NUREG–0750
Vol. 50, No. 3
Pages 219–254

NUCLEAR REGULATORY COMMISSION ISSUANCES

September 1999

U.S. NUCLEAR REGULATORY COMMISSION

Available from

Superintendent of Documents
U.S. Government Printing Office
P.O. Box 37082
Washington, DC 20402–9328

A year's subscription consists of 12 softbound issues,
4 indexes, and 2–4 hardbound editions for this publication.

Single copies of this publication
are available from
National Technical Information Service
Springfield, VA 22161

Errors in this publication may be reported to the
Office of the Chief Information Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001
(301–415–6844)

NUREG–0750
Vol. 50, No. 3
Pages 219–254

NUCLEAR REGULATORY COMMISSION ISSUANCES

September 1999

This report includes the issuances received during the specified period from the Commission (CLI), the Atomic Safety and Licensing Boards (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM)

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or have any independent legal significance.

U.S. NUCLEAR REGULATORY COMMISSION

Prepared by the
Office of the Chief Information Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001
(301–415–6844)

COMMISSIONERS

Greta J. Dicus, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

G. Paul Bollwerk III, Chief Administrative Judge
Atomic Safety & Licensing Board Panel

CONTENTS

Issuances of the Nuclear Regulatory Commission

Issuances of the Atomic Safety and Licensing Boards

Issuances of Directors' Decisions

Commission Issuances

COMMISSION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Greta Joy Dicus, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of **Docket No. 50-029-LA**

YANKEE ATOMIC ELECTRIC COMPANY
(Yankee Nuclear Power Station) **September 10, 1999**

The Commission grants the motion of Licensee Yankee Atomic Electric Company to terminate without prejudice its pending appeal of the Licensing Board's Memorandum and Order in which the Board admitted four contentions. The Commission also vacates both Board orders as moot.

RULES OF PRACTICE: DISMISSAL WITH PREJUDICE

Dismissal of an appeal with prejudice (similar to termination of a proceeding with prejudice) generally implies that we have ruled on the merits of the appeal. *See Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 973 (1981).

RULES OF PRACTICE: DISMISSAL WITH PREJUDICE

Dismissal with prejudice (again like termination with prejudice) is a severe sanction reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general. *See Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132-33 (1981); *Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 978-79 & n.14 (1981).

RULES OF PRACTICE: WITHDRAWAL OF APPLICATION

"[T]he possibility of future litigation with its expenses and uncertainties . . . is precisely the consequence of *any* dismissal without prejudice. It does not provide a basis for departing from the usual rule that a dismissal should be without prejudice." *Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1135 (1981) (emphasis in original), citing *Jones v. SEC,* 298 U.S. 1, 19 (1936), and 5 *Moore's Federal Practice* ¶41.05[1] at 41-72 to 41-73 (2d ed. 1981).

RULES OF PRACTICE: WITHDRAWAL OF APPLICATION

The withdrawal of an application imposes no prejudice on Intervenors where the admitted contentions regarding that application were focused on alleged deficiencies and inadequacies of the withdrawn application, and where the withdrawal will leave the Intervenors in precisely the same position in any subsequent proceeding as if they had prevailed not only on their instant appeal but also on the subsequent merits portion of this proceeding.

RULES OF PRACTICE: VACATUR

"While unreviewed Board decisions do not create binding precedent, where as here the unreviewed rulings involve complex questions and vigorously disputed interpretations of agency provisions, the Commission chooses as a policy matter to vacate them and thereby eliminate any future confusion and dispute over their meaning or effect. *Cf. Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 15 (1996). Our decision to vacate the Board orders does not intimate any opinion on their soundness. *Id.*" *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114 (1998) (internal quotation marks omitted).

MEMORANDUM AND ORDER

The Commission grants the motion of Licensee Yankee Atomic Electric Company ("Yankee Atomic" or "Licensee") to terminate without prejudice its pending appeal of the Licensing Board's Memorandum and Order (LBP-99-14, 49 NRC 238, *reconsideration denied,* LBP-99-17, 49 NRC 375 (1999)) in which the Board admitted four contentions. The Commission also vacates both Board orders as moot.

BACKGROUND

This proceeding concerns a license amendment application in which Yankee Atomic sought approval of its License Termination Plan ("LTP") for the Yankee Nuclear Power Station ("Yankee Rowe"). On May 26, 1999, in a pleading supported by the NRC Staff, Yankee Atomic submitted to the Licensing Board a motion seeking leave to withdraw its LTP application without prejudice and, in the same filing, asked that the Commission dismiss without prejudice Yankee Atomic's pending appeal of LBP-99-14. Responding to the latter request, Intervenors Citizens Awareness Network ("CAN"), the New England Coalition on Nuclear Pollution ("NECNP") and the Franklin Regional Council of Governments ("FRCOG") agreed that the Commission should dismiss the pending appeal, but asked that the dismissal be "with prejudice."

In parallel filings before the Board, Intervenors similarly argued that the Board should terminate the entire proceeding "with prejudice."[1] They also asserted that the Board should require Yankee Atomic to reimburse CAN's and NECNP's litigation expenses and provide Intervenors with various kinds of information regarding the decommissioning of Yankee Rowe. On July 28, 1999, the Board issued LBP-99-27, 50 NRC 45, rejecting these arguments and terminating, without prejudice or conditions, all portions of the proceeding — except for the instant pending appeal. Intervenors chose not to petition for Commission review of LBP-99-27.[2] Consequently, the only remaining portion of this proceeding is Yankee Atomic's appeal of LBP-99-14 — a matter we have held in abeyance pending the August 17th conclusion of the appeal period for LBP-99-27. For the reasons set forth below, we dismiss the appeal without prejudice (as moot) and vacate both LBP-99-14 and LBP-99-17.

DISCUSSION

1. Requested Dismissal of Appeal With Prejudice

Intervenors' request that we dismiss Yankee Atomic's appeal with prejudice suffers from two serious flaws. First, the dismissal of an appeal with prejudice (similar to termination of a proceeding with prejudice) generally implies that we have ruled on the merits of the appeal — clearly not the situation here. *See Philadelphia Electric Co.* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 973 (1981).

---

[1] NECNP later clarified that it was not asking the Board to dismiss the proceeding with prejudice. NECNP's Reply to LBP-99-22, dated June 24, 1999, at 2 n.2.

[2] The Commission is also declining to take review *sua sponte* of the Licensing Board's Memorandum and Order (LBP-99-27) terminating, without prejudice or conditions, all portions of the proceeding except for the instant appeal of LBP-99-14.

Second, dismissal with prejudice (again like termination with prejudice) is a severe sanction reserved for unusual situations involving substantial prejudice to an opposing party or to the public interest in general. *See Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132-33 (1981); *Fulton,* 14 NRC at 978-79 & n.14. We see here no prejudice (much less substantial prejudice) to either the Intervenors' or the public's interest. The admitted contentions were focused on alleged deficiencies and inadequacies of the withdrawn LTP. Moreover, the Intervenors will be in precisely the same position in any subsequent proceeding as if they had prevailed not only on their instant appeal but also on the subsequent merits portion of this proceeding, i.e., they will be faced with Yankee Atomic returning to the Commission in the future with a second proposed LTP which Intervenors may oppose if they wish.[3]

For these reasons, we decline to dismiss the appeal with prejudice. Rather, we dismiss it as moot.

2. *Vacation of LBP-99-14 and LBP-99-17*

We exercise our inherent authority over adjudications and vacate LBP-99-14 and LBP-99-17. As we indicated in *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 114 (1998):

> While unreviewed Board decisions do not create binding precedent, where as here the unreviewed rulings "involve complex questions and vigorously disputed interpretations of agency provisions," the Commission chooses as a policy matter to vacate them and thereby eliminate any future confusion and dispute over their meaning or effect. *Cf. Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 15 (1996). Our decision to vacate the Board orders "does not intimate any opinion on their soundness." *Id.*

CONCLUSION

For the reasons given above, the Commission (1) grants Yankee Atomic's motion to withdraw without prejudice its pending appeal of the Licensing Board's Memorandum and Order (LBP-99-14) and (2) vacates LBP-99-14 and LBP-99-17.

---

[3] "[T]he possibility of future litigation with its expenses and uncertainties . . . is precisely the consequence of *any* dismissal without prejudice. It does not provide a basis for departing from the usual rule that a dismissal should be without prejudice." *North Coast,* 14 NRC at 1135 (emphasis in original), citing *Jones v. SEC,* 298 U.S. 1, 19 (1936), and 5 *Moore's Federal Practice* ¶41.05[1] at 41-72 to 41-73 (2d ed. 1981). *See also Fulton,* 14 NRC at 979 ("it is well settled that the prospect of a second lawsuit — or, in this case, another application to construct a nuclear reactor at Fulton — does not provide the requisite quantum of legal harm to warrant dismissal with prejudice" (citing *Jones, supra*)). (Both *North Coast* and *Fulton* are decisions of the Atomic Safety and Licensing Appeal Board, an entity that the Commission abolished in 1991. However, despite its defunct status, the Appeal Board's decisions still carry precedential weight. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 59 n.2 (1994).)

