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Vol. 41
Index 2

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January - June 1995

U.S. NUCLEAR REGULATORY COMMISSION

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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.

CASE NAME INDEX

ADVANCED MEDICAL SYSTEMS, INC.
 MATERIALS LICENSE RENEWAL; MEMORANDUM AND ORDER; Docket No. 30-16055-ML-Ren (ASLBP No. 95-707-02-ML-Ren) (Source Material License No. 34-19089-01); LBP-95-3, 41 NRC 195 (1995)

ALL LICENSEES
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-95-8, 41 NRC 346 (1995)

ALL PRESSURIZED WATER REACTORS
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-95-2, 41 NRC 55 (1995)

BABCOCK AND WILCOX COMPANY
 MATERIALS LICENSE RENEWAL; ORDER; Docket No. 70-364-ML-Ren; CLI-95-4, 41 NRC 248 (1995)
 MATERIALS LICENSE RENEWAL; INITIAL DECISION (License Renewal); Docket No. 70-364-ML-Ren (ASLBP No. 94-687-01-ML-Ren) (Materials License No. SNM-414); LBP-95-1, 41 NRC 1 (1995)
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 70-364; DD-95-12, 41 NRC 489 (1995)

COMMONWEALTH EDISON COMPANY
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-295, 50-304; DD-95-9, 41 NRC 350 (1995)

CURATORS OF THE UNIVERSITY OF MISSOURI
 MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket Nos. 70-00270-MLA, 30-02278-MLA (TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); CLI-95-1, 41 NRC 71 (1995)
 MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Petitions for Reconsideration); Docket Nos. 70-00270, 30-02278-MLA (TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); CLI-95-8, 41 NRC 386 (1995)

DANIEL J. McCOOL
 ENFORCEMENT ACTION; MEMORANDUM AND ORDER (Dismissing Proceeding); Docket No. IA 94-017 (ASLBP No. 95-705-03-EA); LBP-95-11, 41 NRC 475 (1995)

DR. JAMES E. BAUER
 ENFORCEMENT ACTION; MEMORANDUM AND ORDER; Docket No. IA-94-011; CLI-95-3, 41 NRC 245 (1995)
 ENFORCEMENT ACTION; MEMORANDUM AND ORDER (Dispositive Motion-Related Rulings); Docket No. IA-94-011 (ASLBP No. 94-696-05-EA); LBP-95-7, 41 NRC 323 (1995)

ENTERGY OPERATIONS, INC.
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-313, 50-368, 72-1007; DD-95-3, 41 NRC 62 (1995)

FLORIDA POWER AND LIGHT COMPANY
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-389-A; DD-95-10, 41 NRC 361 (1995)
 REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-335, 50-389, 50-250, 50-251; DD-95-7, 41 NRC 339 (1995)

CASE NAME INDEX

CASE NAME INDEX

GEORGIA INSTITUTE OF TECHNOLOGY

OPERATING LICENSE RENEWAL; PREHEARING CONFERENCE ORDER (Ruling on Standing and Contentions); Docket No. 50-160-Ren (ASLBP No. 95-704-01-Ren) (Renewal of Facility License No. R-97); LBP-95-6, 41 NRC 281 (1995)

GEORGIA POWER COMPANY, et al.

OPERATING LICENSE AMENDMENT; MEMORANDUM; Docket Nos. 50-321, 50-366, 50-424, 50-425 (10 C.F.R. § 2.206); CLI-95-5, 41 NRC 321 (1995)

OPERATING LICENSE AMENDMENT; ORDER; Docket Nos. 50-424-OLA-3, 50-425-OLA-3; CLI-95-9, 41 NRC 404 (1995)

GULF STATES UTILITIES COMPANY, et al.

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Licensee's Motion Requesting Summary Disposition of Contention 2); Docket No. 50-458-OLA (ASLBP No. 93-680-04-OLA); LBP-95-10, 41 NRC 460 (1995)

HYDRO RESOURCES, INC.

MATERIALS LICENSE; MEMORANDUM AND ORDER (Setting Schedule for Filings); Docket No. 40-8968-ML (ASLBP No. 95-706-01-ML); LBP-95-2, 41 NRC 38 (1995)

INNOVATIVE WEAPONRY, INC.

MATERIALS LICENSE RENEWAL; MEMORANDUM AND ORDER (Terminating Proceeding); Docket No. 030-30266-ML-Ren (ASLBP No. 95-701-01-ML-Ren) (Byproduct Materials License No. 30-23697-01E); LBP-95-8, 41 NRC 409 (1995)

KENNETH G. PIERCE

ENFORCEMENT ACTION; MEMORANDUM AND ORDER; Docket No. 55-30662-EA (IA 94-007); CLI-95-6, 41 NRC 381 (1995)

ENFORCEMENT ACTION; INITIAL DECISION (Vacating Staff Order); Docket Nos. 55-30662-EA, IA-94-007 (ASLBP No. 94-694-05-EA) (Re: Prohibition of Participation in Licensed Activities); LBP-95-4, 41 NRC 203 (1995)

LOUISIANA ENERGY SERVICES

MATERIALS LICENSE; ORDER; Docket No. 70-3070-ML; CLI-95-7, 41 NRC 383 (1995)

NATIONAL INSTITUTES OF HEALTH

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 030-01786 (License No. 19-00296-10); DD-94-5, 41 NRC 227 (1995)

NORTHEAST UTILITIES

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-213, 50-245, 50-336, 50-423 (License Nos. DPR-61, DPR-21, DPR-65, NPF-49); DD-95-11, 41 NRC 370 (1995)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-245, 50-336, 50-423; DD-95-4, 41 NRC 175 (1995)

SAFETY LIGHT CORPORATION, et al.

MATERIALS LICENSE; MEMORANDUM; Docket Nos. 030-05980-ML&ML-2, 030-05982-ML&ML-2 (ASLBP Nos. 92-659-01-ML, 92-664-02-ML-2); LBP-95-9, 41 NRC 412 (1995)

SEQUOYAH FUELS CORPORATION

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER; Docket No. 40-08027-MLA (Source Material License No. SUB-1010); CLI-95-2, 41 NRC 179 (1995)

SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS

ENFORCEMENT ACTION; MEMORANDUM AND ORDER (Ruling on Motion for Protective Order); Docket No. 40-8027-EA (ASLBP No. 94-684-01-EA) (Source Material License No. SUB-1010); LBP-95-5, 41 NRC 253 (1995)

ENFORCEMENT ACTION; MEMORANDUM AND ORDER (Denying General Atomics' Motion Regarding NRC Staff "Reliance" Issues and Establishing Schedule for Bifurcated Issue of Agency Jurisdiction); Docket No. 40-8027-EA (ASLBP No. 94-684-01-EA) (Source Material License No. SUB-1010); LBP-95-12, 41 NRC 478 (1995)

SIERRA NUCLEAR CORPORATION

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-313, 50-368, 72-1007; DD-95-3, 41 NRC 62 (1995)

CASE NAME INDEX

SOUTHERN CALIFORNIA EDISON COMPANY, et al.

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-361, 50-362; DD-95-6, 41 NRC 313 (1995)

STATE OF UTAH

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-95-1, 41 NRC 43 (1995)

U.S. DEPARTMENT OF ENERGY

PARTIAL GRANT AND PARTIAL DENIAL OF PETITION FOR RULEMAKING; Docket No. PRM 60-3; DPRM-95-1, 41 NRC 241 (1995)

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

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 Intervenor 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

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

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

DIGESTS

ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

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; Entrainment 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-

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

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

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

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 challenges 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.

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

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.

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

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 KENNETH 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

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

DIGESTS **ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS**

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

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

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 prediscovery 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).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

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

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 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. Bradlee*, 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).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- 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 274j 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.

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

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

ISSUANCES OF DIRECTORS' DECISIONS

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

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

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.

DIGEST
ISSUANCE OF DECISIONS ON PETITIONS FOR RULEMAKING

LEGAL CITATIONS INDEX

CASES

- Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 185 (1993)
 NRC adherence to mootness doctrine; LBP-95-8, 41 NRC 410 (1995)
- Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993)
 summary disposition, standard for grant of; LBP-95-7, 41 NRC 329 (1995); LBP-95-10, 41 NRC 466 (1995)
- Agent Orange: Product Liability Litigation, 821 F.2d 139 (2d Cir. 1987), cert. denied, 484 U.S. 953 (1987)
 modification of protective orders; LBP-95-5, 41 NRC 260 (1995)
- Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 213 (1974), remanded, CLI-74-12, 7 AEC 203 (1974)
 standard for imposition of issue preclusion; LBP-95-9, 41 NRC 446 (1995)
- 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)
 collateral estoppel doctrine, considerations in application of; LBP-95-9, 41 NRC 445 (1995)
- Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974)
 issue preclusion principle applied in NRC proceedings; LBP-95-9, 41 NRC 442 (1995)
- 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)
 actionable element in a civil conspiracy claim; LBP-95-4, 41 NRC 218 n.50 (1995)
- American Mining Congress v. EPA, 965 F.2d 759, 769 (9th Cir. 1992)
 standard for retroactive application of laws; CLI-95-1, 41 NRC 102 n.22 (1995)
- American Nuclear Corp. (Revision of Orders to Modify Source Materials Licenses), CLI-86-23, 24 NRC 704, 708-10 (1986)
 challenges to regulations in NRC licensing proceedings; CLI-95-1, 41 NRC 125 n.70 (1995)
 waiver of bar on collateral attacks on regulations; CLI-95-1, 41 NRC 170 n.163 (1995)
- Anderson v. Albott, 321 U.S. 349, 365 (1944)
 liability of parent corporations for their subsidiaries; LBP-95-9, 41 NRC 457 (1995)
- Anderson v. Bessemer City, 470 U.S. 564, 573-76 (1985)
 "clearly erroneous" standard for review of licensing board initial decisions; CLI-95-6, 41 NRC 382 (1995)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
 standard for grant of summary disposition; LBP-95-9, 41 NRC 449 n.167 (1995)
- Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)
 Board authority to make factual inferences on intervention petitioner's behalf; LBP-95-6, 41 NRC 305, 311 (1995)
- Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 80, appeal dismissed, CLI-93-9, 37 NRC 190 (1993)
 showing necessary for admission as a party in NRC proceedings; LBP-95-3, 41 NRC 196 (1995)

LEGAL CITATIONS INDEX

CASES

- Babcock and Wilcox Co. (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 49 (1994)
injury-in-fact standard for admission as a party in informal proceedings; LBP-95-3, 41 NRC 196 (1995)
- Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522, 524-26 (1931)
applicability of collateral estoppel to jurisdictional issues; LBP-95-9, 41 NRC 443 (1995)
- Barish v. Director of Revenue, 872 S.W.2d 167, 171 (Mo. App. 1994)
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
- Bradley v. School Board of City of Richmond, 416 U.S. 696, 711, 715 & n.21 (1974)
retroactive application of emergency planning regulations; CLI-95-1, 41 NRC 102 (1995)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 533-34 (1986)
burden on opponent of summary disposition; LBP-95-9, 41 NRC 443 (1995)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 536 (1986)
administrative repose doctrine, purpose in judicial proceedings; LBP-95-9, 41 NRC 442 (1995)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986)
weight given to NUREGs and regulatory guides; CLI-95-1, 41 NRC 98 (1995)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980)
authority of presiding officer over Staff in performance of its administrative functions; CLI-95-1, 41 NRC 121 (1995); LBP-95-5, 41 NRC 274-75 (1995)
- Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516-17 (1980)
Commission authority to vacate licensing decisions and ask for further NRC Staff review; CLI-95-1, 41 NRC 122 (1995)
- Carstens v. NRC, 742 F.2d 1546 (D.C. Cir. 1984), cert. denied, 471 U.S. 1136 (1985)
seismic review for SONGS, adequacy of; DD-95-6, 41 NRC 315 n.2 (1995)
- Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-81-2, 13 NRC 36, 40-41 (1981)
standard for grant of summary disposition in operating license proceedings; LBP-95-10, 41 NRC 466 (1995)
- Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420 (1971)
legal basis for Staff use of licensee statements; LBP-95-12, 41 NRC 484 (1995)
- City of Holyoke Gas & Electric Department v. SEC, 972 F.2d 358, 363 (D.C. Cir. 1992)
jurisdictional conflict between two regulatory agencies; DD-95-10, 41 NRC 368 (1995)
- City of West Chicago v. NRC, 701 F.2d 632, 645 (7th Cir. 1983)
applicability of due process protections to generalized health, safety, and environmental concerns; CLI-95-1, 41 NRC 118 (1995)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 120 (1992)
burden on hearing requestor to establish injury in fact; LBP-95-3, 41 NRC 197 (1995)
- Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977)
federal court decisions as precedents for NRC rules; LBP-95-9, 41 NRC 449 n.167 (1995)
pleading requirements where summary disposition motion is unopposed; LBP-95-10, 41 NRC 466 (1995)
- Colorado Taxpayers Union, Inc. v. Romer, 750 F. Supp. 1041, appeal dismissed, 963 F.2d 1394, cert. denied, 113 S. Ct. 1360, 122 L. Ed. 2d 739 (D. Colo. 1990)
standard for finding of fraudulent suppression of a material fact; LBP-95-4, 41 NRC 218 n.50 (1995)
- Commissioner v. Sunnen, 333 U.S. 591, 599-600 (1948)
applicability of collateral estoppel doctrine to administrative adjudicatory determinations; LBP-95-9, 41 NRC 442, 446 (1995)

LEGAL CITATIONS INDEX

CASES

- Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983, 985 (1981)
 appeal period when trial tribunal is considering motion for reconsideration of appealed decision or order; CLI-95-1, 41 NRC 95 n.10 (1995)
- Consolidated Edison Co. of New York (Indian Point, Unit 2), CLI-74-23, 7 AEC 947, 949 (1974)
 litigability of reactor security systems; LBP-95-6, 41 NRC 292 (1995)
- Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175-76 (1975)
 standard for initiation of show-cause proceedings; DD-95-2, 41 NRC 60 (1995); DD-95-6, 41 NRC 319 (1995); DD-95-9, 41 NRC 359 (1995); DD-95-11, 41 NRC 379 (1995); DD-95-12, 41 NRC 495 (1995)
- Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-270, 1 NRC 473, 476 (1975)
 burden on opponent of summary disposition; LBP-95-9, 41 NRC 443 (1995)
- Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979)
 pleading requirements for purpose of establishing standing to intervene; LBP-95-6, 41 NRC 287 (1995)
- Duke Power Co. (Amendment to Materials License SNM-1773 — Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979)
 organizational standing to intervene, basis for; LBP-95-6, 41 NRC 289 n.5 (1995)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 413 (1976)
 burden on opponent of summary disposition; LBP-95-9, 41 NRC 443 (1995)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 85-86 (1985)
 litigability of NRC review of its regulations; LBP-95-6, 41 NRC 303-04 (1995)
- Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983)
 standard for admission of late-filed contentions; LBP-95-1, 41 NRC 5 n.3 (1995)
- Duke Power Co. (Cherokee Nuclear Station, Units 1, 2, and 3), ALAB-482, 7 NRC 979, 980 (1978)
 appeals from dictum in an initial decision with which the party disagrees but which has no operative effect; CLI-95-1, 41 NRC 119 n.63 (1995)
- Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 570 (1976), rendered moot on appeal, Natural Resources Defense Council v. NRC, 580 F.2d 698 (D.C. Cir. 1978)
 application of judicial concepts of standing in NRC proceedings; CLI-95-1, 41 NRC 165 (1995)
- Edwards' Lessee v. Darby, 25 U.S. (12 Wheat.) 206, 210 (1827)
 interpretation of ambiguous texts; LBP-95-4, 41 NRC 212 (1995)
- FCC v. National Broadcasting Co., 319 U.S. 239, 248 (1943) (Frankfurter, J., dissenting)), cert. denied, 475 U.S. 1011 (1986)
 purpose of administrative agencies; LBP-95-5, 41 NRC 277 (1995)
- Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit 1), ALAB-921, 30 NRC 177, 186 (1989)
 burden of proof in materials license amendment proceedings; CLI-95-1, 41 NRC 121 (1995)
- Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-553, 10 NRC 12, 13-14 (1978)
 authority of presiding officer over Staff in performance of its administrative functions; LBP-95-5, 41 NRC 275 (1995)
- Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)
 judicial concepts applied to determinations of standing to intervene; LBP-95-6, 41 NRC 286 (1995)
- FTC v. Anderson, 631 F.2d 741, 746 (D.C. Cir. 1979)
 reasonableness determinations in ruling on information disclosure requests; LBP-95-5, 41 NRC 276 (1995)
- FTC v. Anderson, 631 F.2d 741, 747-48 (D.C. Cir. 1979)
 protection of nonprivileged discovery information; LBP-95-5, 41 NRC 277 n.8 (1995)

