petitions for Reconsideration)
- A The Commission grants a petition for reconsideration of CLI-95-1, 41 NRC 71 (1995), in which the University of Missouri challenges one of the conditions imposed by the Commission. The Commission also denies a second petition for reconsideration of CLI-95-1, in which the Intervenor challenge a number of technical and legal underpinnings of that order.
- B The fact that the Commission's radiation-protection mission requires it to consider questions of fire safety does not convert the Commission into the direct enforcer of local codes, OSHA regulations, or national standards on fire safety, occupational safety, and building safety.
- C Federal restrictions on the University's publication of the methodology and results of the TRUMP-S experiments, including a requirement that it receive security clearance from the Department of Energy if the University wishes to publish such information, constitutes an intervening step outside the control of the NRC and the University that separates the experiments' results from the proliferation feared by the Intervenor.
- D While the Commission by no means encourages defective applications, it also does not take the position that an application, however minimally flawed, must be rejected altogether, and may not be modified or improved as NRC review goes forward. Such a position would be incompatible with the dynamic licensing process followed in Commission licensing proceedings.

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that the Petition for Review fails to raise any substantial question justifying Commission review as required under the agency's controlling procedural regulations. The Commission therefore denies the Intervenor's Petition for Review.

CLI-95-5 GEORGIA POWER COMPANY, et al. (Hatch Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1 and 2). Docket Nos. 50-321, 50-366, 50-424, 50-425 (10 C.F.R. § 2.206); OPERATING LICENSE AMENDMENT; May 11, 1995 (Re-served May 12, 1995); MEMORANDUM

A The Commission clarifies that nothing in its earlier decision, CLI-93-15, 38 NRC 1 (1993), purported to prohibit the Staff from taking further action on the pending Vogtle and Hatch transfer amendments. In CLI-93-15, the Commission vacated a Partial Director's Decision under 10 C.F.R. § 2.206 and instructed the Staff to defer resolving the section 2.206 petition pending the outcome of the Vogtle transfer proceeding.

CLI-95-6 KENNETH G. PIERCE (Shorewood, Illinois). Docket No. 55-30662-EA (IA 94-007); ENFORCEMENT ACTION; June 1, 1995; MEMORANDUM AND ORDER

A The NRC Staff sought Commission review of the Initial Decision on the ground that the Licensing Board made "clearly erroneous" factual findings. The Commission denied Staff's petition for review.

B Among the factors we consider in exercising our discretion to grant or deny review of a licensing board initial decision is the existence of a substantial question whether a licensing board finding of material fact is "clearly erroneous."

C The Staff's petition does not show that the Board's own view of the evidence was "clearly erroneous" — i.e., that its findings were not even plausible in light of the record viewed in its entirety. This is fatal to a petition for review resting solely on the "clearly erroneous" argument.

CLI-95-7 LOUISIANA ENERGY SERVICES (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; June 8, 1995; ORDER

A The Commission denies a petition filed by Citizens Against Nuclear Trash (CANT) seeking interlocutory Commission review of the Atomic Safety and Licensing Board's March 2, 1995 Memorandum and Order (unpublished). That order denied CANT's petition for waiver of certain regulations contained in 10 C.F.R. Part 61 that pertain to land disposal of waste.

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C Licensing board rulings denying waiver requests pursuant to 10 C.F.R. § 2.758, which are interlocutory, are not considered final for purposes of appeal.

CLI-95-8 CURATORS OF THE UNIVERSITY OF MISSOURI. Docket Nos. 70-00270, 30-02278-MLA (TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); MATERIALS LICENSE AMENDMENT; June 22, 1995; MEMORANDUM AND ORDER (Petitions for Reconsideration)

A The Commission grants a petition for reconsideration of CLI-95-1, 41 NRC 71 (1995), in which the University of Missouri challenges one of the conditions imposed by the Commission. The Commission also denies a second petition for reconsideration of CLI-95-1, in which the Intervenor's challenge a number of technical and legal underpinnings of that order.

B The fact that the Commission's radiation-protection mission requires it to consider questions of fire safety does not convert the Commission into the direct enforcer of local codes, OSHA regulations, or national standards on fire safety, occupational safety, and building safety.

C Federal restrictions on the University's publication of the methodology and results of the TRUMP-S experiments, including a requirement that it receive security clearance from the Department of Energy if the University wishes to publish such information, constitutes an intervening step outside the control of the NRC and the University that separates the experiments' results from the proliferation feared by the Intervenor's.

D While the Commission by no means encourages defective applications, it also does not take the position that an application, however minimally flawed, must be rejected altogether, and may not be modified or improved as NRC review goes forward. Such a position would be incompatible with the dynamic licensing process followed in Commission licensing proceedings.