Therefore, the proceeding is terminated.
IT IS SO ORDERED.

For the Commission

ANNETTE L. VIETTI-COOK
Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of September 1999.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Greta Joy Dicus, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of **Docket Nos. 50-334-LT**
50-412-LT

DUQUESNE LIGHT COMPANY
and
FIRSTENERGY NUCLEAR OPERATING COMPANY and PENNSYLVANIA POWER COMPANY
(Beaver Valley Power Station, Units 1 and 2)

September 24, 1999

The Commission waives the time limit for comments set forth in 10 C.F.R. § 2.1305 and refers the comments to the NRC Staff.

MEMORANDUM AND ORDER

The Commission had closed this proceeding on July 23, 1999. CLI-99-23, 50 NRC 21. However, on September 15, 1999, Local 29 of the International Brotherhood of Electrical Workers ("Local 29") filed with the Commission a pleading styled "Petition to Waive Time Limits in 10 C.F.R. § 2.1305 and Supplemental Comments" in this license transfer proceeding involving the Beaver Valley Power Station. Duquesne Light Company, FirstEnergy Nuclear Operating Company, and Pennsylvania Power Company (collectively "FirstEnergy") filed answers opposing Local 29's petition and comments. The NRC Staff, as is its usual practice in license transfer proceedings, has chosen not to participate as a

party in this case. For the reasons set forth below, we waive the time limit set forth in section 2.1305 and refer the comments to the NRC Staff.

BACKGROUND

This proceeding involves a proposed transfer of interests in the Beaver Valley Power Station from Duquesne Light Company to FirstEnergy. Application, dated May 5, 1999. On June 3d, Local 29 sought to intervene and offered comments addressing FirstEnergy's failure to indicate how it intended to staff the Beaver Valley facility. In CLI-99-23, 50 NRC at 22, the Commission denied the Union's petition to intervene on the following ground:

> The Commission's newly promulgated rules for license transfer set out two possible avenues to address issues that may arise from license transfer applications: written comments or hearings. In this instance, Local 29 has filed a "petition to intervene" but has explicitly stated that it has not requested a hearing. In the absence of a hearing request, there is no potential adjudicatory proceeding in which to intervene. Accordingly, we must deny Local 29's "petition to intervene" and treat it as a submission of comments on the license transfer application pursuant to 10 C.F.R. § 2.1305. . . . The Commission will consider and, if appropriate, respond to Local 29's comments in accordance with section 2.1305. We are referring the comment to the NRC Staff for its consideration as it reviews the license transfer application. [Footnote omitted.]

On September 15th, Local 29 filed supplemental comments out-of-time, explaining that, until September 2d, it had lacked access to the information necessary to make specific arguments regarding the safety implications of FirstEnergy's proposed staffing levels for the Beaver Valley facility. Now that Local 29 has obtained this information, it wishes to file comments pursuant to 10 C.F.R. § 2.1305(b), despite that regulation's provision that comments must be submitted within 30 days after the Commission issues a public notice of its receipt of the application. In sum, Local 29 argues that FirstEnergy's plan to eliminate the jobs of 104 members of the Local will adversely affect plant safety. *See* Petition at 3-7. Local 29 seeks three forms of relief: (1) waiver of the time limit for submitting its supplemental comments, (2) a requirement that FirstEnergy demonstrate its ability to operate Beaver Valley safely despite the 104 layoffs, and (3) such hearings or other proceedings as may be necessary to ensure the safe operation of the Beaver Valley facility if the application is granted. *See* Petition at 7.

DISCUSSION

We construe Local 29's instant requests for relief to fall within Subpart M's "comments" option rather than its "adjudicatory hearing" option. Local 29 has not attempted in its petition to meet the regulatory standards for intervention

petitions and adjudicatory hearing requests set forth in 10 C.F.R. § 2.1306. Indeed, it does not even cite those standards. Moreover, it repeatedly refers to its wish to submit supplemental "comments," and only once even uses the word "hearing" (in the final sentence of its petition). Further, the "hearing request" in that last sentence does not seek an adjudicatory hearing *per se* but rather is phrased far more generally — asking the Commission "to hold such hearings or other proceedings as may be necessary to ensure the safe operation of Beaver Valley . . . if the application is granted." Petition at 7.

We therefore will treat Local 29's request in an administrative ("comment") rather than an adjudicatory ("hearing") context. Regarding Local 29's first and second requests for relief, we grant Local 29 a waiver of the time limits for filing comments, in view of Local 29's claim of newly available information, and we refer Local 29's comments to the Staff with instructions to consider, expeditiously, whether those comments call into question FirstEnergy's ability to operate the Beaver Valley plant safely. As to Local 29's third request for relief (seeking "such hearing or other proceedings as may be necessary"), we consider the NRC Staff's ongoing review to be sufficient, in Local 29's words, "to ensure the safe operation of Beaver Valley." Local 29's petition provides no justification for conducting a parallel adjudication on issues that the NRC Staff will already be considering. *See Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-7, 23 NRC 233, 236 (1986), *aff'd sub nom. Ohio v. NRC,* 814 F.2d 258 (6th Cir. 1987).

IT IS SO ORDERED.

For the Commission[1]

ANNETTE L. VIETTI-COOK
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of September 1999.

[1] Commissioner Diaz was not available for the affirmation of this Order. If he had been present, he would have approved the Order.

Atomic Safety and Licensing Boards Issuances

LICENSING BOARDS

ATOMIC SAFETY AND LICENSING BOARD PANEL

G. Paul Bollwerk III,* *Chief Administrative Judge*
Vacant,* *Deputy Chief Administrative Judge (Executive)*
Frederick J. Shon,* *Deputy Chief Administrative Judge (Technical)*

Members

Dr. George C. Anderson
Charles Bechhoefer*
Peter B. Bloch*
Dr. Robin Brett
Dr. James H. Carpenter
Dr. Richard F. Cole*
Dr. Thomas S. Elleman
Dr. Harry Foreman
Dr. David L. Hetrick
Dr. Frank F. Hooper
Dr. Charles N. Kelber*
Dr. Jerry R. Kline
Dr. Peter S. Lam*
Dr. James C. Lamb III
Dr. Linda W. Little
Thomas S. Moore*
Thomas D. Murphy*
Dr. Harry Rein
Lester S. Rubenstein
Dr. David R. Schink
Dr. George F. Tidey

**Permanent panel members*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Dr. Linda W. Little, Special Assistant

In the Matter of

Docket No. 030-34610-ML
(ASLBP No. 99-768-02-ML)
(M22/GID-3 Automatic Chemical Agent Detector/Alarm)

DEPARTMENT OF THE ARMY
(Aberdeen Proving Ground, Maryland)

September 13, 1999

In a proceeding in which the NRC Staff denied the exempt-status registration and licensing request for an Automatic Chemical Agent Detector/Alarm, the Presiding Officer denies a petition for leave to intervene by the manufacturer of the device for lack of standing, outlines other means by which the manufacturer might participate, and schedules a prehearing conference to consider such participation as well as a definition of issues for litigation and schedules for various filings.

RULES OF PRACTICE: STANDING (INFORMAL PROCEEDINGS)

To demonstrate a person's standing to participate as a party in a proceeding adjudicated under the informal licensing procedures of 10 C.F.R. Part 2, Subpart L, the Commission has long looked to "contemporaneous judicial concepts of standing."

RULES OF PRACTICE: STANDING (ZONES OF INTEREST)

Where a petitioner's stated injury is purely economic, unrelated in any respect to radiation or environmental impacts, such injury is outside the zones of interest arguably protected by the governing statutes, here the Atomic Energy Act or the National Environmental Policy Act.

MEMORANDUM AND ORDER

(Intervention Request; Schedules; Prehearing Conference)

I. BACKGROUND

In my Memorandum and Order (Request for Hearing), dated July 12, 1999, I granted the request of the Department of the Army (Army or Applicant) for a hearing with respect to the denial by the NRC Staff of Army's application for registration and licensing of the model M22/GID-3 Automatic Chemical Agent Detector/Alarm (ACADA). On the same day, I published a Notice of Hearing that, *inter alia,* permitted the filing of requests for a hearing and petitions for leave to intervene.

Finally, based on advice that the Army wished to discuss possible settlement with the Staff, I placed the proceeding in abeyance and postponed the filing by the NRC Staff of a hearing file until 3 weeks subsequent to the termination of settlement negotiations (if unsuccessful). I also required periodic reports on the progress of settlement negotiations.

