INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

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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 Decisions on 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 (operating license, operating license amendment, 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. Headers and Digests

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 Judges (ALJ), the Directors' Decisions (DD), and the Decisions on 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

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

CASE NAME INDEX

ADVANCED MEDICAL SYSTEMS, INC.

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 030-16055; DD-97-13, 45 NRC 460 (1997)

ATLAS CORPORATION

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Hearing Request); Docket No. 40-3453-MLA (ASLBP No. 97-723-02-MLA); LBP-97-9, 45 NRC 414 (1997)

CONSUMERS POWER COMPANY

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-255, 72-7; DD-97-1, 45 NRC 33 (1997); DD-97-5, 45 NRC 135 (1997); DD-97-9, 45 NRC 328 (1997); DD-97-15, 45 NRC 475 (1997)

ENERGY FUELS NUCLEAR, INC.

MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Additional Filings Required); Docket No. 40-8681-MLA (ASLBP No. 97-726-03-MLA) (License Amendment) (Re: Alternate Feed Material); LBP-97-10, 45 NRC 429 (1997)

ENTERGY OPERATIONS, INC.

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-313, 50-368, 72-13; DD-97-5, 45 NRC 135 (1997); DD-97-9, 45 NRC 328 (1997); DD-97-15, 45 NRC 475 (1997)

ENVIROCARE OF UTAH, INC.

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 40-8989 (License No. SMC-1559); DD-97-2, 45 NRC 63 (1997)

GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Summary Disposition Motion); Docket No. 50-219-OLA (ASLBP No. 96-717-02-OLA); LBP-97-1, 45 NRC 7 (1997)

REQUEST FOR ACTION; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-219; DD-97-8, 45 NRC 315 (1997)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-219; DD-97-14, 45 NRC 472 (1997)

GEORGIA INSTITUTE OF TECHNOLOGY

OPERATING LICENSE RENEWAL; INITIAL DECISION; Docket No. 50-160-Ren (ASLBP No. 95-704-01-Ren) (Renewal of Facility License No. R-97); LBP-97-7, 45 NRC 265 (1997)

REQUEST FOR ACTION; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-160; DD-97-16, 45 NRC 487 (1997)

GEORGIA POWER COMPANY, *et al.*

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-321, 50-366, 50-424, 50-425; DD-97-6, 45 NRC 144 (1997)

ILLINOIS POWER COMPANY and SOYLAND POWER COOPERATIVE

OPERATING LICENSE AMENDMENT; MEMORANDUM AND ORDER (Terminating Proceeding); Docket No. 50-461-OLA (ASLBP No. 97-725-01-OLA); LBP-97-4, 45 NRC 125 (1997)

LOUISIANA ENERGY SERVICES, L.P.

CONSTRUCTION PERMIT-OPERATING LICENSE PROCEEDING; ORDER; Docket No. 70-3070-ML; CLI-97-7, 45 NRC 437 (1997)

CASE NAME INDEX

CASE NAME INDEX

CONSTRUCTION PERMIT-OPERATING LICENSE PROCEEDING; PARTIAL INITIAL DECISION
(Resolving Contentions B and J.3); Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML) (Special Nuclear Material License); LBP-97-3, 45 NRC 99 (1997)

CONSTRUCTION PERMIT-OPERATING LICENSE PROCEEDING; FINAL INITIAL DECISION
(Addressing Contention J.9); Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML) (Special Nuclear Material License); LBP-97-8, 45 NRC 367 (1997)

MATERIALS LICENSE; ORDER; Docket No. 70-3070-ML; CLI-97-2, 45 NRC 3 (1997); CLI-97-3, 45 NRC 49 (1997); CLI-97-4, 45 NRC 95 (1997)

NORTHEAST NUCLEAR ENERGY COMPANY
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 50-245 (License No. DPR-21); DD-97-4, 45 NRC 86 (1997)

NORTHEAST UTILITIES
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-245, 50-336, 50-423 (License Nos. DPR-21, DPR-65, NPF-49); DD-97-11, 45 NRC 347 (1997)

RALPH L. TETRICK
SPECIAL PROCEEDING; MEMORANDUM AND ORDER; Docket No. 55-20726-SP; CLI-97-5, 45 NRC 355 (1997)

SPECIAL PROCEEDING; INITIAL DECISION; Docket No. 55-20726-SP (ASLBP No. 96-721-01-SP) (Re: Operator License); LBP-97-2, 45 NRC 51 (1997)

SPECIAL PROCEEDING; CORRECTED COPY OF MEMORANDUM AND ORDER (Denial of Reconsideration, Stay); Docket No. 55-20726-SP (ASLBP No. 96-721-01-SP) (Re: Operator License); LBP-97-6, 45 NRC 130 (1997)

SPECIAL PROCEEDING; MEMORANDUM AND ORDER (Determination of Remand Question); Docket No. 55-20726-SP (ASLBP No. 97-727-01-SP-R) (Re: Senior Reactor Operator License); LBP-97-11, 45 NRC 441 (1997)

REGENTS OF THE UNIVERSITY OF CALIFORNIA
INDEMNITY; DECISION; CLI-97-6, 45 NRC 358 (1997)

SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS
ENFORCEMENT ACTION; MEMORANDUM AND ORDER; Docket No. 70-3070-ML; CLI-97-1, 45 NRC 1 (1997)

SHIELDALLOY METALLURGICAL CORPORATION
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 040-07102; DD-97-10, 45 NRC 338 (1997)

REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 040-8948 (License No. SMB-1507); DD-97-12, 45 NRC 449 (1997);

SIERRA NUCLEAR CORPORATION
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket No. 72-1007; DD-97-15, 45 NRC 475 (1997)

TOLEDO EDISON COMPANY, *et al.*
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-346, 72-1004; DD-97-3, 45 NRC 71 (1997)

UNIVERSITY OF CINCINNATI
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Dismissing Proceeding); Docket No. 30-02764-MLA (ASLBP No. 97-722-01-MLA); LBP-97-5, 45 NRC 128 (1997)

WESTINGHOUSE ELECTRIC CORPORATION
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-7, 45 NRC 258 (1997)

WISCONSIN ELECTRIC POWER COMPANY
REQUEST FOR ACTION; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; Docket Nos. 50-266, 50-301, 72-5; DD-97-5, 45 NRC 135 (1997); DD-97-9, 45 NRC 328 (1997); DD-97-15, 45 NRC 475 (1997)

DIGESTS **ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION**

- CLI-97-1** SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS (Gore, Oklahoma Site Decontamination and Decommissioning Funding), Docket No. 40-8027-EA; ENFORCEMENT ACTION; January 22, 1997; MEMORANDUM AND ORDER
- A The Commission grants two petitions for review challenging the Licensing Board's approval of a settlement agreement. The Commission also establishes a briefing schedule.
- CLI-97-2** LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; January 29, 1997; ORDER
- A The Commission denies a motion, filed by the Intervenor, requesting partial reconsideration of CLI-96-8, 44 NRC 107 (1996). In CLI-96-8, the Commission granted in part and denied in part the Intervenor's petition for review of Atomic Safety and Licensing Board Initial Decision LBP-96-7, 43 NRC 142 (1996), which resolved all contentions on emergency planning in the Applicant's favor.
- B Motions for reconsideration may not rest on a new thesis that could have been raised earlier in a petition for review.
- C NRC rules contemplate petitions for reconsideration of a Commission decision on the merits, not petitions for reconsideration of a Commission decision to decline review of an issue. *See* 10 C.F.R. § 2.786(e).
- CLI-97-3** LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; February 13, 1997; ORDER
- A The Commission grants petitions filed by the Staff and Louisiana Energy Services for Commission review of the Atomic Safety and Licensing Board Partial Initial Decision, LBP-96-25, 44 NRC 331 (1996), and sets a briefing schedule pursuant to 10 C.F.R. § 2.786(d).
- CLI-97-4** LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; MATERIALS LICENSE; March 21, 1997; ORDER
- A The Commission grants Nuclear Energy Institute's motion for leave to file an *amicus curiae* brief in the appeal of the Atomic Safety and Licensing Board's second Partial Initial Decision, LBP-96-25, 44 NRC 331 (1996), and adjusts the briefing schedule and page limits for responsive and reply briefs. The Commission also grants Louisiana Energy Services' motion for the Commission to defer filing of petitions for review of the third Partial Initial Decision, LBP-97-3, 45 NRC 99 (1997).
- B "[A]n *amicus curiae* necessarily takes the proceeding as it finds it. An *amicus curiae* can neither inject new issues into a proceeding nor alter the content of the record developed by the parties." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 (1987) (footnote omitted).
- CLI-97-5** RALPH L. TETRICK (Denial of Application for Reactor Operator License), Docket No. 55-20726-SP; SPECIAL PROCEEDING; May 20, 1997; MEMORANDUM AND ORDER
- A The Commission remands to the Presiding Officer the issue whether Mr. Tetrick correctly answered Question 63 of his written Senior Operator examination, and directs the Presiding Officer to reconsider expeditiously his prior negative ruling in light of new information submitted to the Commission. The Commission also grants a temporary stay of both the Presiding Officer's Initial Decision and his order denying reconsideration of the Initial Decision (LBP-97-2, 45 NRC 51 (1997), and LBP-97-6, 45 NRC 130 (1997)).
- CLI-97-6** REGENTS OF THE UNIVERSITY OF CALIFORNIA (Indemnity Claim); INDEMNITY; May 29, 1997; DECISION

DIGESTS
ISSUANCES OF THE NUCLEAR REGULATORY COMMISSION

- A The Commission denies the Regents' claim for the NRC's payment of attorney's fees and expenses incurred in the Regents' defense of two private tort suits against it (subsequently settled) for alleged harm caused by radioactive releases from the NRC-licensed Argonaut nuclear test reactor at the University of California at Los Angeles (UCLA).
- B The Commission finds that section 170 of the Atomic Energy Act (known as the Price-Anderson Act) bars the NRC's payment of licensee legal expenses incurred in connection with settlements. Furthermore, the Commission finds that even if it were permitted to pay such expenses under the Act, it would not approve the claim because by statute and under the Indemnity Agreement the Regents should have timely notified the NRC at the point where governmental indemnity arose and should have sought NRC approval of the settlement of the tort cases.
- C The Price-Anderson Act is best understood as barring Commission payment of licensee legal expenses incurred in connection with settlements. 42 U.S.C. § 2210(h).
- D The Commission cannot authorize expenditures of government money without express statutory authority or in the face of a statutory prohibition against such payments. 31 U.S.C. §§ 1341, 1350.
- E Section 170h of the AEA appeared in the original 1957 Price-Anderson Act. It provides the authority for the Commission, when it anticipates making indemnity payments for public liability claims, to collaborate with an indemnified person, approve payments of claims, take charge of such action, and settle or defend any such action.
- F The 1975 Hathaway Amendment altered section 170h of the AEA by providing that a Commission-approved settlement "shall not include expenses in connection with the claim incurred by the person indemnified."
- G The 1988 Price-Anderson Act amendments loosened restrictions on government payment of legal costs and modified several of the Hathaway Amendment provisions, but did not alter section 170h in any respect; therefore, the bar against indemnifying a licensee's expenses in settlements remains in place.
- H The Commission believes that a lawsuit that is dismissed voluntarily after a negotiated arrangement in which a licensee, among other things, forfeits any right to seek costs from plaintiff qualifies as a "settlement" and not a "dismissal."
- I The fact that a specific provision of the Price-Anderson Act other than section 170h was modified by the 1988 Amendments to contemplate government payment of licensee legal costs in some situations does not mean that Congress repealed section 170h by implication.
- J The Price-Anderson Act contemplates that at the point where governmental indemnity arises in a public liability claim, the licensee will offer the government the opportunity to take over defense of the claims and manage the lawsuit. 42 U.S.C. § 2210(h).
- K By statute, a licensee is required both to notify the NRC that it has reached the point where government indemnification payments will be required under a public liability claim and to seek NRC's approval of the settlement of such a claim.
- L The Price-Anderson Act provides for indemnification of expenses incurred defending claims against licensees, not reimbursement for expenses incurred in presenting claims to the government.
- CLI-97-7 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML; CONSTRUCTION PERMIT-OPERATING LICENSE; June 30, 1997; ORDER
- A The Commission grants petitions filed by the Staff and Louisiana Energy Services for Commission review of the Atomic Safety and Licensing Board's May 1, 1997 Final Initial Decision, LBP-97-8, 45 NRC 367 (1997), and sets a briefing schedule pursuant to 10 C.F.R. § 2.786(d). The Commission also denies Nuclear Energy Institute's (NEI's) motion for leave to file an *amicus curiae* brief in support of the petition for review.
- B Our rules contemplate *amicus curiae* briefs only after the Commission grants a petition for review, and do not provide for *amicus* briefs supporting or opposing petitions for review. See 10 C.F.R. § 2.715(d).