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- E Although the Commission expects its Staff to consider thoroughly all its licensing decisions, the issue for decision in adjudications is not whether the Staff performed this duty well, but instead whether the license application raises health and safety concerns.
- F The Commission's regulations categorically exclude from NEPA review all amendments for the use of radioactive materials for research and development. The purpose of an environmental report is to inform the Staff's preparation of an Environmental Assessment (EA) and, where appropriate, an Environmental Impact Statement (EIS). Where Staff is categorically excused from preparing an EA or EIS, a licensee need not submit an environmental report.
- G When determining issues of public health and safety, the Commission has the discretion to use the best technical guidance available, including any pertinent NUREGs and Regulatory Guides, as long as they are germane to the issues then pending before the Commission. However, the Commission's decision to look to such documents for technical guidance in no way contradicts the Commission's rulings that NUREGs and Regulatory Guides are advisory by nature and do not themselves impose legal requirements on either the Commission or its licensees.
- H A licensee is free either to rely on NUREGs and Regulatory Guides or to take alternative approaches to meet its legal requirements (as long as those approaches have the approval of the Commission or NRC Staff).
- I The fact that the emergency planning regulations had not yet gone into effect when the University filed its applications did not preclude the Commission from seeking technical guidance from a NUREG that provided the scientific foundation for those regulations.
- J The Commission is free to consider a licensee's general emergency procedures when resolving risk issues, regardless of the fact that the Commission's regulations do not require the licensee to submit those emergency procedures as part of an application.
- K The following technical issues are discussed: Radiation detection equipment; Evacuation plan; Dose and dispersion calculations; Fire safety issues; Emergency plans; Emergency procedures; Transuranic (TRU) material, storage of; Dispersion; Accident dose estimates; NUREG-1140; Regulatory Guide 1.145.
- CLI-95-9 GEORGIA POWER COMPANY, et al. (Vogtle Electric Generating Plant, Units 1 and 2), Docket Nos. 50-424-OLA-3, 50-425-OLA-3; OPERATING LICENSE AMENDMENT; June 22, 1995; ORDER
- A The Commission denies Georgia Power Company's motion that in effect requests the Commission to stay indefinitely inquiries being conducted by the NRC Office of Investigation.
- B It is not unusual in our practice for an adjudicatory proceeding and an OI investigation on the same general subject matter to proceed simultaneously, even where issues may overlap.
- C Despite this practice, the Commission has been willing to stay a parallel proceeding if a party shows substantial prejudice.

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- LBP-95-1 BABCOCK AND WILCOX COMPANY (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), Docket No. 70-364-ML-Ren (ASLBP No. 94-687-01-ML-Ren) (Materials License No. SNM-414); MATERIALS LICENSE RENEWAL; January 3, 1995; INITIAL DECISION (License Renewal)
- LBP-95-2 HYDRO RESOURCES, INC. (12750 Merit Drive, Suite 1210 LB12, Dallas, TX 75251), Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); MATERIALS LICENSE; January 9, 1995; MEMORANDUM AND ORDER (Setting Schedule for Filings)
- A Subpart L, by its own language, demands precision from the outset of both the applicant and the petitioners. The initial petition must set forth standing arguments and areas of concern and is extremely important because it shapes the course of the proceeding.
- B Under the provisions of 10 C.F.R. § 2.1209 (1994) and in the interest of fairness to all potential parties, the Presiding Officer in a Subpart L informal proceeding established a new schedule for filing amended petitions for hearing and initial answers by the Applicant and the Staff.
- C While the NRC has for years recognized a unique relationship with Native American peoples and considered this special status in adjudicative decisions and while that status is not of itself sufficient foundation for ignoring the Commission's rules, every precaution should be taken to ensure that Native Americans are not excluded from the proceeding simply because of ignorance of the ingredients of a legally complete petition to intervene, citing, Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, 10 NRC 1, 10 (1979).
- LBP-95-3 ADVANCED MEDICAL SYSTEMS, INC. (Cleveland, Ohio), Docket No. 30-16055-ML-Ren (ASLBP No. 95-707-02-ML-Ren) (Source Material License No. 34-19089-01); MATERIALS LICENSE RENEWAL; March 13, 1995; MEMORANDUM AND ORDER
- LBP-95-4 KEITH G. PIERCE (Shorewood, Illinois), Docket Nos. 55-30662-EA, IA-94-007 (ASLBP No. 94-694-05-EA) (Re: Prohibition of Participation in Licensed Activities); ENFORCEMENT ACTION; March 27, 1995; INITIAL DECISION (Vacating Staff Order)
- A The Licensing Board vacated a Staff order that had barred the defendant from working as a reactor operator. It held that plant procedures were ambiguous and that a defendant who had made a reasonable interpretation of those procedures should not be found in violation of those procedures. It also held, after reexamining factual evidence in light of its view of procedural ambiguity, that there had been no lying to or concealment of facts from the NRC.
- B When a violation of ambiguous plant procedures is alleged, it is appropriate to receive evidence from plant operators in order to determine how those procedures were interpreted by them. Likewise, it is appropriate to interpret the procedures in light of company actions in cases of alleged violations of the same procedures, as reflected in official records. It also is appropriate to examine training given to plant operators in the meaning of the procedures.
- C It is not appropriate to sustain an enforcement action in which the operator did not act willfully because he reasonably believed he had complied with plant procedures.
- D When a person is charged with improperly stating under oath that he had failed to remember facts about a meeting or conversation, it is important to examine precisely what that person was doing at the time and how strong others' memories are before concluding that he had lied.
- E A person may not be convicted of a conspiracy to conceal facts from the NRC unless he had a duty to reveal those facts or that he entered into an agreement to conceal facts from the NRC. When a station operator reassures trainees that they may keep a certain matter within the control room, it is not appropriate



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to hold a reactor operator responsible for having agreed to a continuing conspiracy to conceal information just because he remained silent while the reassurance was taking place.

F Civil conspiracy requires an agreement to perform an illegal act.

LBP-95-5 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site Decontamination and Decommissioning Funding), Docket No. 40-8027-EA (ASLBP No. 94-684-01-EA) (Source Material License No. SUB-1010); ENFORCEMENT ACTION; April 18, 1995; MEMORANDUM AND ORDER (Ruling on Motion for Protective Order)

A The Licensing Board grants a motion for a protective order limiting the use of the protected information to those individuals participating in the litigation and for the purposes of the litigation only.

B The Commission's regulation concerning protective orders is patterned after Rule 26(c) of the Federal Rules of Civil Procedure, and we look to decisions interpreting the federal rule for guidance. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 760 (1975).

C "In providing authority to permit discovery of confidential information only in a designated way with few exceptions, the protection granted parties or persons against the disclosure of trade secrets and confidential business information restricts the use of such information to those engaged in the proceeding." Marcus, Myth and Reality in Protective Order Litigation, 69 Cornell L. Rev. 72, 73 (1983); see also cases cited, 8 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 2043 n.29; as an example of such limitation, see Administrative Conference of the United States, Manual for Administrative Law Judges 192 (Form 19-d).