In its second status report, dated August 23, 1999, the Staff, on behalf of both itself and the Army, reported that, although the parties have attempted to resolve their dispute, the Army and the Staff have not been able to reach a settlement. Under the schedule previously established, the Staff will provide (mail) a hearing file to the Presiding Officer, his Special Assistant, and the Army by today, Monday, September 13, 1999. Schedules for other filings will be determined at the prehearing conference set forth below.

II. PROPOSED INTERVENTION

In response to the Notice of Hearing, which was published in 64 Fed. Reg. 38,484 (July 16, 1999), a timely petition for leave to intervene was filed on August 13, 1999, by Graseby Dynamics Ltd. (Graseby), manufacturer of the M22/GID-3 Automatic Chemical Agent Detector/Alarm for which the Army seeks registration and licensing. Graseby seeks intervention in support of the Army. The Army has not responded to Graseby's petition. On August 23, 1999, the Staff filed

a response opposing Graseby's petition, both for lack of standing and for failing to define an area "germane" to the proceeding that it wishes to litigate.

To intervene in a proceeding of this type, a petitioner such as Graseby needs to establish (1) its interest in the proceeding (i.e., its standing); (2) how that interest may be affected by the results of the proceeding; (3) the petitioner's area of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the petition was timely submitted. 10 C.F.R. § 2.1205(e).

As indicated earlier, Graseby's petition was timely filed. But there are problems with respect to other elements of Graseby's petition, particularly its demonstration of standing.

To demonstrate a person's standing to participate as a party in a proceeding adjudicated under the informal licensing procedures of 10 C.F.R. Part 2, Subpart L, the Commission has long looked to "contemporaneous judicial concepts of standing." *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), LBP-97-20, 46 NRC 257, 262 (1997), *aff'd,* CLI-98-11, 48 NRC 1 (1998), *appeal docketed,* No. 98-1426 (D.C. Cir. Sept. 15, 1998) (*citing, among others, Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976)). As the Presiding Officer in *Quivira* pointed out, and as the Staff reiterates here, a contemporary delineation of judicial concepts of standing appeared in a recent Supreme Court decision, *Bennett v. Spear,* 520 U.S. 154 (1997). In pertinent part, the Court stated that the "irreducible constitutional minimum" requirements for standing are that the litigant suffer an "injury-in-fact," that is "actual or imminent, not conjectural or hypothetical," that there is a causal connection between the alleged injury and the action complained of, and that the injury will be redressed by a favorable decision. 520 U.S. at 167. *See also Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1991)

In addition, there may be "prudential" standing requirements, such as that the litigant's asserted interests fall within the "zones of interest" arguably protected by the governing statutes — here, the Atomic Energy Act or the National Environmental Policy Act (NEPA). *Bennett, supra,* 520 U.S. at 162. The Commission applies both the constitutional and prudential aspects of the standing doctrine. *See, e.g., International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259 261-65 (1998).

Although Graseby's statement of interests is somewhat cryptic, it apparently is seeking intervention as the manufacturer of the ACADA for which the Staff has denied a license to the Army. It asserts that

> [t]he results of the proceeding will impact the U.S. Government's strategy, plans & procedures in the fielding & maintenance of the [Detector/Alarm] on behalf of the U.S. armed services. The company is under contract to the Government for warranty and maintenance activities and will therefore be directly affected by the results. The decision could also affect the company's business strategy regarding such activities.

Graseby goes on to state that its area of concern about the licensing activity relates to the technical reasons for supporting the Army's case and that its request is timely because the Army "has begun to field the above equipment, which is mission critical, to various service users."

Evaluating this brief statement against governing standards for standing, Graseby has established injury in fact — the imminent diminution of its ability to market its ACADA and supporting services; that this result emanates from the Staff's action vis-à-vis the Army; and how this proceeding might alleviate that injury — i.e., by permitting registration and licensing of Graseby's ACADA without regard to the limits imposed by the Staff on the Army's use of the device. Beyond that, Graseby's petition was timely filed.

Where Graseby's statement of standing falls short, however, is in establishing that Graseby's alleged injury falls within the zones of interest arguably protected by the governing statutes, here, the Atomic Energy Act or NEPA. Graseby's stated injury is purely economic, unrelated in any respect to radiation or to environmental impacts. Such injury is outside the zones of interest arguably protected by the Atomic Energy Act or NEPA. *Quivira*, CLI-98-11, *supra*, 47 NRC at 8-11.

For these reasons, Graseby lacks standing to intervene on its own right. Accordingly, I *deny* its intervention request for lack of standing.

That does not mean, however, that Graseby may not participate in this proceeding in any capacity. Graseby has not thus far indicated with sufficient particularity what information, as the manufacturer of the ACADA, it could contribute to the record to assist me in making an informed decision. Graseby has stated that it desires to support the Army's case. The Army may thus wish to utilize Graseby in the presentation of its case. In addition, were Graseby further to identify the detailed information that it could supply for the record, it might be able to gain party status as a discretionary intervenor. *See Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 102-07 (1976) (standing lacking because of failure to satisfy "zone of interest" criterion); *id.*, ALAB-363, 4 NRC 631 (1976) (intervention permitted on the basis of discretionary standing).

I do not have before me sufficient information to determine whether admittance of Graseby as a matter of discretion would be beneficial. I hereby invite the Army to determine whether it wishes to utilize Graseby in the presentation of its case or, alternatively, whether Graseby believes that its admission on a discretionary basis would be beneficial. At the prehearing conference set forth below, I will entertain the views of the Army and Graseby, as well as the NRC Staff, on these matters.

III. PREHEARING CONFERENCE

A prehearing conference is hereby scheduled for Wednesday, October 13, 1999, beginning at 9:30 a.m., in the Atomic Safety and Licensing Board hearing room,

3d floor, 11555 Rockville Pike, Rockville, Maryland. That conference will consider, *inter alia,* the definition of issues for litigation, the form of participation, if any, of Graseby Dynamics, and schedules for further filings. Graseby Dynamics is invited to appear on matters concerning its participation.

Parties, as well as Graseby, are requested to provide the Presiding Officer, the Special Assistant, and the other participants with an outline of issues to be raised as well as the form of participation, if any, of Graseby. Such outline should be in the hands of the Presiding Officer, the Special Assistant, and other participants by close of business Friday, October 8, 1999.

IT IS SO ORDERED.

Charles Bechhoefer, Presiding Officer
ADMINISTRATIVE JUDGE

Rockville, Maryland,
September 13, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

Docket No. 72-22-ISFSI
(ASLBP No. 97-732-02-ISFSI)

PRIVATE FUEL STORAGE, L.L.C.
(Independent Spent Fuel Storage Installation)

September 20, 1999

In this proceeding concerning the application of Private Fuel Storage, L.L.C. (PFS), under 10 C.F.R. Part 72 to construct and operate an independent spent fuel storage installation (ISFSI), in accordance with its prior ruling in LBP-99-34, 50 NRC 168 (1999), granting summary disposition on contention Utah B, License Needed for Intermodal Transfer Point (ITP), the Licensing Board dismisses contention Utah N, Flooding, and the portions of contentions Utah K/Confederated Tribes B, Inadequate Consideration of Credible Accidents; Utah O, Hydrology; Utah R, Emergency Plan; and Utah S, Decommissioning, that relate to the proposed Rowley Junction, Utah rail to heavy haul-truck ITP. Further, in connection with its decision in LBP-99-35, 50 NRC 180 (1999), the Board denies a PFS request for reconsideration of its ruling denying summary disposition on the portion of contention Utah K/Confederated Tribes B concerning the use of training exercise ordinance at Dugway Proving Ground, and clarifies its ruling regarding Utah Test and Training Range-related overflights.

MOTION FOR RECONSIDERATION: RAISING MATTERS FOR THE FIRST TIME; MISUNDERSTOOD OR OVERLOOKED RECORD MATERIAL; SEEKING CLARIFICATION

RULES OF PRACTICE: MOTION FOR RECONSIDERATION (RAISING MATTERS FOR THE FIRST TIME; MISUNDERSTOOD OR OVERLOOKED RECORD MATERIAL; SEEKING CLARIFICATION)

Although a party may not base a reconsideration motion on new information or a new thesis, *see* LBP-98-10, 47 NRC 288, 292 (1998) (citing *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997)), a request to reexamine existing record material that may have been misunderstood or overlooked, or to clarify a matter that a party believes is unclear, is appropriate, *see id.* at 296-97 (citing *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 687 (1983)).