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

LBP-97-1 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Oyster Creek Nuclear Generating Station), Docket No. 50-219-OLA (ASLBP No. 96-717-02-OLA); OPERATING LICENSE AMENDMENT; January 31, 1997; MEMORANDUM AND ORDER (Ruling on Summary Disposition Motion)

A In this proceeding concerning challenges by Intervenor Nuclear Information Resource Service (NIRS) and the Oyster Creek Nuclear Watch (OCNW) to a technical specification change regarding heavy load handling over the Oyster Creek Nuclear Generating Station spent fuel pool, the Licensing Board grants summary disposition in favor of Licensee General Public Utilities Nuclear Corporation (GPUN) on the sole intervenor contention, ruling that (1) prior to the requested revision, the technical specification did preclude the heavy load activity now at issue; (2) as they embody the agency's "defense-in-depth" philosophy, the provisions of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants" (July 1980), which Intervenor asserts preclude authorizing the requested technical specification change, establish guidance rather than regulatory requirements for handling heavy loads; and (3) nothing in the provisions of NUREG-0612 and later NRC Staff generic letters intended to promote compliance with that document's recommendations bars the adoption of the requested technical specification change.

B The first interpretational tool for discerning the meaning of the terms of a license is the plain meaning of the language of the provision in question.

C A subsequent enactment that declares the intent of an earlier provision generally is to be given "great weight" in resolving a construction problem. *See Red Lion Broadcasting v. FCC*, 395 U.S. 367, 380-81 (1969); *cf.* 17A Am. Jur. 2d *Contracts* § 388, at 415-16 (1991) (when contract terms are ambiguous and parties have made other contracts concerning the same subject matter, those instruments can be examined together to aid in interpretation). The relevance of such a subsequent enactment seems particularly telling when the parties who drafted and approved the revision declare it was intended to clarify any ambiguity in the prior version.

D In a technical specification paragraph that sets forth a general prohibition, the use of the term "except" to describe a specific activity sanctioned in a subsequent paragraph establishes that, but for its specification as an exception, that activity would be covered by the general prohibition.

E A Staff report bearing the NUREG designation does not fall into the category of a regulatory "requirement," such as a statute, regulation, license condition, or order. *See Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 98 (1995). Instead, at best, "it serves as guidance, setting forth but one method for meeting the applicable regulatory requirements In other words, that document 'is treated simply as evidence of a legitimate means for complying with regulatory requirements.'" *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986) (quoting *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), *aff'd in part on other grounds*, CLI-83-22, 18 NRC 299 (1983)).

F In a generic letter that both "requested" that licensees take various actions and "required" that licensees provide a report detailing their compliance efforts, in contrast to the reporting component of a generic letter, which seemingly would constitute a "requirement," *see* 10 C.F.R. §§ 2.204, 50.54(f), the generic letter's compliance request would not constitute a "requirement" in the absence of some additional regulatory directive such as an order or a regulation mandating compliance. *Cf.* 60 Fed. Reg. 34,381, 34,392 (1995) (agency expects licensees to adhere to commitments resulting from administrative actions such as confirmatory action letters and will issue appropriate orders to ensure commitments are met), *reprinted in*

DIGESTS

ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

Office of Enforcement, U.S. Nuclear Regulatory Commission, NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" at 14 (July 1995).

- G A technical specification that is not subject to revision would not be the norm. By providing in section 187 of the Atomic Energy Act that agency-issued licenses are "subject to amendment," 42 U.S.C. § 2237; *see also, e.g.*, 10 C.F.R. § 50.90, the Congress contemplated that any license provision could be changed, at least so long as the revision sought was not inimical to the public health and safety or the common defense and security. Consequently, in the absence of language in the license (or some other regulatory requirement) that makes manifest a license provision's immutability, the question in a license amendment proceeding generally is whether the requested change is consistent with applicable agency regulatory strictures and any suitable guidance.

LBP-97-2 RALPH L. TETRICK (Denial of Application for Reactor Operator License), Docket No. 55-20726-SP (ASLBP No. 96-721-01-SP) (Re: Operator License); SPECIAL PROCEEDING; February 28, 1997; INITIAL DECISION

- A The Presiding Officer determined that a reactor operator should be considered to have passed the written test for senior reactor operator.

- B He determined that one of the questions on the exam was ambiguous and should be disallowed. He also determined, in the absence of guidance from the Staff of the Commission, that examination scores are sufficiently imprecise that they should be rounded to the nearest integer. As a consequence, the score on the written examination was 80%, which the Presiding Officer considered a passing score. Since this was the last hurdle for the applicant in obtaining his license, the Presiding Officer directed the Staff to issue a Senior Reactor Operator's license to him.

LBP-97-3 LOUISIANA ENERGY SERVICES, L.P. (Claiborne Enrichment Center), Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML) (Special Nuclear Material License); CONSTRUCTION PERMIT-OPERATING LICENSE; March 7, 1997; PARTIAL INITIAL DECISION (Resolving Contentions B and J.3)

- A In this Partial Initial Decision in the combined construction permit-operating license proceeding for the Claiborne Enrichment Center, the Licensing Board resolves in favor of the Intervenor a portion of decommissioning funding contention B.1 and environmental contention J.3 concerning the conversion component of the estimated cost of tails disposal.

- B The Commission's rules of practice for the conduct of formal adjudicatory hearings provide in 10 C.F.R. § 2.732 that the applicant has the burden of proof in the proceeding. Thus, in order for the applicant to prevail on each contested factual issue, the applicant's position must be supported by a preponderance of the evidence. *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 720 (1985); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577 (1984). *See* 1 Charles H. Koch, Jr., *Administrative Law and Practice* § 6.44 (1985).

- C The USEC Privatization Act, 42 U.S.C. § 2297h-11(a)(1)(B) now makes the Department of Energy, at the request of an NRC-licensed enricher, responsible for the disposal of depleted uranium tails at DOE's disposal costs, including a pro rata share of any of DOE's capital costs.

LBP-97-4 ILLINOIS POWER COMPANY and SOYLAND POWER COOPERATIVE (Clinton Power Station, Unit 1), Docket No. 50-461-OLA (ASLBP No. 97-725-01-OLA); OPERATING LICENSE AMENDMENT; March 11, 1997; MEMORANDUM AND ORDER (Terminating Proceeding)

- A In this proceeding regarding the proposed transfer of the ownership share of Clinton Power Station minority owner Soyland Power Cooperative to majority owner Illinois Power Company, the Licensing Board grants the unopposed request of Petitioner Southwestern Electric Cooperative, Inc., to dismiss its protective intervention petition and terminate the proceeding.

- B Simply because a filing is labeled a petition to intervene does not prevent the presiding officer from treating it as a request to initiate a hearing if this, in fact, is what the petitioner is seeking. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 5 (1996).

LBP-97-5 UNIVERSITY OF CINCINNATI (Denial of License Amendment), Docket No. 30-02764-MLA (ASLBP No. 97-722-01-MLA); MATERIALS LICENSE AMENDMENT; March 27, 1997; MEMORANDUM AND ORDER (Dismissing Proceeding)

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

LBP-97-6 **RALPH L. TETRICK** (Denial of Application for Reactor Operator License), Docket No. 55-20726-SP (ASLBP No. 96-721-01-SP) (Re: Operator License); SPECIAL PROCEEDING; March 27, 1997; CORRECTED COPY OF MEMORANDUM AND ORDER (Denial of Reconsideration, Stay)

- A The Presiding Officer denied the Staff's motion for reconsideration. He ruled that the Staff should reasonably have foreseen the importance of whether or not to round up applicant's examination score. Consequently, Staff should have raised this question earlier and it was untimely to do so in a Motion for Reconsideration. Since the Presiding Officer also concluded that there was no important safety issue involved, he used his discretion to deny the untimely motion.

LBP-97-7 **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 3, 1997; INITIAL DECISION

- A The Licensing Board issues an Initial Decision that authorizes grant of a 20-year renewal of the operating license of the Georgia Tech Research Reactor.

- B Merely because expert witnesses for all parties reach similar conclusions on an issue does not mean that the Licensing Board must reach the same conclusion. The significance of various facts is for the Board to determine, based on the record, and cannot be delegated to the expert witnesses of various parties, even if they all agree. The Board must satisfy itself that the conclusions reached have a solid foundation.

- C A licensing board must do more than act as an "umpire blandly calling balls and strikes for adversaries appearing before it." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-94-35, 40 NRC 180, 192 (1994), citing *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608, 620 (2d Cir. 1965).

- D Although the testimony of a public official working for a government agency may be entitled to a presumption (albeit rebuttable) that public officials are presumed to have performed their official duties in a proper manner, this presumption does not apply where the official is not operating in a traditional governmental capacity but rather as an official of a regulated entity operated by a government unit.

- E Government entities have the same burdens in proving their cases in NRC licensing proceedings as private entities.

- F NRC regulations prescribe no particular managerial structure. The acceptability of a managerial organizational structure depends, in part, on the independence of operational and safety functions.

- G With respect to power reactors, interpretations of quality assurance requirements have led to mandatory separation of operational and safety functions. With respect to nonpower reactors, there is no regulatory requirement for any particular structure, and they vary considerably, so long as some form of independent safety review is maintained.

- H Where two forms of management organization are legally acceptable, a Licensing Board would need a strong record establishing the performance superiority of one (and safety deficiencies attributable to the other) to mandate a change.

- I A licensing board would only refuse to authorize a renewed license under the enforcement policy (i.e., based on violations) for reasons that were as serious as those that could lead to license revocation. Under NRC's enforcement policy, a series of Severity Level IV violations would not warrant license revocation.

- J The following technical issue is discussed: Management organization.

LBP-97-8 **LOUISIANA ENERGY SERVICES, L.P.** (Claiborne Enrichment Center), Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML) (Special Nuclear Material License); CONSTRUCTION PERMIT-OPERATING LICENSE; May 1, 1997; FINAL INITIAL DECISION (Addressing Contention J.9)

- A In this Final Initial Decision in the combined construction permit-operating license proceeding for the Claiborne Enrichment Center, the Licensing Board (1) determines that a thorough NRC Staff investigation of the facility site selection process is essential to determine whether racial discrimination played a role in that process, thereby ensuring compliance with the nondiscrimination directive contained in Executive Order 12898; (2) resolves in favor of the Intervenor portions of the contention concerning the adequacy of the Staff's treatment in the final environmental impact statement of the impacts of relocating the parish road connecting the African American communities of Forest Grove and Center Springs and the economic impacts of the facility on properties in those communities; and (3) denies the Applicant's requested authorization for a license.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

- B** On February 11, 1994, the President issued Executive Order 12898, 3 C.F.R. 859 (1995), titled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," and an accompanying Memorandum for the Heads of All Departments and Agencies, 30 Weekly Comp. Pres. Doc. 279 (Feb. 14, 1994). The President's memorandum states that the Executive Order is designed "to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice" and "to promote nondiscrimination in Federal programs substantially affecting human health and the environment."
- C** As an independent regulatory agency the NRC is not mandatorily subject to Executive Order 12898. Nevertheless, on March 31, 1994, the then Chairman of the Commission wrote the President stating that the NRC would carry out the measures in the Executive Order. By voluntarily agreeing to implement the President's environmental justice directive, the Commission has made it fully applicable to the agency and, until that commitment is revoked, the President's order, as a practical matter, applies to the NRC to the same extent as if it were an executive agency. The NRC is obligated, therefore, to carry out the Executive Order in good faith in implementing its programs, policies, and activities that substantially affect human health or the environment.
- D** Although Executive Order 12898 does not create any new rights that the Intervenor may seek to enforce before the agency or upon judicial review of the agency's actions, the President's directive is, in effect, a procedural directive to the head of each executive department and agency that, "to the greatest extent practicable and permitted by law," it should seek to achieve environmental justice in carrying out its mission by using such tools as the National Environmental Policy Act.
- E** Pursuant to the President's order, there are two aspects to environmental justice: first, each agency is required to identify and address disproportionately high and adverse health or environmental effects on minority and low-income populations in its programs, policies, and activities; and second, each agency must ensure that its programs, policies, and activities that substantially affect human health or the environment do not have the effect of subjecting persons and populations to discrimination because of their race, color, or national origin.
- F** It is clear that Executive Order 12898 directs all agencies in analyzing the environmental effects of a federal action in an EIS required by NEPA to include in the analysis, "to the greatest extent practicable," the human health, economic, and social effects on minority and low-income communities.
- G** In using the term human health and environmental "effects" in Executive Order 12898 and the accompanying memorandum the President's order tracks the regulations of the Council on Environmental Quality ("CEQ") that define "effects" to include both direct and indirect effects and states that "[e]ffects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8(b).
- H** Executive Order 12898 does impose duties on the NRC because the Commission has undertaken to carry out the President's directive, but no party to an agency proceeding has a remedy with regard to the manner in which the agency carries out its commitment to the President to implement Executive Order 12898.
- LBP-97-9** ATLAS CORPORATION (Moab, Utah Facility), Docket No. 40-3453-MLA (ASLBP No. 97-723-02-MLA); MATERIALS LICENSE AMENDMENT; May 16, 1997; MEMORANDUM AND ORDER (Denying Hearing Request)
- A** In this 10 C.F.R. Part 2, Subpart L informal proceeding concerning pro se petitioner John Francis Darke's challenge to a request by Atlas Corporation to amend the license for its Moab, Utah uranium milling facility to extend the completion date for placing a final radon barrier on the facility tailings pile, the Presiding Officer rules (1) Petitioner Darke's hearing request is timely and specifies areas of concern that are germane to the subject matter of the proceeding; (2) Petitioner Darke has failed to establish any grounds for using 10 C.F.R. Part 2, Subpart G formal adjudicatory procedures; and (3) despite multiple opportunities to address the issue, Petitioner Darke has failed to meet his burden to establish his standing to intervene in this proceeding.
- B** To be admitted as a party to an informal adjudication under Subpart L of 10 C.F.R. Part 2 regarding a licensee-initiated materials license amendment, the individual or organization filing a hearing/intervention request must establish three things: (1) the petitioner is a "person whose interest may be affected by

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

the proceeding" within the meaning of section 189a(1)(A) of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. § 2239(a)(1)(A), in that the petitioner has standing to participate in the proceeding consistent with the standards governing standing in judicial proceedings generally; (2) the petitioner has "areas of concern" regarding the requested licensing action that are germane to the subject matter of the amendment proceeding; and (3) the hearing/intervention petition was timely filed. *See* 10 C.F.R. § 2.1205(e), (h).