D "[E]xceptions recognized for extrajudicial releases of protected information are generally in circumstances where either a statute or an agency's rules and regulations specifically provide for the disclosure of information obtained by it." See, e.g., Resolution Trust Corp. v. KPMG Peat Marwick, 779 F. Supp. 2 (D.D.C. 1991).

E The availability of management directives in the NRC's Public Document offices does not place those who do business with the NRC on notice of the Agency's policies and practices regarding the use of protected discovery information.

F It cannot be successfully maintained that the Staff, as one litigant in a proceeding, in the absence of statutory or regulatory authority directing otherwise, can perform with different responsibilities than other litigants. It must operate and conform to the same standards as apply to other parties. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-801, 21 NRC 479, 484 (1985).

G In the absence of regulatory authority or some policy direction by the Commission, the Staff must be bound by the terms of a Board protective order.

H It has been stated that the "Commission and its adjudicatory boards have always proceeded on the assumption that the terms of all protective orders will be scrupulously observed by everyone who acquires confidential information under such an order." Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 400 (1979).

LBP-95-6 GEORGIA INSTITUTE OF TECHNOLOGY (Georgia Tech Research Reactor, Atlanta, Georgia), Docket No. 50-160-Ren (ASLBP No. 95-704-01-Ren) (Renewal of Facility License No. R-97); OPERATING LICENSE RENEWAL; April 26, 1995; PREHEARING CONFERENCE ORDER (Ruling on Standing and Contentions)

A In a proceeding involving the proposed renewal of a facility operating license for a research reactor, an Atomic Safety and Licensing Board determines that a Petitioner for intervention possesses standing and has proffered two acceptable contentions. The Board accordingly grants the Petitioner's petition for leave to intervene and request for a hearing.

B The Commission has long applied contemporary judicial concepts of standing to determine whether a petitioner for intervention has a sufficient interest in a proceeding to be permitted to intervene as a matter of right.

C To establish standing, a petitioner must show that the subject matter of the hearing will cause him or her injury in fact and that the injury is arguably within the zone of interests protected by the Atomic Energy Act of 1954, as amended, or the National Environmental Policy Act as amended.

D A group or organization may establish its standing through the interests of its members. To do so, a group must demonstrate that at least one member who personally has standing wishes the group to

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represent him or her. Signature of a petition by a ranking official who has personal standing is sufficient for standing purposes.

- E When a group bases its standing on the membership of an individual, the individual need not have been a member on the date the original petition for leave to intervene was filed but only as of the date the supplemental petition for intervention must be filed. The Rules permit amendment until that date without prior approval of the Licensing Board and there is no definition of the scope or subject matter of such amendments.
- F In determining standing, a Licensing Board must accept as true all material allegations of an intervention petition and must construe the petition in favor of the petitioner, notwithstanding contrary interpretations by other parties.
- G Living or working within a specified distance of a site (with variations of distance depending upon the nature of the nuclear facility or activity), or even passing by the entrance to a site twice a week for recreational purposes, is enough to presume injury in fact. Such facts may be sufficient for standing purposes even though they might be insufficient to found a valid contention.
- H The adequacy of an applicant's physical security system is a permissible issue in an operating license renewal proceeding.
- I Although 10 C.F.R. § 50.13 provides that applicants need not provide design features or other measures to protect against attacks or destructive acts, including sabotage, by an enemy of the United States, it does not preclude intervenors from challenging whether security systems satisfy governing security requirements, set forth in 10 C.F.R. Part 73.
- J Admission of a contention involving a security plan does not transform the security plan into a public document. Licensing boards may adopt appropriate protective measures to preclude public release of information concerning such a plan.
- K The applicable design-basis threats against which an applicant must protect appear in 10 C.F.R. § 73.1, to the extent referenced in sections applicable to particular types of reactors. The design-basis threat for research reactors includes "radiological sabotage."
- L The security plan for certain research reactors, insofar as it protects against radiological sabotage, may be modified to account for special circumstances. 10 C.F.R. § 73.60(f).
- M Serious violations or other incidents may form the basis for a contention challenging the adequacy of management of a facility.
- N Where there is no local public document room in an area near a facility, and where a petitioner for intervention unsuccessfully seeks information from a local NRC office, a licensing board may judge the adequacy of a proposed contention on the basis of available information.
- O A petitioner's imprecise reading of a reference document, or typographical errors in that document, cannot serve to generate an issue suitable for litigation.
- P NRC's review of regulations governing a particular issue does not serve as a basis for a particular contention concerning that issue. Nor does a petitioner's differing opinion as to what applicable regulations should (but do not) require.
- Q A petitioner is obligated to provide the analyses and supporting evidence showing why its bases support its contention. A licensing board may not make factual inferences on a petitioner's behalf.
- R The following technical issues are discussed: Research reactors, Security plan, Management.
- LBP-95-7 DR. JAMES E. BAUER (Order Prohibiting Involvement in NRC-Licensed Activities), Docket No. IA-94-011 (ASLBP No. 94-696-05-EA); ENFORCEMENT ACTION; May 31, 1995; MEMORANDUM AND ORDER (Dispositive Motion-Related Rulings)
- A In this proceeding concerning an NRC Staff enforcement order prohibiting the involvement of Dr. James E. Bauer in NRC-licensed activities, the Licensing Board denies (1) the portion of an NRC Staff pre-discovery dispositive motion relating to the parties' Joint Issue 1, which was initially considered in LBP-94-40, 40 NRC 323, 332-33 (1994), and (2) the Staff's petition for reconsideration of the Board's ruling in LBP-94-40, 40 NRC at 337, concerning Bauer Issue 8, albeit with an additional modification of that issue.
- B Summary disposition is appropriate only when it has been shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993).