MEMORANDUM AND ORDER
(Summary Disposition-Related Rulings)

In late August 1999 rulings, LBP-99-34, 50 NRC 168 (1999), and LBP-99-35, 50 NRC 180 (1999), the Licensing Board addressed two motions filed by Applicant Private Fuel Storage, L.L.C. (PFS), seeking summary disposition of contentions Utah B, License Needed for Intermodal Transfer Facility, and Utah K/Confederated Tribes B, Inadequate Consideration of Credible Accidents. Now pending with the Board are party pleadings relating to these determinations. Relative to contention Utah B, at the Board's request the parties have submitted their views on the impact on other pending contentions of the Board's ruling that the specific licensing provisions of 10 C.F.R. Part 72 do not apply to the planned Rowley Junction, Utah rail to heavy-haul truck intermodal transfer point (ITP). Also, the Board's determination on contention Utah K/Confederated Tribes B regarding the use of ground-launched ordnance during military training exercises at Dugway Proving Ground (DPG) and military aircraft overflights relating to the use of the Utah Test and Training Range (UTTR) is the subject of a PFS reconsideration/clarification motion.

For the reasons set forth below, we dismiss all or part of contentions Utah K/Confederated Tribes B, Utah N, Utah O, Utah R, Utah S, as they relate to the Rowley Junction ITP and deny the PFS request for reconsideration of our ruling regarding training exercise ordnance at DPG. Further, we provide additional information regarding our ruling on UTTR-related overflights.

I. BACKGROUND

A. Impact of Ruling on Contention Utah B

In our LBP-99-34 ruling concerning contention Utah B, the Board found that the ITP that PFS has proposed may be constructed and operated at Rowley Junction, Utah, to move spent fuel shipments from the rail mainline some 25 miles north of its planned Skull Valley, Utah 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) is "governed by the general licensing provisions of 10 C.F.R. Part 71 and the related [United States Department of Transportation (DOT)] regulations for transporting spent nuclear fuel so as not to require specific licensing under 10 C.F.R. Part 72." 50 NRC at 176. In addition, citing its earlier contentions-admission decision in LBP-98-7, 47 NRC 142, *reconsideration granted in part and denied in part on other grounds,* LBP-98-10, 47 NRC 288, *aff'd on other grounds,* CLI-98-13, 48 NRC 26 (1998), the Board indicated that this determination could be dispositive of the ITP-related portions of eight other delineated State contentions. *See* LBP-99-34, 50 NRC at 178. As a consequence, the Board requested that the parties address the question "whether, in light of this ruling on contention Utah B, the [referenced] contentions should be dismissed as they relate to the ITP." *Id.*

In filings dated September 7, 1999, PFS, Intervenor State of Utah (State), and the NRC Staff discuss the impact of the Board's August 30, 1999 contention Utah B ruling on contentions Utah K/Confederated Tribes B; Utah N, Flooding; Utah O, Hydrology; Utah R, Emergency Plan; Utah S, Decommissioning; Utah T, Inadequate Assessment of Required Permits and Other Entitlements; Utah U, Impacts of Onsite Storage Not Considered; and Utah W, Other Impacts Not Considered. PFS and the Staff declare that, with the exception of contention Utah U, the Board's ruling on Utah B renders all or portions of these other contentions subject to dismissal as they relate to the Rowley Junction ITP. *See* [PFS] Position on Dismissal of ITP-Related Contentions (Sept. 7, 1999) at 3-10; NRC Staff's Position Regarding the Impact of LBP-99-34 on Other Contentions (Sept. 7, 1999) at 2-8. Relative to contention Utah U, both PFS and the Staff assert that, notwithstanding the Board's identification of this contention as having an ITP connection, as admitted this issue has no ITP-related aspects and so is not to be subject to dismissal based on the Board's contention Utah B ruling.

The State takes a somewhat different stance. Although agreeing with PFS and the Staff that contention Utah U has no ITP-related features, the State disagrees that the Board's ruling in LBP-99-34 is dispositive of several of the other contentions. *See* [State] Response to the Impact of the Board's Ruling in LBP-99-34 (Utah Contention B) as the Ruling May Relate to Other Admitted Contentions (Sept. 7, 1999) at 3-6. Specifically, the State declares that the ITP-related portions of emergency plan and decommissioning contentions Utah R and Utah S should

be retained because there is nothing in the record to show that the public will be adequately protected from PFS activities at the ITP or that PFS has adequate assets to decommission the ITP. Additionally, the State asserts that because contentions Utah T and Utah W involve issues that arise under the National Environmental Policy Act of 1969 (NEPA), their ITP-related aspects are not subject to dismissal as a consequence of LBP-99-34.

B. Reconsideration/Clarification of Ruling on Contention Utah K/Confederated Tribes B

The other summary disposition-related matter concerns a September 3, 1999 PFS filing seeking reconsideration and/or clarification of two aspects of the Board's LBP-99-35 ruling on summary disposition for contention Utah K/Confederated Tribes B. In this submission, PFS asks that the Board reconsider its determination denying summary disposition in PFS's favor regarding the firing of military ordnance during training exercises on DPG. *See* [PFS] Motion for Reconsideration and Clarification of Ruling on [PFS] Motion for Summary Disposition of Contention Utah K/Confederated Tribes B (Sept. 3, 1999) at 2-4. In addition, PFS suggests that the Board should clarify its ruling concerning the UTTR to address specifically the question of the hazard posed by aircraft using air-delivered ordnance other than cruise missiles on targets located within the United States Department of Defense (DOD) land boundaries of the UTTR. *See id.* at 4-6.

In its September 9, 1999 response to the PFS reconsideration/clarification motion, the Staff indicates its support for the relief requested in the PFS motion based on its position, as expressed in the Staff's response to the PFS dispositive motion regarding this contention, that PFS was entitled to summary disposition on these aspects of contention Utah K/Confederated Tribes B. *See* NRC Staff's Response to "[PFS] Motion for Reconsideration and Clarification of Ruling on the [PFS] Motion for Summary Disposition of Contention Utah K/Confederated Tribes B" (Sept. 9, 1999) at 2. The State, on the other hand, asserts that the PFS reconsideration/clarification request should be denied. Regarding the matter of training exercise ordnance at DPG, the State maintains that its showing there were ground-based weapons used at DPG that exceeded the ranges described by PFS was sufficient to establish a material factual dispute because it showed PFS had not accounted for all training munitions used. *See* [State] Response to [PFS] Motion for Reconsideration and Clarification of Ruling on the [PFS] Motion for Summary Disposition of Contention Utah K/Confederated Tribes B (Sept. 13, 1999) at 3-6. Further, regarding the PFS request for clarification of the issue of UTTR air-delivered ordnance other than cruise missiles, the State declares that PFS is now trying to rewrite its motion to draw a distinction between air munitions fired over DOD property and air munitions fired over non-DOD land, including the Skull Valley site of the PFS ISFSI. The State declares this is inappropriate and, in any

event, does not exempt these concerns from consideration as part of the cumulative aircraft hazards analysis that is still outstanding. *See id.* at 6-8.

II. ANALYSIS

A. Impact of Ruling on Contention Utah B

Of the eight contentions identified by the Board in LBP-99-34 as potentially impacted by that ruling, there apparently is no dispute among PFS, the State, and the Staff that our determination there is dispositive of all or part of three contentions — Utah K/Confederated Tribes B, Utah N, and Utah O as they relate to the ITP. As a consequence, we dismiss the admitted portion of contention Utah K/Confederated Tribes B regarding the alleged impact on the Rowley Junction ITP of accidents involving (1) materials or activities at or emanating from (a) the Tekoi Rocket Engine Test facility (Tekoi), (b) Salt Lake City International Airport (SLCIA), (c) DPG, including Michael Army Airfield (MAAF), (e) Hill Air Force Base (HAFB), and (f) the UTTR; or (2) hazardous materials that pass through Rowley Junction from the Laidlaw APTUS hazardous waste incinerator, the Envirocare low-level radioactive and mixed waste landfill, or Laidlaw's Clive Hazardous Waste Facility and Grassy Mountain hazardous waste landfill. In addition, we dismiss the admitted portion of contention Utah O regarding groundwater impacts relative to the Rowley Junction ITP as well as contention Utah N, which raised only an ITP-related concern, in its entirety.

Relative to the four contentions that the State asserts are not subject to dismissal, the State's argument regarding contentions Utah R and Utah S is simply a variation on its already rejected assertion that the existing program for regulating spent fuel transportation under 10 C.F.R. Part 71 and the complementary DOT regime is inadequate. *See* LBP-99-34, 50 NRC at 176-77. Accordingly, based on our ruling regarding contention Utah B, we dismiss the aspects of these contentions that relate to the ITP.

Relative to contentions Utah T and Utah W, however, as the State points out, these raise issues that go to the NEPA responsibilities that are part of the agency licensing process relative to the PFS ISFSI. Although, as we pointed out in ruling on contention Utah B, the ITP is not subject to the Part 72 licensing process, like the more recently proposed Low Junction rail spur, it is proposed to be constructed as part of the PFS application for that license and, as such, is subject to consideration under NEPA. *See* LBP-99-3, 49 NRC 40, 53 (1999). Accordingly, we take no action regarding these two contentions as they relate to the ITP.