- C In an informal adjudication under 10 C.F.R. Part 2, Subpart L, the petitioner may request that the proceeding be conducted employing procedures other than those set forth in Subpart L, which could include use of the procedures for formal, trial-type adjudications set forth in Subpart G of Part 2. *See id.* § 2.1209(k).

- D The "areas of concern" specified in support of a hearing request under Subpart L "need not be extensive, but [they] must be sufficient to establish that the issues the requester wants to raise fall generally within the range of matters that properly are subject to challenge in such a proceeding." 54 Fed. Reg. 8269, 8272 (1989). Like the requirement that a 10 C.F.R. Part 2, Subpart G formal hearing petition must define the "specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene," 10 C.F.R. § 2.714(a)(2), the Subpart L direction to define "areas of concern" is only intended to ensure that the matters the petitioner wishes to discuss in his or her written presentation are generally within the scope of the proceeding.

- E A request to use other procedures in a 10 C.F.R. Part 2, Subpart L proceeding should involve consideration of whether, given the particular circumstances involved in the proceeding, permitting the use of additional, trial-type procedures such as oral cross-examination would add appreciably to the factfinding process. *See Sequoyah Fuels Corp.* (Sequoyah UF₆ to UF₄ Facility), CLI-86-17, 24 NRC 489, 497 (1986).

- F As a request for a revision to a 10 C.F.R. Part 40 source materials license, a licensee's amendment application falls squarely within the designation of a "licensee-initiated amendment" under 10 C.F.R. § 2.1201(a)(1) — as opposed to being a 10 C.F.R. Part 2, Subpart B Staff-imposed amendment that would be subject to the formal hearing procedures in Subpart G — and thus properly is the subject of Subpart L informal procedures.

- G To establish standing to participate as of right in an adjudicatory proceeding regarding an agency licensing action, an individual petitioner must demonstrate that (1) he or she has suffered or will suffer a distinct and palpable "injury in fact" within the "zone of interests" arguably protected by the statutes governing the proceeding (e.g., the AEA, the National Environmental Policy Act of 1969); (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

- H Although the petitioner bears the burden of establishing his or her standing, it also is clear under Commission caselaw that in making a standing determination a presiding officer is to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

- I A licensee's claim that "regulatory limits" are not being exceeded by offsite radiological releases from a facility is not, standing alone, sufficient to show that a petitioner lacks standing. As was noted in the face of a similar assertion, "[r]elative to a threshold standing determination, . . . even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury in fact." *General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 158 (1996).

- J A showing that there may be some offsite radiological impacts to someone is not enough to establish standing for a particular petitioner. As the Commission has made clear on a number of occasions, in the context of a proceedings other than those for the grant of a reactor construction permit or operating license, a petitioner who wants to establish "injury in fact" for standing purposes must make some specific showing outlining how the particular radiological (or other cognizable) impacts from the nuclear facility or materials involved in the licensing action at issue can reasonably be assumed to accrue to the petitioner. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 246-48 (1996).

- K In proceedings other than those for the grant of a reactor construction permit or operating license, petitioners generally establish their "injury in fact" by quantifying the distance from the nuclear facility or materials at which they reside or engage in other activities they believe are likely to result in radiological impacts. *See, e.g., Oyster Creek*, LBP-96-23, 44 NRC at 157-59.

DIGESTS
ISSUANCES OF THE ATOMIC SAFETY AND LICENSING BOARDS

L A petitioner has not shown any reasonable nexus between himself or herself and any purported radiological impacts when, despite assertions about potential facility-related airborne and waterborne radiological contacts, he or she has not delineated these with enough concreteness to establish some impact on him that is sufficient to provide him or her with standing. By not providing any information that indicates whether water-related activities are being conducted upstream or downstream from a facility and by describing other activities only using vague terms such as "near," "close proximity," or "in the vicinity" of the facility at issue, the petitioner fails to carry his or her burden of establishing the requisite "injury in fact."

M It generally is the practice for participants making factual claims regarding the circumstances that establish standing to do so in affidavit form that is notarized or includes a declaration that the statements are true and are made under penalty of perjury.

LBP-97-10 ENERGY FUELS NUCLEAR, INC. (White Mesa Uranium Mill), Docket No. 40-8681-MLA (ASLBP No. 97-726-03-MLA) (License Amendment) (Re: Alternate Feed Material); MATERIALS LICENSE AMENDMENT; May 27, 1997; MEMORANDUM AND ORDER (Additional Filings Required)

A The Presiding Officer in this proceeding under 10 C.F.R. Part 2, Subpart L, explained what was required for a party to show standing, including affidavits of residence, a statement of authorization to represent particular members of the organizations, and a plausible allegation of injury in fact resulting from the amendment that is the subject of the licensing proceeding. Petitioner were permitted to file supplemental filings to fulfill these requirements. In addition, various procedural requirements for Subpart L filings were explained.

B To attain standing, petitioners should show a plausible way in which activities licensed by the challenged amendment would injure them. The injury must be due to the amendment and not to the license itself, which was granted previously. The injury must occur to individuals whose residence is demonstrated in the filing and whom the organizations are authorized to represent.

LBP-97-11 RALPH L. TETRICK (Denial of Application for Reactor Operator License), Docket No. 55-20726-SP (ASLBP No. 97-727-01-SP-R) (Re: Senior Reactor Operator License); SPECIAL PROCEEDING; June 25, 1997; MEMORANDUM AND ORDER (Determination of Remand Question)

A The Presiding Officer in this Subpart L proceeding, having requested further information in this remand proceeding, affirmed his earlier determination that Mr. Tetric had incorrectly answered the remanded question on his Senior Reactor Operator's examination. Plant procedures involved in this question were interpreted to require an understanding of the root cause of the incident described in the question.

B The Presiding Officer expressed confidence that in deciding this case the Commission will be aware that motions for reconsideration are frequently filed before presiding officers, both at the end of cases and after interim orders. *Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-648, 14 NRC 34, 37-38 (1981).

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DD-97-1 CONSUMERS POWER COMPANY (Palisades Nuclear Plant), Docket Nos. 50-255, 72-7; REQUEST FOR ACTION; January 23, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Acting Director of the Office of Nuclear Reactor Regulation is granting, in part, and denying, in part, a petition filed by the organizations Don't Waste Michigan and Lake Michigan Federation pursuant to 10 C.F.R. § 2.206. The Petitioners requested that the NRC (1) find that Consumers Power Company violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the Licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the Licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades. To the extent that the NRC has determined that Consumers Power Company violated NRC regulations insofar as the original unloading procedure developed for unloading dry storage casks was not adequate, the petition is granted. However, the NRC has decided not to impose a civil penalty for the violation or to suspend Consumers Power Company's use of the general license for dry cask storage at Palisades. To that extent, the petition is denied.

DD-97-2 ENVIROCARE OF UTAH, INC., Docket No. 40-8989 (License No. SMC-1559); REQUEST FOR ACTION; February 5, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director, Office of Nuclear Material Safety and Safeguards, has denied a petition filed by Dr. Thomas B. Cochran on behalf of Natural Resources Defense Council (NRDC) requesting that the NRC take action regarding Envirocare of Utah, Inc. (Envirocare). The petition requested that the NRC immediately revoke any license or cause the State of Utah (Utah) to revoke any Agreement State license or licenses held by Envirocare, its President, Khosrow Semnani, or any entity controlled or managed by Mr. Semnani; prohibit the future issuance of any license by the NRC, Utah, or other NRC Agreement State to Mr. Semnani or any entity controlled or managed by him or with which he has a significant affiliation; and suspend Utah's Agreement State status until it can demonstrate that it can operate its Division of Radiation Control in a lawful manner. As a basis for the petition, the Petitioner asserted that an article in the *Salt Lake City Tribune* reported secret cash payments made by Mr. Semnani to the Director of the Utah Division of Radiation Control, and Utah's initiation of a criminal investigation into the matter. The reasons for the denial are set forth in the Decision.

- B The Commission's regulations recognize that a licensee should be afforded under usual circumstances a prior opportunity to be heard before the agency suspends a license or takes other enforcement action, but that extraordinary circumstances may warrant summary action prior to hearing.

- C Since the inception of the 10 C.F.R. § 2.206 process, the Commission has consistently stated that the purpose of 10 C.F.R. § 2.206 is to provide the public with the means for participating in the enforcement process.

- D In accordance with the Commission's determination that the section 2.206 process should be focused on requests for enforcement action rather than an evaluation of safety concerns, petitions will be reviewed under 10 C.F.R. § 2.206 if the request is for enforcement action, and a request under section 2.206 should be distinguished from a request to deny a pending license application or amendment.

DD-97-3 TOLEDO EDISON COMPANY, *et al.* (Davis-Besse Independent Spent Fuel Storage Installation), Docket Nos. 50-346, 72-1004; REQUEST FOR ACTION; February 5, 1997; 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 filed pursuant to 10 C.F.R. § 2.206 on behalf of the Toledo Coalition for Safe Energy,

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DIGESTS

ISSUANCES OF DIRECTORS' DECISIONS

Alice Hirt, Charlene Johnston, Dini Schut, and William Hoops. The petition is granted to the extent that the NRC has initiated a rulemaking to modify the Certificate of Compliance for the VECTRA Technologies NUHOMS-24P dry-shielded canisters (DSCs) in order to require fabrication inspection. The Petitioners' request that the NRC require the unloading of DSCs pending completion of the rulemaking is denied. The Director also finds no basis for taking any further enforcement action against VECTRA or to require the halting of the ISFSI operation at Davis-Besse.

DD-97-4 NORTHEAST NUCLEAR ENERGY COMPANY (Millstone Nuclear Power Station, Unit 1), Docket No. 50-245 (License No. DPR-21); REQUEST FOR ACTION; February 11, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director, Office of Nuclear Reactor Regulation, has granted in part and denied in part a petition filed by Anthony J. Ross requesting action regarding Millstone Nuclear Power Station, Unit 1. The Petitioner requested that the Commission take escalated enforcement action against the Licensee and certain individuals based upon the deliberate failure to comply with procedures involving sign-out of measuring and test equipment, and conduct an investigation into alleged procedural violations and audit the Millstone Unit 1 maintenance department *Measuring and Test Equipment folders for widespread problems regarding procedural noncompliance*. To the extent that the Petitioner requested escalated enforcement action be taken, the petition has been denied; to the extent that the Petitioner requested an investigation into the procedural violations and an audit, the petition has been granted.

B Minor violations, as described in the current enforcement policy, are not the subject of formal enforcement action and are usually not cited in inspection reports. To the extent that such violations are described, they are now noted as noncited violations.

C The institution of a proceeding pursuant to 10 C.F.R. § 2.206 is appropriate only if substantial health and safety issues have been raised.

DD-97-5 CONSUMERS POWER COMPANY (Palisades Nuclear Plant), Docket Nos. 50-255, 72-7; ENTERGY OPERATIONS, INC. (Arkansas Nuclear One, Units 1 and 2), Docket Nos. 50-313, 50-368, 72-13; WISCONSIN ELECTRIC POWER COMPANY (Point Beach Nuclear Plant, Units 1 and 2), Docket Nos. 50-266, 50-301, 72-5; REQUEST FOR ACTION; March 4, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation denies the request by Petitioner Fawn Shillinglaw, filed pursuant to 10 C.F.R. § 2.206, that the NRC take action to prohibit loading of VSC-24 casks at any nuclear site until the multiassembly sealed basket #4 at the Palisades nuclear plant has been unloaded and the experience evaluated for potential safety improvements. The Director concludes that the NRC will not permit unloading of any casks until it obtains reasonable assurance, through a variety of means, of each licensee's ability to do so safely, and therefore need not suspend any licensee's use of the general license for dry cask storage until the multiassembly sealed basket at Palisades has been unloaded.