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- C With respect to a summary disposition motion, the moving party "bears the burden of showing the absence of a genuine issue as to any material fact." *Id.* (footnote omitted). Further, in assessing the showing made by the motion's proponent, the presiding officer is required to "view the record in the light most favorable to the party opposing such a motion." *Id.* (footnote omitted). In doing so, however, if the presiding officer finds that the proponent has failed to make the required showing, then the presiding officer "must deny the motion — even if the opposing party chooses not to respond or its response is inadequate." *Id.* (footnote omitted).
- D In construing the meaning of the terms of a license, it is most useful to look to the principles that govern the construction of another written instrument — the contract. *Cf. Meadow Green-Wildcat Corp. v. Hathaway*, 936 F.2d 601, 603-05 (1st Cir. 1991) (regarding standard of review to apply in interpreting terms of agency permit, court will treat the instrument like a contract).
- E It is a well-established rule that if the terms of a writing are plain and unambiguous, there is no room for construction, because the only purpose of judicial construction is to remove doubt and uncertainty. See 17A Am. Jur. 2d Contracts § 337, at 342 (1991). Further, if the language of the instrument is unambiguous, its meaning should be determined without reference to extrinsic materials. See *id.* at 343-44.
- F The preliminary inquiry in seeking to construe the terms of a written instrument is to determine whether ambiguity exists, which is a question of law that can be resolved through summary disposition. See 10A Charles A. Wright, et al., *Federal Practice and Procedure* § 2730.1, at 279 (2d ed. 1983). On the other hand, if it is determined that ambiguity exists that can be resolved only through an inquiry into the state of mind of the parties to the instrument, then genuine issues of material fact generally will exist that make summary disposition inappropriate. See *id.* at 265-66.
- G Language in a license condition stating that the license is "based on" the statements and representations in a license application is not the equivalent of a declaration that the application is "incorporated by reference into" the license. As one court has pointed out in interpreting the interchangeable term "based upon," a "straightforward textual exegesis" leads to the conclusion that this term means "derived from" or "use[d] as a basis for." *United States ex rel. Siller v. Becton Dickinson & Co.*, 21 F.3d 1339, 1348 (4th Cir.), cert. denied, 130 L. Ed. 2d 278 (1994). To say that the license is derived from the application is not the same as saying that the application and its terms are incorporated into the license so as effectively to be made provisions of the license.
- H A license "condition" either imposes a specific qualification on the standard terms of the license or creates particular duties or requirements for the licensee beyond those specified under the standard terms of the license.
- I Even if there is no facial ambiguity in the terms of a license, in interpreting the meaning of those terms it may be appropriate to look to an extrinsic source such as agency regulations based upon the general rule of construction that in drafting an instrument the parties are presumed to have in mind all the existing legal directives relating to the instrument, or the subject matter thereof. See 17A Am. Jur. 2d Contracts § 381, at 402-03 (1991).
- J A party contesting a Staff enforcement order is free to propose any legal or factual issues it wants to litigate, at least so long as that issue bears some relationship to the bases set forth in support of the order by tending to establish, either alone or with other issues, that some explicit or implicit legal or factual predicate to the order should not be sustained. See LBP-94-40, 40 NRC at 336 n.7.
- LBP-95-8 INNOVATIVE WEAPONRY, INC. (Albuquerque, New Mexico). Docket No. 030-30266-ML-Ren (ASLBP No. 95-701-01-ML-Ren) (Byproduct Materials License No. 30-23697-01E); MATERIALS LICENSE RENEWAL; June 1, 1995; MEMORANDUM AND ORDER (Terminating Proceeding)
- A In a proceeding involving an appeal from the NRC Staff's denial of a requested renewal of a byproduct materials license, in which (based on a transfer of the license to a new entity) the Staff rescinds its prior license renewal denial, the Presiding Officer grants the Staff's unopposed motion to terminate the proceeding.
- B Although the NRC is not strictly bound by the mootness doctrine, its adjudicatory tribunals have generally adhered to the mootness principle.
- LBP-95-9 SAFETY LIGHT CORPORATION, et al. (Bloomsburg Site Decommissioning and License Renewal Denials). Docket Nos. 030-05980-ML&ML-2, 030-05982-ML&ML-2 (ASLBP Nos. 92-659-01-ML, 92-664-02-ML-2); MATERIALS LICENSE; June 8, 1995; MEMORANDUM