Finally, with respect to contention Utah U, we agree with the parties that this issue was mislabeled as including ITP-related concerns. Accordingly, our ruling in LBP-99-34 had no impact on the substance of contention Utah U as it was admitted by the Board.

We include as Appendix A to this Decision a revised version of contentions Utah K/Confederated Tribes B, Utah O, and Utah R that reflect our ruling here and, in the case of Utah K/Confederated Tribes B, our ruling in LBP-99-35 as well.

B. Reconsideration/Clarification of Ruling on Contention Utah K/Confederated Tribes B

1. Reconsideration Standard

Although a party may not base a reconsideration motion on new information or a new thesis, *see* LBP-98-10, 47 NRC at 292 (citing *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997), a request to reexamine existing record material that may have been misunderstood or overlooked, or to clarify a matter that the party believes is unclear, is appropriate, *see id.* at 296-97 (citing *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 687 (1983)).

2. DPG Training Exercise Ordnance

In its August 30 ruling on the PFS motion relative to the issue of DPG training exercise ordnance, the Board noted that "[t]he State's sworn assertions regarding the current training use of a missile at the Wig Mountain site that can reach the PFS facility establishes a litigable material factual dispute." LBP-99-35, 50 NRC at 194. Nonetheless, according to PFS, the State's showing that DPG-fired ordnance is capable of reaching the PFS facility is not sufficient given the PFS assertion that "most" of the training weapons do not have the range to reach the PFS facility and its showing that training weapons are fired away from the facility and only under stringent safety precautions. What this PFS claim fails fully to account for, however, is the nature of the ordnance involved. As is apparent from other portions of this contention, it has not been established that missiles necessarily travel in the direction they are fired. Accordingly, given the uncontroverted showings about the range of missiles utilized in training exercises and the distance between their firing area and the location of the PFS facility, we reaffirm our ruling regarding this portion of the contention and deny the PFS motion for reconsideration.[1]

[1] Under the circumstances, we are unwilling to parse this portion of the contention based on the type of ordnance used, but would note that ordnance that is not capable of reaching the PFS facility from DPG training exercise areas, either because of its range or the manner in which it is delivered, seemingly provides little or no substantive support for the State's claims.

3. *UTTR-Related Non-Cruise Missile Overflights*

In ruling on the matter of UTTR-related overflights not involving cruise missiles, the Board indicated that "[r]elative to the issue of noncrash consequences of overflights, it is apparent this question hinges on whether UTTR aircraft will transit Skull Valley, a factual matter that the Staff has asked be deferred as part of its military aircraft crash analysis." LBP-99-35, 50 NRC at 198 (citation omitted). By way of further explanation, we note that this Board ruling was an acknowledgment of the Staff's "no position" determination regarding the various PFS undisputed material factual statements that described the parameters of UTTR-related overflights in Skull Valley and the State's assertion that military aircraft "overflying" Skull Valley present a significant risk to the PFS facility as contrasted with the PFS asserted undisputed material factual statement that military aircraft on UTTR "run-ins for weapon delivery do not cross Skull Valley." *Compare* NRC Staff's Response to [PFS] Motion for Partial Summary Disposition of Utah Contention K and Confederated Tribes Contention B (July 22, 1999) at 4 n.3 *and* [State] Opposition to [PFS] Motion for Partial Summary Disposition of Utah Contention K and Confederated Tribes Contention B (July 22, 1999) at 8-9 *with* [PFS] Motion for Partial Summary Disposition of Utah Contention K and Confederated Tribes Contention B (June 7, 1999), Statement of Material Facts at 8. By the Board's reckoning, these assertions by the parties leave open the possibility that there will be UTTR-related military overflights that, by reason of their proximity to the PFS facility, can have some direct impact on the PFS facility.

Of course, as the Board noted, PFS will be permitted to supplement its summary disposition motion as it concerns Skull Valley overflights once the Staff has taken its position on such flights. *See* LBP-99-35, 50 NRC at 198.

III. CONCLUSION

The Board's prior ruling in LBP-99-34 granting summary disposition in favor of PFS on contention Utah B concerning the proposed Rowley Junction ITP mandates the dismissal of contention Utah N and the ITP-related portions of contentions Utah K/Confederated Tribes B, Utah O, Utah R, and Utah S. Further, the Board denies the PFS request for reconsideration of its LBP-99-35 ruling denying summary disposition for contention Utah K/Confederated Tribes B on the matter of DPG training exercise ordnance and clarifies its ruling regarding UTTR-related non-cruise missile overflights as set forth above.

For the foregoing reasons, it is, this 20th day of September 1999, ORDERED that:

1. Contention Utah N and the ITP-related portions of contentions Utah K/Confederated Tribes B, Utah O, Utah R, and Utah S are *dismissed.*

2. The PFS September 3, 1999 motion for reconsideration and/or clarification of LBP-99-35 is *denied* as to the portion of contention Utah K/Confederated Tribe B regarding DPG training exercise ordnance and is *clarified* on the matter of UTTR air-delivered ordnance as is discussed in section II.B.3 above.

THE ATOMIC SAFETY AND
LICENSING BOARD[2]

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 20, 1999

[2]Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to counsel for (1) Applicant PFS; (2) Intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the Staff.

APPENDIX A

REVISED CONTENTIONS

1. UTAH K/CONFEDERATED TRIBES B — Inadequate Consideration of Credible Accidents

CONTENTION: The Applicant has inadequately considered credible accidents caused by external events and facilities affecting the ISFSI, including the cumulative effects of military testing facilities in the vicinity.

2. UTAH O — Hydrology

CONTENTION: The Applicant has failed to adequately assess the health, safety and environmental effects from the construction, operation, and decommissioning of the ISFSI, as required by 10 C.F.R. §§ 72.24(d), 72.100(b) and 72.108, with respect to the following contaminant sources, pathways, and impacts:

1. Contaminant pathways from the applicant's sewer/wastewater system; routine facility operations; and construction activities.
2. Contaminant pathways from the applicant's retention pond in that:
   a. The ER fails to discuss potential for overflow and therefore fails to comply with 10 C.F.R. Part 51.
   b. ER is deficient because it contains no information concerning effluent characteristics and environmental impacts associated with seepage from the pond in violation of 10 C.F.R. § 51.45(b) and § 72.126(c) & (d).
3. Potential for groundwater and surface water contamination.
4. The effects of applicant's water usage on other well users and on the aquifer.
5. Impact of potential groundwater contamination on downgradient hydrological resources.

3. UTAH R — Emergency Plan

CONTENTION: The Applicant has not provided reasonable assurance that the public health and safety will be adequately protected in the event of an emergency at the storage site in that PFS has not adequately described the means and equipment for mitigation of accidents because it does not have adequate support capability to fight fires onsite.

Directors' Decisions Under 10 CFR 2.206

DIRECTORS' DECISIONS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Samuel J. Collins, Director

In the Matter of **Docket No. 50-213**

CONNECTICUT YANKEE ATOMIC POWER COMPANY
(Haddam Neck Plant) **September 9, 1999**

By a petition dated March 11, 1997, Rosemary Bassilakis, on behalf of the Citizens Awareness Network and the Nuclear Information Resource Service (Petitioners), requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) (1) commence enforcement action against the Connecticut Yankee Atomic Power Company (CY) by means of a large civil penalty to ensure compliance with safety-based radiological control routines; (2) modify CY's license for the Haddam Neck Plant, pursuant to 10 C.F.R. § 2.202, to prohibit any decommissioning activity, which would include decontamination or dismantling, until CY manages to conduct routine maintenance at the facility without the occurrence of any contamination events for at least 6 months; and (3) place the Haddam Neck Plant on the NRC Watch List.

The Director of the Office of Nuclear Reactor Regulation issued a Partial Director's Decision on September 3, 1997, and a Completion of a Previously Issued Partial Director's Decision on September 9, 1999. The Partial Director's Decision denied Petitioners' second and third requests noted above. The completion of the Director's Decision granted the first request above in part, in that the NRC commenced enforcement action against the Licensee, and denied it in part, in that the NRC concluded that no civil penalty would be assessed against the Licensee.

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
(Completion of Previously Issued Partial Director's Decision)

I. INTRODUCTION

On March 11, 1997, Rosemary Bassilakis submitted a petition pursuant to Title 10 of the *Code of Federal Regulations*, § 2.206 (10 C.F.R. § 2.206), on behalf of the Citizens Awareness Network and the Nuclear Information Resource Service (Petitioners) requesting that the NRC (1) commence enforcement action against the Connecticut Yankee Atomic Power Company (CY, or Licensee) by means of a large civil penalty to ensure compliance with safety-based radiological control routines; (2) modify CY's license for the Haddam Neck Plant, pursuant to 10 C.F.R. § 2.202, to prohibit any decommissioning activity, which would include decontamination or dismantling, until CY manages to conduct routine maintenance at the facility without any occurrence of contamination events for at least 6 months; and (3) place the Haddam Neck Plant on the NRC Watch List. The Petitioners stated that their particular concern was the inability of CY management to maintain proper radiological controls at the Haddam Neck Plant.