LEGAL CITATIONS INDEX

CASES

- FTC v. Atlantic Richfield Co., 567 F.2d 96, 104 (D.C. Cir. 1977)
 authority of presiding officer to oversee the introduction of investigative/enforcement information into a proceeding; LBP-95-5, 41 NRC 275 n.7 (1995)
- GAF Corp. v. Eastman Kodak Co., 415 F. Supp. 129, 132 (S.D.N.Y. 1976)
 scope of government authority to demand information; LBP-95-5, 41 NRC 261 (1995)
 use of discovery to gather information for proceedings other than the pending litigation; LBP-95-5, 41 NRC 260 (1995)
- General Electric Co. v. NRC, 750 F.2d 1394 (1984)
 Staff authority to disclose protected information in light of board ruling to the contrary; LBP-95-5, 41 NRC 258 n.13 (1995)
- General Telephone Co. of the Southwest v. United States, 449 F.2d 846, 855 (5th Cir. 1971)
 liability of parent corporations for their subsidiaries; LBP-95-9, 41 NRC 458 (1995)
- Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), ALAB-859, 25 NRC 23 (1987)
 licensing board jurisdiction to impose license conditions; CLI-95-1, 41 NRC 94 (1995)
- Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 41 (1993)
 issues litigable in materials license amendment proceeding; CLI-95-1, 41 NRC 165 (1995)
- Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-15, 40 NRC 319 (1994)
 Commission policy on interlocutory review; CLI-95-3, 41 NRC 246 (1995)
 showing necessary for interlocutory review of waiver denial; CLI-95-7, 41 NRC 384 (1995)
- Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-15, 40 NRC 319, 321-22 (1994)
 legal error as basis for interlocutory review; CLI-95-3, 41 NRC 247 (1995)
- Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 NRC 96, 98 n.2, aff'd, CLI-93-26, 38 NRC 25 (1993)
 effect of pendency of section 2.206 petition on hearing request on materials license renewal for same licensee; LBP-95-3, 41 NRC 198 n.16 (1995)
- Grand Jury Subpoena, 836 F.2d 1468, 1477 (4th Cir. 1988), cert. denied, 487 U.S. 1240 (1989)
 exceptions for extrajudicial release of protective order information; LBP-95-5, 41 NRC 259 (1995)
- H.P. Lambert Co. v. Secretary of Treasury, 354 F.2d 819, 822 (1st Cir. 1965)
 liability of parent corporations for their subsidiaries; LBP-95-9, 41 NRC 458 (1995)
- Hale v. Henkel, 201 U.S. 43, 74-75 (1906)
 invocation of self-incrimination privilege where corporate records are involved; LBP-95-5, 41 NRC 278 n.9 (1995)
- Harris v. Amoco Production Co., 768 F.2d 669 (5th Cir. 1985), cert. denied, 475 U.S. 1011 (1986)
 discretionary authority to decide appropriateness of protective order; LBP-95-5, 41 NRC 260 (1995)
 trial court discretion to restrict agency use of protected discovery information for investigative purposes; LBP-95-5, 41 NRC 263 (1995)
- Harris v. Amoco Production Co., 768 F.2d 669, 671 (5th Cir. 1985)
 purpose of administrative agencies; LBP-95-5, 41 NRC 277 (1995)
- Hickman v. Taylor, 329 U.S. 495, 505-07 (1947)
 limitations on discovery; LBP-95-5, 41 NRC 259 (1995)
- Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 400 (1979)
 Staff responsibility to observe terms of protective orders; LBP-95-5, 41 NRC 264 (1995)
- Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979)
 organizational standing to intervene, basis for; LBP-95-6, 41 NRC 286 (1995)
- Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 649 (1979)
 membership status of member on whom organizational standing to intervene is based at time original petition is filed; LBP-95-6, 41 NRC 287-88 (1995)

LEGAL CITATIONS INDEX

CASES

- Independent U.S. Tanker Owners Comm. v. Lewis*, 690 F.2d 908, 922-23 (D.C. Cir. 1982)
 authority to institute formal hearings in materials licensing proceedings; CLI-95-1, 41 NRC 119 (1995)
- Indiana Regional Cancer Center*, LBP-94-36, 40 NRC 283 (1994)
 denial of materials license applications; LBP-95-7, 41 NRC 328 (1995)
- Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 717 (7th Cir. 1965)
 liability of parent corporations for their subsidiaries; LBP-95-9, 41 NRC 458 (1995)
- Kelley v. Selin*, 42 F.3d 1501, 1507-08 (6th Cir. 1995)
 weight given to material allegations of intervention petition in determining standing to intervene; LBP-95-6, 41 NRC 286 (1995)
- Kelley v. Selin*, 42 F.3d 1501, 1509 (6th Cir. 1995)
 pleading requirements for purpose of establishing standing to intervene; LBP-95-6, 41 NRC 287 (1995)
- Kerr-McGee Corp. (West Chicago Rare Earths Facility)*, CLI-82-2, 15 NRC 232, 247-256 (1982), *aff'd sub nom. City of West Chicago v. NRC*, 701 F.2d 632, 641-45 (7th Cir. 1983)
 type of hearings required in materials license proceedings; CLI-95-1, 41 NRC 119 n.60 (1995)
- Kerr-McGee Corp. (West Chicago Rare Earths Facility)*, CLI-82-2, 15 NRC 232, 256-57 (1982)
 applicability of due process protections to generalized health, safety, and environmental concerns; CLI-95-1, 41 NRC 118 (1995)
- Kiva Construction and Engineering, Inc. v. International Fidelity Insurance Co.*, 749 F. Supp. 753, *aff'd*, 961 F.2d 213 (W.D.La. 1990)
 standard for finding of fraudulent suppression of a material fact; LBP-95-4, 41 NRC 218 n.50 (1995)
- Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1502 n.29, 1503 (1994)
 standard for retroactive application of laws; CLI-95-1, 41 NRC 102 n.22 (1995)
- Linkletter v. Walker*, 381 U.S. 618 (1965)
 retroactive application of emergency planning regulations; CLI-95-1, 41 NRC 102 (1995)
- Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3)*, ALAB-801, 21 NRC 479, 484 (1985)
 NRC Staff responsibilities as a party; LBP-95-5, 41 NRC 263 (1995)
- Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3)*, ALAB-812, 22 NRC 5, 56 (1985)
 authority of presiding officer to rule on adequacy of NRC Staff's safety review; CLI-95-1, 41 NRC 121 (1995)
 burden of proof in materials license amendment proceedings; CLI-95-1, 41 NRC 121 (1995)
- Lujan v. Defenders of Wildlife*, 000 U.S. 000, 112 S. Ct. 2130, 2136 (1992)
 application of judicial concepts of standing in NRC proceedings; CLI-95-1, 41 NRC 165 (1995)
- Marrese v. American Academy of Orthopaedic Surgeons*, 706 F.2d 1488, 1495 (7th Cir. 1983)
 use of discovery to coerce the adverse party to settle; LBP-95-5, 41 NRC 260 (1995)
- Martindell v. International Telephone & Telegraph Corp.*, 594 F.2d 291 (1979)
 modification of protective orders; LBP-95-5, 41 NRC 263 (1995)
- Martindell v. International Telephone & Telegraph Corp.*, 594 F.2d 291, 295-96 (1979)
 stipulations of confidentiality for witnesses' testimony against the federal government; LBP-95-5, 41 NRC 263 (1995)
- Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)
 factors to be addressed when presenting due process arguments; CLI-95-1, 41 NRC 118 n.57 (1995)
- McLaughlin v. Bradlee*, 803 F.2d 1197, 1204 (D.C. Cir. 1986)
 correctness of earlier determination of an issue as basis for collateral estoppel; LBP-95-9, 41 NRC 447 (1995)
- Meadow Green-Wildcat Corp. v. Hathaway*, 936 F.2d 601, 603-05 (1st Cir. 1991)
 application of contract construction principles to license construction; LBP-95-7, 41 NRC 329 (1995)
- Mencoid Corp. v. Mid-Continent Investment Co.*, 320 U.S. 661, 669-70 (1944)
 correctness of earlier determination of an issue as basis for collateral estoppel; LBP-95-9, 41 NRC 446 (1995)

LEGAL CITATIONS INDEX

CASES

- Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1327 (1982)
jurisdiction to address motions to reopen; CLI-95-1, 41 NRC 93 (1995)
- Montana v. United States, 440 U.S. 147, 159 (1979)
"changed factual circumstances" standard for application of collateral estoppel; LBP-95-9, 41 NRC 446 (1995)
- National Association of Government Employees v. Campbell, 593 F.2d 1023, 1027 (D.C. Cir. 1978)
pleading requirements for summary disposition motions; LBP-95-10, 41 NRC 465, 471 (1995)
- National Institutes of Health, DD-95-5, 41 NRC 227, 235 (1995)
licensee's environmental report requirements where Staff is categorically excluded from preparing an EA or an EIS; CLI-95-8, 41 NRC 396 (1995)
- National Surety Corp. v. First National Bank in Indiana, 106 F. Supp. 302, 304 (W.D. Pa. 1952)
official notice of terrorist incidents at public buildings; LBP-95-6, 41 NRC 295 (1995)
- New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 279-80 (1978)
authority of presiding officer over Staff in performance of its administrative functions; LBP-95-5, 41 NRC 275 (1995)
- New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 280 (1978)
standard for certification of disputes to the Commission; LBP-95-5, 41 NRC 273 (1995)
- Northern States Power Co. (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 314 (1989)
elements for establishing organizational standing; LBP-95-3, 41 NRC 201 (1995)
- Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40 (1990)
injury in fact based on passing site entrance for recreational purposes; LBP-95-6, 41 NRC 287 n.4 (1995)
- Oncology Services Corp., CLI-93-17, 38 NRC 44 (1993)
stay of parallel proceeding where discovery would compromise an OI investigation; CLI-95-9, 41 NRC 405 (1995)
- Oncology Services Corp., LBP-94-2, 39 NRC 11, 25 (1994)
authority of presiding officer to assess propriety of Staff investigative and enforcement activities; LBP-95-5, 41 NRC 275 (1995)
- Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 352 n.17 (1978)
use of discovery to gather information for proceedings other than the pending litigation; LBP-95-5, 41 NRC 260 (1995)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 790, review declined, CLI-83-32, 18 NRC 1309 (1983)
flaws in license amendment applications; CLI-95-8, 41 NRC 395 (1995)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807, review declined, CLI-83-32, 18 NRC 1309 (1983)
burden of proof in materials license amendment proceedings; CLI-95-1, 41 NRC 121 (1995)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775, 777 (1980)
litigability of reactor security systems; LBP-95-6, 41 NRC 292 (1995)
- Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 19-20 (1993)
litigability of level IV and level V violations; LBP-95-6, 41 NRC 297 (1995)
- Pacific Gas and Electric Co. (Humboldt Bay Power Plant, Unit 3), LBP-81-20, 14 NRC 101 (1981)
deferral of ruling on licensee's request to withdraw a license amendment request; CLI-95-2, 41 NRC 190 (1995)
- Pacific Gas and Electric Co. (Humboldt Bay Power Plant, Unit 3), LBP-86-1, 23 NRC 25 (1986)
decommissioning plan requirements for termination of a license renewal proceeding; CLI-95-2, 41 NRC 190 (1995)
- Pension Benefit Guaranty Corp. v. Ouimet Corp., 711 F.2d 1085, 1093 (1st Cir.), cert. denied, 464 U.S. 961 (1983)
liability of parent corporations for their subsidiaries; LBP-95-9, 41 NRC 457 (1995)

LEGAL CITATIONS INDEX

CASES

- Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406-07 (1978), reconsideration denied, CLI-80-21, 11 NRC 707 (1980)
- weight given to licensee compliance with regulatory guides; CLI-95-1, 41 NRC 98 (1995)
- Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223 (1979)
- authority of presiding officer over Staff in performance of its administrative functions; LBP-95-5, 41 NRC 275 (1995)
- Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755 (1983)
- jurisdiction to address motions to reopen; CLI-95-1, 41 NRC 94 (1995)
- Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773, 775 (1985)
- licensing board jurisdiction to impose license conditions; CLI-95-1, 41 NRC 94 (1995)
- Public Citizen v. Liggett Group, Inc., 858 F.2d 775 (1st Cir. 1988), cert. denied, 488 U.S. 1030 (1989)
- modification of protective orders; LBP-95-5, 41 NRC 260 (1995)
- Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478 (1975)
- board authority to entertain and dispose of motion to dismiss and subsequent interlocutory appeal; LBP-95-9, 41 NRC 444 (1995)
- Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-920, 30 NRC 121, 124-26 (1989)
- appealability of waiver denials; CLI-95-7, 41 NRC 384 (1995)
- Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-8, 29 NRC 399, 416, reconsideration denied, CLI-89-9, 29 NRC 423 (1989)
- forum for challenging regulations; CLI-95-1, 41 NRC 171 (1995)
- Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-90-44, 32 NRC 433, 437 (1990)
- summary disposition in light of existence of health and safety issues; LBP-95-10, 41 NRC 465 (1995)
- Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 786-87 (1979)
- treatment of inadequately briefed arguments on appeal; CLI-95-1, 41 NRC 132 n.81, 137 n.95 (1995)
- Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, 10 NRC 1, 10 (1979)
- pleading requirements for Native Americans in NRC proceedings; LBP-95-2, 41 NRC 40 (1995)
- Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162, 173 (1979)
- Native Americans' status in NRC proceedings; LBP-95-2, 41 NRC 40 (1995)
- Ralis v. RFE/RL, Inc., 770 F.2d 1121, 1127 (D.C. Cir. 1985)
- standard for retroactive application of laws; CLI-95-1, 41 NRC 102 n.22 (1995)
- Randall C. Orem, D.O., CLI-93-14, 37 NRC 423 (1993)
- establishing materiality of issues by analogy; LBP-95-12, 41 NRC 482 (1995)
- Rank v. Krug, 90 F. Supp. 773, 781 (S.D. Cal. 1950)
- official notice of terrorist incidents at public buildings; LBP-95-6, 41 NRC 295 (1995)
- Resolution Trust Corp. v. KPMG Peat Marwick, 779 F. Supp. 2 (D.D.C. 1991)
- exceptions for extrajudicial release of protective order information; LBP-95-5, 41 NRC 259 (1995)
- Rhinehart v. Seattle Times, 98 Wash. 2d 226, 654 P.2d 673 (1982)
- restrictions on the use of protected information; LBP-95-5, 41 NRC 259 (1995)
- Robbins v. Clarke, 946 F.2d 1331 (8th Cir. 1991)
- standard for finding of fraudulent suppression of a material fact; LBP-95-4, 41 NRC 218 n.50 (1995)
- Rockwell International Corp. (Rocketydyne Division), ALAB-925, 30 NRC 709, 716 (1989)
- cross-examination solely by presiding officer in informal proceedings; CLI-95-1, 41 NRC 120 n.65 (1995)
- discovery in informal proceedings; CLI-95-1, 41 NRC 118 n.58 (1995)