DD-97-6 GEORGIA POWER COMPANY, *et al.* (Vogtle Electric Generating Plant, Units 1 and 2; Hatch Nuclear Plant, Units 1 and 2), Docket Nos. 50-321, 50-366, 50-424, 50-425; REQUEST FOR ACTION; March 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

A The Acting Director, Office of Nuclear Reactor Regulation, has granted in part and denied in part a petition filed by Michael D. Kohn, Esquire, on behalf of Messrs. Marvin B. Hobby and Allen L. Mosbaugh requesting action regarding the Vogtle and Hatch nuclear facilities operated by Georgia Power Company and allegedly by the Southern Nuclear Operating Company (SONOPCO or Southern Nuclear). The petition raised concerns about the management practices of GPC and Southern Nuclear with respect to operation of the facilities, treatment of employees who raise concerns, provision of information to the NRC, and alleged false testimony before the Department of Labor. Petitioners requested the NRC to take immediate steps to determine if GPC's current management has the requisite character, competence, fundamental trustworthiness, and commitment to safety to continue operating a nuclear facility.

B Some concerns raised by the petition were partially substantiated. Violations of regulatory requirements occurred. The petition was granted to the extent that: the NRC issued three Notices of Violation and civil penalties to GPC for certain violations, the NRC issued letters to GPC (and GPC and SONOPCO employees) regarding the requirements of 10 C.F.R. §§ 50.7 and 50.9, the license transfer amendment proceeding evaluated many of the concerns, and the license transfer amendments issued for the facilities were conditioned to address concerns about management. The petition was denied to the extent that

DIGESTS

ISSUANCES OF DIRECTORS' DECISIONS

the Acting Director determined that no unauthorized transfer of the Vogtle operating licenses has occurred, and concluded that none of the issues call into question the Licensee's character, competence, fundamental trustworthiness, or commitment to safety in the operation of its nuclear facilities. Therefore, further action with respect to the issues raised in the petition was denied.

- C The general standard for integrity is whether there is reasonable assurance that the licensee has sufficient character to operate the plant in a manner consistent with public health and safety and applicable NRC requirements. The Commission may consider the acts of the licensee (and its employees) that have a rational connection to safe operation of a nuclear power plant.

DD-97-7 WESTINGHOUSE ELECTRIC CORPORATION (Madison, Pennsylvania); REQUEST FOR ACTION; March 20, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director, Office of Enforcement, has taken action with regard to a petition filed by Shannon Doyle requesting that the Commission take action with regard to Westinghouse Electric Corporation. The Petitioner requested that the Commission investigate allegations that Westinghouse willfully provided false information to the Department of Labor (DOL), institute a show-cause proceeding pursuant to 10 C.F.R. § 2.202, and/or impose a civil penalty upon Westinghouse. The Petitioner had asserted, as a basis for his request, that Westinghouse had failed to correct the DOL record and provided material false statements to the DOL Administrative Law Judge in a case arising under the Energy Reorganization Act. In denying the petition, the Director determined that the matter should be referred to the DOL Administrative Review Board for its consideration.

- B The NRC generally does not have specific requirements for qualification and training of health physics technicians.

- C The NRC and DOL have complementary responsibilities in the area of employee protection.

DD-97-8 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Oyster Creek Nuclear Generating Station), Docket No. 50-219; REQUEST FOR ACTION; April 2, 1997; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A By a petition dated September 19, 1994, Reactor Watchdog Project, Nuclear Information and Resource Service, and Oyster Creek Nuclear Watch (Petitioners) requested that the NRC take action with regard to Oyster Creek Nuclear Generating Station (OCNGS) operated by GPU Nuclear Corporation (GPU or Licensee). Petitioners requested that the NRC (1) immediately suspend the OCNGS operating license until the Licensee inspects and repairs or replaces all safety-class reactor internal component parts subject to embrittlement and cracking, (2) immediately suspend the OCNGS operating license until the Licensee submits an analysis regarding the synergistic effects of through-wall cracking of multiple safety-class components, (3) immediately suspend the OCNGS operating license until the Licensee has analyzed and mitigated any area of noncompliance with regard to irradiated fuel pool cooling as a single-unit boiling water reactor (BWR), and (4) issue a generic letter requiring other licensees of single-unit BWRs to submit information regarding fuel pool boiling in order to verify compliance with regulatory requirements and to promptly take appropriate mitigative action if the unit is not in compliance. By a letter dated December 13, 1994, Petitioners supplemented their petition and requested that the NRC: (1) suspend the OCNGS operating license until Petitioners' concerns regarding cracking are addressed including inspection of all reactor vessel internal components and other safety-related systems susceptible to intergranular stress-corrosion cracking and completion of any and all necessary repairs and modifications; (2) explain the discrepancies between the response of the NRC Staff dated October 27, 1994, to the petition and time-to-boil calculations for the FitzPatrick Plant; (3) require GPU to produce documents for evaluation of the time-to-boil calculations for the OCNGS irradiated fuel pool; (4) identify redundant components that may be powered from onsite power supplies to be used for spent fuel pool cooling as qualified Class 1E systems; (5) hold a public meeting in Toms River, New Jersey, to permit presentation of additional information related to the petition; and (6) treat Petitioners' letter of December 13, 1994, as a formal appeal of the denial of their request of September 19, 1994, to immediately suspend the OCNGS operating license.

- B By letter dated October 27, 1994, the Director denied Petitioners' request for immediate suspension of the OCNGS operating license. By letter dated April 10, 1995, the Director denied requests (5) and (6) of the December 13, 1994 Supplemental Petition. On August 4, 1995, the Director issued a Partial Director's Decision (DD-95-18, 42 NRC 67) denying requests (1) and (2) of the September 19, 1994 Petition and request (1) of the December 13, 1994 Supplemental Petition.

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

- C By a Director's Decision issued on April 2, 1997, the Director granted in part requests (3) (exclusive of the request to suspend OCNCS operating license was previously denied) and (4) of the September 19, 1994 Petition, and granted requests (2), (3), and (4) of the December 13, 1994 Supplemental Petition.
- DD-97-9 WISCONSIN ELECTRIC POWER COMPANY (Point Beach Nuclear Plant, Units 1 and 2), Docket Nos. 50-266, 50-301, 72-5; CONSUMERS POWER COMPANY (Palisades Nuclear Plant), Docket Nos. 50-255, 72-7; ENTERGY OPERATIONS, INC. (Arkansas Nuclear One, Units 1 and 2), Docket Nos. 50-313, 50-368, 72-13; REQUEST FOR ACTION; April 17, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director of the Office of Nuclear Reactor Regulation denies a petition filed pursuant to 10 C.F.R. § 2.206 by Citizen's Utility Board on September 30, 1996, asking the NRC to (1) require the Licensee for Point Beach Nuclear Plant to reserve a fixed number of vacant spaces in the spent fuel pool to permit retrieval from a VSC-24 cask in the event the fuel in the cask must be removed, and (2) to order all users of the VSC-24 cask not to load any casks until the COC, SAR, and SER are amended to contain operating controls and limits to prevent hazardous conditions.
- DD-97-10 SHIELDALLOY METALLURGICAL CORPORATION (Newfield, New Jersey), Docket No. 040-07102; REQUEST FOR ACTION; April 15, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By an undated letter received October 11, 1996, and supplemented by a letter dated February 7, 1997, Mr. Sherwood Bauman, Chairperson of Save Wills Creek (Petitioner), requested modification of Shieldalloy Metallurgical Corporation's (SMC) license to allow only possession of radioactive material for the express purpose of decommissioning and decontaminating its Newfield, New Jersey facility, and further requested that current operations at the facility that result in additional radioactive material being stored at the site be halted. The request was considered as a petition submitted pursuant to 10 C.F.R. § 2.206.
- B In a Director's Decision dated April 15, 1997, the Director of Nuclear Material Safety and Safeguards granted in part and denied in part the relief sought by Petitioner. The Director concluded that concerns regarding SMC's proposed decommissioning funding plan warranted conditioning SMC's license as part of any future renewal to require SMC to provide additional proof of a proposed slag disposition method, in the form of an NRC-approved export application, within 1 year of the license's renewal. Additionally, any renewed SMC license will require financial assurance commensurate in value with the costs of offsite disposal for future source-material possession increases. The Director also concluded that Petitioner had otherwise failed to provide a basis to warrant modification of SMC's license in the manner requested or to halt current operations.
- DD-97-11 NORTHEAST UTILITIES (Millstone Nuclear Power Station, Units 1, 2, and 3), Docket Nos. 50-245, 50-336, 50-423 (License Nos. DPR-21, DPR-65, NPF-49); REQUEST FOR ACTION; April 29, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A The Director, Office of Nuclear Reactor Regulation, has granted in part and denied in part a petition filed by Anthony J. Ross requesting that the Commission take action with regard to Millstone Nuclear Power Station. Specifically, the Petitioner requested that accelerated enforcement action be taken for violations at Millstone involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner alleged that violations in these areas have increased significantly, that many of these violations had never been assigned a severity level, and that when the violations are considered collectively, escalated enforcement action is warranted due to the repetitive nature of the violations. For reasons fully explained in the Director's Decision, to the extent that the Petitioner requested that the NRC take action against the Licensee for violations in these areas, the petition has been granted; in other respects, the petition has been denied.
- DD-97-12 SHIELDALLOY METALLURGICAL CORPORATION (Newfield, New Jersey), Docket No. 040-8948 (License No. SMB-1507); REQUEST FOR ACTION; June 6, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206
- A By a letter dated July 22, 1996, Mr. Sherwood Bauman (Petitioner) requested that the following actions be taken with regard to NRC Licensee Shieldalloy Metallurgical Corporation (SMC): (1) that the previous site Licensee have its license reinstated such that it and SMC become co-responsible for the remediation and decommissioning of the SMC site; (2) that all NRC or State of Ohio parties involved in wrongdoing related to this issue be dismissed from employment and criminally charged where appropriate; (3) that the NRC terminate its development of an environmental impact statement (EIS) for the SMC site;

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

(4) in place of the EIS, the NRC order SMC and its predecessor to submit a decommissioning plan limited to remediation of licensed material; and (5) that the Ohio Environmental Protection Agency and Department of Health should evaluate all unlicensed slag found at the SMC site. The request was considered as a petition submitted pursuant to 10 C.F.R. § 2.206.

- B In a Director's Decision issued on June 6, 1997, the Director of Nuclear Material Safety and Safeguards denied the relief sought by Petitioner. The Director concluded that it would be inappropriate to reinstate the previous Licensee's license for the SMC site, as SMC was the current Licensee and therefore responsible for decommissioning the site. For similar reasons, the Director denied Petitioner's request to order SMC and the previous Licensee to submit a decommissioning plan. With regard to Petitioner's allegations of wrongdoing, with respect to any such activity by NRC employees the allegation was referred to the NRC Office of the Inspector General. The Director also concluded that the current EIS was properly evaluating all slag at the SMC site, contrary to Petitioner's claim that the scope of the EIS exceeded NRC authority. Finally, the Director concluded that Petitioner's request for action by State of Ohio agencies was properly addressed by those agencies and not the NRC.

DD-97-13 ADVANCED MEDICAL SYSTEMS, INC. (Cleveland, Ohio), Docket No. 030-16055; REQUEST FOR ACTION; June 13, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A The Director of the Office of Nuclear Material Safety and Safeguards (NMSS) denies a petition filed with the Nuclear Regulatory Commission (NRC or Commission) by letter dated March 3, 1993, by William B. Schatz, Esq., on behalf of the Northeast Ohio Regional Sewer District (District or Petitioner), requesting that actions be taken regarding Advanced Medical Systems, Inc. (the Licensee). The petition was partially granted, as explained in the Decision. The Director denies the remaining requests of the petition on the basis of analysis of the technical issues and the Commission's authority to grant the requested relief, set forth in the Decision, which analysis showed that the Commission did not have such authority and that no technical basis warranted granting the petition.

- B No statute or regulation grants the Commission authority to require a licensee to pay, in effect, compensatory damages to private individuals. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 269 (1996). A court of competent jurisdiction, and not the NRC, is the proper forum for such an individual to seek compensatory damages from a licensee.

- C The following technical issue is discussed: Contamination of sewer line.

DD-97-14 GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION (Oyster Creek Nuclear Generating Station), Docket No. 50-219; REQUEST FOR ACTION; June 16, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A By a petition dated April 1, 1997, Berkeley Township Environmental Commission (Petitioners) requested that the NRC direct Oyster Creek Nuclear Generating Station (OCNGS or Licensee) to shut down its operations during a planned transfer of fuel from wet to dry storage. The request was considered as a petition submitted pursuant to 10 C.F.R. § 2.206.

- B In a Director's Decision issued on June 16, 1997, the Director of Nuclear Reactor Regulation dismissed Petitioners' request as premature. The Director concluded that because OCNGS would first have to submit a request for a license amendment to perform the action in question, which it had not yet done and on which the Petitioners would have an opportunity to comment, there was no basis for the Commission to take the requested action at this time.