In support of their requests, the Petitioners noted three radiological deficiencies that occurred at the Haddam Neck Plant. The first occurred on various dates in 1996 and involved inadequate calibration of various detectors in the radiation monitoring system. The second occurred in November 1996 and involved two individuals who received an unplanned exposure while working in the fuel transfer canal. The third occurred in February 1997 and involved the release of contaminated video equipment to a nonlicensed vendor.

The Petitioners' requests and the NRC's evaluation and conclusions are discussed in the sections below. The background section provides relevant information on NRC oversight and enforcement activities at Haddam Neck and briefly describes the Partial Director's Decision sent to the Petitioners in September 1997. The discussion section describes the enforcement actions taken in response to the events noted in the petition and explains the purpose of assessing civil penalties. The conclusion section presents the Director's Decision.

II. BACKGROUND

CY submitted certifications of permanent cessation of operations at the Haddam Neck Plant and permanent defueling of its reactor on December 5, 1996. Prior to that date, the NRC identified a number of significant regulatory concerns regarding the Licensee's performance. The NRC took a number of actions over the next few months to bring the Licensee into compliance with applicable regulations. The actions most relevant to the Petitioners' requests and concern were the issuance of Confirmatory Action Letter (CAL) No. 1-97-007 on March 4, 1997, a civil

penalty of $650,000 on May 12, 1997, and a supplement to the CAL on November 17, 1997. The CAL was issued in response to weakness in managing and controlling radiological work at the Haddam Neck Plant. The three events noted in the petition were identified in the CAL as examples of radiological weaknesses. The civil penalty did not specifically address radiological issues, but did identify programmatic weaknesses that required prompt and comprehensive correction of violations. In the November 17, 1997 supplement to the CAL, the NRC found, after conducting several inspections, that CY had achieved radiation program improvement in several areas. Subsequently, on May 5, 1998, the NRC found that the Licensee had completed all the commitments listed in the CAL and that it could safely conduct significant radiological work.

The NRC issued a Partial Director's Decision (DD-97-19, 46 NRC 91) on September 3, 1997, in response to the three requests contained in the petition. The first request, to take enforcement action and impose a large civil penalty on the Licensee, was deferred until inspections and investigations could be completed and enforcement actions evaluated for the deficiencies noted. The Partial Director's Decision did not consider the May 12, 1997 civil penalty to be a response to the Petitioners' first request because radiological issues were not included in the notice of violation. The second request, to impose a 6-month moratorium on decommissioning activities, was denied because (1) on the basis of experience, there was no reason to expect that 10 C.F.R. Part 20 dose limits would be exceeded at the Haddam Neck Plant, (2) a senior resident inspector was on site to monitor and inspect the Licensee's performance on a day-to-day basis, and (3) a confirmatory action letter was issued to CY on March 4, 1997, to document the Licensee's commitments to improve its radiation protection program. The third request, to place Haddam Neck on the NRC Watch List, was denied on the basis that the inspection program in place at the plant was sufficient to monitor Licensee performance at a permanently shutdown and defueled reactor.

III. DISCUSSION OF PETITIONERS' DEFERRED REQUEST

The three radiological deficiencies noted by the Petitioners have been inspected and investigated. In considering the Petitioners' deferred request, the NRC determined whether violations of NRC requirements had occurred. Identified violations were then dispositioned in accordance with the NRC's Enforcement Policy.

The first deficiency, involving inadequate calibration of various detectors in the radiation monitoring system (RMS) during 1996, was identified as a violation by NRC letter dated January 15, 1998. The NRC determined that a violation of regulatory requirements occurred in that the Licensee failed to establish and implement RMS test procedures as required by Technical Specification 6.8.

Such programmatic deficiency on the part of a licensee would normally be subject to escalated enforcement action. However, the NRC determined that the provisions of section VII.B.2, "Violations Identified During Extended Shutdowns or Work Stoppages," of the Enforcement Policy applied, and it decided to exercise enforcement discretion in this case. Therefore, the NRC did not issue a notice of violation or propose a civil penalty. This decision was made on the basis that (1) the events leading to the violation took place before the permanent shutdown of the plant in December 1996 and (2) the Licensee had already been issued a $650,000 civil penalty on May 12, 1997, for technical and safety review program inadequacies that led to the inadequate RMS calibrations and other violations.

The second deficiency, involving an unplanned radiation exposure, resulted in a notice of violation issued to the Licensee on April 5, 1999. The NRC identified several violations that occurred during the event and classified them in the aggregate as a Severity Level III violation. In accordance with the Enforcement Policy, a civil penalty is normally considered for a Severity Level III violation or problem. However, the NRC determined that section VII.B.6 of the Enforcement Policy, "Violations Involving Special Circumstances," applied to the event, and it exercised enforcement discretion to not impose a civil penalty in this case. Therefore, the NRC did not propose a civil penalty because (1) the violations occurred before CY's decision, in December 1996, to permanently shut down and defuel the Haddam Neck facility and (2) CY had already been issued a $650,000 civil penalty on May 12, 1997, to address poor performance that existed before the decision was made to permanently shut down the reactor.

The third deficiency, involving release of contaminated equipment, was the subject of two enforcement actions, both issued on May 12, 1999. The first enforcement action was issued as a notice of violation to an individual on the basis that he attempted to conceal the release of contaminated video equipment to a nonlicensed vendor. The NRC classified the violation as Severity Level III. The NRC considered issuing an order to the individual to prevent him from engaging in licensed activities at NRC-licensed facilities. The NRC did not issue an order to the individual because, among other factors, he was not in a management or supervisory position at the facility and was no longer employed in, or seeking work in, the nuclear industry. The second enforcement action was issued to CY for failure to perform an adequate survey, with subsequent loss of control of material. However, CY promptly achieved compliance by retrieving the contaminated equipment. CY then investigated the cause of the release and took corrective actions to prevent recurrence. Therefore, because the release of the contaminated material and the resultant loss of control of material were not willful on the part of the Licensee, the NRC classified the violation as Severity Level IV and treated it as a noncited violation in accordance with Appendix C of the Enforcement Policy. Violations treated in this manner are not subject to a civil penalty.

As discussed above, although the events noted by the Petitioners constituted violations of the NRC's regulations and certain enforcement actions were taken, a civil penalty was not assessed on the Licensee. This result partially fulfills the Petitioners' request to take enforcement action against the Licensee. With regard to imposing a civil penalty, the NRC Enforcement Policy (NUREG-1600, Rev. 1, § VI.B) states, "Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus Licensees' attention on violations of significant regulatory concern." Based on numerous inspections, the NRC has concluded that the Licensee has taken timely and comprehensive corrective actions to improve its radiation protection program, has achieved adequate compliance in the time after the events occurred, and has focused its attention on maintaining adequate radiological controls. An additional civil penalty is unnecessary in light of the improvement in the Licensee's performance. Consequently, consistent with the Enforcement Policy, discretion was exercised to not impose civil penalties for these violations. Therefore, the request to take enforcement action by means of a large civil penalty on CY in response to the events noted in the petition is granted in part, in that enforcement action has been taken against the Licensee, and denied in part, since no civil penalty was imposed.

IV. DECISION

For the reasons stated above and in Director's Decision DD-97-19, issued September 3, 1997, the petition is granted in part and denied in part. The Decision and the documents cited in the Decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street NW, Washington, DC.

In accordance with 10 C.F.R. § 2.206(c), a copy of the Decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR
REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 9th day of September 1999.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Samuel J. Collins, Director

In the Matter of

Docket Nos. 50-336
50-423
(License Nos. NPF-65,
NPF-49)

NORTHEAST NUCLEAR ENERGY COMPANY
(Millstone Nuclear Power Station, Units 2 and 3)

September 28, 1999

On April 14, 1999, Mr. Scott Cullen filed two separate but related petitions pursuant to 10 C.F.R. § 2.206 on behalf of Standing for Truth About Radiation, the Nuclear Information Resource Service, New York State Senator Ken LaValle, and New York State Assembly members Fred Thiele and Patricia Acampora (the Petitioners).

The first petition requested that (1) the NRC immediately suspend Northeast Nuclear Energy Company's licenses to operate the Millstone Nuclear Power Station until there are reasonable assurances that adequate protective measures for Fishers Island, New York, can and will be taken in the event of a radiological emergency at Millstone; (2) the operating licenses be suspended until such time as "a range of protective actions have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public"; and (3) these matters be the subject of a public hearing, with full opportunity for public comment. The basis for the Petitioners' requests is that the Petitioners contend that the site is in violation of 10 C.F.R. §§ 50.54(q) and 50.47 with regard to emergency planning requirements because Fishers Island, New York, which is located within the 10-mile EPZ for Millstone, has no functional emergency plan.