LEGAL CITATIONS INDEX

CASES

- Rockwell International Corp. (Rocketdyne Division), ALAB-925, 30 NRC 709, 718 (1989)
presiding officer's discretion to manage informal proceedings; CLI-95-1, 41 NRC 117 n.54 (1995)
- Rockwell International Corp. (Rocketdyne Division), ALAB-925, 30 NRC 709, 721-22 (1989), aff'd,
CLI-90-5, 31 NRC 337 (1990)
authority of presiding officers to direct NRC Staff in performance of its safety reviews; CLI-95-1, 41
NRC 121 (1995)
- RTC v. Thornton, 798 F. Supp. 1, 4 (D.D.C. 1992)
effect of issuance of internal practice guidelines on internal sharing of subpoenaed material pursuant
to guidelines; LBP-95-5, 41 NRC 274 n.4 (1995)
standard for certification of disputes to the Commission; LBP-95-5, 41 NRC 273 (1995)
- Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799,
816 (1981)
litigability of NRC review of its regulations; LBP-95-6, 41 NRC 303-04 (1995)
- Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56
(1992)
showing necessary for admission as a party in NRC proceedings; LBP-95-3, 41 NRC 196 (1995)
- Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91, 93
(1994)
Commission policy on interlocutory review; CLI-95-3, 41 NRC 246 (1995)
showing necessary for interlocutory review of waiver denial; CLI-95-7, 41 NRC 384 (1995)
- Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91,
93-94 (1994)
legal error as basis for interlocutory review; CLI-95-3, 41 NRC 247 (1995)
- Safety Light Corp. (Bloomsburg Site Decontamination), CLI-92-13, 36 NRC 79, 87 (1992)
authority to institute formal hearings in materials licensing proceedings; CLI-95-1, 41 NRC 119
(1995)
- Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984)
discretionary authority to decide appropriateness of protective order; LBP-95-5, 41 NRC 260 (1995)
- SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1384-87 (D.C. Cir.) (en banc), cert. denied, 449 U.S. 993
(1980)
extent of appropriate board interposition relative to protective orders; LBP-95-5, 41 NRC 278 n.10
(1995)
- Sequoyah Fuels Corp. (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-17,
39 NRC 359, 361 (1994)
weight given to evidence presented by opponent of summary disposition motion; LBP-95-10, 41 NRC
466 (1995)
- Sequoyah Fuels Corp. (Sequoyah UF₆ to UF₄ Facility), CLI-86-17, 24 NRC 489, 495-98 (1986)
applicability of due process protections to generalized health, safety, and environmental concerns;
CLI-95-1, 41 NRC 118 (1995)
factors to be addressed when presenting due process arguments; CLI-95-1, 41 NRC 118 n.57 (1995)
- Sequoyah Fuels Corp. (Sequoyah UF₆ to UF₄ Facility), CLI-86-17, 24 NRC 489, 497 n.5 (1986)
cross-examination in informal proceedings; CLI-95-1, 41 NRC 120 n.65 (1995)
- Sequoyah Fuels Corp., LBP-94-39, 40 NRC 314, 315-16 (1994)
pleading requirements for hearing requests on materials license renewals; LBP-95-3, 41 NRC 196
(1995)
pleading requirements on areas of concern in informal proceedings; LBP-95-3, 41 NRC 199 n.17
(1995)
- Siegel v. AEC, 400 F.2d 778, 783 (D.C. Cir. 1968)
NRC regulatory authority, scope of; LBP-95-9, 41 NRC 451 (1995)
- Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15
NRC 1383, 1384 (1982)
discretion of presiding officer to preclude oral cross-examination in informal proceedings; CLI-95-1,
41 NRC 120 (1995)

LEGAL CITATIONS INDEX

CASES

- Southern Pacific R.R. v. United States, 168 U.S. 1, 48-49 (1897)
 relitigation of identical jurisdictional issues; LBP-95-9, 41 NRC 442 (1995)
- Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981)
 purpose of summary disposition; LBP-95-10, 41 NRC 466 (1995)
- Stoll v. Gottlieb, 305 U.S. 165, 172 (1938)
 applicability of collateral estoppel to jurisdictional issues; LBP-95-9, 41 NRC 443 (1995)
- Stone v. Williams, 970 F.2d 1043, cert. denied, 113 S. Ct. 2331, 124 L. Ed. 2d 243 (2d Cir. 1992)
 source of cause of action for conspiracy; LBP-95-4, 41 NRC 218 n.50 (1995)
- Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 281-82 (1969)
 retroactive application of emergency planning regulations; CLI-95-1, 41 NRC 102 (1995)
- Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 760 (1975)
 interpretation of regulations governing protective orders; LBP-95-5, 41 NRC 258 (1995)
- Transnuclear, Inc. (Export of 93.15% Enriched Uranium), CLI-94-1, 39 NRC 1, 5 (1994)
 injury-in-fact standard for admission as a party in informal proceedings; LBP-95-3, 41 NRC 196 (1995)
 institutional interest in providing information to the public as basis for standing to intervene in informal proceedings; LBP-95-3, 41 NRC 201 (1995)
- Transnuclear, Inc. (Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977)
 application of judicial concepts of standing in NRC proceedings; CLI-95-1, 41 NRC 165 (1995)
- Umetco Minerals Corp., LBP-94-18, 39 NRC 369, 370 (1994)
 pleading requirements to establish standing to intervene in NRC proceedings; LBP-95-2, 41 NRC 40 (1995)
- Union of Concerned Scientists v. NRC, 920 F.2d 50, 53 (D.C. Cir. 1990)
 type of hearings required in materials license proceedings; CLI-95-1, 41 NRC 119 n.60 (1995)
- United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412 (1982),
 rev'd and remanded per curiam on other grounds sub nom. Natural Resources Defense Council v. NRC,
 695 F.2d 623 (D.C. Cir. 1982)
 litigable common defense and security issues in materials license amendment proceedings; CLI-95-1,
 41 NRC 165 (1995)
- United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 420 (1982)
 applicability to administrative agency when overriding public policy interests favor relitigation;
 LBP-95-9, 41 NRC 441 (1995)
- United States ex rel. Siller v. Becton Dickinson & Co., 21 F.3d 1339, 1348 (4th Cir.), cert. denied, 130 L. Ed. 2d 278 (1994)
 interpretation of "based on"; LBP-95-7, 41 NRC 330 (1995)
- United States v. Chemical Foundation, Inc., 272 U.S. 1, 14-15 (1926)
 court presumption that government officials will properly discharge their official duties; LBP-95-5, 41 NRC 277 (1995)
- United States v. Moser, 266 U.S. 236, 242 (1924)
 correctness of earlier determination of an issue as basis for collateral estoppel; LBP-95-9, 41 NRC 447 (1995)
- United States v. Utah Construction & Mining Co., 384 U.S. 394, 421-22 (1966)
 applicability of collateral estoppel doctrine to administrative adjudicatory determinations; LBP-95-9, 41 NRC 442 (1995)
- Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973)
 deadline for filing amended petitions for hearings; LBP-95-2, 41 NRC 40-41 (1995)
- Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-555, 10 NRC 23 (1979)
 standard for grant of a protective order for proprietary information; LBP-95-5, 41 NRC 275 n.6 (1995)

LEGAL CITATIONS INDEX

CASES

- Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 28-29 (1979)
- Staff role in protective orders; LBP-95-5, 41 NRC 258-59 n.16 (1995)
- Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), *aff'd sub nom. Virginia Electric and Power Co. v. NRC*, 571 F.2d 1289 (4th Cir. 1978)
- establishing materiality of issues by analogy; LBP-95-12, 41 NRC 482 (1995)
- Warth v. Seldin, 422 U.S. 490, 501 (1975)
- weight given to material allegations of intervention petition in determining standing to intervene; LBP-95-6, 41 NRC 286 (1995)
- Warth v. Seldin, 422 U.S. 490, 511 (1975)
- organizational standing to intervene, basis for; LBP-95-6, 41 NRC 286 (1995)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 548 (1983)
- appellate forum's affirmation of lower forum's ruling for reasons not espoused by the lower court; CLI-95-1, 41 NRC 87 n.4 (1995)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984)
- standard for institution of show-cause proceedings; DD-95-6, 41 NRC 319 (1995); DD-95-9, 41 NRC 359 (1995); DD-95-12, 41 NRC 495 (1995)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 924 (1984)
- standard for institution of show-cause proceedings; DD-95-2, 41 NRC 60 (1995); DD-95-11, 41 NRC 379 (1995)
- Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 335 (1979)
- membership status of member on whom organizational standing to intervene is based at time original petition is filed; LBP-95-6, 41 NRC 287-88 (1995)
- Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982)
- purpose of summary disposition; LBP-95-10, 41 NRC 466 (1995)
- Wisconsin's Environmental Decade v. SEC, 882 F.2d 523, 527 (D.C. Cir. 1989)
- jurisdictional conflict between two regulatory agencies; DD-95-10, 41 NRC 368 (1995)
- Ziffrin, Inc. v. United States, 318 U.S. 73, 78 (1943)
- retroactive application of emergency planning regulations; CLI-95-1, 41 NRC 102 (1995)

LEGAL CITATIONS INDEX REGULATIONS

- 5 C.F.R. 2635.101(b)(11)
responsibility of NRC Staff to report evidence of wrongdoing by licensees; LBP-95-5, 41 NRC 274 (1995)
- 10 C.F.R. 1.12
investigative authority of Office of the Inspector General; LBP-95-5, 41 NRC 273 n.2 (1995)
- 10 C.F.R. 1.13
NRC Staff supervisory and investigative authority; LBP-95-5, 41 NRC 256 (1995)
- 10 C.F.R. 1.23
definition of "staff personnel"; LBP-95-5, 41 NRC 274 n.3 (1995)
- 10 C.F.R. 1.31
NRC Staff supervisory and investigative authority; LBP-95-5, 41 NRC 256 (1995)
- 10 C.F.R. 1.31(b)
definition of "NRC Staff personnel"; LBP-95-5, 41 NRC 273 n.2 (1995)
delegation of Commission investigative and enforcement authority to Staff personnel and offices;
LBP-95-5, 41 NRC 273 (1995)
- 10 C.F.R. 1.32
delegation of Commission investigative and enforcement authority to Staff personnel and offices;
LBP-95-5, 41 NRC 273 (1995)
- 10 C.F.R. 1.36(a)
delegation of Commission investigative and enforcement authority to Staff personnel and offices;
LBP-95-5, 41 NRC 273 (1995)
- 10 C.F.R. 1.36(c)
Staff responsibility to use information about criminal wrongdoing to make criminal referrals to the
Department of Justice; LBP-95-5, 41 NRC 278 n.10 (1995)
- 10 C.F.R. 2.4 (1994)
non-utility operating license applicants; LBP-95-10, 41 NRC 472 (1995)
- 10 C.F.R. 2.103(b)
denial of materials license applications; LBP-95-7, 41 NRC 327 (1995)
effect on legal finding where Staff fails to provide notice under; LBP-95-7, 41 NRC 331 n.5 (1995)
- 10 C.F.R. 2.107
authority of presiding officer to allow withdrawal of materials license renewal application; CLI-95-2, 41
NRC 184 (1995)
- 10 C.F.R. 2.107(a)
presiding officer's authority to rule on request to withdraw a license renewal application; CLI-95-2, 41
NRC 191-92 (1995)
- 10 C.F.R. 2.202
basis for Staff regulatory jurisdiction; LBP-95-12, 41 NRC 480 (1995)
- 10 C.F.R. 2.202(c)(2)(i)
grounds for challenges to immediate effectiveness of enforcement orders; CLI-95-3, 41 NRC 247 n.2
(1995)
- 10 C.F.R. 2.204
NRC authority to demand information from licensees; LBP-95-5, 41 NRC 261 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.206
disposal of licensed materials, request for action on irregularities in; DD-95-5, 41 NRC 228-39 (1995)
effect of pendency of requests for action on hearing petition on materials license renewal; LBP-95-3, 41 NRC 198 n.16 (1995)
forum for litigating untimely hearing requests; LBP-95-1, 41 NRC 6, 35 (1995)
generic letter of instruction requiring review of employee procedures for reporting safety concerns, request for; DD-95-8, 41 NRC 346-49 (1995)
licensee retaliation for employee reporting of deficiencies in fitness for duty program; DD-95-4, 41 NRC 175-78 (1995)
modifications to VSC-24 cask; DD-95-3, 41 NRC 63-69 (1995)
network transmission without imposing multiple charges for transmission among multiple delivery points, request for; DD-95-10, 41 NRC 361-69 (1995)
receipt inspection activities, adequacy of; DD-95-11, 41 NRC 370-80 (1995)
referral of intervenor concerns to Staff for technical review under; CLI-95-4, 41 NRC 251 (1995)
retaliation against employees for engaging in protected activities, request for action based on; DD-95-7, 41 NRC 340-45 (1995)
security plan modifications, request for action on; DD-95-9, 41 NRC 350-69 (1995)
stress corrosion cracking in vessel head penetrations; DD-95-2, 41 NRC 56-61 (1995)
testing for radiological contamination near Apollo facility, request for; DD-95-12, 41 NRC 490-96 (1995)
Utah Agreement State Program, request for suspension of; DD-95-1, 41 NRC 43-54 (1995)
vacation of Director's Decision; CLI-95-5, 41 NRC 322 (1995)
vulnerability of SONGS to earthquakes and terrorist threats; DD-95-6, 41 NRC 314-19 (1995)
- 10 C.F.R. 2.714
standard for admission of late-filed contentions; LBP-95-1, 41 NRC 5 n.3 (1995)
- 10 C.F.R. 2.714(b)(2)
pleading requirements for accident scenario contentions; LBP-95-6, 41 NRC 302, 303 (1995)
- 10 C.F.R. 2.714(b)(2)(i)
pleading requirements for contentions; LBP-95-6, 41 NRC 306, 310 (1995)
- 10 C.F.R. 2.714(b)(2)(ii)
facts supporting contentions; LBP-95-6, 41 NRC 294 (1995)
pleading requirements for contentions; LBP-95-6, 41 NRC 302, 306, 307, 308, 310 (1995)
- 10 C.F.R. 2.714(b)(2)(iii)
intervenor's demonstration of genuine complaint with applicant; LBP-95-6, 41 NRC 295 (1995)
pleading requirements for contentions; LBP-95-6, 41 NRC 302, 306, 307, 308, 310 (1995)
- 10 C.F.R. 2.718
board authority to entertain and dispose of motion to dismiss and subsequent interlocutory appeal; LBP-95-9, 41 NRC 444 (1995)
delay factor in grant of protective orders; LBP-95-5, 41 NRC 264 (1995)
- 10 C.F.R. 2.718(i)
standard for certification of disputes to the Commission; LBP-95-5, 41 NRC 273 (1995)
- 10 C.F.R. 2.721, 2.730(e)
board authority to entertain and dispose of motion to dismiss and subsequent interlocutory appeal; LBP-95-9, 41 NRC 444 (1995)
- 10 C.F.R. 2.740(c)
board authority to supervise discovery procedure; LBP-95-5, 41 NRC 265 (1995)
confidential business information and records as protected discovery materials; LBP-95-5, 41 NRC 255 (1995)
good-cause requirement for grant of a protective order; LBP-95-5, 41 NRC 264 (1995)
procedure for obtaining protected information; LBP-95-5, 41 NRC 264 (1995)
Staff entitlement to confidential business information and records; LBP-95-5, 41 NRC 257, 258 (1995)
- 10 C.F.R. 2.743(i)
official notice of terrorist incidents at public buildings; LBP-95-6, 41 NRC 295 (1995)