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- A In this Memorandum the Licensing Board sets forth its reasons for previously granting an NRC Staff motion for summary deposition on the issue of whether the agency has regulatory jurisdiction over USR Industries and its four wholly owned subsidiaries.
- B Although in some circumstances the law of the case doctrine may be a rule of practice, that doctrine only applies to successive stages of the same proceeding. See 1B Moore's Federal Practice ¶0.404[1] (2d ed. 1995).
- C That doctrine provides that once the law of the case is determined on appeal by a superior tribunal in a proceeding, the inferior tribunal lacks the authority to depart from it in that same proceeding. Any change in the law of the case must be made by the superior tribunal itself or by a yet higher authority to which the superior tribunal owes obedience. See 1B Moore's Federal Practice ¶0.404[1] (2d ed. 1995).
- D The doctrine of collateral estoppel long has been held applicable to administrative adjudicatory determinations. See *United States v. Utah Construction & Mining Co.*, 384 U.S. 394, 421-22 (1966); *Commissioner v. Sunnen*, 333 U.S. 591 (1948). See also 4 K. Davis, *Administrative Law Treatise* § 21:2 (2d ed. 1983). And issue preclusion is a settled principle of NRC adjudicatory proceedings. See, e.g., *Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2)*, CLI-74-12, 7 AEC 203 (1974).
- E As in judicial proceedings, the purpose of the administrative repose doctrine "is to prevent continuing controversy over matters finally determined and to save the parties and boards the burden of relitigating old issues." *Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant)*, ALAB-837, 23 NRC 525, 536 (1986).
- F In contrast to the doctrine of res judicata that is applicable only when a final judgment is rendered, "for purposes of issue preclusion . . . 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." *Restatement (Second) of Judgments* § 13 (1980).
- G For a prior determination of an issue to be sufficiently firm to support issue preclusion, the earlier decision should not be "avowedly tentative." *Restatement (Second) of Judgments* § 13 cmt. g (1980). Additionally, the fact "that the parties were fully heard, that the court supported its decision with a reasoned opinion, [and] that the decision . . . was in fact reviewed on appeal are factors supporting the conclusion that the decision is final for the purpose of preclusion." *Id.*
- H Finally, even when all of the requirements for applying the doctrine of collateral estoppel are met, the doctrine still must be "applied with a sensitive regard for any supported assertion of changed circumstances or the possible existence of some special public interest factor in the particular case." *Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2)*, ALAB-182, 7 AEC 210, 216 (1974).
- I "To produce absolution from collateral estoppel on the ground of changed factual circumstances, the changes must be of a character and degree such as might place before the court an issue different in some respect from the one decided in the initial case." 1B Moore's Federal Practice ¶0.448, at III-642 (2d ed. 1995).
- J Similarly, "a change or development in the controlling legal principles" or a "change [in] the legal atmosphere" may make issue preclusion inapplicable. *Commissioner v. Sunnen*, 333 U.S. 591, 599-600 (1948).
- K Whatever other public policy factors may outweigh the application of the doctrine of collateral estoppel, the correctness of the earlier determination of an issue is not among them. Simply stated, issue preclusion does not depend on the correctness of the prior decision. *United States v. Moser*, 266 U.S. 236, 242 (1924); *McLaughlin v. Bradley*, 803 F.2d 1197, 1204 (D.C. Cir. 1986). See 1B Moore's Federal Practice ¶0.441[2], at III-519 to III-521 (2d ed. 1995).
- L Because the Commission's summary disposition rules borrow extensively from Rule 56 of the Federal Rules of Civil Procedure, it has long been held that federal court decisions interpreting and applying like provisions of Rule 56 are appropriate precedent for the Commission's rules. See, e.g., *Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2)*, ALAB-443, 6 NRC 741, 753-54 (1977).
- M Pursuant to Rule 56(c) and by analogy the Commission's summary disposition rule, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

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- N Similarly, summary judgment, as well as summary disposition, "will not lie if the dispute about a material fact is 'genuine', that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
- O Stated otherwise, "there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986).
- P The plain language of section 184 of the Atomic Energy Act is exceptionally broad and the reach of the provision is all encompassing. The title of section 184, "Inalienability of Licenses," only reinforces its breadth inasmuch as "inalienable" means "incapable of being alienated, surrendered or transferred." Webster's Third New International Dictionary 1140 (1971).
- Q The reach of the statute is manifest from its comprehensive language, and section 184 contains absolutely no limiting provisions. The terms "voluntarily or involuntarily, directly or indirectly" and the phrase "through transfer of control of any license to any person" are words and phrases of inclusion indicating a congressional intent to expand the scope of the section to the maximum extent.
- R On its face, section 184 not only broadly prohibits all manner of transfers, assignments, and disposals of NRC licenses, but also all manner of actions that have the effect of, in any way, directly or indirectly, transferring actual or potential control over a license without the agency's knowledge and express written consent.
- S As a consequence of the merger and the merger agreement, the new parent corporation now possessed the ultimate authority to exercise dominion over the corporate affairs of its wholly owned subsidiary, including the power to direct, manage, and regulate all activities concerning the material license. The very definition of a subsidiary corporation is one that is controlled by another corporation by reason of the latter's ownership of at least a majority of the shares of stock. Black's Law Dictionary 1428 (6th ed. 1990). See 18 Am. Jur. 2d Corporations § 35 (1985).
- T If the statutory proscription against the transfer of control of NRC licenses could be avoided by the expedient of a corporate restructuring, complex or otherwise, then section 184 would be a toothless tiger.
- U As long as section 184 and any other regulation or license condition is not violated, a material licensee may transfer its assets without notifying and obtaining the agency's permission.
- V When the transfer of control of NRC licenses is involved, section 184 requires the agency's express written consent, not just that the agency be notified.
- W The language of the Atomic Energy Act itself demonstrates that Congress placed no importance on the corporate form in enacting section 184.
- X The inclusion of a "corporation" in the definition of a "person" in section 11s of the Atomic Energy Act and the use of the latter term in the inalienability of licenses provision in section 184 indicates that Congress intended a corporation to be treated in the same manner as all other entities.
- Y Corporate law principles, which are applicable only to the corporate form of organization, are entitled to no consideration under section 184 and do not thwart NRC regulatory jurisdiction over a corporation for violating that provision.
- Z Congress, in effect, already has pierced the corporate veil for corporate violators of section 184 by definitionally including corporations in the inalienability of licenses provision. See *Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 711 F.2d 1085, 1093 (1st Cir.), cert. denied, 464 U.S. 961 (1983).
- AA It long has been established that the fiction of corporate separateness of state-chartered corporations will not be permitted to frustrate the policies of a federal statute.
- BB The statutory frustration principle permits the NRC to disregard the corporate form and impose liability on the parent corporation shareholder for the obligations of its subsidiary. And, this is true whether or not its intent was to avoid the statutory prohibition of section 184 for "intention is not controlling when the fiction of corporate entity defeats a legislative purpose." *Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 717 (7th Cir. 1965).
- LBP-95-10 GULF STATES UTILITIES COMPANY, et al. (River Bend Station, Unit 1), Docket No. 50-458-OLA (ASLBP No. 93-680-04-OLA); OPERATING LICENSE AMENDMENT; June 15, 1995; MEMORANDUM AND ORDER (Ruling on Licensee's Motion Requesting Summary Disposition of Contention 2)