The second petition requested that the NRC institute a proceeding, pursuant to 10 C.F.R. § 2.202, to suspend the operating licenses for the Millstone Nuclear

Power Station until the facility is in full compliance with the law. Specifically, the Petitioners maintain that there are no mechanisms by which the conditional factors of demography, topography, land characteristics, access routes, and jurisdictional boundaries can be evaluated, resulting in a complete lack of reasonable assurances that adequate protective measures can and will be taken on Long Island in the event of an accident at Millstone. The Petitioners contend that this constitutes a violation of sections 50.54(q) and 50.47.

In the May 14, 1999 acknowledgment letter to the petitions, the NRC provided the basis for denial of the Petitioners' request to immediately suspend the operating licenses for Millstone, and the basis for denying the request for an informal hearing. This information was again provided in this Final Director's Decision. The only issue remaining to be addressed related to the protective measures for Fishers Island, New York. The NRC requested the support of the Federal Emergency Management Agency with the assessment of the protective measures for Fishers Island.

On the basis of the NRC Staff's review of the Federal Emergency Management Agency evaluation of offsite emergency plans, and the findings of the NRC regarding onsite emergency preparedness for the Millstone Nuclear Power Station, the Petitioners' request to suspend the operating licenses until such time as "a range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public" for Fishers Island was denied.

FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

By letter dated April 14, 1999, Mr. Scott Cullen, on behalf of Standing for Truth About Radiation (STAR), the Nuclear Information Resource Service (NIRS), New York State Senator Ken LaValle, and New York State Assembly members Fred Thiele and Patricia Acampora (the Petitioners) submitted two separate but related petitions pursuant to Title 10 of the *Code of Federal Regulations,* § 2.206 (10 C.F.R. § 2.206). In the first petition, the Petitioners requested that (1) the U.S. Nuclear Regulatory Commission (NRC) immediately suspend Northeast Nuclear Energy Company's (NNECO's) licenses to operate the Millstone Nuclear Power Station until there are reasonable assurances that adequate protective measures for Fishers Island, New York, can and will be taken in the event of a radiological emergency at Millstone; (2) the operating licenses be suspended until such time as "a range of protective actions have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public"; and (3) these matters be the subject of a public hearing, with full opportunity for public

comment. The basis for the Petitioners' requests is that the Millstone Nuclear Power Station is not in full compliance with the law. Specifically, the Petitioners contend that the site is in violation of 10 C.F.R. §§ 50.54(q) and 50.47 with regard to emergency planning requirements because Fishers Island, New York, which is located within the 10-mile EPZ for Millstone, has no functional emergency plan.

In the second petition, the Petitioners requested that the NRC institute a proceeding, pursuant to 10 C.F.R. § 2.202, to suspend the operating licenses for the Millstone Nuclear Power Station until the facility is in full compliance with the law. Specifically, the Petitioners maintain that there are no mechanisms by which the conditional factors of demography, topography, land characteristics, access routes, and jurisdictional boundaries can be evaluated, resulting in a complete lack of reasonable assurances that adequate protective measures can and will be taken on Long Island in the event of an accident at Millstone. The Petitioners contend that this constitutes a violation of sections 50.54(q) and 50.47.

The NRC informed the Petitioners in a letter to Mr. Cullen dated May 14, 1999, that their request for immediate suspension of the operating licenses for the Millstone Nuclear Power Station, Units 2 and 3 (First Petition, Request 1), was denied. The denial was based on the NRC's finding about the current state of emergency preparedness at Millstone. The federal agency with lead responsibility for assessing the emergency preparedness of state and local governments within the EPZs surrounding nuclear power plants is the Federal Emergency Management Agency (FEMA). FEMA's responsibilities are defined in NRC's and FEMA's regulations (10 C.F.R. Part 50 and 44 C.F.R. Part 350, respectively) and in a memorandum of understanding between the two agencies (58 Fed. Reg. 47,996 (Sept. 14, 1993)). The NRC evaluates onsite emergency planning and reviews FEMA's evaluation of offsite emergency preparedness for the purpose of making findings on the overall state of emergency preparedness. As stated in 10 C.F.R. § 50.54(s)(3):

> The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the licensee's emergency plans are adequate and capable of being implemented.

FEMA has reviewed the State of Connecticut's emergency plan. FEMA has also reviewed the plans for the nine local communities within the Millstone plume exposure pathway EPZ, including Fishers Island, New York. Further, FEMA has evaluated several exercises of these plans. FEMA originally provided its findings and determinations to the NRC in October 1984 on the adequacy of offsite planning for Millstone, in accordance with 44 C.F.R. Part 350 of its regulations. Following the latest exercise, FEMA confirmed that the offsite radiological emergency response plans and procedures for the State of Connecticut

and the affected local jurisdictions, including Fishers Island, New York, specific to the Millstone Nuclear Power Station, can be implemented and are adequate to provide reasonable assurance that appropriate measures can be taken to protect the health and safety of the public in the event of a radiological emergency at Millstone. This was documented in a December 29, 1997 letter from FEMA to the NRC. The letter forwarded FEMA's report for the August 21, 1997 full-participation plume pathway and the October 8-10, 1997 ingestion pathway exercises of the offsite radiological emergency plans for Millstone. Regarding Fishers Island, no deficiencies or areas requiring corrective action were identified in the exercises.

Further, the NRC has found that the Licensee's emergency plans are an adequate basis for an acceptable state of onsite emergency preparedness in accordance with the requirements of 10 C.F.R. § 50.47(b) and Appendix E to 10 C.F.R. Part 50 as documented in the NRC's letter to the Licensee dated June 4, 1998.

In the first petition, the Petitioners raised a concern about the evacuation of Fishers Island residents to New London, Connecticut, a direction closer to the site and to an area that may have already been affected by a radiological emergency at Millstone. Fishers Island is located about 7½ miles east/southeast of Millstone. The New London port is located about 5 miles northeast of Millstone. As stated in the NRC's May 14, 1999 letter to the Petitioners, the NRC found no *prima facie* evidence in the information submitted by the Petitioners that the protective action of evacuation to New London will not provide an adequate level of protection to the public. Further, the Petitioners did not submit any other information that would raise an immediate concern with the NRC's finding regarding the adequacy of emergency planning for Millstone. On the basis of a review of FEMA's findings and determinations on the adequacy of offsite emergency preparedness and on the NRC's assessment of the adequacy of onsite emergency preparedness, the NRC determined that (1) there was reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and (2) there was insufficient evidence to grant the Petitioners' request to immediately suspend the operating licenses for Millstone Nuclear Power Station, Units 2 and 3.

The Petitioners were also told in the May 14, 1999 acknowledgment letter that their request for an informal public hearing (First Petition, Request 3) was denied. The denial was based on the NRC's finding about the current state of emergency preparedness at Millstone. Specifically, the denial was based on the NRC Staff's determination that the information provided in the petitions did not identify deficiencies in offsite emergency preparedness that would preclude the implementation of adequate protective measures for the public in the event of a radiological emergency at Millstone. Further, the NRC Staff determined that the issues did not rise to the level of significance that justified conducting an informal hearing on the petitions.

The Petitioners were told, however, that their petition did raise the potential that enhancements could be made to emergency planning for Millstone that could improve the protection of public health and safety. Further, the May 14, 1999 acknowledgment letter indicated that the areas identified in the petitions related to the adequacy of evacuation and protective measures planning for Fishers Island would be evaluated within a reasonable time. Since FEMA has the primary responsibility for evaluating the emergency preparedness of state and local governments, the NRC requested the assistance of FEMA, in a letter dated June 4, 1999, in evaluating the potential enhancements identified in the petitions.

The NRC also told the Petitioners in the May 14, 1999 letter that the request in their second petition to initiate a proceeding, pursuant to 10 C.F.R. § 2.202, to suspend the operating licenses for Millstone did not satisfy the criteria for consideration as a section 2.206 petition. Specifically, the NRC concluded that the referenced factors regarding the determination of the 10-mile plume exposure pathway EPZ were properly taken into account. The NRC determined that the second petition request did not contain sufficient information to warrant further action by the NRC to require that the 10-mile EPZ be expanded to include the eastern end of Long Island, New York.

II. DISCUSSION

The Commission's regulations in 10 C.F.R. § 50.54(q) and (s) governing emergency planning for operating nuclear power plants require the submittal and implementation of licensee (onsite) and state and local government (offsite) emergency plans that conform to the emergency planning standards in 10 C.F.R. § 50.47(b) and the requirements in Appendix E to 10 C.F.R. Part 50. FEMA is the federal agency with the lead responsibility for evaluating offsite radiological emergency response plans and preparedness.