LEGAL CITATIONS INDEX REGULATIONS

- scope of Commission examination of record during appellate review; CLI-95-1, 41 NRC 87 (1995)
- 10 C.F.R. 2.749(a)
 - answers to motions for summary disposition; LBP-95-9, 41 NRC 419 n.7 (1995)
 - burden on opponent of summary disposition motion; LBP-95-9, 41 NRC 449 n.165 (1995)
 - pleading requirements for summary disposition motions; LBP-95-9, 41 NRC 448 (1995)
- 10 C.F.R. 2.749(b)
 - basis for licensing board decision on summary disposition motion; LBP-95-9, 41 NRC 449 n.165 (1995)
 - burden on opponent of summary disposition motion; LBP-95-9, 41 NRC 449 (1995)
 - pleading requirements for opponent of summary disposition motion; LBP-95-10, 41 NRC 466 (1995)
- 10 C.F.R. 2.749(d)
 - basis for licensing board decision on summary disposition motion; LBP-95-9, 41 NRC 449 n.165 (1995)
 - summary disposition, standard for grant of; LBP-95-10, 41 NRC 466 (1995)
- 10 C.F.R. 2.758
 - standard for immediate certification of waiver denial; CLI-95-7, 41 NRC 384 (1995)
- 10 C.F.R. 2.762
 - retroactive application of regulations governing appeals; CLI-95-1, 41 NRC 92 n.8 (1995)
- 10 C.F.R. 2.771
 - discretion of presiding officer to extend deadline for petitions for reconsideration; CLI-95-1, 41 NRC 173 (1995)
 - jurisdiction over motions for reconsideration; CLI-95-1, 41 NRC 93 (1995)
- 10 C.F.R. 2.771(b)
 - pleading requirements for motions for reconsideration; LBP-95-7, 41 NRC 334 n.9 (1995)
- 10 C.F.R. 2.786
 - retroactive application of regulations governing appeals; CLI-95-1, 41 NRC 92 n.8 (1995)
- 10 C.F.R. 2.786(b)(4)
 - pleading requirements for petitions for review; CLI-95-4, 41 NRC 248-49, 250 n.2, 251 (1995)
- 10 C.F.R. 2.786(b)(4)(i)
 - "clearly erroneous" standard for review of licensing board initial decisions; CLI-95-6, 41 NRC 382 (1995)
 - factual support required for contentions proffered in petition for review; CLI-95-4, 41 NRC 251 (1995)
- 10 C.F.R. 2.786(b)(4)(ii)
 - lack of legal precedent as basis for review of presiding officer's findings of fact; CLI-95-4, 41 NRC 251 (1995)
- 10 C.F.R. 2.786(b)(4)(iii)
 - legal error as basis for review of presiding officer's findings of fact; CLI-95-4, 41 NRC 251 (1995)
- 10 C.F.R. 2.786(b)(6)
 - appeal period when trial tribunal is considering motion for reconsideration of appealed decision or order; CLI-95-1, 41 NRC 95 n.10 (1995)
- 10 C.F.R. 2.786(g)
 - standard for certification of disputes to the Commission; LBP-95-5, 41 NRC 273 (1995)
- 10 C.F.R. 2.786(g)(1) and (2)
 - standards for grant of interlocutory review; CLI-95-3, 41 NRC 246 (1995)
- 10 C.F.R. 2.790
 - applicability to NRC Staff; LBP-95-5, 41 NRC 268, 269 (1995)
 - Commission authority to withhold documents from public disclosure; LBP-95-5, 41 NRC 267 (1995)
 - NRC Staff as a party to a protective order; LBP-95-5, 41 NRC 261 (1995)
 - procedure for obtaining protected information; LBP-95-5, 41 NRC 264 (1995)
- 10 C.F.R. 2.804
 - availability of management directives in NRC Public Document Rooms as sufficient notice of agency practices and policies; LBP-95-5, 41 NRC 262 (1995)
- 10 C.F.R. 2.1205
 - hearing rights on materials license renewals; LBP-95-3, 41 NRC 196 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.1205(a)
 - criteria for determining standing in informal proceedings; LBP-95-3, 41 NRC 196 (1995)
- 10 C.F.R. 2.1205(c)
 - deadline for hearing requests on materials license application; LBP-95-2, 41 NRC 39 (1995)
 - timely hearing requests on materials license renewals; LBP-95-3, 41 NRC 200 (1995)
- 10 C.F.R. 2.1205(c)(1)
 - deadlines for hearing requests; LBP-95-1, 41 NRC 5 (1995)
- 10 C.F.R. 2.1205(f)
 - deadline for answers to hearing requests; LBP-95-2, 41 NRC 39 (1995)
 - Staff participation in materials license renewal proceedings; LBP-95-3, 41 NRC 195 n.1, 200 n.18 (1995)
- 10 C.F.R. 2.1205(g)
 - burden on intervenors in Subpart L proceedings; CLI-95-1, 41 NRC 165 (1995)
 - litigable issues in materials license amendment proceedings; CLI-95-1, 41 NRC 167 (1995)
 - litigable issues in materials license renewal proceedings; LBP-95-3, 41 NRC 196 (1995)
 - nuclear weapons proliferation, litigability of; CLI-95-8, 41 NRC 394 (1995)
- 10 C.F.R. 2.1205(k)(1)
 - standard for grant of untimely hearing requests; LBP-95-1, 41 NRC 5 (1995)
- 10 C.F.R. 2.1205(k)(2)
 - forum for litigating untimely hearing requests; LBP-95-1, 41 NRC 6, 32, 35 (1995)
 - referral of request for action to Executive Director for Operations; DD-95-12, 41 NRC 490 (1995)
 - standard for admission of amended petitions containing new concerns; LBP-95-1, 41 NRC 5 (1995)
- 10 C.F.R. 2.1209(i)
 - discretion of presiding officer to allow oral presentations in informal proceedings; CLI-95-1, 41 NRC 120 (1995)
- 10 C.F.R. 2.1209(k)
 - authority to institute formal hearings in materials licensing proceedings; CLI-95-1, 41 NRC 119 (1995)
 - authority to require a formal hearing; CLI-95-1, 41 NRC 119 (1995)
- 10 C.F.R. 2.1211(b)
 - affidavit requirement for participation by a government entity who has failed to meet the judicial concepts of standing; LBP-95-3, 41 NRC 201, 202 (1995)
 - participation by a government entity who has failed to meet the judicial concepts of standing; LBP-95-3, 41 NRC 201 (1995)
- 10 C.F.R. 2.1231(d)
 - discovery in informal proceedings; CLI-95-1, 41 NRC 118 n.58 (1995)
- 10 C.F.R. 2.1233
 - oral presentations in informal proceedings; CLI-95-1, 41 NRC 120 (1995)
 - participation by a government entity who has failed to meet the judicial concepts of standing; LBP-95-3, 41 NRC 201 (1995)
 - pleading requirements for contesting license applications; LBP-95-1, 41 NRC 4, 5 (1995)
- 10 C.F.R. 2.1233(a)
 - discretion of presiding officer to preclude oral cross-examination in informal proceedings; CLI-95-1, 41 NRC 120 (1995)
 - presiding officer's discretion to manage informal proceedings; CLI-95-1, 41 NRC 117 n.55 (1995)
- 10 C.F.R. 2.1233(c)
 - flaws in license amendment applications; CLI-95-8, 41 NRC 395 (1995)
 - pleading requirements on areas of concern in informal proceedings; LBP-95-3, 41 NRC 199 n.17 (1995)
 - scope of litigable issues in materials license amendment proceeding; CLI-95-1, 41 NRC 95, 96 (1995)
- 10 C.F.R. 2.1233(d)
 - pleading requirements on areas of concern in informal proceedings; LBP-95-3, 41 NRC 199 n.17 (1995)
- 10 C.F.R. 2.1235
 - participation by a government entity who has failed to meet the judicial concepts of standing; LBP-95-3, 41 NRC 201 (1995)

LEGAL CITATIONS INDEX REGULATIONS

- 10 C.F.R. 2.1235(a)
discretion of presiding officer to allow oral presentations in informal proceedings; CLI-95-1, 41 NRC 120 (1995)
- 10 C.F.R. 2.1239(a)
collateral attacks on regulations in licensing proceedings; CLI-95-1, 41 NRC 170 n.163 (1995)
- 10 C.F.R. 2.1239(b)
waiver of bar on collateral attacks against regulations; CLI-95-1, 41 NRC 125 n.70, 170 n.163 (1995)
waiver of categorical exclusion from preparing an environmental report; CLI-95-8, 41 NRC 396-97 (1995)
- 10 C.F.R. 2.1251(a)
finality of materials license renewal decision; LBP-95-1, 41 NRC 37 (1995)
- 10 C.F.R. 2.1251(d)
authority of presiding officer to examine issues not placed in controversy; LBP-95-1, 41 NRC 3 (1995)
scope of litigable issues in informal proceedings; LBP-95-1, 41 NRC 6 (1995)
- 10 C.F.R. 2.1253
retroactive application of regulations governing appeals; CLI-95-1, 41 NRC 92 n.8 (1995)
standard for grant of petitions for review; CLI-95-4, 41 NRC 251 (1995)
- 10 C.F.R. 2.1259
jurisdiction over motions for reconsideration; CLI-95-1, 41 NRC 93 (1995)
- 10 C.F.R. 2.1259(b)
discretion of presiding officer to extend deadline for petitions for reconsideration; CLI-95-1, 41 NRC 173 (1995)
- 10 C.F.R. Part 2, Appendix C
basis for Staff regulatory jurisdiction; LBP-95-12, 41 NRC 480 (1995)
- 10 C.F.R. Part 9, Subpart A
procedure for handling FOIA requests for protected discovery information; LBP-95-5, 41 NRC 266 (1995)
- 10 C.F.R. 9.17, 9.25
applicability to NRC Staff; LBP-95-5, 41 NRC 268, 269 (1995)
- 10 C.F.R. Part 19
radiation protection training requirements for special nuclear materials licensees; CLI-95-1, 41 NRC 113 (1995)
- 10 C.F.R. 19.11(c)
licensee posting requirements for notice informing employees of their rights and protections; DD-95-8, 41 NRC 348 (1995)
- 10 C.F.R. Part 20
limits on radiation releases from incineration or sewage disposal of wastes; DD-95-5, 41 NRC 231, 233 (1995)
prior approval requirement for incineration of radioactive wastes; DD-95-5, 41 NRC 232, 235 (1995)
- 10 C.F.R. 20.3(a)(17)
definition of "unrestricted area"; CLI-95-1, 41 NRC 146 n.109 (1995)
- 10 C.F.R. 20.105(a)
effluent radioactive exposure limits for individuals; LBP-95-1, 41 NRC 11 (1995)
- 10 C.F.R. 20.106(a)
limits on airborne radioactive effluents; DD-95-12, 41 NRC 492 n.7 (1995)
radioactive effluent releases for Parks Township facility; LBP-95-1, 41 NRC 11, 33 (1995)
- 10 C.F.R. 20.106(b)
exceptions to limits on airborne radioactive effluents; DD-95-12, 41 NRC 492 n.7 (1995)
site boundary limits for radioactive releases; DD-95-12, 41 NRC 492 n.7 (1995)
- 10 C.F.R. 20.201
radiation survey for brachytherapy remote afterloader misadministration incident; LBP-95-7, 41 NRC 333, 334 (1995)

LEGAL CITATIONS INDEX REGULATIONS

- 10 C.F.R. 20.201(b)
 - demonstration of applicability to medical procedure being performed with licensed material; LBP-95-7, 41 NRC 333, 336 (1995)
- 10 C.F.R. 20.201(b)(2)
 - applicability of "reasonableness" standard to radiation survey requirements for high-dose-rate brachytherapy; LBP-95-7, 41 NRC 332, 335, 336 n.10 (1995)
- 10 C.F.R. 20.302
 - incineration of radioactive waste; DD-95-5, 41 NRC 231 (1995)
- 10 C.F.R. 20.303
 - sewage system disposal of radioactive waste; LBP-95-1, 41 NRC 24 (1995)
- 10 C.F.R. 20.303(a)-(c)
 - limits on radioactive material discharges into sanitary sewer systems; DD-95-5, 41 NRC 236 (1995)
- 10 C.F.R. 20.303(d)
 - exceptions from limits regarding radioactive material discharges into sanitary sewer systems; DD-95-5, 41 NRC 228, 235, 236 (1995)
- 10 C.F.R. 20.304
 - land disposal of low-level radioactive wastes; LBP-95-1, 41 NRC 13, 31 (1995)
- 10 C.F.R. 20.1003
 - ALARA standard for radiological releases; LBP-95-1, 41 NRC 12 n.7 (1995)
 - definition of "byproduct material"; DD-95-5, 41 NRC 230 (1995)
 - definition of "unrestricted area"; CLI-95-1, 41 NRC 146 n.109 (1995); DD-95-12, 41 NRC 493 n.9 (1995)
- 10 C.F.R. 20.1301(a)(1)
 - environmental assessment requirements for radiation releases from incineration of wastes; DD-95-5, 41 NRC 234 (1995)
- 10 C.F.R. 20.1801
 - storage and control of NRC-licensed material; DD-95-9, 41 NRC 358 (1995)
- 10 C.F.R. 20.2003
 - restrictions on sanitary sewer disposal of radioactive wastes; LBP-95-1, 41 NRC 24 (1995)
- 10 C.F.R. 20.3003(a)(4)
 - exceptions from limits regarding radioactive materials discharges into sanitary sewer systems; DD-95-5, 41 NRC 235-36 (1995)
- 10 C.F.R. Part 20, Appendix B, Table 2
 - exceptions to limits on airborne radioactive effluents; DD-95-12, 41 NRC 493 (1995)
 - limits on radiation releases from incineration or sewage disposal of wastes; DD-95-5, 41 NRC 233-34 (1995)
- 10 C.F.R. Part 20, Appendix B, Table 2, col. 1 and Table 3
 - standard for acceptable radiological releases, basis for; LBP-95-1, 41 NRC 12 (1995)
- 10 C.F.R. Part 20, Appendix B, Table 3
 - limits on radiation releases from sewage disposal of wastes; DD-95-5, 41 NRC 236 (1995)
- 10 C.F.R. 25.15(b), 25.17(a), 25.35
 - intervenor access to security plans; LBP-95-6, 41 NRC 295 (1995)
- 10 C.F.R. Part 26
 - adequacy of computer system used in execution of fitness-for-duty program; DD-95-4, 41 NRC 175 (1995)
- 10 C.F.R. 30.4
 - definition of emergency classes for materials license facilities; CLI-95-1, 41 NRC 154 n.131 (1995)
- 10 C.F.R. 30.4(q)
 - NRC authority over byproduct materials used in research and development; LBP-95-9, 41 NRC 424 (1995)
- 10 C.F.R. 30.32(a)
 - in license amendment applications, incorporation by reference any information contained in previous applications, statements, or reports, filed with the Commission; CLI-95-1, 41 NRC 99 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 30.32(i)
 - emergency plan requirements for materials license amendments; CLI-95-1, 41 NRC 101 (1995)
- 10 C.F.R. 30.32(i)(1)(i)
 - Staff evaluation of maximum offsite dose from research reactor accident for emergency planning purposes; CLI-95-1, 41 NRC 101 n.20 (1995)
- 10 C.F.R. 30.32(i)(3)
 - emergency planning requirements for university research laboratory special nuclear materials license; CLI-95-1, 41 NRC 140 (1995)
- 10 C.F.R. 30.32(i)(3)(iii)
 - emergency classes for materials license facilities; CLI-95-1, 41 NRC 154 n.131 (1995)
- 10 C.F.R. 30.32(i)(4)
 - emergency planning requirements for university research laboratory special nuclear materials license; CLI-95-1, 41 NRC 140 (1995)
- 10 C.F.R. 30.33(a)(2)
 - standard for Commission approval of materials licenses; CLI-95-1, 41 NRC 123 (1995)
- 10 C.F.R. 30.33(a)(3)
 - licensee staff's qualifications for special nuclear materials license; CLI-95-1, 41 NRC 108-09, 112 (1995)
 - standard for Commission approval of materials licenses; CLI-95-1, 41 NRC 123 (1995)
- 10 C.F.R. 30.33(b)
 - grant of a license by default; LBP-95-7, 41 NRC 328 (1995)
 - transfer of control of NRC licenses; LBP-95-9, 41 NRC 418 (1995)
- 10 C.F.R. 30.35
 - denial of license renewal for failure to comply with decommissioning funding requirements; LBP-95-9, 41 NRC 412 (1995)
- 10 C.F.R. 30.35(a)
 - decommissioning funding requirements for materials license facilities; CLI-95-1, 41 NRC 169 (1995)
- 10 C.F.R. 30.35(f)(4)
 - certification of financial assurance for decommissioning where licensee is a government entity; CLI-95-1, 41 NRC 169-71 (1995)
- 10 C.F.R. 30.36
 - effectiveness of transferred license pending final Staff action on renewal; LBP-95-8, 41 NRC 410, 411 (1995)
 - Staff order directing licensee to comply with decommissioning requirements of; LBP-95-9, 41 NRC 420 (1995)
- 10 C.F.R. 30.37(b)
 - effectiveness of license pending agency action on renewal request; LBP-95-9, 41 NRC 424 (1995)
- 10 C.F.R. 34.34(a)
 - NRC authority over byproduct materials licensees; LBP-95-9, 41 NRC 423 (1995)
- 10 C.F.R. 35.404(a)
 - applicability to iridium-192 use as remote afterloader sealed source in high-dose-rate brachytherapy treatments; LBP-95-7, 41 NRC 332, 333, 335 (1995)
- 10 C.F.R. 40.4
 - definition of "decommission" and "residual" contamination; CLI-95-2, 41 NRC 188 (1995)
- 10 C.F.R. 40.42(b)
 - notification and reporting requirements for automatic extension of materials license; CLI-95-2, 41 NRC 184, 187 (1995)
- 10 C.F.R. 40.42(c)
 - changes in wording of; CLI-95-2, 41 NRC 183 n.10 (1995)
 - effect of licenses with respect to possession of "source material"; CLI-95-2, 41 NRC 189 (1995)
 - notification and reporting requirements for automatic extension of materials license; CLI-95-2, 41 NRC 184, 188, 189 n.39 (1995)