## DIGESTS

### ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- LBP-95-11 DANIEL J. McCOOL (Order Prohibiting Involvement in NRC-Licensed Activities), Docket No. IA 94-017 (ASLBP No. 95-705-03-EA); ENFORCEMENT ACTION; June 23, 1995; MEMORANDUM AND ORDER (Dismissing Proceeding)
- LBP-95-12 SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site Decontamination and Decommissioning Funding), Docket No. 40-8027-EA (ASLBP No. 94-684-01-EA) (Source Material License No. SUB-1010); ENFORCEMENT ACTION; June 30, 1995; MEMORANDUM AND ORDER (Denying General Atomics' Motion Regarding NRC Staff "Reliance" Issues and Establishing Schedule for Bifurcated Issue of Agency Jurisdiction)

**DIGESTS**  
**ISSUANCES OF DIRECTORS' DECISIONS**

DD-95-1 STATE OF UTAH (Agreement Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended); REQUEST FOR ACTION; January 26, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of State Programs denies the petition submitted pursuant to 10 C.F.R. § 2.206 by US Ecology, Inc. (Petitioner), requesting action with regard to Utah's Agreement State Program.

B Petitioner requested NRC to initiate appropriate proceedings, including relevant hearings, to suspend or revoke Utah's Agreement State status under section 274) of the Atomic Energy Act of 1954, as amended (AEA), for Utah's failure to require state or federal government land ownership in regulating the commercial disposal of low-level radioactive waste at the Envirocare of Utah, Inc. The Petitioner's request was denied because the Director did not find that the Petitioner had raised a sufficient issue of Utah's compliance with one or more requirements of section 274 of the AEA or any substantial health and safety issues to warrant the action requested.

DD-95-2 ALL PRESSURIZED WATER REACTORS; REQUEST FOR ACTION; January 26, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director, Office of Nuclear Reactor Regulation, has denied a petition filed by John Willis on behalf of Greenpeace International requesting that action be taken regarding all pressurized water reactors (PWRs) currently operating in the United States. The Petitioner requested that the NRC immediately and fully inspect all vessel head penetrations in these reactors for cracking, publish the results, shut down affected reactors, and "relicense" reactors that must be closed. As grounds for these requests, the Petitioner alleged that: (1) certain foreign PWRs are cracking; (2) testing in France revealed incipient circumferential cracking of some VHPs, which could lead to a through-wall break in the primary pressure boundary without fulfillment of the leak-before-break criterion; and (3) this could cause ejection of the control rod drive mechanism, with resulting loss of control of the reactor. The reasons for the denial are fully set forth in the Decision.

B The NRC Staff conducts meetings periodically with affected owners groups to discuss emerging and existing generic, technical issues rather than meeting with each individual licensee.

C The following technical issue is discussed: primary water stress corrosion cracking in vessel head penetrations.

DD-95-3 ENTERGY OPERATIONS, INC. (Arkansas Nuclear One) and SIERRA NUCLEAR CORPORATION, Docket Nos. 50-313, 50-368, 72-1007; REQUEST FOR ACTION; January 31, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Material Safety and Safeguards grants in part and denies in part a petition submitted pursuant to 10 C.F.R. § 2.206 by Mr. Dennis Dums, on behalf of the Wisconsin Citizen's Utility Board (Petitioner), requesting action with regard to Arkansas Nuclear One (ANO) operated by Entergy Operations, Inc. (Entergy or the Licensee).

B Petitioner requested that the Chairman exercise his authority to: (1) determine the applicability of 10 C.F.R. § 72.48 to 10 C.F.R. Subparts K and L; (2) determine whether Entergy is in violation of any NRC regulations regarding use of section 72.48 to make modifications to the VSC-24 cask for use at ANO; (3) order ANO to cease using section 72.48 until NRC determines whether or not it is applicable; (4) order Sierra Nuclear Corporation to cease construction of VSC-24 casks for use at ANO that are being constructed based on ANO's section 72.48 evaluation.