DD-97-15 WISCONSIN ELECTRIC POWER COMPANY (Point Beach Nuclear Plant, Units 1 and 2), Docket Nos. 50-266, 50-301, 72-5; CONSUMERS POWER COMPANY (Palisades Nuclear Plant), Docket Nos. 50-255, 72-7; ENTERGY OPERATIONS, INC. (Arkansas Nuclear One, Units 1 and 2), Docket Nos. 50-313, 50-368, 72-13; SIERRA NUCLEAR CORPORATION, Docket No. 72-1007; REQUEST FOR ACTION; June 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

- A By a petition filed on October 18, 1996, the organizations Don't Waste Michigan and Lake Michigan Federation requested, pursuant to 10 C.F.R. § 2.206, that the NRC prohibit the loading of Ventilated Storage Casks until an independent, third-party review of the design has been performed to address their concerns and the certificate of compliance, safety analysis report, and safety evaluation report for the casks have been amended to contain operating controls and limits to prevent hazardous conditions. The Director of the Office of Nuclear Material Safety and Safeguards, in the following Decision, denies the Petitioners' request.

DIGESTS
ISSUANCES OF DIRECTORS' DECISIONS

DD-97-16 GEORGIA INSTITUTE OF TECHNOLOGY (Georgia Tech Research Reactor, Atlanta, Georgia),
Docket No. 50-160; REQUEST FOR ACTION; June 27, 1997; FINAL DIRECTOR'S DECISION UNDER
10 C.F.R. § 2.206

A The Director of the Office of Nuclear Reactor Regulation (NRR) denies a petition filed with the Nuclear Regulatory Commission (NRC or Commission) by letter dated October 23, 1994, by Ms. Pamela Blockey-O'Brian (Petitioner), requesting that actions be taken regarding the Georgia Tech Research Reactor (GTRR) operated by the Georgia Institute of Technology (the Licensee). The petition was deferred pending a decision by the Atomic Safety and Licensing Board (ASLB) on Georgia Tech's license renewal application, in which issues substantially similar to the Petitioner's were raised. The petition is denied based on the Director's analysis of the technical issues, set forth in the Decision, which analysis showed no technical basis warranting granting the petition.

B The Commission ordinarily expects the Staff to deny a petition filed pursuant to 10 C.F.R. § 2.206 that raises the same issues that are being considered in a pending adjudication on the basis of the pendency of the identical matters in a proceeding involving the same licensee or facility. *Georgia Power Co.* (Hatch Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-15, 38 NRC 1, 2-3 (1993); see *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Units 1 and 2; Oyster Creek Nuclear Generating Station), CLI-85-4, 21 NRC 561, 563-65 (1985); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981). (This general rule is not intended to bar a petitioner from seeking immediate enforcement action from the Staff in circumstances in which the presiding officer is not empowered to grant such relief. *Vogtle*, 38 NRC at 3.) The same result can be achieved by the Staff deferring consideration of issues raised in a petition filed pursuant to 10 C.F.R. § 2.206 that are being considered in a pending proceeding involving the same licensee and facility.

C The following technical issues are discussed: *Management of the GTRR; Security.*

LEGAL CITATIONS INDEX

CASES

- Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 299 (1994)
 hearing rights on enforcement actions; DD-97-2, 45 NRC 68 (1997)
- Alfred J. Morabito* (Senior Operator License for Beaver Valley Power Station, Unit 1), LBP-88-10, 27 NRC 417 (1988); LBP-88-16, 27 NRC 583 (1988)
 purpose of reactor operator examinations; LBP-97-2, 45 NRC 52 (1997)
- Ardestani v. INS*, 112 S. Ct. 515, 116 L. Ed. 2d 496 (1991)
 plain-language standard for interpretation of regulatory guidance; LBP-97-6, 45 NRC 132 n.3 (1997)
- Bennett v. Spear*, 117 S. Ct. 1154, 1166 (1997)
 effect given to statutory provisions barring payment of attorneys' fees; CLI-97-6, 45 NRC 364 (1997)
- Blue Cross and Blue Shield of Alabama v. Weitz*, 913 F.2d 1544, 1548, *reh'g denied*, 921 F.2d 283 (1990)
 interpretation of regulatory guides; LBP-97-6, 45 NRC 132 n.3 (1997)
- CAN v. NRC*, 59 F.3d 294 (1st Cir. 1995)
 hearing rights on decommissioning; DD-97-13, 45 NRC 465 (1997)
- Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986)
 application and status of regulatory guides; LBP-97-1, 45 NRC 25 (1997)
- Central Electric Power Cooperative* (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981)
 motions for reconsideration resting on a new thesis; CLI-97-2, 45 NRC 4 (1997)
- Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175 (1975)
 standard for institution of show-cause proceedings; DD-97-4, 45 NRC 92-93 (1997)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-152, 6 AEC 816, 817 (1973)
 management organizational structure for research reactors, standards for; LBP-97-7, 45 NRC 301-02 (1997)
- Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 645 (1974)
 licensing board jurisdiction where motion for reconsideration has been filed; LBP-97-6, 45 NRC 131 (1997)
- Consumers Power Co.* (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108 (1979)
 standing to intervene in materials license amendment proceedings; LBP-97-10, 45 NRC 432 (1997)
- Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 98 (1995)
 application and status of regulatory guides; LBP-97-1, 45 NRC 25 (1997)
- Curators of the University of Missouri*, LBP-90-18, 31 NRC 559, 566 (1990)
 fulfillment of injury in fact requirement; LBP-97-10, 45 NRC 431 n.4 (1997)
- Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)
 standing to intervene on basis of injury in fact to spouse and children of petitioner; LBP-97-9, 45 NRC 426 (1997)
- Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)
 alleging an injury to someone other than petitioner; LBP-97-10, 45 NRC 431 n.5 (1997)

LEGAL CITATIONS INDEX

CASES

- General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Units 1 and 2; Oyster Creek Nuclear Generating Station), CLI-85-4, 21 NRC 561, 563-65 (1985)
disposition of identical issues that are pending before a presiding officer; DD-97-16, 45 NRC 489 (1997)
- General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 158 (1996)
minor radiological exposures as basis for standing to intervene; LBP-97-9, 45 NRC 425 (1997)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-10, 42 NRC 1, 2 (1995)
responsibility for developing factual record on issues in contention; CLI-97-5, 45 NRC 356 (1997)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995)
construction of petitions in making standing determinations; LBP-97-9, 45 NRC 424 (1997)
- Georgia Power Co.* (Hatch Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-15, 38 NRC 1, 2-3 (1993)
disposition of identical issues that are pending before a presiding officer; DD-97-16, 45 NRC 489 (1997)
- Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281, 291 (1980)
licensee abdication of responsibility or knowledge as basis for license revocation; DD-97-6, 45 NRC 155 (1997)
- Lane v. Pena*, 116 S. Ct. 2092, 2096 (1996)
standard for seeking monetary relief against the government; CLI-97-6, 45 NRC 362 (1997)
- Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1011-12 (1973)
standard for judging adequacy of Staff treatment of various impacts in the FEIS; LBP-97-8, 45 NRC 399 (1997)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), *aff'd in part on other grounds*, CLI-83-22, 18 NRC 299 (1983)
application and status of regulatory guides; LBP-97-1, 45 NRC 25 (1997)
- Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1136-37 (1985)
standards for management character and competence; DD-97-6, 45 NRC 155 (1997)
- Millspaugh v. Karam*, *Civil Action No. 1:88-cv-312-ODE (N.D. Ga. 10/31/91 (slip op. at 24-25, 27-28), aff'd per curiam sub nom. Sharpe v. Karam*, 976 F.2d 744 (11th Cir. 1992)
retaliation against employees for engaging in protected activities; LBP-97-7, 45 NRC 278 n.20 (1997)
- Minnesota PIRG v. Butz*, 541 F.2d 1292, 1299 (8th Cir. 1976), *cert. denied*, 430 U.S. 922 (1977)
purposes on environmental impact statements; LBP-97-8, 45 NRC 401 (1997)
- Office of Personnel Management v. Richmond*, 496 U.S. 414, 424-30 (1990)
restrictions on NRC expenditures; CLI-97-6, 45 NRC 362 (1997)
- Office of Personnel Management v. Richmond*, 496 U.S. 414, 432 (1990)
standard for pursuing monetary relief against the government; CLI-97-6, 45 NRC 362 (1997)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577 (1984)
burden of proof on applicants; LBP-97-3, 45 NRC 104 (1997)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981)
disposition of identical issues that are pending before a presiding officer; DD-97-16, 45 NRC 489 (1997)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-94-35, 40 NRC 180, 192 (1994)
review responsibilities of licensing boards; LBP-97-7, 45 NRC 271 n.7 (1997)

LEGAL CITATIONS INDEX

CASES

- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 706 (1985)
supplementation of final environmental impact statement by decision and adjudicatory record; LBP-97-3, 45 NRC 123 (1997)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 720 (1985)
burden of proof on applicants; LBP-97-3, 45 NRC 104 (1997)
- Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 741 (1985)
weight given to conclusions of expert witnesses; LBP-97-7, 45 NRC 271-72 (1997)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 (1987)
participation by amicus curiae; CLI-97-4, 45 NRC 96 (1997)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 587 (1988)
content of decommissioning funding plans; LBP-97-3, 45 NRC 118 (1997)
- Puerto Rico Electric Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-648, 14 NRC 34, 37-38 (1981)
showing necessary for raising matters for first time on appeal; LBP-97-11, 45 NRC 442 n.1 (1997)
- Randall C. Orem, D.O.*, CLI-93-14, 37 NRC 423, 427-28 (1993)
definition of material false statement; DD-97-6, 45 NRC 156 (1997)
- Red Lion Broadcasting v. FCC*, 395 U.S. 367, 380-81 (1969)
resolution of language construction issues relative to interpretation of technical specifications; LBP-97-1, 45 NRC 19 (1997)
- Reich Geo-Physical, Inc.*, ALJ-85-1, 22 NRC 941, 962-63 (1985)
interpretation of "careless disregard"; DD-97-6, 45 NRC 156 (1997)
- Rodger W. Ellingwood* (Senior Operator License for Catawba Nuclear Station), LBP-89-21, 30 NRC 68 (1989)
purpose of reactor operator examinations; LBP-97-2, 45 NRC 52 (1997)
- Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608, 620 (2d Cir. 1965)
review responsibilities of licensing boards; LBP-97-7, 45 NRC 271 n.7 (1997)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)
standard for review of settlements; CLI-97-1, 45 NRC 2 (1997)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-96-3, 43 NRC 16, 17 (1996)
amicus curiae briefs supporting or opposing petitions for review; CLI-97-7, 45 NRC 439 (1997)
- Sequoyah Fuels Corp.* (Sequoyah UF₆ to UF₄ Facility), CLI-86-17, 24 NRC 489, 497 (1986)
trial-type procedures in informal proceedings, standard for; LBP-97-9, 45 NRC 423 (1997)
- State of Utah* (Agreement Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended), DD-95-1, 41 NRC 43 (1995)
scope of section 2.206 process; DD-97-2, 45 NRC 65 n.1 (1997)
- Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-418, 6 NRC 1, 2 (1977)
motions for reconsideration resting on a new thesis; CLI-97-2, 45 NRC 4 (1997)
- Tennessee Valley Authority* (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-506, 8 NRC 533, 544 (1978)
burden of proof on governmental entities; LBP-97-7, 45 NRC 271 (1997)
- Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-10, 19 NRC 509, 517-18 (1984)
new arguments or evidence in motions for reconsideration; LBP-97-6, 45 NRC 131 (1997)
- Trans World Airlines, Inc. v. Thurston*, 83 L. Ed. 2d 523, 537 (1985)
interpretation of "careless disregard"; DD-97-6, 45 NRC 156 (1997)
- United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926)
burden of proof on governmental entities; LBP-97-7, 45 NRC 271 (1997)

LEGAL CITATIONS INDEX

CASES

- Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 813 (1974)
defense-in-depth principle; LBP-97-1, 45 NRC 20 n.7 (1997)
- Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 486, 491 (1976) *aff'd sub nom. Virginia Electric and Power Co. v. NRC*, 571 F.2d 1289 (4th Cir. 1978)
licensee communications with NRC, importance of; DD-97-6, 45 NRC 156 (1997)
- 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-97-4, 45 NRC 93 (1997)
- Watt v. Alaska*, 451 U.S. 259, 266-67 (1981)
statutory effect of Price-Anderson Act section 170k; CLI-97-6, 45 NRC 363 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 5 (1996)
treatment of minority owner's protective intervention petition as request for hearing; LBP-97-4, 45 NRC 126 n.1 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996)
standing to intervene in materials license amendment proceeding, criteria for; LBP-97-9, 45 NRC 423-24 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 247-48 (1996)
showing necessary to establish injury in fact for purpose of standing to intervene; LBP-97-9, 45 NRC 426 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 255 (1996)
responsibility for developing factual record on issues in contention; CLI-97-5, 45 NRC 356 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 268, 269 (1996)
Commission authority to require a licensee to pay compensatory damages to private individuals;
DD-97-13, 45 NRC 465-66 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 272 (1996)
specificity required of petitions for review; CLI-97-2, 45 NRC 4 (1997)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86, 92-93, *petition for review denied*, CLI-96-9, 44 NRC 112 (1996)
procedural requirements governing summary disposition process; LBP-97-1, 45 NRC 14 (1997)