LEGAL CITATIONS INDEX REGULATIONS

- 10 C.F.R. 40.42(e)
continuation of license beyond expiration date to allow decommissioning activities; CLI-95-2, 41 NRC 183, 184, 187-88 (1995)
- 10 C.F.R. 40.42(e)(1) and (2)
interpretation of automatic extension provision for materials licenses; CLI-95-2, 41 NRC 191 (1995)
- 10 C.F.R. 40.42(f)(2)
termination of materials licenses; CLI-95-2, 41 NRC 188 (1995)
- 10 C.F.R. 40.42(i)(1) and (2)
radiological survey reporting requirements for termination of licenses; CLI-95-2, 41 NRC 189 n.38 (1995)
- 10 C.F.R. 40.43(b)
effect of license pending agency ruling on renewal application; CLI-95-2, 41 NRC 181, 187 n.27 (1995)
- 10 C.F.R. 50.7
adequacy of computer system used in execution of fitness for duty program; DD-95-4, 41 NRC 175 (1995)
protection of employees engaging in protected activities; DD-95-8, 41 NRC 348 (1995)
retaliation against employees for engaging in protected activities; DD-95-7, 41 NRC 340, 342 (1995)
- 10 C.F.R. 50.12
issue preclusion applied to exemption requests; LBP-95-9, 41 NRC 447 (1995)
- 10 C.F.R. 50.13
litigability of reactor security in research reactor license renewal proceeding; LBP-95-6, 41 NRC 290, 291, 292, 293 (1995)
- 10 C.F.R. 50.33(f)
exclusion of electric utilities from financial qualifications at operating license stage; LBP-95-10, 41 NRC 472 (1995)
nuclear facility obligation to stop operating when necessary funds are unavailable; LBP-95-10, 41 NRC 465 (1995)
- 10 C.F.R. 50.33(f)(2)
non-utility operating license applicants, financial qualifications requirements for; LBP-95-10, 41 NRC 473 (1995)
- 10 C.F.R. 50.34(b)
applicability to research reactor license amendment application; CLI-95-1, 41 NRC 97 n.11 (1995)
- 10 C.F.R. 50.54(p)
revision of security plans; DD-95-9, 41 NRC 352, 358 (1995)
- 10 C.F.R. 50.54(cc)
licensee responsibility to notify NRC of bankruptcy proceedings; LBP-95-10, 41 NRC 471 n.8 (1995)
- 10 C.F.R. 50.59
limits on design modification without prior NRC approval; DD-95-3, 41 NRC 68 (1995)
- 10 C.F.R. 50.75
showing necessary to demonstrate noncompliance with; LBP-95-6, 41 NRC 308 (1995)
- 10 C.F.R. Part 50, Appendix A, Criterion 2
design basis for natural phenomena; DD-95-6, 41 NRC 315 (1995)
- 10 C.F.R. Part 50, Appendix B
receipt inspection activities, allegations of violation of; DD-95-11, 41 NRC 371, 372 (1995)
- 10 C.F.R. Part 50, Appendix E n.2 at 734
emergency classes for research reactors; CLI-95-1, 41 NRC 154 n.131 (1995)
- 10 C.F.R. Part 50, Appendix E, IV.C
emergency classes for nuclear power reactors; CLI-95-1, 41 NRC 154 n.131 (1995)
- 10 C.F.R. Part 51
environmental assessment requirements for radiation releases from incineration of wastes; DD-95-5, 41 NRC 234, 235 (1995)
environmental impact statement requirements for materials licenses; CLI-95-1, 41 NRC 124 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 51.14(a)
federal actions for which environmental impact statements, environmental assessments, or findings of no significant impact are not required; CLI-95-1, 41 NRC 124 (1995)
- 10 C.F.R. 51.20(b)
licensing actions requiring environmental assessment; LBP-95-1, 41 NRC 14 (1995)
licensing actions requiring environmental impact statements; DD-95-5, 41 NRC 234 (1995)
- 10 C.F.R. 51.20(b)(7)
environmental impact statement requirements for materials licenses; CLI-95-1, 41 NRC 124, 125 (1995)
qualification of laboratory whose experiments involve possession and use of special nuclear materials as plutonium processing and fuel fabrication facility; CLI-95-1, 41 NRC 126 (1995)
- 10 C.F.R. 51.20(b)(14)
environmental impact assessment requirements for license renewals; LBP-95-1, 41 NRC 14 (1995)
- 10 C.F.R. 51.21
environmental assessment requirements for radiation releases from incineration of wastes; DD-95-5, 41 NRC 234 (1995)
environmental report or environmental assessment requirements for limits on radiological releases from incinerators; DD-95-5, 41 NRC 229 (1995)
licensing actions requiring environment assessment; LBP-95-1, 41 NRC 14 (1995)
licensing actions that are excluded from the requirement for environmental impact statements; DD-95-5, 41 NRC 234 (1995)
- 10 C.F.R. 51.22(a)
licensing actions that are excluded from the requirement for environmental impact statements; DD-95-5, 41 NRC 234 (1995)
- 10 C.F.R. 51.22(c)(14)(i)-(xv)
effluent releases from activities excluded from the requirement for an environmental impact statement; DD-95-5, 41 NRC 234, 236 (1995)
licensing actions that are excluded from the requirement for environmental impact statements; DD-95-5, 41 NRC 234, 235, 236 (1995)
- 10 C.F.R. 51.22(c)(14)(v)
environmental impact statement requirements for materials licenses; CLI-95-1, 41 NRC 124 (1995)
environmental review requirements for radioactive materials use for research and development; CLI-95-8, 41 NRC 396 (1995)
- 10 C.F.R. 51.22(c)(14)(xvi)
licensing actions that are excluded from the requirement for environmental impact statements; DD-95-5, 41 NRC 234, 235, 236 (1995)
- 10 C.F.R. 51.40
licensee consultation with NRC Staff prior to preparing environmental reports; CLI-95-8, 41 NRC 396 n.7 (1995)
- 10 C.F.R. 51.41
purpose of environmental report; CLI-95-8, 41 NRC 396 n.7 (1995)
- 10 C.F.R. 51.45(c)
purpose of environmental review; CLI-95-8, 41 NRC 396 (1995)
- 10 C.F.R. 51.60(b)
environmental report or environmental assessment requirements for limits on radiological releases from incinerators; DD-95-5, 41 NRC 229 (1995)
- 10 C.F.R. 51.60(b)(2)(v)
environmental report requirement for materials license amendment applications; CLI-95-1, 41 NRC 103 (1995)
- 10 C.F.R. 60.2
definition of "important to safety" relative to geologic repositories; DPRM-95-1, 41 NRC 242 (1995)
proposed new definitions; DPRM-95-1, 41 NRC 242 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 60.111
 - accident dose limits at preclosure control area boundary of geologic repository; DPRM-95-1, 41 NRC 242 (1995)
- 10 C.F.R. 60.111(a)
 - deleting of the phrase "at the times"; DPRM-95-1, 41 NRC 242 (1995)
- 10 C.F.R. Part 61
 - appeal of denial of waiver of; CLI-95-7, 41 NRC 384 (1995)
- 10 C.F.R. 61.6
 - exemption from state or federal land ownership requirement for disposal of radioactive wastes received from others; DD-95-1, 41 NRC 51 (1995)
 - exemptions from regulatory requirements for land disposal of radioactive waste; DD-95-1, 41 NRC 45, 47 (1995)
- 10 C.F.R. 61.59
 - state adoption of regulations for land disposal of radioactive waste; DD-95-1, 41 NRC 45 (1995)
- 10 C.F.R. 61.59(a)
 - disposal of radioactive waste received from others on privately owned land; DD-95-1, 41 NRC 51 (1995)
- 10 C.F.R. 70.4
 - classification of university lab as plutonium processing plant; CLI-95-1, 41 NRC 103, 104 (1995)
 - definition of emergency classes for materials license facilities; CLI-95-1, 41 NRC 154 n.131 (1995)
 - qualification of laboratory whose experiments involve possession and use of special nuclear materials as plutonium processing and fuel fabrication facility; CLI-95-1, 41 NRC 124, 125, 126 (1995)
- 10 C.F.R. 70.21(a)(3)
 - in license amendment applications, incorporation by reference of any information contained in previous applications, statements, or reports filed with the Commission; CLI-95-1, 41 NRC 99 (1995)
- 10 C.F.R. 70.21(f)
 - environmental report requirements for special nuclear materials license applicants; CLI-95-1, 41 NRC 104 (1995)
- 10 C.F.R. 70.22(a)(4)
 - isotope specification requirements for special nuclear materials license applications; CLI-95-1, 41 NRC 105 (1995)
- 10 C.F.R. 70.22(a)(8)
 - safety procedures in Part 70 license applications; CLI-95-1, 41 NRC 99, 100 (1995)
- 10 C.F.R. 70.22(h)(1)
 - qualification of laboratory whose experiments involve possession and use of special nuclear materials as plutonium processing and fuel fabrication facility; CLI-95-1, 41 NRC 127 n.72 (1995)
- 10 C.F.R. 70.22(i)
 - emergency plan requirements for materials license amendments; CLI-95-1, 41 NRC 101 (1995)
 - emergency planning requirements for university research laboratory special nuclear materials license; CLI-95-1, 41 NRC 140 (1995)
- 10 C.F.R. 70.22(i)(3)(iii)
 - emergency classes for materials license facilities; CLI-95-1, 41 NRC 154 n.131 (1995)
- 10 C.F.R. 70.23(a)(2)
 - licensee staff's qualifications for special nuclear materials license; CLI-95-1, 41 NRC 108-09, 112 (1995)
- 10 C.F.R. 70.23(a)(2), (3), and (4)
 - standard for Commission approval of materials licenses; CLI-95-1, 41 NRC 123 (1995)
- 10 C.F.R. 70.24(a)
 - criticality procedures in special nuclear materials license amendments; CLI-95-1, 41 NRC 99 n.15 (1995)
 - qualification of laboratory whose experiments involve possession and use of special nuclear materials as plutonium processing and fuel fabrication facility; CLI-95-1, 41 NRC 127 n.72 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 70.25(f)(4)
certification of financial assurance for decommissioning where licensee is a government entity; CLI-95-1, 41 NRC 169-71 (1995)
- 10 C.F.R. 70.31(d)
common defense and security considerations in materials license amendment issuance; CLI-95-1, 41 NRC 163, 164 (1995)
- 10 C.F.R. 72.48
applicability to design modifications to VSC-24 spent fuel storage cask; DD-95-3, 41 NRC 63, 69 (1995)
- 10 C.F.R. 72.48(a)(1)
modification of spent fuel storage cask design without prior NRC approval; DD-95-3, 41 NRC 64, 65-66 (1995)
- 10 C.F.R. 72.48(a)(2)
limits on modification of spent fuel storage cask design without prior NRC approval; DD-95-3, 41 NRC 67 (1995)
- 10 C.F.R. 72.210
applicability of 10 C.F.R. 72.48 to general licenses; DD-95-3, 41 NRC 65, 66 (1995)
- 10 C.F.R. 72.212(a)(2)
scope of general license applicability to cask storage of spent fuel; DD-95-3, 41 NRC 66 n.2 (1995)
- 10 C.F.R. 72.230(a)
safety analysis report requirements for design modifications to spent fuel storage casks; DD-95-3, 41 NRC 66 n.3 (1995)
- 10 C.F.R. 72.234(c)
exemption to allow design modifications to VSC-24 spent fuel storage casks; DD-95-3, 41 NRC 64 (1995)
- 10 C.F.R. 73.1
design-basis threats to research reactors, litigability of; LBP-95-6, 41 NRC 292, 293 (1995)
- 10 C.F.R. 73.1(a)
litigability of reactor security systems; LBP-95-6, 41 NRC 292 (1995)
- 10 C.F.R. 73.1(a)(1)
design-basis threats for radiological sabotage; DD-95-6, 41 NRC 317 (1995)
litigability of radiological sabotage at research reactors; LBP-95-6, 41 NRC 292-93, 311 (1995)
protection of nuclear power reactors against land-vehicle bombs; DD-95-9, 41 NRC 357 (1995)
- 10 C.F.R. 73.1(a)(1)(i)(E)
exclusion of car bomb threats from design basis for research reactors; LBP-95-6, 41 NRC 293 (1995)
land vehicle-bomb threats to power reactors, consideration of; DD-95-6, 41 NRC 318 (1995)
- 10 C.F.R. 73.1(a)(1)(iii)
exclusion of car bomb threats from design basis for research reactors; LBP-95-6, 41 NRC 293 (1995)
hand-carried bomb threats to power reactors, consideration of; DD-95-6, 41 NRC 318 (1995)
- 10 C.F.R. 73.1(a)(2)
exclusion of theft or diversion of special nuclear material from design basis for research reactors; LBP-95-6, 41 NRC 293 (1995)
- 10 C.F.R. 73.2
exclusion of theft or diversion of special nuclear material from design basis for research reactors; LBP-95-6, 41 NRC 293 (1995)
guard, definition of; DD-95-9, 41 NRC 352 (1995)
- 10 C.F.R. 73.6
applicability to research reactors; LBP-95-6, 41 NRC 294 (1995)
- 10 C.F.R. 73.6(c)
qualification of laboratory whose experiments involve possession and use of special nuclear materials as plutonium processing and fuel fabrication facility; CLI-95-1, 41 NRC 127 n.72 (1995)
- 10 C.F.R. 73.20
physical protection performance objectives for power reactors; LBP-95-6, 41 NRC 294 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 73.45
 - physical protection performance objectives for power reactors; LBP-95-6, 41 NRC 294 (1995)
- 10 C.F.R. 73.46
 - physical protection performance objectives for power reactors; LBP-95-6, 41 NRC 294 (1995)
- 10 C.F.R. 73.55
 - applicability to research reactors; LBP-95-6, 41 NRC 294 (1995)
 - standard for NRC Staff review of security plans; DD-95-9, 41 NRC 352, 355, 356 (1995)
- 10 C.F.R. 73.55(b)(1)
 - Zion security plan, adequacy of; DD-95-9, 41 NRC 352 (1995)
- 10 C.F.R. 73.55(b)(2)
 - Zion security plan, adequacy of; DD-95-9, 41 NRC 352 (1995)
- 10 C.F.R. 73.55(c)(4)
 - checking protected areas, personnel and frequency requirements; DD-95-9, 41 NRC 358 (1995)
- 10 C.F.R. 73.55(c)(9)
 - protective measures against land vehicle bomb threats to power reactors; DD-95-6, 41 NRC 318 (1995)
- 10 C.F.R. 73.55(d)(4)
 - vehicle escort requirements for power reactors; DD-95-9, 41 NRC 354 (1995)
- 10 C.F.R. 73.55(h)
 - Zion security plan response requirements, adequacy of; DD-95-9, 41 NRC 352 (1995)
- 10 C.F.R. 73.55(h)(3)
 - number of armed response personnel; DD-95-9, 41 NRC 351, 352, 353, 358 (1995)
- 10 C.F.R. 73.55(h)(4)
 - NRC Staff observance of security drills; DD-95-9, 41 NRC 356 (1995)
- 10 C.F.R. 73.55(h)(4)(iii)(A)
 - safeguards contingency plans involving armed response personnel; DD-95-9, 41 NRC 358 (1995)
- 10 C.F.R. 73.60
 - design-basis threats to research reactors, litigability of; LBP-95-6, 41 NRC 292, 311 (1995)
- 10 C.F.R. 73.60(e)
 - litigability of radiological sabotage at research reactors; LBP-95-6, 41 NRC 292-93 (1995)
- 10 C.F.R. 73.60(f)
 - enhanced security for research reactor during Olympic Games; LBP-95-6, 41 NRC 291, 294, 295, 309 (1995)
 - litigability of radiological sabotage at research reactors; LBP-95-6, 41 NRC 292-93 (1995)
 - modification of security plans to account for special circumstances; LBP-95-6, 41 NRC 293, 310 (1995)
- 10 C.F.R. 73.67
 - design-basis threats to research reactors, litigability of; LBP-95-6, 41 NRC 292, 310, 311 (1995)
- 10 C.F.R. Part 73, Appendix B, Criterion I.B.1.a
 - qualifications of watchmen; DD-95-9, 41 NRC 354 (1995)
- 10 C.F.R. Part 73, Appendix C
 - design-basis threats to research reactors, litigability of; LBP-95-6, 41 NRC 292, 293 (1995)
- 10 C.F.R. Part 100, Appendix A, III(C)
 - determination of design bases for earthquakes; DD-95-6, 41 NRC 315 (1995)
- 10 C.F.R. Part 100, Appendix A, V(a)(2)
 - ground motion level requiring reactor shutdown; DD-95-6, 41 NRC 317 (1995)
- 10 C.F.R. 140.3(h), 150.11
 - qualification of laboratory whose experiments involve possession and use of special nuclear materials as plutonium processing and fuel fabrication facility; CLI-95-1, 41 NRC 127 n.72 (1995)
- 10 C.F.R. 170.11
 - waiver of annual fees, request for; LBP-95-6, 41 NRC 308 (1995)
- 10 C.F.R. Part 810
 - security-related federal restrictions on publication of nuclear research; CLI-95-8, 41 NRC 394-95 (1995)
- 10 C.F.R. 810.7, 810.8
 - authorization necessary for publication of nuclear research findings; CLI-95-8, 41 NRC 395 (1995)