Fishers Island, New York, is located within the 10-mile plume exposure pathway EPZ for the Millstone Nuclear Power Station and is included in the State of Connecticut's Radiological Emergency Response Plan for Millstone. This plan has been approved by FEMA in accordance with 44 C.F.R. Part 350 of its regulations. The Connecticut emergency plan (Revision 1, dated July 1997) contains the following information regarding Fishers Island:

> Fishers Island, located about 7 ½ miles east/southeast of Millstone, is primarily residential with a small year-round population of about 300 persons and a summer population estimated to be approximately 3000 persons. On the Independence Day (July 4) weekend, this transient population may peak at approximately 5000 persons. Fishers Island is a Hamlet, [a] political subdivision of the Town of Southold, New York, which is in Suffolk County on Long Island.
>
> Because of the logistics associated with the island's location, there has been a long-standing operational agreement between officials of Fishers Island, the Town of Southold, Suffolk

County, the State of New York, and the State of Connecticut. Under this agreement, the lead responsibility for assessing the initial radiological impact of an incident on Fishers Island, and providing assistance with the implementation of any protective actions, belongs to the State of Connecticut. Officials of Fishers Island and the Town of Southold, however, have the authority to implement public protective actions.

The State of New York coordinates the assessment process and resulting protective action recommendations made by the State of Connecticut for Fishers Island, maintains communications with Suffolk County, and provides support to Suffolk County and Fishers Island, as necessary. The Town of Southold, as well as Suffolk County, provides back-up communication capabilities and support, and would lend additional emergency services to the island, if requested.

The State of Connecticut offers resource support to Fishers Island in the area of protective actions. Emergency Alerting System (EAS) announcements for Fishers Island will be made over the Connecticut Emergency Alerting System. The island relies on the nearby Town of Groton, Connecticut, for back-up activation of the public alerting system. Fishers Island residents are designated to go to the host community of Windham[, Connecticut].

On September 2, 1999, FEMA responded to the NRC's request for assistance, including a report prepared by the Regional Assistance Committee (RAC) Chair of FEMA Region I, the FEMA region in which Millstone is located. The RAC Chair is the leading staff technical person with radiological emergency preparedness responsibilities in each FEMA region. FEMA stated that they performed a thorough review and assessment of the emergency evacuation planning for Fishers Island, New York. FEMA noted that Fishers Island is included in the State of Connecticut's approved radiological emergency response plan and that the Fishers Island plan has been tested several times since it was approved, most recently during the August 1997 exercise of the State of Connecticut's plans for Millstone.

FEMA's report stated that in the unlikely event of a nuclear incident at Millstone, the residents of Fishers Island would be directed to shelter in place or to evacuate. If directed to evacuate, the Fishers Island evacuees would be moved by ferry to New London, then transported by bus to the host community in Windham, Connecticut. New London was chosen as the ferry's destination because the Fishers Island Ferry District, which would provide service in the event of an evacuation, is based on Fishers Island and normal everyday traffic travels between New London and Fishers Island. Should an incident at Millstone require the evacuation of Fishers Island, residents would evacuate the island using the regular ferry service, and would be transported to the host community in Windham, Connecticut, by way of the Port of New London. Should New London not be available to the Fisher Island evacuees (i.e., if radiological conditions have resulted in its evacuation), then the Connecticut Emergency Management Director and the State of New York Emergency Management Office would jointly choose to direct the ferry to another port, such as Stonington, Connecticut, located northeast of Fishers Island and east of New London. FEMA's report noted that the protective actions of sheltering and

evacuation are the same two protective actions that appear in all other Connecticut emergency response plans.

With regard to the Petitioners' specific concern about the August 8, 1997 Millstone exercise, FEMA's report stated that the postulated condition of the Millstone plant during the exercise was such that the Governor of Connecticut ordered residents in all EPZ communities to evacuate. With the postulated conditions, the protective action for Fishers Island was to evacuate through New London. The Petitioners were concerned that this was a direction that brought the evacuees closer to the plant. FEMA indicated that the Fishers Island evacuees would not have been at risk during the conduct of this protective action because the plume, had it been real, was traveling in a westerly direction, away from New London, according to the exercise scenario. As such, during this scenario, the evacuees could pass through New London without the threat of exposure to radiation. As discussed previously, should New London not be available (for example, the plume has passed over New London and adverse radiological conditions exist), the ferry would be directed to another port.

FEMA's report indicates that certain enhancements to the Fishers Island plan are being considered and its September 2, 1999 report summarized some of the ongoing emergency planning activities. In July 1998, Northeast Utilities (the Licensee), the Connecticut Office of Emergency Management, and FEMA Regions I and II participated in a demonstration of a ferry run from Fishers Island to Stonington, Connecticut. The objective of this demonstration was to determine the feasibility of having the ferry pick up people from Fishers Island and take them to Stonington, which is located about 7 miles northeast of Fishers Island. The plan and preparations for adding the Port of Stonington, Connecticut, as a receiving port for Fishers Island evacuees is projected to be completed by the end of 1999. Windham, Connecticut, will continue to be used as the host community for Fishers Island residents. FEMA will review changes to the offsite emergency plans to ensure that the plans are adequate and capable of being implemented.

FEMA's report stated that an agreement exists between the Connecticut Office of Emergency Management and the Fishers Island Ferry District for the exclusive use of their ferries in the event of an incident at Millstone. Further, FEMA indicated that negotiations are in progress for an agreement between the Connecticut Office of Emergency Management and the Cross Sound Ferry Company for the use of five of their ferries in the event of an emergency at Millstone.

FEMA's report also noted that in September 1998, a meeting between Connecticut and New York State emergency management agencies was held in Hartford, Connecticut, to discuss offsite emergency preparedness for Millstone and the degree of coordination and communications. At the meeting were representatives of the Connecticut Office of Emergency Management, the New York State Emergency Management Office, Northeast Utilities, FEMA, and the NRC. Further, in October 1998, the Connecticut Office of Emergency Management and the New

York State Emergency Management Office met to discuss other ways of improving communications in making appropriate protective action decisions for Fishers Island.

On June 22, 1999, the Connecticut Office of Emergency Management held its quarterly emergency management director's meeting on Fishers Island to discuss emergency response issues concerning Millstone. The emergency management directors from the Millstone EPZ communities attended this meeting, including those from Fishers Island, the Town of Southold, New London, Stonington, and the host community of Windham, Connecticut. This meeting gave these key emergency management directors an opportunity to communicate directly.

In its September 2, 1999 letter to the NRC, FEMA stated that on the basis of its assessment of emergency planning for the Millstone Nuclear Power Station, there is continued reasonable assurance that adequate protective measures can be taken to protect the public health and safety in the event of a radiological emergency at Millstone.

III. CONCLUSION

After reviewing FEMA's findings and determinations on the adequacy of offsite emergency preparedness and the NRC's assessment of onsite emergency preparedness, the NRC has determined that there is continued reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Millstone. In addition, based on FEMA's findings on the adequacy of emergency preparedness for Fishers Island, the NRC concludes that the Fishers Island emergency plan is adequate and there is reasonable assurance that it can be implemented. Further, the NRC recognizes that potential enhancements are being implemented to improve the protection of the health and safety of the population on Fishers Island. As a result of these findings by FEMA and the NRC, the NRC has determined that the Petitioners' request to suspend the operating licenses for Millstone Units 2 and 3 until a range of protective actions are developed for the 10-mile EPZ (First Petition, Request 2) is denied.

A copy of this Final Director's Decision will be placed in the Commission's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

As provided in 10 C.F.R. § 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Final Director's Decision will constitute the final action of the Commission

25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

FOR THE NUCLEAR
REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 28th day of September 1999.

NRC FORM 335
(2-89)
NRCM 1102,
3201, 3202

U.S. NUCLEAR REGULATORY COMMISSION

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC, Add Vol., Supp., Rev., and Addendum Numbers, if any.)
NUREG–0750
Vol. 50, No. 3
Pages 219–254

2. TITLE AND SUBTITLE

Nuclear Regulatory Commission Issuances for September 1999

3. DATE REPORT PUBLISHED

MONTH	YEAR
November	1999

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

6. TYPE OF REPORT

Legal

7. PERIOD COVERED (Inclusive Dates)

8. PERFORMING ORGANIZATION – NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

Office of the Chief Information Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001

9. SPONSORING ORGANIZATION – NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Office of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

Legal issuances of the Commission, the Atomic Safety and Licensing Board Panel, the Administrative Law Judges, and NRC Program Offices are presented.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

legal issuances

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)
Unclassified

(This Report)
Unclassified

15. NUMBER OF PAGES

16. PRICE