LEGAL CITATIONS INDEX REGULATIONS

- 3 C.F.R. 859 (1995)
racial discrimination in siting of nuclear facility; LBP-97-8, 45 NRC 374 (1997)
- 3 C.F.R. 861 (1995)
federal actions to address racial discrimination in site selection; LBP-97-8, 45 NRC 374, 390 (1997)
- 10 C.F.R. 2.109
status of operating license pending licensing board decision of renewal application; LBP-97-7, 45 NRC 269 (1997)
- 10 C.F.R. 2.202(a)(5)
revocation of byproduct material license, circumstances appropriate for; DD-97-2, 45 NRC 67 (1997)
- 10 C.F.R. 2.204
application and status of generic letters; LBP-97-1, 45 NRC 26 n.10 (1997)
- 10 C.F.R. 2.206
cobalt-60 contamination of sewer lines; DD-97-13, 45 NRC 461-71 (1997)
design deficiencies in NUHOMS dry-shielded canisters; DD-97-3, 45 NRC 71-85 (1997)
disposition of indetical issues that are pending before a presiding officer; DD-97-16, 45 NRC 488-94 (1997)
financial assurance of decommissioning and decontamination in light of additional radioactive material being stored on site; DD-97-10, 45 NRC 339-46 (1997)
licensee bribery of agreement state Radiation Control Director; DD-97-2, 45 NRC 64-70 (1997)
loading of spent fuel in ventilated storage casks, design concerns; DD-97-15, 45 NRC 476-86 (1997)
management character and competence; DD-97-6, 45 NRC 147-257 (1997)
measuring and test equipment sign-out procedures, violations of; DD-97-4, 45 NRC 86-93 (1997)
qualification and training of health physics technicians; DD-97-7, 45 NRC 258 (1997)
reactor internal component and spent fuel pool cooling concerns; DD-97-8, 45 NRC 316-27 (1997)
reservation of fixed number of vacant spaces in spent fuel pool to permit retrieval from; DD-97-9, 45 NRC 329-37 (1997)
shutdown during transfer of spent fuel from wet to dry storage; DD-97-14, 45 NRC 472-74 (1997)
site remediation and decommissioning concerns relative to radioactive slag; DD-97-12, 45 NRC 450-59 (1997)
unloading of multiassembly basket of VSC-24 dry storage casks, reasonable assurance of safety of procedures for; DD-97-5, 45 NRC 136-43 (1997)
unloading procedures for dry storage casks, violations of requirements for; DD-97-1, 45 NRC 33-47 (1997)
violations of procedure compliance, work control, and tagging control; DD-97-11, 45 NRC 348-53 (1997)
- 10 C.F.R. 2.701(b)
service requirements for informal proceedings; LBP-97-10, 45 NRC 433 (1997)
- 10 C.F.R. 2.710
computation of time for petitions for review of decision served by mail; LBP-97-6, 45 NRC 133 (1997)
deadline for filing petition for review of initial decision; LBP-97-2, 45 NRC 61 (1997)
service of initial decisions; LBP-97-2, 45 NRC 60 (1997)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 2.712(e)
 - date of service for petitions for review; LBP-97-6, 45 NRC 133 (1997)
 - service of initial decisions; LBP-97-2, 45 NRC 60 (1997)
- 10 C.F.R. 2.713(b)
 - notice-of-appearance requirements for informal proceedings; LBP-97-10, 45 NRC 433 (1997)
- 10 C.F.R. 2.714(a)
 - challenges to technical specification changes; LBP-97-1, 45 NRC 11 (1997)
 - late-filing requirements for new basis for contention; LBP-97-1, 45 NRC 18 (1997)
- 10 C.F.R. 2.714(a)(2)
 - specification of areas of concern in informal proceedings; LBP-97-9, 45 NRC 422-23 (1997)
- 10 C.F.R. 2.714(a)(3)
 - standards for standing to intervene and contentions in operating license renewal proceeding; LBP-97-7, 45 NRC 269 (1997)
- 10 C.F.R. 2.714(b)(2)
 - basis and specificity requirements for contention admission; LBP-97-8, 45 NRC 373 (1997)
 - challenges to technical specification changes; LBP-97-1, 45 NRC 11 (1997)
- 10 C.F.R. 2.714(b)(2)(iii)
 - specificity of contentions based on documents not yet available; LBP-97-8, 45 NRC 373 (1997)
- 10 C.F.R. 2.714a
 - Commission review of decision admitting contentions; LBP-97-7, 45 NRC 270 (1997)
- 10 C.F.R. 2.715(a)
 - oral limited appearance statements in operating license renewal proceeding; LBP-97-7, 45 NRC 270 n.4 (1997)
- 10 C.F.R. 2.715(c)
 - interested-state request for license conditions; LBP-97-3, 45 NRC 123 (1997)
- 10 C.F.R. 2.715(d)
 - amicus curiae briefs supporting or opposing petitions for review; CLI-97-7, 45 NRC 439 (1997)
- 10 C.F.R. 2.720(h)(2)
 - basis for licensing board review of applicant's managerial deficiencies; LBP-97-7, 45 NRC 272 n.8 (1997)
- 10 C.F.R. 2.732
 - burden on applicants in licensing proceedings; LBP-97-3, 45 NRC 104 (1997); LBP-97-8, 45 NRC 373 (1997)
- 10 C.F.R. 2.749(a)
 - procedural requirements governing summary disposition process; LBP-97-1, 45 NRC 14 (1997)
- 10 C.F.R. 2.749(d)
 - standard for seeking summary disposition; LBP-97-1, 45 NRC 13 (1997)
- 10 C.F.R. 2.754(b)
 - default on issues not included in intervenor's findings at hearing; LBP-97-3, 45 NRC 119 n.13 (1997)
- 10 C.F.R. 2.760
 - authority to issue renewal of operating license; LBP-97-7, 45 NRC 313 (1997)
 - finality of decision on operating license amendment; LBP-97-1, 45 NRC 30 (1997)
 - finality of initial decisions; LBP-97-8, 45 NRC 412 (1997)
 - finality of partial initial decision; LBP-97-3, 45 NRC 124 (1997)
- 10 C.F.R. 2.771
 - licensing board jurisdiction where motion for reconsideration has been filed; LBP-97-6, 45 NRC 131 (1997)
- 10 C.F.R. 2.786
 - content of petitions for review and responses; LBP-97-2, 45 NRC 61 (1997); LBP-97-6, 45 NRC 133 (1997)
 - deadline for petition for review of licensing board decision authorizing license renewal; LBP-97-7, 45 NRC 313 (1997)
 - deadline for petitions for review; LBP-97-2, 45 NRC 60 (1997); LBP-97-6, 45 NRC 133 (1997)