LEGAL CITATIONS INDEX

REGULATIONS

- 29 C.F.R. 1910.2(c)
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
- 40 C.F.R. 262.12
identifier numbers for hazardous waste generators; LBP-95-1, 41 NRC 34 (1995)
- 40 C.F.R. 264.117(c)
control of post-closure activities on low-level radioactive waste disposal sites; DD-95-1, 41 NRC 48 (1995)
- 49 C.F.R. 173.425(b)(1)
container requirements for transportation of radioactive wastes; LBP-95-1, 41 NRC 15 (1995)

LEGAL CITATIONS INDEX STATUTES

- 5 U.S.C. app. § 2(1)
investigative authority of Office of the Inspector General; LBP-95-5, 41 NRC 273 n.2 (1995)
- 18 U.S.C. 1905
NRC Staff as a party to a protective order; LBP-95-5, 41 NRC 261 (1995)
- 29 U.S.C. 652(5) (1988)
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
- Administrative Procedure Act, 5 U.S.C. 552
NRC procedure for handling FOIA requests for protected discovery information; LBP-95-5, 41 NRC 266 (1995)
- Administrative Procedure Act, 5 U.S.C. 554 (1988)
discovery rights in informal proceedings; CLI-95-1, 41 NRC 118 n.58 (1995)
- Administrative Procedure Act, 556(d)
rebuttal evidence in informal proceedings, right of intervenors to present; CLI-95-1, 41 NRC 115 (1995)
- Administrative Procedure Act, 7(c), 5 U.S.C. 556(d)
rebuttal by intervenors in materials license proceedings; CLI-95-1, 41 NRC 117 (1995)
- Atomic Energy Act, 11s, 42 U.S.C. 2014(s)
corporation included in definition of "person"; LBP-95-9, 41 NRC 453 n.179, 457 (1995)
- Atomic Energy Act, 57, 42 U.S.C. 2077(c)(2)
common defense and security considerations in materials license amendment issuance; CLI-95-1, 41 NRC 163, 164 (1995)
- Atomic Energy Act, 57b, 42 U.S.C. 2077(b)
security-related federal restrictions on publication of nuclear research; CLI-95-8, 41 NRC 394-95 (1995)
- Atomic Energy Act, 57c(2), 42 U.S.C. 2077(c)(2)
fire safety responsibilities of NRC, scope of; CLI-95-8, 41 NRC 393 (1995)
- Atomic Energy Act, 84a(1), 42 U.S.C. 2014(a)(1)
fire safety responsibilities of NRC, scope of; CLI-95-8, 41 NRC 393 (1995)
- Atomic Energy Act, 161c, 42 U.S.C. 2201(c)
Commission authority to investigate and undertake enforcement action; LBP-95-5, 41 NRC 273 (1995)
- Atomic Energy Act, 161n, 42 U.S.C. 2201(n)
delegation of Commission investigative and enforcement authority to Staff personnel and offices; LBP-95-5, 41 NRC 273 (1995)
- Atomic Energy Act, 182
nuclear facility obligation to stop operating when necessary funds are unavailable; LBP-95-10, 41 NRC 465 (1995)
- Atomic Energy Act, 182a, 42 U.S.C. 2232(a)
common defense and security considerations in materials license amendment hearings; CLI-95-1, 41 NRC 86 (1995)
demand for information from parent company shareholder; LBP-95-9, 41 NRC 437 (1995)
fire safety responsibilities of NRC, scope of; CLI-95-8, 41 NRC 393 (1995)
- Atomic Energy Act, 183c, 42 U.S.C. 2233(c)
transfer of byproduct material license; LBP-95-9, 41 NRC 423 (1995)

LEGAL CITATIONS INDEX

STATUTES

LEGAL CITATIONS INDEX

STATUTES

- Atomic Energy Act, 184, 42 U.S.C. 2234
transfer of control of NRC licenses; LBP-95-9, 41 NRC 418, 422, 438-41, 443, 448, 451, 453-56 (1995)
- Atomic Energy Act, 189
hearing rights on materials license amendments; CLI-95-1, 41 NRC 115 (1995)
issue preclusion in formal adjudicatory proceedings; LBP-95-9, 41 NRC 447 (1995)
- Atomic Energy Act, 189a, 42 U.S.C. 2239(a)
hearing rights on decommissioning activities; CLI-95-2, 41 NRC 182-83 (1995)
- Atomic Energy Act, 189a(1), 42 U.S.C. 2239(a)(1)
rebuttal by intervenors in materials license proceedings; CLI-95-1, 41 NRC 117 (1995)
- Atomic Energy Act, 274j
NRC review of Agreement State Programs; DD-95-1, 41 NRC 46 (1995)
suspension of Agreement State Program, request for; DD-95-1, 41 NRC 44 (1995)
- Communications Act, 310(d), 47 U.S.C. 310(d)
comparison with AEA section 184; LBP-95-9, 41 NRC 439 (1995)
- Energy Policy Act of 1992, 211
Federal Energy Regulatory Commission authority to order transmission access to promote competition; DD-95-10, 41 NRC 365 (1995)
- Energy Reorganization Act, 211
actions against employees that constitute violations of; DD-95-7, 41 NRC 343 (1995)
- Federal Power Act, 203
Federal Energy Regulatory Commission review of power company mergers; DD-95-10, 41 NRC 367 (1995)
- Mo. Const. of 1945, art. 9, 9
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
- Mo. Rev. Stat. 172.020 (1986)
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
- National Environmental Policy Act, 102(2), 42 U.S.C. 4332(2)
purpose of environmental report; CLI-95-8, 41 NRC 396 n.7 (1995)
- National Environmental Policy Act, 102(2)(C), 42 U.S.C. 4332(2)(C)
environmental assessment requirements for radiation releases from incineration of wastes; DD-95-5, 41 NRC 234 (1995)
environmental impact statement requirements for materials licenses; CLI-95-1, 41 NRC 124 (1995)
- Nuclear Waste Policy Act, 42 U.S.C. 10198(a)
site-specific approvals for spent fuel storage technologies; DD-95-3, 41 NRC 67 (1995)
- Occupational Safety and Health Act, 42 U.S.C. 11,021(a)(1)
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
safety data sheets for special nuclear materials for emergency planning purposes; CLI-95-1, 41 NRC 139 (1995)
- Occupational Safety and Health Act, 42 U.S.C. 11,021(a)(2)
definition of "employer"; CLI-95-1, 41 NRC 139 (1995)
- Occupational Safety and Health Act, 42 U.S.C. 11,021(e)(4), (2)
definition of "hazardous chemicals"; CLI-95-1, 41 NRC 139 (1995)
- Pub. L. No. 96-303, 94 Stat. 855 (1980)
responsibility of NRC Staff to report evidence of wrongdoing by licensees; LBP-95-5, 41 NRC 274 (1995)
- Public Utilities Holding Company Act, 10(b)(1)
Federal Energy Regulatory Commission review of power company mergers; DD-95-10, 41 NRC 367 (1995)

LEGAL CITATIONS INDEX OTHERS

- 17A Am. Jur. 2d 374 § 356
interpretation of ambiguous texts; LBP-95-4, 41 NRC 212 (1995)
- 17A Am. Jur. 2d 375 § 357
construction of ambiguous contracts; LBP-95-4, 41 NRC 212 (1995)
- 17A Am. Jur. 2d Contracts § 337, at 342 (1991)
ambiguity in licenses; LBP-95-7, 41 NRC 329 (1995)
- 17A Am. Jur. 2d Contracts § 337, at 343-44 (1991)
inquiry into extrinsic materials where there is no ambiguity in license; LBP-95-7, 41 NRC 331 (1995)
- 17A Am. Jur. 2d Contracts § 381, at 402-03 (1991)
standard for use of extrinsic materials in license construction; LBP-95-7, 41 NRC 331 (1995)
- 18 Am. Jur. 2d Corporations § 35 (1985)
definition of "parent corporation"; LBP-95-9, 41 NRC 452 (1995)
- 18 Am. Jur. 2d Corporations § 35 (1985)
definition of "subsidiary corporation"; LBP-95-9, 41 NRC 452 (1995)
- Administrative Conference of the United States, Manual for Administrative Law Judges 192 (Form 19-d)
restrictions on the use of confidential business information; LBP-95-5, 41 NRC 259 (1995)
- Black's Law Dictionary 1114 (6th ed. 1990)
definition of "parent corporation"; LBP-95-9, 41 NRC 452 (1995)
- Black's Law Dictionary 1428 (6th ed. 1990)
definition of "subsidiary corporation"; LBP-95-9, 41 NRC 452 (1995)
- 4 K. Davis, Administrative Law Treatise § 21:2 (2d ed. 1983)
applicability of collateral estoppel doctrine to administrative adjudicatory determinations; LBP-95-9, 41 NRC 442 (1995)
- Kenneth Culp Davis, Administrative Law Treatise at 65 § 7.14 (2d ed. 1979)
interpretation of ambiguous texts; LBP-95-4, 41 NRC 212 (1995)
- Kenneth Culp Davis, Administrative Law Treatise at 324 § 5.06
interpretation of ambiguous texts; LBP-95-4, 41 NRC 212 (1995)
- Edles and Nelson, Federal Regulatory Process: Agency Practice and Procedures, 5.4 IV at 107 (2d ed. 1992)
authority to institute formal hearings in materials licensing proceedings; CLI-95-1, 41 NRC 119 (1995)
- Executive Order 12,600, 52 Fed. Reg. 23,781 (1987)
NRC procedure for handling FOIA requests for protected discovery information; LBP-95-5, 41 NRC 266 (1995)
- Fed. R. Civ. P. 26(c)
function of a protective order; LBP-95-5, 41 NRC 263 (1995)
- Fed. R. Civ. P. 56(e)
burden on opponent of summary disposition motion; LBP-95-9, 41 NRC 449 n.165 (1995)
- Fed. R. Evid. 401
equivocacy of term "material" with term "relevant"; LBP-95-12, 41 NRC 484 (1995)
- Manual for Complex Litigation 2d, § 21.431 (1985)
"umbrella" protective orders; LBP-95-5, 41 NRC 260 (1995)

LEGAL CITATIONS INDEX

OTHERS

LEGAL CITATIONS INDEX

OTHERS

- Marcus, Myth and Reality in Protective Order Litigation, 69 Cornell L. Rev. 1, 23 (1983)
 "umbrella" protective orders; LBP-95-5, 41 NRC 260 (1995)
- Marcus, Myth and Reality in Protective Order Litigation, 69 Cornell L. Rev. 72, 73 (1983)
 restrictions on the use of confidential business information; LBP-95-5, 41 NRC 259 (1995)
- Marcus, The Discovery Confidentiality Controversy, U. Ill. L. Rev. 457, 458 (1991)
 use of materials obtained through discovery; LBP-95-5, 41 NRC 260 (1995)
- 1B James W. Moore et al., Moore's Federal Practice 0.404[1] (2d ed. 1995)
 law of the case doctrine, application of; LBP-95-9, 41 NRC 441 (1995)
- 1B James W. Moore et al., Moore's Federal Practice 0.441[2], at III-519 to III-521
 correctness of earlier determination of an issue as basis for collateral estoppel; LBP-95-9, 41 NRC 447 (1995)
- 1B James W. Moore et al., Moore's Federal Practice 0.448, at III-642
 "changed factual circumstances" standard for application of collateral estoppel; LBP-95-9, 41 NRC 446 (1995)
- 4 James W. Moore et al., Moore's Federal Practice 26.02 (1994)
 purpose of discovery; LBP-95-5, 41 NRC 259 (1995)
- 9 James W. Moore et al., Moore's Federal Practice 110.08[3] at 59-60 & n.5, 204.12[1] at 4-67 to 4-69 (1993)
 disposition of petition for review where motion for reconsideration of same issues is pending; CLI-95-1, 41 NRC 95 n.10 (1995)
- Restatement (Second) of Judgments § 13 (1980)
 definition of "final judgment" for purposes of issue preclusion; LBP-95-9, 41 NRC 445 (1995)
- 2 J. Sutherland, Statutes and Statutory Construction 41.04 at 349 (1986)
 standard for retroactive application of laws; CLI-95-1, 41 NRC 103 n.23 (1995)
- Webster's Third New International Dictionary 1140 (1971)
 definition of "inalienable"; LBP-95-9, 41 NRC 451 (1995)
- Webster's Third New International Dictionary 2361 (1986)
 definition of "terrorist"; LBP-95-6, 41 NRC 293 (1995)
- 8 John H. Wigmore, Evidence in Trials at Common Law § 2259a, at 353 & n.1 (McNaughton rev. 1961)
 invocation of self-incrimination privilege where corporate records are involved; LBP-95-5, 41 NRC 278 n.9 (1995)
- 8 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 2036 (1970)
 purpose of protective orders; LBP-95-5, 41 NRC 259 (1995)
- 8 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 2043 n.29 (1970)
 restrictions on the use of confidential business information; LBP-95-5, 41 NRC 259 (1995)
- 8 Charles A. Wright et al., Federal Practice and Procedure 2d (1970), 1994 Supplement § 2043
 use of materials obtained through discovery; LBP-95-5, 41 NRC 260 (1995)
- 10A Charles A. Wright et al., Federal Practice and Procedure § 2730.1, at 279 (2d ed. 1983)
 summary disposition applied to ambiguity question in licenses; LBP-95-7, 41 NRC 330 (1995)
- 18 Charles A. Wright et al., Federal Practice and Procedure § 4426, at 265 (1981)
 correctness of earlier determination of an issue as basis for collateral estoppel; LBP-95-9, 41 NRC 447 (1995)

SUBJECT INDEX

ADJUDICATORY BOARDS

authority over NRC Staff actions; CLI-95-1, 41 NRC 71 (1995); CLI-95-8, 41 NRC 386 (1995)
jurisdiction to consider motions for reconsideration; CLI-95-1, 41 NRC 71 (1995)

ADJUDICATORY PROCEEDINGS

effect of parallel proceedings on; CLI-95-9, 41 NRC 404 (1995)

ADMINISTRATIVE REPOSE DOCTRINE

purpose of; LBP-95-9, 41 NRC 412 (1995)

AFFIDAVITS

post-application submission by materials license applicant; CLI-95-1, 41 NRC 71 (1995)

AGREEMENT STATE PROGRAMS

NRC review requirements; DD-95-1, 41 NRC 43 (1995)

AMENDMENT OF REGULATIONS

preclosure operations at geologic repository; DPRM-95-1, 41 NRC 241 (1995)

AMERICIUM

curie content, disclosure of; CLI-95-1, 41 NRC 71 (1995)

ANTITRUST

network transmission without imposing multiple charges for transmission among multiple delivery points,
request for; DD-95-10, 41 NRC 361 (1995)

APPEALS, INTERLOCUTORY

rulings denying waiver requests; CLI-95-7, 41 NRC 383 (1995)

See also Review, Interlocutory

ATOMIC ENERGY ACT

common defense and security considerations under; CLI-95-1, 41 NRC 71 (1995); CLI-95-8, 41 NRC 386 (1995)

corporation included in definition of a "person"; LBP-95-9, 41 NRC 412 (1995)

hearing rights and requirements on materials licenses; CLI-95-1, 41 NRC 71 (1995)

interpretation of "inalienability of licenses"; LBP-95-9, 41 NRC 412 (1995)

interpretation of "through transfer of control of any license to any person"; LBP-95-9, 41 NRC 412 (1995)

interpretation of "voluntarily or involuntarily, directly or indirectly"; LBP-95-9, 41 NRC 412 (1995)

liability of parent corporation shareholder for obligations of its subsidiary; LBP-95-9, 41 NRC 412 (1995)