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- C With regard to the Petitioner's request for NRC to (1) determine the applicability of section 72.48 to 10 C.F.R. Subparts K and L, and (2) determine whether Entergy is in violation of any NRC regulations regarding use of section 72.48, the Director grants the petition in part and determines that section 72.48 is applicable to the general license found in 10 C.F.R. Part 72, Subpart K, of the Commission's regulations and that ANO can make use of this authority as a Subpart K licensee in accordance with the terms and limitations of section 72.48.
- D With regard to the Petitioner's request for NRC to (3) order ANO to cease using section 72.48 until NRC determines whether or not it is applicable and (4) order Sierra Nuclear Corporation to cease construction of VSC-24 casks for use at ANO, the Director finds, in accordance with the foregoing determination, that ANO can make use of section 72.48, and accordingly denies those portions of the petition.
- DD-95-4 NORTHEAST UTILITIES (Millstone Nuclear Power Station), Docket Nos. 50-245, 50-336, 50-423, REQUEST FOR ACTION, February 22, 1995, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Acting Director of the Office of Enforcement has denied petitions filed by Carmela V. Marien and Marianne W. Nerricio requesting that accelerated enforcement action be taken against Northeast Utilities (NU). The Petitioners requested that this action be taken against NU for willful violations of the employee protection provisions of 10 C.F.R. § 50.7. As grounds for their request, the Petitioners asserted that they were retaliated against for engaging in protected activities consisting of raising concerns regarding a computer system being used in the execution of NU's fitness-for-duty program. The reasons for the denial are fully set forth in the Decision.
- DD-95-5 NATIONAL INSTITUTES OF HEALTH, Docket No. 030-01786 (License No. 19-00296-10); REQUEST FOR ACTION, March 5, 1995, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Material Safety and Safeguards granted in part, was unable to grant in part, and determined that a petition dated December 2, 1993, and submitted by the North Bethesda Congress of Citizen's Associations (Petitioner), was mooted in part. The petition requested that the Nuclear Regulatory Commission (NRC) take action with regard to the National Institutes of Health (NIH), specifically that the NRC: (1) suspend License Condition 27 (formerly License Condition 24) of the NIH Materials License No. 19-00296-10 (License), which authorizes NIH to dispose of licensed materials by incineration, pending resolution of two regulatory issues — (a) no environmental report or environmental assessment has been completed regarding the incineration of radioactive waste on NIH's Bethesda campus, and (b) there may be less than adequate monitoring to ensure that radioactive effluents are within regulatory limits; (2) provide copies of the NRC environmental assessments and/or safety evaluations that provide the bases for (a) an exception from 10 C.F.R. § 20.303(d) limits regarding radioactive materials discharges into sanitary sewer systems (License Condition 21); and (b) approval of the construction and operation of a low-level waste storage facility at NIH's Poolesville campus (License Condition 28); and (3) forward a copy of future correspondence between NRC and NIH regarding these matters to the Petitioner. The Director determined that because NIH permanently ceased operation of the three incinerators and amended the license to delete License Condition 27, the request to suspend License Condition 27 was moot. Because the NRC was not required to conduct environmental assessments in connection with the NIH applications for authority to incinerate radioactive waste and for authority to discharge radioactive materials into sanitary sewer systems, and because NIH was not required to submit environmental reports in connection with those applications, Petitioner's request for copies of such environmental assessments and reports cannot be granted. The information submitted by NIH in support of its application for authority to construct and operate the Poolesville low-level waste storage facility, however, is the functional equivalent of an environmental report and safety evaluation. The Director supplied the Petitioner with copies of documents submitted by NIH in support of License Conditions 21, 27, and 28. The Director placed Petitioner on the distribution list for all correspondence regarding operation of the NIH incinerators, sewer disposal limits, and interim radioactive waste storage license amendments at the Poolesville facility.
- DD-95-6 SOUTHERN CALIFORNIA EDISON COMPANY, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361, 50-362, REQUEST FOR ACTION, April 27, 1995, DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director, Office of Nuclear Reactor Regulation, denies a petition filed on August 10, 1994, by Mr. Ted Dougherty requesting a shutdown of the San Onofre Nuclear Generating Station. The request was



**DIGESTS**  
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based on concerns regarding the vulnerability of SONGS to earthquakes because of the existence of nearby fault lines, and concerns regarding the defensibility of SONGS to a terrorist threat.

B Appendix A (Criterion 2) to 10 C.F.R. Part 50 states that the design basis for the nuclear power plant should reflect the most severe of the natural phenomena that have been historically reported for the site and surrounding area, the combinations of the effects of normal and accident conditions with the effects of the natural phenomena, and the importance of the safety functions to be performed.

C Appendix A to 10 C.F.R. Part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," Section III(c), requires that the nuclear power plant's design bases for earthquakes be determined through evaluation of the geologic and seismic history of the nuclear power plant site and surrounding region.

D The design-basis threat for radiological sabotage has been modified by an amendment to 10 C.F.R. Part 73 to include use of a land vehicle by adversaries for transporting personnel and their hand-carried equipment to the proximity of vital areas and to include a land vehicle-bomb.

DD-95-7 FLORIDA POWER AND LIGHT COMPANY (Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-335, 50-389, 50-250, 50-251; REQUEST FOR ACTION; May 11, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Enforcement has denied petitions filed by Thomas J. Saporito, Jr., requesting that the NRC: (1) submit an amicus curiae brief to the Department of Labor regarding his claim that Florida Power & Light Co. (FP&L) retaliated against him for engaging in protected activities; (2) institute a show-cause hearing to modify, suspend, or revoke FP&L's licenses to operate Turkey Point; (3) institute a show-cause proceeding to order the FP&L to provide him with a "make whole" remedy; (4) take escalated enforcement action against FP&L and certain FP&L employees for engaging in retaliation; (5) conduct an investigation of FP&L to determine the involvement of each and every individual in the discrimination against him, and report the results to the Department of Justice; and (6) conduct an investigation to determine if the overall work environment at Turkey Point and St. Lucie nuclear stations is free from hostility and encourages employees to freely and confidentially contact the NRC without going through the normal chain of command. The reasons for the denial are fully set forth in the Decision.

DD-95-8 ALL LICENSEES; REQUEST FOR ACTION; May 25, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Enforcement has denied a petition filed by Thomas J. Saporito, Jr., requesting that the NRC issue a generic letter of instruction to all licensees requiring them to review station operating procedures in order to ascertain whether the procedures contain any restrictions that would prevent or dissuade a licensee employee from bringing perceived safety concerns directly to the NRC without following the normal chain of command. In the petition, he also requested that each licensee be required to report to the Commission, under oath or affirmation, that the review has been completed, that its employees are free to bring concerns to the NRC without following the normal chain of command, and that this information has been communicated to all of its employees. The reasons for the denial are fully set forth in the Decision.