LEGAL CITATIONS INDEX
REGULATIONS

- effect of petition for review on finality of decision; LBP-97-3, 45 NRC 124 (1997)
petitions for review of initial decisions; LBP-97-8, 45 NRC 412 (1997)
- 10 C.F.R. 2.786(b)(1)
deadline for petitions for review of decision on operating license amendment; LBP-97-1, 45 NRC 30 (1997)
schedule adjustments for response to amicus curiae; CLI-97-4, 45 NRC 97 (1997)
- 10 C.F.R. 2.786(b)(2)-(3)
content of review briefs and answers; LBP-97-1, 45 NRC 31 (1997); LBP-97-3, 45 NRC 124 (1997)
- 10 C.F.R. 2.786(b)(3)
schedule adjustments for response to amicus curiae; CLI-97-4, 45 NRC 97 (1997)
- 10 C.F.R. 2.786(b)(4)
deadline for petitions for review; LBP-97-3, 45 NRC 124 (1997)
discretion of Commission to accept petitions for review; LBP-97-7, 45 NRC 313 (1997)
grounds for petitions for review; LBP-97-1, 45 NRC 30 (1997)
grounds for petitions for review of initial decisions; LBP-97-8, 45 NRC 412 (1997)
petitions for review, grant of; CLI-97-7, 45 NRC 438 (1997)
review of licensing board ruling on settlement agreement; CLI-97-1, 45 NRC 1 (1997)
standard for grant of review of partial initial decision on enrichment facility licensing; CLI-97-3, 45 NRC 49 (1997)
- 10 C.F.R. 2.786(d)
briefing schedule for Commission review; CLI-97-7, 45 NRC 438 (1997)
briefing schedule for review of licensing board ruling on settlement agreement; CLI-97-1, 45 NRC 1 (1997)
briefing schedule for review of partial initial decision on enrichment facility licensing; CLI-97-3, 45 NRC 49 (1997)
- 10 C.F.R. 2.786(e)
reconsideration of Commission decision to decline review; CLI-97-2, 45 NRC 5 (1997)
- 10 C.F.R. Part 2, Subpart L
procedures for informal hearing on materials license amendment; LBP-97-9, 45 NRC 420 (1997)
- 10 C.F.R. 2.1201(a)(1)
trial-type procedures in informal proceedings, standard for; LBP-97-9, 45 NRC 423 (1997)
- 10 C.F.R. 2.1201(a)(2)
informal proceeding on reactor operator examination results; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 2.1203(c), (e)
service requirements for informal proceedings; LBP-97-10, 45 NRC 433 (1997)
- 10 C.F.R. 2.1205(e), (h)
admission criteria for parties to materials license amendment proceedings; LBP-97-9, 45 NRC 422, 427 (1997)
- 10 C.F.R. 2.1205(h)
factors to be addressed to establish standing to intervene; LBP-97-10, 45 NRC 432 (1997)
- 10 C.F.R. 2.1205(m)
hearing requirements on materials license amendments; LBP-97-9, 45 NRC 421 (1997)
- 10 C.F.R. 2.1205(o)
content of appeals; LBP-97-9, 45 NRC 427-28 (1997)
- 10 C.F.R. 2.1209
supplemental filings to establish standing to intervene; LBP-97-10, 45 NRC 432 (1997)
- 10 C.F.R. 2.1209(k)
formal trial-type procedures in informal proceedings; LBP-97-9, 45 NRC 422 (1997)
- 10 C.F.R. 2.1213
Staff participation in informal proceedings; LBP-97-9, 45 NRC 421 (1997)
- 10 C.F.R. 2.1231
submission of hearing file in informal proceedings; LBP-97-2, 45 NRC 52 (1997)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 2.1233
 - written presentations in informal proceedings; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 2.1251
 - finality of initial decisions; LBP-97-2, 45 NRC 60 (1997); LBP-97-6, 45 NRC 133 (1997)
- 10 C.F.R. 2.1263
 - contesting materials license amendments; LBP-97-9, 45 NRC 421 (1997)
- 10 C.F.R. Part 2, Appendix C
 - definitions of severity levels of violations; LBP-97-7, 45 NRC 273 n.10, 311 (1997)
 - enforcement policy applicable to procedure compliance, work control, and tagging control violations; DD-97-11, 45 NRC 349 (1997)
- 10 C.F.R. Part 2, Appendix C, § II (1995 ed.)
 - standard for refusal to authorize operating license renewal; LBP-97-7, 45 NRC 311 n.39 (1997)
- 10 C.F.R. Part 2, Appendix C, § IV.B
 - definition of repetitive violation; DD-97-11, 45 NRC 350 n.4 (1997)
- 10 C.F.R. Part 2, Appendix C, V.A
 - NRC discretion in issuing Notice of Violation for isolated severity level V violation; DD-97-6, 45 NRC 165 (1997)
- 10 C.F.R. Part 2, Appendix C, V.G.1
 - circumstances under which NRC need not issue a Notice of Violation for severity level IV or V violations; DD-97-6, 45 NRC 165, 167, 168 (1997)
- 10 C.F.R. Part 2, Appendix C, V.G.5
 - NRC discretion to forego a Notice of Violation when violation is discovered as a result of corrective action for previous enforcement action; DD-97-6, 45 NRC 171 (1997)
- 10 C.F.R. Part 20
 - reporting requirements for cadmium-115 accident; LBP-97-7, 45 NRC 285 (1997)
- 10 C.F.R. 20.105
 - exposure rate in excess for unrestricted area, notice of violation for; DD-97-13, 45 NRC 466 (1997)
- 10 C.F.R. 20.203(c)(2)
 - failure to lock high radiation area; LBP-97-7, 45 NRC 288 (1997)
- 10 C.F.R. 20.303
 - disposal limits for discharges of radioactive materials into sewers; DD-97-13, 45 NRC 464 (1997)
- 10 C.F.R. 20.303(a)
 - discharge of insoluble radioactive materials into sewer lines; DD-97-13, 45 NRC 461-62, 468 (1997)
- 10 C.F.R. 20.401(c)(3)
 - disposal records for cobalt-60 discharges into sewer lines; DD-97-13, 45 NRC 461-62, 468 (1997)
- 10 C.F.R. 20.1301(a)(1)
 - amendment of byproduct materials license to allow increased dose to visitors of radiation therapy patients; LBP-97-5, 45 NRC 128 (1997)
- 10 C.F.R. 20.1301-.1302
 - standing to intervene where there is compliance with regulatory requirements for preventing radiological exposure; LBP-97-9, 45 NRC 425 (1997)
- 10 C.F.R. 20.2003
 - discharge of insoluble radioactive materials into sewer lines; DD-97-13, 45 NRC 462, 469 (1997)
 - testing of groundwater to ensure compliance with; DD-97-13, 45 NRC 467 (1997)
- 10 C.F.R. Part 21
 - design deficiencies in spent fuel pool decay heat removal systems and containment systems; DD-97-8, 45 NRC 318 (1997)
- 10 C.F.R. Part 30
 - amendment of byproduct materials license to allow increased dose to visitors of radiation therapy patients; LBP-97-5, 45 NRC 128 (1997)
- 10 C.F.R. Part 35
 - qualification and training of health physics technicians; DD-97-7, 45 NRC 261 (1997)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. Part 40
amendment of materials license to extend completion date for radon barrier for uranium mill tailings;
LBP-97-9, 45 NRC 418 (1997)
license requirements for pyrochlore processing; DD-97-10, 45 NRC 339 (1997)
- 10 C.F.R. 40.1(a)
licensing requirements for possession of radioactive slag; DD-97-12, 45 NRC 456 (1997)
- 10 C.F.R. 40.4
financial assurance sufficient to decommission a site for unrestricted release; DD-97-10, 45 NRC 342 (1997)
licensable quantities in radioactive slag; DD-97-12, 45 NRC 452 (1997)
- 10 C.F.R. 40.13(a)
licensable quantities in radioactive slag; DD-97-12, 45 NRC 452 (1997)
source material in baghouse dust; DD-97-10, 45 NRC 340, 341 (1997)
- 10 C.F.R. 40.31(j)(3)(i)
brief-description requirement for offsite fire department training and qualifications; CLI-97-2, 45 NRC 5 (1997)
- 10 C.F.R. 40.36
financial assurance of decommissioning and decontamination in light of additional radioactive material being stored on site, adequacy of; DD-97-10, 45 NRC 339, 342 (1997)
- 10 C.F.R. 40.36(a), (c)(1), (d), (e)(3)
content of decommissioning funding plan; LBP-97-3, 45 NRC 101 (1997)
- 10 C.F.R. 40.36(c)(2)
certification required to meet financial assurance requirements; DD-97-10, 45 NRC 343-44 (1997)
- 10 C.F.R. 40.36(e)
content of decommissioning funding plan; DD-97-10, 45 NRC 340 n.3 (1997)
- 10 C.F.R. 40.42
site decommissioning requirements when licensee is no longer performing principal activities for which license was issued; DD-97-12, 45 NRC 453, 454 (1997)
- 10 C.F.R. 40.42(a)
materials license status pending Commission decision on license renewal; DD-97-10, 45 NRC 340 (1997)
- 10 C.F.R. Part 40, Appendix A
materials license amendment to permit receipt and processing of alternative feed material; LBP-97-10, 45 NRC 430 (1997)
- 10 C.F.R. Part 50, Appendix A, § I, Criteria 2, 4, 5, 61
technical specification change involving heavy load handling over spent fuel pool, 45 NRC 27 n.11 (1997)
- 10 C.F.R. Part 40, Appendix A, Criterion 6A(1)
validity of reasons for extension of completion date for radon barrier for uranium mill tailings;
LBP-97-9, 45 NRC 423 (1997)
- 10 C.F.R. 50.5
failure to comply with sign-out procedures for measuring and test equipment; DD-97-4, 45 NRC 87 (1997)
- 10 C.F.R. 50.7
right of licensee employees to provide safety information directly to NRC; LBP-97-7, 45 NRC 275 (1997)
- 10 C.F.R. 50.33, 50.34
inclusion of budget review activities in final safety analysis report; DD-97-6, 45 NRC 242 (1997)
- 10 C.F.R. 50.54(f)
application and status of generic letters; LBP-97-1, 45 NRC 26 n.10 (1997)
requirement that licensee inform NRC, prior to restart, of actions taken to ensure that it would operate plant according to license terms and conditions; DD-97-11, 45 NRC 350-52 (1997)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. 50.54(x)
non-emergency deviation from technical specifications requiring NRC notification; DD-97-6, 45 NRC 157 (1997)
- 10 C.F.R. 50.57
authority to issue renewal of operating license; LBP-97-7, 45 NRC 313 (1997)
- 10 C.F.R. 50.59
consistency of planned core offload evolutions, including spent fuel decay heat removal, with licensing basis; DD-97-8, 45 NRC 323, 324 (1997)
engineering and safety evaluation of radioactive waste microfiltration system, adequacy of; DD-97-6, 45 NRC 171 (1997)
evaluation of multiassembly sealed basket cooling skid; DD-97-1, 45 NRC 41-42 (1997)
NRC policy on safety analysis of spent fuel canister design; DD-97-3, 45 NRC 81 n.16 (1997)
- 10 C.F.R. 50.67
performance of spent fuel pool decay heat removal and coolant inventory control and reactivity control, Staff analysis of; DD-97-8, 45 NRC 321 (1997)
- 10 C.F.R. 50.72
notification of declaration of emergency event; DD-97-6, 45 NRC 157 (1997)
Red Phone notification, definition of; DD-97-6, 45 NRC 170 n.24 (1997)
- 10 C.F.R. 50.73
events for which written reports to NRC are required within 30 days; DD-97-6, 45 NRC 157, 166 n.23, 196 (1997)
- 10 C.F.R. 50.73(a)(1)
Licensee Event Report, allegation of material false statement in; DD-97-6, 45 NRC 192 (1997)
- 10 C.F.R. 50.73(b)(1), (3)
content of Licensee Event Reports; DD-97-6, 45 NRC 192 (1997)
- 10 C.F.R. 50.80
character and integrity required of NRC licensees; DD-97-6, 45 NRC 229 (1997)
- 10 C.F.R. 50.82
NRC policy on decommissioning; DD-97-13, 45 NRC 465 (1997)
- 10 C.F.R. 50.90
consistency of planned core offload evolutions, including refueling practices, with licensing basis; DD-97-8, 45 NRC 324 (1997)
revision of technical specifications; LBP-97-1, 45 NRC 26 n.11 (1997)
- 10 C.F.R. 50.91
transfer of spent fuel from wet to dry storage, license amendment necessary for; DD-97-14, 45 NRC 473 (1997)
- 10 C.F.R. 50.91-.92
issuance of license amendment upon finding of no significant hazards consideration; LBP-97-1, 45 NRC 11 n.2 (1997)
- 10 C.F.R. 50.109(a)(3)
analysis for safety enhancement backfits; DD-97-8, 45 NRC 321 (1997)
- 10 C.F.R. Part 50, Appendix B.I
management organizational structure for research reactors, standards for; LBP-97-7, 45 NRC 301-02 (1997)
- 10 C.F.R. Part 50, Appendix B, Criteria V and VI
deficiencies in dry-cask unloading procedure as violation of; DD-97-1, 45 NRC 38, 40, 43 (1997)
- 10 C.F.R. Part 51
adequacy of Staff environmental review; LBP-97-8, 45 NRC 374 (1997)
environmental impact statement for site decommissioning and disposal of slag piles; DD-97-12, 45 NRC 453 (1997)
environmental impact statement requirements for decommissioning funding plans; DD-97-10, 45 NRC 342 (1997)

LEGAL CITATIONS INDEX
REGULATIONS

- 10 C.F.R. 51.102
 - supplementation of final environmental impact statement by decision and adjudicatory record; LBP-97-3, 45 NRC 123 (1997)
- 10 C.F.R. 55.4
 - definition of senior reactor operator; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 55.41(b)(1)-(14)
 - scope of written examination questions for senior reactor operator licenses; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 55.43
 - responsibility for developing and administering reactor operator license examinations; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 55.43(a)
 - scope of written examination questions for reactor operator licenses; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 55.43(b)(1)-(7)
 - scope of written examination questions for senior reactor operator licenses; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. 55.45
 - responsibility for developing and administering reactor operator license examinations; LBP-97-2, 45 NRC 52 (1997)
 - scope of operating test for senior reactor operator licenses; LBP-97-2, 45 NRC 52 (1997)
- 10 C.F.R. Part 60
 - classification of depleted uranium tails for disposal purposes; LBP-97-3, 45 NRC 109 (1997)
- 10 C.F.R. Part 61
 - deep disposal site as most likely for uranium tails disposal; LBP-97-3, 45 NRC 107, 108 (1997)
- 10 C.F.R. 61.55(a)(2)(iv)
 - availability of deep burial for uranium tails disposal; LBP-97-3, 45 NRC 108 (1997)
- 10 C.F.R. 61.55(a)(3)
 - classification of depleted uranium tails for disposal purposes; LBP-97-3, 45 NRC 109 (1997)
- 10 C.F.R. 61.55(a)(6)
 - classification of depleted uranium tails for disposal purposes; LBP-97-3, 45 NRC 109 (1997)
- 10 C.F.R. 70.22(i)(3)(i)
 - brief-description requirement for offsite fire department training and qualifications; CLI-97-2, 45 NRC 5 (1997)
- 10 C.F.R. 70.25(a), (e)
 - content of decommissioning funding plan; LBP-97-3, 45 NRC 101 (1997)
- 10 C.F.R. Part 72
 - design review of ventilated storage casks; DD-97-15, 45 NRC 479, 483 (1997)
 - suspension of general license for dry-cask unloading procedure deficiencies; DD-97-1, 45 NRC 43, 46 (1997)
- 10 C.F.R. 72.48
 - changes to design of dry storage cask for spent fuel; DD-97-3, 45 NRC 73 n.5 (1997)
- 10 C.F.R. 72.122(h), (l)
 - considerations in development of dry-cask unloading procedures; DD-97-1, 45 NRC 39 (1997)
- 10 C.F.R. 72.122(l)
 - reservation of fixed number of vacant spaces in spent fuel pool to permit retrieval from; DD-97-9, 45 NRC 330, 331-32 (1997)
- 10 C.F.R. Part 72, Subpart G
 - quality assurance for independent spent fuel storage installations; DD-97-1, 45 NRC 38 n.4 (1997)
- 10 C.F.R. 72.150
 - deficiencies in dry-cask unloading procedure as violation of; DD-97-1, 45 NRC 38 n.4 (1997)
 - documentation requirements for quality-related activities; DD-97-3, 45 NRC 80 (1997)
- 10 C.F.R. 72.152
 - deficiencies in dry-cask unloading procedure as violation of; DD-97-1, 45 NRC 38 n.4 (1997)

LEGAL CITATIONS INDEX

REGULATIONS

- 10 C.F.R. Part 72, Subpart K
 - authority to store spent fuel in dry-cask storage system on site; DD-97-1, 45 NRC 34 (1997); DD-97-5, 45 NRC 136 (1997)
- 10 C.F.R. 72.210, 72.212
 - authorization for onsite storage of spent nuclear fuel; DD-97-3, 45 NRC 72 (1997)
- 10 C.F.R. 72.212(a)(2)
 - use of certified casks for onsite storage of spent nuclear fuel; DD-97-3, 45 NRC 80 n.15 (1997)
- 10 C.F.R. 72.212(b)
 - applicability of Certificate of Compliance terms and conditions to general licensee; DD-97-3, 45 NRC 83 (1997)
- 10 C.F.R. 72.212(b)(2)
 - deficiencies in dry-cask unloading procedure as violation of; DD-97-1, 45 NRC 37 (1997)
- 10 C.F.R. 72.212(b)(9)
 - licensee responsibility to prepare, review, approve, and test written procedures for dry-cask loading and unloading; DD-97-3, 45 NRC 83 (1997)
- 10 C.F.R. 72.214
 - approval procedure for spent fuel storage casks; DD-97-3, 45 NRC 80 n.15 (1997)
- 10 C.F.R. 72.230
 - Safety Analysis Report requirement for vendors seeking NRC approval of spent fuel storage casks; DD-97-3, 45 NRC 73 n.4 (1997)
- 10 C.F.R. 72.232
 - NRC inspection of vendors' facilities where dry storage casks are fabricated; DD-97-3, 45 NRC 73 (1997)
- 10 C.F.R. 72.236(b)
 - content of SAR for vendors seeking NRC approval of spent fuel storage casks; DD-97-3, 45 NRC 77 n.9, 78 n.11 (1997)
- 10 C.F.R. 72.236(h)
 - considerations in development of dry-cask unloading procedures; DD-97-1, 45 NRC 39 (1997)
- 10 C.F.R. Part 73
 - security plans for research reactors; DD-97-16, 45 NRC 491 (1997)
- 10 C.F.R. 73.71
 - Red Phone notification, definition of; DD-97-6, 45 NRC 170 n.24 (1997)
- 10 C.F.R. 74.13(a)(1)
 - failure to submit material status reports; LBP-97-7, 45 NRC 292 (1997)
- 10 C.F.R. Part 100
 - offsite dose consequences for heavy load handling over spent fuel pool; LBP-97-1, 45 NRC 16, 21, 28, 29 n.16 (1997)
- 29 C.F.R. Part 24
 - discrimination against employees for engaging in protected activities; DD-97-6, 45 NRC 223 (1997)
- 40 C.F.R. 1508.8(b)
 - definition of human health and environmental "effects"; LBP-97-8, 45 NRC 376 n.3 (1997)
- 40 C.F.R. 1508.14
 - definition of human health and environmental "effects"; LBP-97-8, 45 NRC 376 n.3 (1997)
- 40 C.F.R. Part 192, Subparts D & E
 - environmental and economic considerations in materials licensing decisions; LBP-97-10, 45 NRC 430 (1997)
- 49 C.F.R. Part 172
 - documentation deficiencies in shipment of radioactive materials; LBP-97-7, 45 NRC 289 (1997)