NRC health and safety responsibilities under; CLI-95-8, 41 NRC 386 (1995)

safety findings; CLI-95-1, 41 NRC 71 (1995); CLI-95-8, 41 NRC 386 (1995)

transfer of control of licenses; LBP-95-9, 41 NRC 412 (1995)

BANKRUPTCY

funding to ensure safety through; LBP-95-10, 41 NRC 460 (1995)

BOARDS

See Adjudicatory Boards; Licensing Boards

BRACHYTHERAPY

high-dose-rate, radiation survey requirements; LBP-95-7, 41 NRC 323 (1995)

BRIEFS, APPELLATE

inadequacies in; CLI-95-1, 41 NRC 71 (1995)

SUBJECT INDEX

CIVIL CONSPIRACY

standard for conviction of; LBP-95-4, 41 NRC 203 (1995)

COLLATERAL ESTOPPEL

applicability to administrative adjudicatory determinations; LBP-95-9, 41 NRC 412 (1995)

definition of "final judgment" for purposes of issue preclusion; LBP-95-9, 41 NRC 412 (1995)

CONFIDENTIAL INFORMATION

discovery of; LBP-95-5, 41 NRC 253 (1995)

CONSPIRACY

See Civil Conspiracy

CONSTRUCTION

See Judicial Construction

CONTAINMENT

research reactor, integrity of; LBP-95-6, 41 NRC 281 (1995)

CONTAMINATION, RADIOLOGICAL

reservoir, vulnerability to releases from research reactor; LBP-95-6, 41 NRC 281 (1995)

sewage disposal of radionuclides; LBP-95-6, 41 NRC 281 (1995)

testing based on calculations; DD-95-12, 41 NRC 489 (1995)

CONTENTIONS

admissibility based on availability of information; LBP-95-6, 41 NRC 281 (1995)

admissibility of issues based on imprecise reading of a reference document; LBP-95-6, 41 NRC 281 (1995)

management competence issues; LBP-95-6, 41 NRC 281 (1995)

NRC review of regulations as basis for; LBP-95-6, 41 NRC 281 (1995)

pleading requirements; LBP-95-6, 41 NRC 281 (1995)

CONTRACTS

construction principles applied to license construction; LBP-95-7, 41 NRC 323 (1995)

CROSS-EXAMINATION

parties' right to; CLI-95-1, 41 NRC 71 (1995)

DECOMMISSIONING

effectiveness of materials license beyond expiration to allow for; CLI-95-2, 41 NRC 179 (1995)

financial qualifications for; LBP-95-12, 41 NRC 478 (1995)

hearing rights on; CLI-95-2, 41 NRC 179 (1995)

materials license renewal for; CLI-95-2, 41 NRC 179 (1995)

DECOMMISSIONING FUNDING PLANS

materials license amendment applicant's responsibility for; CLI-95-1, 41 NRC 71 (1995)

DEFINITIONS

guard, relative to physical security; DD-95-9, 41 NRC 350 (1995)

license conditions; LBP-95-7, 41 NRC 323 (1995)

DESIGN

spent fuel storage casks; DD-95-3, 41 NRC 62 (1995)

DESIGN-BASIS EVENTS

geologic repositories; DPRM-95-1, 41 NRC 241 (1995)

DISCOVERY

confidential business information; LBP-95-5, 41 NRC 253 (1995)

DISMISSAL OF PROCEEDING

for failure to prosecute case; LBP-95-11, 41 NRC 475 (1995)

DUE PROCESS

opportunity for response; CLI-95-1, 41 NRC 71 (1995)

EMERGENCY PLANNING

applicability to research reactors; CLI-95-8, 41 NRC 386 (1995)

EMERGENCY PLANS

materials licensees; CLI-95-1, 41 NRC 71 (1995)

research reactors; CLI-95-1, 41 NRC 71 (1995)

SUBJECT INDEX

EMERGENCY RESPONSE PLANS

research reactors, deficiencies in; LBP-95-6, 41 NRC 281 (1995)

ENFORCEMENT ACTION

definition of; LBP-95-5, 41 NRC 253 (1995)

financial qualifications for decommissioning funding; LBP-95-12, 41 NRC 478 (1995)

prohibition of licensee involvement in NRC-licensed activities; LBP-95-11, 41 NRC 475 (1995)

stay of proceedings; CLI-95-9, 41 NRC 404 (1995)

violation of plant procedures; LBP-95-4, 41 NRC 203 (1995)

ENFORCEMENT ORDERS

challenges to immediate effectiveness of; CLI-95-3, 41 NRC 245 (1995)

ENFORCEMENT PROCEEDINGS

scope of; LBP-95-7, 41 NRC 323 (1995)

ENGINEERED SAFETY FEATURES

numerical dose criteria for use in identifying need for; DPRM-95-1, 41 NRC 241 (1995)

ENVIRONMENTAL ANALYSIS

Staff obligation to prepare; CLI-95-1, 41 NRC 71 (1995)

ENVIRONMENTAL ASSESSMENT

incineration of licensed materials, need for; DD-95-5, 41 NRC 227 (1995)

requirements for materials license renewals; LBP-95-1, 41 NRC 1 (1995)

Staff obligation to prepare; CLI-95-1, 41 NRC 71 (1995)

ENVIRONMENTAL IMPACT STATEMENTS

requirements for materials license renewals; LBP-95-1, 41 NRC 1 (1995)

Staff obligation to prepare; CLI-95-1, 41 NRC 71 (1995)

ENVIRONMENTAL REPORTS

incineration of licensed materials, need for; DD-95-5, 41 NRC 227 (1995)

radioactive materials use for research and development, need for; CLI-95-8, 41 NRC 386 (1995)

EVIDENCE

discretion of presiding officer in admission of; CLI-95-1, 41 NRC 71 (1995)

rebuttal; CLI-95-1, 41 NRC 71 (1995)

EXEMPTIONS

from Part 61, standard for grant of; DD-95-1, 41 NRC 43 (1995)

FINANCIAL QUALIFICATIONS

for decommissioning funding; LBP-95-12, 41 NRC 478 (1995)

materials license applicants; CLI-95-1, 41 NRC 71 (1995)

non-utility applicants for operating licenses; LBP-95-10, 41 NRC 460 (1995)

research reactor decommissioning; LBP-95-6, 41 NRC 281 (1995)

safety significance; LBP-95-10, 41 NRC 460 (1995)

FIRE

detection, protection, and suppression measures at research reactor; CLI-95-1, 41 NRC 71 (1995)

radionuclide inhalation dose levels; CLI-95-1, 41 NRC 71 (1995)

FIRE SAFETY

NRC responsibilities under the Atomic Energy Act; CLI-95-8, 41 NRC 386 (1995)

FITNESS FOR DUTY PROGRAM

computer program adequacy; DD-95-4, 41 NRC 175 (1995)

GENERAL LICENSES

design modifications to spent fuel storage casks; DD-95-3, 41 NRC 62 (1995)

GEOLOGIC CONDITIONS

sinkholes and reactor building stability; LBP-95-6, 41 NRC 281 (1995)

GEOLOGIC REPOSITORIES

preclosure operations at; DPRM-95-1, 41 NRC 241 (1995)

HEARING REQUESTS

amended, containing new areas of concerns; LBP-95-1, 41 NRC 1 (1995)

amendment of; LBP-95-2, 41 NRC 38 (1995)

SUBJECT INDEX

- answers to; LBP-95-2, 41 NRC 38 (1995)
- deadlines for filing; LBP-95-1, 41 NRC 1 (1995)
- pleading requirements for; LBP-95-1, 41 NRC 1 (1995)
- pleading requirements on materials license renewals; LBP-95-3, 41 NRC 195 (1995)
- untimely, standard for grant of; LBP-95-1, 41 NRC 1 (1995)
- HEARING RIGHTS
 - decommissioning activities; CLI-95-2, 41 NRC 179 (1995)
 - materials license renewals; LBP-95-3, 41 NRC 195 (1995)
- HOUSEKEEPING
 - adequacy for prevention of radiological releases from Parks Township facility; LBP-95-1, 41 NRC 1 (1995)
- INCINERATION
 - radioactive waste disposal by; DD-95-5, 41 NRC 227 (1995)
- INFORMAL PROCEEDINGS
 - hearing procedures; CLI-95-1, 41 NRC 71 (1995)
 - oral presentations in; CLI-95-1, 41 NRC 71 (1995)
 - pleading requirements in; LBP-95-1, 41 NRC 1 (1995); LBP-95-2, 41 NRC 38 (1995)
 - See also Subpart L Proceedings
- INTERVENTION
 - Native Americans; LBP-95-2, 41 NRC 38 (1995)
 - presiding officer's authority; LBP-95-2, 41 NRC 38 (1995)
 - Subpart L pleading requirements; LBP-95-2, 41 NRC 38 (1995)
- INTERVENTION PETITIONS
 - weight given to material allegations in; LBP-95-6, 41 NRC 281 (1995)
- JUDICIAL CONSTRUCTION
 - ambiguity and reference to extrinsic material; LBP-95-7, 41 NRC 323 (1995)
- JURISDICTION
 - bifurcation of; LBP-95-12, 41 NRC 478 (1995)
 - conflict between two regulatory agencies; DD-95-10, 41 NRC 361 (1995)
 - motions for reconsideration; CLI-95-1, 41 NRC 71 (1995)
- LAW OF THE CASE
 - application standards; LBP-95-9, 41 NRC 412 (1995)
 - authority of inferior tribunal once case is determined on appeal; LBP-95-9, 41 NRC 412 (1995)
- LIABILITY
 - of parent corporation shareholder for obligations of its subsidiary; LBP-95-9, 41 NRC 412 (1995)
 - remediation and corrective measures relating to radioactive releases from radioactive waste disposal site; DD-95-1, 41 NRC 43 (1995)
- LICENSE AMENDMENTS
 - application flaws; CLI-95-8, 41 NRC 386 (1995)
- LICENSE CONDITIONS
 - amount, storage, and disposal of transuranic materials for experimental purposes; CLI-95-8, 41 NRC 386 (1995)
 - construction of term "based on"; LBP-95-7, 41 NRC 323 (1995)
 - definition; LBP-95-7, 41 NRC 323 (1995)
- LICENSE RENEWAL
 - conditions on withdrawal of application for; CLI-95-2, 41 NRC 179 (1995)
- LICENSEE EMPLOYEES
 - qualifications of; CLI-95-1, 41 NRC 71 (1995)
 - reporting of safety concerns, review of station operating procedures for; DD-95-8, 41 NRC 346 (1995)
 - retaliation against, for engaging in protected activities; DD-95-7, 41 NRC 339 (1995)
- LICENSEES
 - bankruptcy; LBP-95-10, 41 NRC 460 (1995)

SUBJECT INDEX

- generic letter of instruction requiring review of employee procedures for reporting safety concerns; DD-95-8, 41 NRC 346 (1995)
- misconduct involving NRC-licensed activities; LBP-95-11, 41 NRC 475 (1995)
- NRC communication with; DD-95-2, 41 NRC 55 (1995)
- retaliation against whistleblowers; DD-95-4, 41 NRC 175 (1995)
- LICENSES
 - construction of terms; LBP-95-7, 41 NRC 323 (1995)
 - See also General Licenses; Materials Licenses; Source Materials License
- LICENSING BOARDS
 - review of NRC Staff actions; CLI-95-8, 41 NRC 386 (1995)
- MANAGEMENT COMPETENCE
 - demonstration of; LBP-95-1, 41 NRC 1 (1995)
- MATERIAL FALSE STATEMENTS
 - establishing materiality by analogy; LBP-95-12, 41 NRC 478 (1995)
- MATERIALS LICENSE AMENDMENT APPLICATIONS
 - deficiencies as indicator of applicant's competence; CLI-95-1, 41 NRC 71 (1995)
- MATERIALS LICENSE AMENDMENTS
 - decommissioning funding plan requirements; CLI-95-1, 41 NRC 71 (1995)
 - standard for grant of; CLI-95-1, 41 NRC 71 (1995)
- MATERIALS LICENSE APPLICATIONS
 - safety procedures submitted with; CLI-95-1, 41 NRC 71 (1995)
- MATERIALS LICENSE PROCEEDINGS
 - litigable issues in; LBP-95-3, 41 NRC 195 (1995)
- MATERIALS LICENSE RENEWAL
 - decommissioning activities; CLI-95-2, 41 NRC 179 (1995)
 - effect of pendency of 2.206 petitions on hearing requests on; LBP-95-3, 41 NRC 195 (1995)
 - environmental assessment requirements; LBP-95-1, 41 NRC 1 (1995)
 - possession of radioactive materials for manufacture of medically related devices; LBP-95-3, 41 NRC 195 (1995)
- MATERIALS LICENSES
 - effectiveness pending Staff action on renewal; LBP-95-8, 41 NRC 409 (1995)
 - hearing rights on; CLI-95-1, 41 NRC 71 (1995)
 - in-situ leach uranium mining operations; LBP-95-2, 41 NRC 38 (1995)
 - Part 30 standards; CLI-95-1, 41 NRC 71 (1995); CLI-95-8, 41 NRC 386 (1995)
 - Part 70 standards; CLI-95-1, 41 NRC 71 (1995); CLI-95-8, 41 NRC 386 (1995)
- MISREPRESENTATION
 - improper statement under oath because of failure to remember facts; LBP-95-4, 41 NRC 203 (1995)
- MONITORING, RADIOLOGICAL
 - radioactive effluents; DD-95-5, 41 NRC 227 (1995)
 - research reactor site, adequacy of; LBP-95-6, 41 NRC 281 (1995)
- MOOTNESS
 - NRC adherence to principle of; LBP-95-8, 41 NRC 409 (1995)
- NATIONAL ENVIRONMENTAL POLICY ACT
 - environmental impact statement requirements for materials license amendments; CLI-95-1, 41 NRC 71 (1995)
- NATIVE AMERICANS
 - intervention in NRC proceedings; LBP-95-2, 41 NRC 38 (1995)
- NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION
 - deferral of issuance; CLI-95-5, 41 NRC 321 (1995)
- NRC REVIEW
 - Agreement State Programs; DD-95-1, 41 NRC 43 (1995)
- NRC STAFF
 - board authority over actions of; CLI-95-1, 41 NRC 71 (1995); CLI-95-8, 41 NRC 386 (1995)

SUBJECT INDEX

- obligation to explain determinations and make findings of fact; CLI-95-1, 41 NRC 71 (1995)
- responsibilities of; LBP-95-5, 41 NRC 253 (1995)
- safety evaluation report; CLI-95-1, 41 NRC 71 (1995)
- NRC STAFF REVIEW**
 - referral of intervenor concerns for; CLI-95-4, 41 NRC 248 (1995)
 - safety, weight given to adequacy of; CLI-95-1, 41 NRC 71 (1995)
 - security plans, standard for; DD-95-9, 41 NRC 350 (1995)
- NUCLEAR NON-PROLIFERATION**
 - considerations in materials license amendment issuance; CLI-95-1, 41 NRC 71 (1995)
- NUCLEAR REGULATORY COMMISSION**
 - communication with licensees; DD-95-2, 41 NRC 55 (1995)
 - health and safety responsibilities; CLI-95-8, 41 NRC 386 (1995)
- NUCLEAR WEAPONS PROLIFERATION**
 - exclusion of issue of; CLI-95-8, 41 NRC 386 (1995)
- OPERATING LICENSE AMENDMENT**
 - transfer of operational authority; CLI-95-5, 41 NRC 321 (1995)
- OPERATING LICENSE HEARINGS**
 - issues for consideration in; LBP-95-6, 41 NRC 281 (1995)
- OPERATING LICENSE RENEWAL PROCEEDING**
 - research reactors; LBP-95-6, 41 NRC 281 (1995)
- PHYSICAL SECURITY**
 - protection against land-vehicle bombs; DD-95-6, 41 NRC 313 (1995)
 - sabotage-based contentions; LBP-95-6, 41 NRC 281 (1995)
- PLUTONIUM**
 - radioisotope and curie content description; CLI-95-1, 41 NRC 71 (1995)
- PRESIDING OFFICER**
 - authority in Subpart L proceedings; LBP-95-2, 41 NRC 38 (1995)
 - authority to examine issues not placed in controversy; LBP-95-1, 41 NRC 1 (1995)
 - authority to manage proceedings; CLI-95-1, 41 NRC 71 (1995)
 - discretion in admission of evidence; CLI-95-1, 41 NRC 71 (1995)
 - examination of witnesses; CLI-95-1, 41 NRC 71 (1995)
 - function in license renewal proceeding; CLI-95-2, 41 NRC 179 (1995)
 - jurisdiction to consider motions for reconsideration; CLI-95-1, 41 NRC 71 (1995)
 - responsibility for record development; CLI-95-1, 41 NRC 71 (1995)
 - review of NRC Staff actions; CLI-95-8, 41 NRC 386 (1995)
- PRESSURIZED WATER REACTORS**
 - stress corrosion cracking in vessel head penetrations; DD-95-2, 41 NRC 55 (1995)
- PROOF, BURDEN OF**
 - licensee's, in licensing proceedings; CLI-95-1, 41 NRC 71 (1995)
 - summary disposition; LBP-95-7, 41 NRC 323 (1995)
- PROTECTIVE ORDERS**
 - interpretation of; LBP-95-5, 41 NRC 253 (1995)
 - responsibilities of parties; LBP-95-5, 41 NRC 253 (1995)
 - sources of NRC policies and practices; LBP-95-5, 41 NRC 253 (1995)
- QUALIFICATIONS**
 - watchmen; DD-95-9, 41 NRC 350 (1995)
- QUALITY ASSURANCE**
 - receipt inspection activities, adequacy of; DD-95-11, 41 NRC 370 (1995)
- RADIATION DOSE**
 - numerical dose criteria for use in identifying need for engineered safety features; DPRM-95-1, 41 NRC 241 (1995)