DD-95-9 COMMONWEALTH EDISON COMPANY (Zion Nuclear Power Station, Units 1 and 2), Docket Nos. 50-295, 50-304; REQUEST FOR ACTION; May 26, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies a petition submitted pursuant to 10 C.F.R. § 2.206 by Robert K. Rutherford and forty-three other security guards at the Zion Nuclear Power Station (Petitioners) requesting action with regard to the Zion Nuclear Power Station, Units 1 and 2, of the Commonwealth Edison Company (ComEd or Licensee). Petitioners requested that the Nuclear Regulatory Commission (NRC) rethink and withdraw its approval of the October 7, 1994 revisions to the Zion security plan, and demand greater justification from both the Licensee and its security contractor concerning the proposal to reduce the number of armed guards and the defense of the Zion facility. Petitioners also requested that the manning and positioning of armed guards be reconsidered and increased to a more sound defensive position. The petition is denied because Petitioners raised no substantial safety concern regarding the revised security plan for the Zion facility.

DD-95-10 FLORIDA POWER AND LIGHT COMPANY (St. Lucie Nuclear Power Plant, Unit 2), Docket No. 50-389-A; REQUEST FOR ACTION; May 26, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

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- A The Director, Office of Nuclear Reactor Regulation, denies a petition dated July 2, 1993, filed by the Florida Municipal Power Agency (FMPA), which requested, inter alia, that the NRC (1) declare that Florida Power & Light Company (FPL) is obligated to provide network transmission among geographically separated sections of FMPA without imposing multiple charges for transmission among multiple delivery points; (2) issue a notice of violation of that obligation; (3) order FPL to file with the Federal Energy Regulatory Commission a rate schedule that provides for transmission in a manner that complies with the antitrust conditions which are a part of the St. Lucie Plant, Unit 2 license. The reasons for the denial are fully set forth in the Director's Decision.
- DD-95-11 NORTHEAST UTILITIES (Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3), Docket Nos. 50-213, 50-245, 50-336, 50-423 (License Nos. DPR-61, DPR-21, DPR-65, NPF-49); REQUEST FOR ACTION, May 31, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation has denied the petition filed by Mr. Ronald Gavensky requesting that the licenses of the Haddam Neck Plant and the Millstone Nuclear Power Station, Units 1, 2, and 3, be temporarily revoked based on Petitioner's allegations. Petitioner raised numerous concerns regarding receipt inspection activities by Northeast Utilities (NU) at these facilities. After a review of Petitioner's concerns, the Director concluded that no substantial health and safety issues were raised regarding these facilities that would require initiation of formal enforcement action.
- DD-95-12 BABCOCK AND WILCOX COMPANY (Pennsylvania Nuclear Service Operations, Parks Township, Pennsylvania), Docket No. 70-364, REQUEST FOR ACTION, June 26, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Material Safety and Safeguards grants in part two requests for action under 10 C.F.R. § 2.206 (initially raised as concerns by Citizens' Action for a Safe Environment and the Kiski Valley Coalition to Save Our Children in their joint request for an informal hearing pursuant to 10 C.F.R. Part 2, Subpart L) referred, pursuant to 10 C.F.R. § 2.1205(k)(2), by the Presiding Officer in the Initial Decision, dated January 3, 1995.
- B The Petitioners, based on a concern about radioactive releases from the Babcock & Wilcox Company's (B&W) Apollo facility, request the Commission to test for radioactive contamination in the general vicinity of Kepple Hill and Riverview in Parks Township. This request has been granted insofar as the Nuclear Regulatory Commission (Commission) Staff calculated the potential airborne uranium concentration and potential contamination of soil, reviewed the environmental monitoring and aerial radiological survey data, and concluded that the radioactive releases from the Apollo facility have been within regulatory limits and have not resulted in concentrations of radioactivity in the soil greater than the Commission's current release criteria for uranium.
- C The Petitioners, based on a concern about the past operations of the B&W Parks Township facility, request the Commission to investigate radiological contamination on the Farmers Delight Dairy Farm. This request has been granted insofar as the Commission Staff has reviewed the environmental monitoring data collected from the area of the Parks Township facility since 1969, as well as soil samples from the area, and concluded that there has been no significant increase in background levels outside of the immediate site area of the Parks Township facility.
- D The values set forth in 10 C.F.R. Part 20, Appendix B, Table II, are regulatory limits applicable at the site boundary, not at the stack discharge point.

**DIGEST**  
**ISSUANCE OF DECISIONS ON PETITIONS FOR RULEMAKING**

DPRM-95-1 U.S. DEPARTMENT OF ENERGY. Docket No. PRM 60-3; March 15, 1995; PARTIAL GRANT AND PARTIAL DENIAL OF PETITION FOR RULEMAKING

A The Nuclear Regulatory Commission (NRC) is granting in part and denying in part a petition for rulemaking (PRM-60-3) from the U.S. Department of Energy. The Petitioner requested that the NRC amend its regulations governing the preclosure operations at a geologic repository operations area so as to establish numerical dose criteria for use in identifying the need for engineered safety features and for determining their adequacy. In granting the petition in part, NRC is proposing certain numerical dose criteria that would be applicable to two different categories of design-basis events, namely (1) events reasonably likely to occur regularly, moderately frequently, or one or more times before permanent closure; and (2) events that are considered unlikely, but that are sufficiently credible to warrant consideration. The petition is denied in part insofar as it proposed other numerical dose criteria.

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- Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216 (1974), remanded, CLI-74-12, 7 AEC 203 (1974)  
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- American Computer Trust Leasing v. Jack Farrell Implement Co., 763 F. Supp. 1473, order aff'd and remanded, 967 F.2d 1208, cert. denied, Boerboom International, Inc. v. American Computer Trust Leasing, 113 S. Ct. 414, 121 L. Ed. 338 (113 S. Ct. 414, 121 L. Ed. 2d 338)  
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- American Nuclear Corp. (Revision of Orders to Modify Source Materials Licenses), CLI-86-23, 24 NRC 704, 708-10 (1986)  
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- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)  
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- Barish v. Director of Revenue, 872 S.W.2d 167, 171 (Mo. App. 1994)  
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