SUBJECT INDEX

RADIATION EXPOSURE

occupational; CLI-95-1, 41 NRC 71 (1995)

RADIATION SURVEY

applicability to iridium-192 use as remote afterloader sealed source in high-dose-rate brachytherapy treatments; LBP-95-7, 41 NRC 323 (1995)

RADIOACTIVE EFFLUENTS

discharges into sanitary sewers; DD-95-5, 41 NRC 227 (1995)

RADIOACTIVE WASTE

offsite contamination from transportation of; LBP-95-1, 41 NRC 1 (1995)

storage at research reactor; CLI-95-1, 41 NRC 71 (1995)

RADIOACTIVE WASTE SITE

control of post-closure activities on; DD-95-1, 41 NRC 43 (1995)

liability for radioactive releases from; DD-95-1, 41 NRC 43 (1995)

mined-out area, integrity of; LBP-95-1, 41 NRC 1 (1995)

RADIOACTIVE WASTE, LOW-LEVEL

disposal on private land; DD-95-1, 41 NRC 43 (1995)

land disposal requirements; LBP-95-1, 41 NRC 1 (1995)

sewage system requirements; LBP-95-1, 41 NRC 1 (1995)

storage facility approval; DD-95-5, 41 NRC 227 (1995)

RADIOLOGICAL DOSE

accident estimates; CLI-95-1, 41 NRC 71 (1995)

RADIOLOGICAL EXPOSURE

individual limits from airborne and liquid effluents; LBP-95-1, 41 NRC 1 (1995)

RADIOLOGICAL RELEASES

site boundary limits; DD-95-12, 41 NRC 489 (1995)

standard for determining acceptable levels of; LBP-95-1, 41 NRC 1 (1995)

testing based on calculation of airborne uranium concentration and soil contamination; DD-95-12, 41 NRC 489 (1995)

threat from Parks Township facility; LBP-95-1, 41 NRC 1 (1995)

water-migration pathway; LBP-95-1, 41 NRC 1 (1995)

RADIONUCLIDES

inhalation dose levels from release during a fire; CLI-95-1, 41 NRC 71 (1995)

REACTOR CONTROL RODS

mispositioning of; LBP-95-4, 41 NRC 203 (1995)

REACTOR OPERATORS

prohibition of participation in licensed activities; LBP-95-4, 41 NRC 203 (1995)

REACTORS

See Pressurized Water Reactors; Research Reactors

RECONSIDERATION

jurisdiction over motions for; CLI-95-1, 41 NRC 71 (1995)

REGULATIONS

collateral attack on; CLI-95-1, 41 NRC 71 (1995)

concentration values of Part 20, Appendix B; DD-95-12, 41 NRC 489 (1995)

interpretation of 10 C.F.R. 40.42(e); CLI-95-2, 41 NRC 179 (1995)

retroactive application of; CLI-95-1, 41 NRC 71 (1995)

See also Amendment of Regulations

REGULATORY GUIDES

applications of; CLI-95-8, 41 NRC 386 (1995)

weight given to nonconformance with; CLI-95-1, 41 NRC 71 (1995)

RESEARCH REACTORS

detection, protection, and suppression measures; CLI-95-1, 41 NRC 71 (1995)

emergency plans; CLI-95-1, 41 NRC 71 (1995)

operating license renewal proceedings; LBP-95-6, 41 NRC 281 (1995)

SUBJECT INDEX

security plans for; LBP-95-6, 41 NRC 281 (1995)

REVIEW

"clearly erroneous" argument; CLI-95-6, 41 NRC 381 (1995)

licensee, of station operating procedures for reporting safety concerns; DD-95-8, 41 NRC 346 (1995)

of licensing board initial decisions, standard for grant of; CLI-95-6, 41 NRC 381 (1995)

pleading requirements for petitions for; CLI-95-4, 41 NRC 248 (1995)

standard for grant of; CLI-95-4, 41 NRC 248 (1995)

standard in interpreting terms of agency permit; LBP-95-7, 41 NRC 323 (1995)

See also NRC Staff Review

REVIEW, INTERLOCUTORY

legal error as basis for; CLI-95-3, 41 NRC 245 (1995)

NRC policy on; CLI-95-3, 41 NRC 245 (1995)

showing necessary for grant of; CLI-95-3, 41 NRC 245 (1995); CLI-95-7, 41 NRC 383 (1995)

RULES OF PRACTICE

adjudications involving military or foreign affairs functions; LBP-95-6, 41 NRC 281 (1995)

admissibility of areas of concern; CLI-95-8, 41 NRC 386 (1995)

admissibility of evidence; CLI-95-1, 41 NRC 71 (1995)

burden of proof in licensing proceedings; CLI-95-1, 41 NRC 71 (1995)

collateral estoppel; LBP-95-9, 41 NRC 412 (1995)

conditions on withdrawal of license renewal application; CLI-95-2, 41 NRC 179 (1995)

contention admissibility based on availability of information; LBP-95-6, 41 NRC 281 (1995)

contentions challenging management competence; LBP-95-6, 41 NRC 281 (1995)

discovery of confidential business information; LBP-95-5, 41 NRC 253 (1995)

interlocutory review policy; CLI-95-3, 41 NRC 245 (1995)

interlocutory review, showing necessary for grant of; CLI-95-7, 41 NRC 383 (1995)

law of the case doctrine; LBP-95-9, 41 NRC 412 (1995)

license renewal proceedings; CLI-95-2, 41 NRC 179 (1995)

litigability of issues based on imprecise reading of a reference document; LBP-95-6, 41 NRC 281 (1995)

mootness principle, NRC adherence to; LBP-95-8, 41 NRC 409 (1995)

NRC Staff responsibilities; LBP-95-5, 41 NRC 253 (1995)

oral presentations in informal proceedings; CLI-95-1, 41 NRC 71 (1995)

petitions for review; CLI-95-6, 41 NRC 381 (1995)

protective orders, interpretation of; LBP-95-5, 41 NRC 253 (1995)

security plans; LBP-95-6, 41 NRC 281 (1995)

standing to intervene in operating license renewal proceedings; LBP-95-6, 41 NRC 281 (1995)

Subpart L hearing procedures; CLI-95-1, 41 NRC 71 (1995)

summary disposition, showing necessary for grant of; LBP-95-7, 41 NRC 323 (1995)

summary disposition; LBP-95-9, 41 NRC 412 (1995)

waiver of rules or regulations; CLI-95-1, 41 NRC 71 (1995)

SABOTAGE

protection against land-vehicle bombs; DD-95-9, 41 NRC 350 (1995)

radiological, physical protection against; DD-95-6, 41 NRC 313 (1995)

SAFETY EVALUATION REPORT

Staff obligation to prepare; CLI-95-1, 41 NRC 71 (1995)

SAFETY ISSUES

financial qualifications rule and; LBP-95-10, 41 NRC 460 (1995)

See also Engineered Safety Features; Fire Safety

SECURITY

publication of research results related to reactors; CLI-95-8, 41 NRC 386 (1995)

See also Physical Security

SECURITY PERSONNEL

reduction of number of armed guards; DD-95-9, 41 NRC 350 (1995)

SUBJECT INDEX

- watchmen; DD-95-9, 41 NRC 350 (1995)
- SECURITY PLANS
 - design basis for; DD-95-9, 41 NRC 350 (1995); LBP-95-6, 41 NRC 281 (1995)
 - research reactors; LBP-95-6, 41 NRC 281 (1995)
 - revision of; DD-95-9, 41 NRC 350 (1995)
 - storage and control of NRC-licensed materials; DD-95-9, 41 NRC 350 (1995)
- SEISMIC DESIGN
 - of SONGS to earthquakes; DD-95-6, 41 NRC 313 (1995)
- SEWER SYSTEMS
 - radiological contamination of; LBP-95-6, 41 NRC 281 (1995)
- SHOW-CAUSE PROCEEDINGS
 - litigation of untimely hearing requests in; LBP-95-1, 41 NRC 1 (1995)
 - standard for initiation of; DD-95-2, 41 NRC 55 (1995)
- SOURCE MATERIALS LICENSE
 - effect beyond expiration date to allow decommissioning and security activities; CLI-95-2, 41 NRC 179 (1995)
- SPECIAL NUCLEAR MATERIALS
 - description of curie content in license applications; CLI-95-1, 41 NRC 71 (1995)
- SPENT FUEL STORAGE CASKS
 - VSC-24 design modifications; DD-95-3, 41 NRC 62 (1995)
- STANDING TO INTERVENE
 - groups and organizations; LBP-95-6, 41 NRC 281 (1995)
 - injury in fact requirement for; LBP-95-3, 41 NRC 195 (1995); LBP-95-6, 41 NRC 281 (1995)
 - institutional interest in providing information to the public as basis for; LBP-95-3, 41 NRC 195 (1995)
 - judicial concepts applied in determinations of; LBP-95-6, 41 NRC 281 (1995)
 - organizational, elements for establishing; LBP-95-3, 41 NRC 195 (1995)
 - pleading requirements; LBP-95-6, 41 NRC 281 (1995)
 - pleading requirements in informal proceedings; LBP-95-2, 41 NRC 38 (1995)
 - weight given to material allegations in intervention petitions; LBP-95-6, 41 NRC 281 (1995)
- STAY
 - of enforcement proceedings; CLI-95-9, 41 NRC 404 (1995)
- STRESS CORROSION CRACKING
 - reactor vessel head penetrations; DD-95-2, 41 NRC 55 (1995)
- SUBPART L PROCEEDINGS
 - authority of presiding officer; LBP-95-2, 41 NRC 38 (1995)
 - scope of litigable issues; LBP-95-1, 41 NRC 1 (1995)
 - See also Informal Proceedings
- SUMMARY DISPOSITION
 - applicability of Federal Rules of Civil Procedure in NRC proceedings; LBP-95-9, 41 NRC 412 (1995)
 - burden of proof; LBP-95-7, 41 NRC 323 (1995)
 - burden on proponent of; LBP-95-10, 41 NRC 460 (1995)
 - construction of license terms; LBP-95-7, 41 NRC 323 (1995)
 - showing necessary for grant of; LBP-95-7, 41 NRC 323 (1995); LBP-95-9, 41 NRC 412 (1995)
- TERRORISM
 - physical protection of nuclear plants; DD-95-6, 41 NRC 313 (1995)
- TRANSFER OF LICENSE
 - statutory prohibition against; LBP-95-9, 41 NRC 412 (1995)
- TRANSPORTATION
 - container requirements for radioactive wastes; LBP-95-1, 41 NRC 1 (1995)
 - radioactive wastes, offsite contamination from; LBP-95-1, 41 NRC 1 (1995)
- TRANSURANIC MATERIALS
 - amount, storage, and disposal for experimental purposes; CLI-95-8, 41 NRC 386 (1995)

SUBJECT INDEX

URANIUM

airborne releases of; DD-95-12, 41 NRC 489 (1995)

VIOLATIONS

plant operating procedures, penalty for; LBP-95-4, 41 NRC 203 (1995)

WAIVERS

appealability of ruling denying requests for; CLI-95-7, 41 NRC 383 (1995)

WASTE DISPOSAL

incineration of radioactive materials; DD-95-5, 41 NRC 227 (1995)

private land; DD-95-1, 41 NRC 43 (1995)

transuranic elements; CLI-95-1, 41 NRC 71 (1995)

See also Radioactive Waste

WHISTLEBLOWERS

licensee retaliation against; DD-95-4, 41 NRC 175 (1995); DD-95-7, 41 NRC 339 (1995)

WITNESSES

presiding officer's examination of; CLI-95-1, 41 NRC 71 (1995)

FACILITY INDEX

ARKANSAS NUCLEAR ONE; Docket Nos. 50-313, 50-368, 72-1007
 REQUEST FOR ACTION; January 31, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-3, 41 NRC 62 (1995)

CLAIBORNE ENRICHMENT CENTER; Docket No. 70-3070-ML
 MATERIALS LICENSE; June 8, 1995; ORDER; CLI-95-7, 41 NRC 383 (1995)

GEORGIA TECH RESEARCH REACTOR, Atlanta, Georgia; Docket No. 50-160-Ren
 OPERATING LICENSE RENEWAL; April 26, 1995; PREHEARING CONFERENCE ORDER
 (Ruling on Standing and Contentions); LBP-95-6, 41 NRC 281 (1995)

HADDAM NECK PLANT; Docket No. 50-213
 REQUEST FOR ACTION; May 31, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-11, 41 NRC 370 (1995)

HATCH NUCLEAR PLANT, Units 1 and 2; Docket Nos. 50-321, 50-366
 OPERATING LICENSE AMENDMENT; May 11, 1995 (Re-served May 12, 1995);
 MEMORANDUM; CLI-95-5, 41 NRC 321 (1995)

MILLSTONE NUCLEAR POWER STATION, Units 1, 2, and 3; Docket Nos. 50-245, 50-336, 50-423
 REQUEST FOR ACTION; February 22, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-4, 41 NRC 175 (1995)

REQUEST FOR ACTION; May 31, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-11, 41 NRC 370 (1995)

PENNSYLVANIA NUCLEAR SERVICE OPERATIONS, Parks Township, Pennsylvania; Docket No. 70-364
 MATERIALS LICENSE RENEWAL; January 3, 1995; INITIAL DECISION (License Renewal);
 LBP-95-1, 41 NRC 1 (1995)

MATERIALS LICENSE RENEWAL; April 26, 1995; ORDER; CLI-95-4, 41 NRC 248 (1995)

REQUEST FOR ACTION; June 26, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-12, 41 NRC 489 (1995)

RIVER BEND STATION, Unit 1; Docket No. 50-458-OLA
 OPERATING LICENSE AMENDMENT; June 15, 1995; MEMORANDUM AND ORDER (Ruling
 on Licensee's Motion Requesting Summary Disposition of Contention 2); LBP-95-10, 41 NRC 460
 (1995)

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;
 DD-95-6, 41 NRC 313 (1995)

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;
 DD-95-10, 41 NRC 361 (1995)

ST. LUCIE NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-250, 50-251
 REQUEST FOR ACTION; May 11, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-7, 41 NRC 339 (1995)

TURKEY POINT NUCLEAR GENERATING PLANT, Units 3 and 4; Docket Nos. 50-335, 50-389
 REQUEST FOR ACTION; May 11, 1995; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-95-7, 41 NRC 339 (1995)

FACILITY INDEX

FACILITY INDEX

VOGTLE ELECTRIC GENERATING PLANT, Units 1 and 2; Docket Nos. 50-424, 50-425

OPERATING LICENSE AMENDMENT; May 11, 1995 (Re-served May 12, 1995);

MEMORANDUM; CLI-95-5, 41 NRC 321 (1995)

OPERATING LICENSE AMENDMENT; June 22, 1995; ORDER; CLI-95-9, 41 NRC 404 (1995)

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;

DD-95-9, 41 NRC 350 (1995)