LEGAL CITATIONS INDEX

STATUTES

- 31 U.S.C. §§ 1341, 1350
 - restrictions on NRC expenditures; CLI-97-6, 45 NRC 362 (1997)
- 33 U.S.C. §§ 401-413
 - facility-related impacts impairing use of navigable waters as injury in fact for purpose of standing to intervene; LBP-97-9, 45 NRC 425, 427 n.5 (1997)
- Atomic Energy Act, 11jj, 42 U.S.C. § 2014(jj)
 - NRC authority to approve payment of a plaintiff's legal costs in connection with a settlement; CLI-97-6, 45 NRC 364 n.4 (1997)
- Atomic Energy Act, 11k, 42 U.S.C. § 2014(k)
 - definition of public liability; CLI-97-6, 45 NRC 363 n.3 (1997)
- Atomic Energy Act, 11w, 42 U.S.C. § 2014(w)
 - definition of financial protection; CLI-97-6, 45 NRC 363 n.3 (1997)
- Atomic Energy Act, 170h, 42 U.S.C. § 2210(h)
 - NRC payment of legal expenses incurred in connection with settlements; CLI-97-6, 45 NRC 361, 362 (1997)
 - prior notice and reasonableness of indemnity claims; CLI-97-6, 45 NRC 364, 365 (1997)
- Atomic Energy Act, 170k, 42 U.S.C. § 2210(k)
 - standard for indemnification for attorneys' fees and expenses; CLI-97-6, 45 NRC 361 (1997)
- Atomic Energy Act, 182, 42 U.S.C. § 2232
 - character and integrity required of NRC licensees; DD-97-6, 45 NRC 229 (1997)
- Atomic Energy Act, 182a
 - requirement the licensee inform NRC, prior to restart, of actions taken to ensure that it would operate plant according to license terms and conditions; DD-97-11, 45 NRC 350-51 (1997)
- Atomic Energy Act 187, 42 U.S.C. § 2237
 - revision of technical specifications; LBP-97-1, 45 NRC 26 n.11 (1997)
- Atomic Energy Act, 189a(1)(A), 42 U.S.C. 2239(a)(1)(A)
 - admission criteria for parties to materials license amendment proceedings; LBP-97-9, 45 NRC 422 (1997)
- Atomic Energy Act, 189a(1)(A), (2)(A), 42 U.S.C. § 2239(a)(1)(A), (2)(a)
 - issuance of license amendment upon finding of no significant hazards consideration; LBP-97-1, 45 NRC 11 n.2 (1997)
- Constitution, Appropriations Clause, art. 1, § 9, cl. 7)
 - restrictions on NRC expenditures; CLI-97-6, 45 NRC 362 (1997)
- Energy Reorganization Act, 210 [211], 42 U.S.C. § 5851
 - discrimination against employees for engaging in protected activities; DD-97-6, 45 NRC 223 (1997)
 - discrimination in matter of qualification and training of health physics technician; DD-97-7, 45 NRC 260 (1997)
 - right of licensee employees to provide safety information directly to NRC; LBP-97-7, 45 NRC 275 (1997)
- Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, subsection 1-101
 - racial discrimination in siting of nuclear facility; LBP-97-8, 45 NRC 374, 376 (1997)

LEGAL CITATIONS INDEX

STATUTES

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, section 2.2
federal actions to address racial discrimination in site selection; LBP-97-8, 45 NRC 374 (1997)

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, subsection 6-604
compliance of individual agencies with; LBP-97-8, 45 NRC 374 (1997)

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, subsection 6-609
purpose of order and right to judicial review; LBP-97-8, 45 NRC 374-75 (1997)

Low Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b *et seq.*
plausibility of applicant's strategy for disposal of depleted uranium tails; LBP-97-3, 45 NRC 110 n.7 (1997)

National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*
economic and sociological impacts of facility sited in minority community; LBP-97-8, 45 NRC 371 (1997)

National Environmental Policy Act of 1969, 102(2)(A), (C), and (E)
adequacy of Staff environmental review; LBP-97-8, 45 NRC 374, 376 (1997)

USEC Privatization Act, Pub. L. No. 104-134, 100 Stat. 1321 (1996), 42 U.S.C. § 2297h-11
disposal strategy for depleted uranium tails; LBP-97-3, 45 NRC 109 (1997)

USEC Privatization Act, 42 U.S.C. § 2297h-11(a)(1)(B), (a)(3)
DOE responsibility for disposal of depleted uranium tails; LBP-97-3, 45 NRC 110 n.7 (1997)

USEC Privatization Act, 42 U.S.C. § 2297h-11(a), (c)
plausibility of applicant's strategy for disposal of depleted uranium tails; LBP-97-3, 45 NRC 110 n.7 (1997)

USEC Privatization Act, 42 U.S.C. § 2297h-11(b)
options for depleted uranium tails disposal; LBP-97-3, 45 NRC 110 (1997)

USEC Privatization Act, 42 U.S.C. § 2297h-11(c)
state liability for waste attributable to private uranium enrichment facility; LBP-97-3, 45 NRC 123 (1997)

LEGAL CITATIONS INDEX OTHERS

- 31A C.J.S. *Evidence* § 146, at 318-22
 - burden of proof on governmental entities; LBP-97-7, 45 NRC 271 (1997)
- 17A Am. Jur. 2d *Contracts* § 388, at 415-16 (1991)
 - resolution of language construction issues relative to interpretation of technical specifications; LBP-97-1, 45 NRC 19 (1997)
- Damage Claims Under the Atomic Energy Act, 1 U.S. Op. OLC 157, 158 & n.3 (1977)
 - use of government indemnity money to pay attorneys' fees and expenses; CLI-97-6, 45 NRC 362 (1997)
- Fed. R. Civ. P. 11
 - prior notice and reasonableness of indemnity claims; CLI-97-6, 45 NRC 365 (1997)
- Fed. R. Civ. P. 56(c)
 - standard for seeking summary disposition; LBP-97-1, 45 NRC 13 (1997)
- H.R. Rep. No. 296, 85th Cong., 1st Sess. 23 (1957)
 - use of government indemnity money to pay attorneys' fees and expenses; CLI-97-6, 45 NRC 362 n.2 (1997)
- Interpretation of Price-Anderson Act, File B-197742, 1980 WL 16980, at *4 (C.G.)
 - bar on indemnification for legal expenses; CLI-97-6, 45 NRC 363 (1997)
- 1 Charles H. Koch, Jr., *Administrative Law and Practice* § 6.44 (1985)
 - burden of proof on applicants; LBP-97-3, 45 NRC 104 (1997)
- Memorandum for the Heads of All Departments and Agencies, 30 Weekly Comp. Pres. Doc. 279 (Feb. 14, 1994)
 - NRC commitment to implement environmental justice directive; LBP-97-8, 45 NRC 374, 375 (1997)
- Webster's Third New International Dictionary* 1736 (1971)
 - definition of "plausible" and "strategy" relative to uranium tails disposal; LBP-97-3, 45 NRC 105 (1997)

1

2

3

4

5

SUBJECT INDEX

ACCIDENTS

- cadmium-115, reporting requirements for; LBP-97-7, 45 NRC 265 (1997)
- hydrogen gas ignition during welding of ventilated storage casks; DD-97-15, 45 NRC 475 (1997)

ADMISSION OF PARTIES

- in informal hearings, requirements for; LBP-97-9, 45 NRC 414 (1997)

AFRICAN AMERICAN COMMUNITIES

- siting of nuclear facilities in; LBP-97-8, 45 NRC 367 (1997)

AGREEMENT STATE

- licensee bribery of state official; DD-97-2, 45 NRC 63 (1997)

AMENDMENT

- See Byproduct Materials License Amendment; Operating License Amendments

AMICUS CURIAE

- briefs supporting or opposing petitions for review; CLI-97-7, 45 NRC 437 (1997)
- scope of participation; CLI-97-4, 45 NRC 95 (1997)

APPLICANTS

- burden of proof on; LBP-97-3, 45 NRC 99 (1997)

ATOMIC ENERGY ACT

- hearing rights on enforcement actions; DD-97-2, 45 NRC 63 (1997)
- interpretation of section 170h; CLI-97-6, 45 NRC 358 (1997)
- license amendments; LBP-97-1, 45 NRC 7 (1997)
- licensing standards; DD-97-6, 45 NRC 144 (1997)
- standing to intervene in materials license amendment proceeding; LBP-97-9, 45 NRC 414 (1997)

ATTORNEYS' FEES AND EXPENSES

- incurred in defense of tort suits, NRC payment of; CLI-97-6, 45 NRC 358 (1997)

BRIEFS

- schedule and page-limit adjustments for response and reply to amicus curiae; CLI-97-4, 45 NRC 95 (1997)

BRIEFS, APPELLATE

- challenging licensing board approval of settlement agreement; CLI-97-1, 45 NRC 1 (1997)
- scheduling of; CLI-97-3, 45 NRC 49 (1997)
- specificity required in; CLI-97-2, 45 NRC 3 (1997)

BURDEN OF PROOF

- on applicants; LBP-97-3, 45 NRC 99 (1997)
- on government entities; LBP-97-7, 45 NRC 265 (1997)

BYPRODUCT MATERIALS LICENSE

- hearing rights on enforcement actions; DD-97-2, 45 NRC 63 (1997)

BYPRODUCT MATERIALS LICENSE AMENDMENT

- to allow increased dose to visitors of radiation therapy patients; LBP-97-5, 45 NRC 128 (1997)

CADMIUM-115

- accident, reporting requirements for; LBP-97-7, 45 NRC 265 (1997)

CERTIFICATE OF COMPLIANCE

- applicability of terms and conditions to general licensees; DD-97-3, 45 NRC 71 (1997)

SUBJECT INDEX

COBALT-60
contamination of sewer lines with; DD-97-13, 45 NRC 460 (1997)

COMPENSATORY DAMAGES
to private individuals, Commission authority to require a licensee to pay; DD-97-13, 45 NRC 460 (1997)

CONCRETE
VSC-24, thermal performance of; DD-97-9, 45 NRC 328 (1997)

CONSTRUCTION OF TERMS
"except" in technical specifications; LBP-97-1, 45 NRC 7 (1997)
plain meaning of the language; LBP-97-1, 45 NRC 7 (1997)
subsequent revisions, weight given to; LBP-97-1, 45 NRC 7 (1997)

CONTAINMENT ISOLATION VALVES
surveillance testing of; DD-97-6, 45 NRC 144 (1997)

CRACKING
of reactor internal components; DD-97-8, 45 NRC 315 (1997)
through-wall, of multiple safety-class components; DD-97-8, 45 NRC 315 (1997)

CRITICALITY
of spent fuel in dry storage casks during unloading; DD-97-1, 45 NRC 33 (1997)

DECAY HEAT REMOVAL SYSTEMS
design deficiencies in; DD-97-8, 45 NRC 315 (1997)

DECOMMISSIONING
hearing rights on; DD-97-13, 45 NRC 460 (1997)
possession-only license for purpose of; DD-97-10, 45 NRC 429 (1997)

DECOMMISSIONING FUNDING
disposal of depleted uranium tails, reasonable assurance of; LBP-97-3, 45 NRC 99 (1997)

DECOMMISSIONING FUNDING PLAN
content of; LBP-97-3, 45 NRC 99 (1997)
license conditions regarding proof of proposed slag disposition method; DD-97-10, 45 NRC 338 (1997)

DECONTAMINATION
possession-only license for purpose of; DD-97-10, 45 NRC 338 (1997)

DEFENSE-IN-DEPTH POLICY
technical specification changes and; LBP-97-1, 45 NRC 7 (1997)

DEFINITIONS
financial protection; CLI-97-6, 45 NRC 358 (1997)
public liability; CLI-97-6, 45 NRC 358 (1997)

DEPARTMENT OF ENERGY
responsibility for disposal of depleted uranium tails; LBP-97-3, 45 NRC 99 (1997)

DEPARTMENT OF LABOR
jurisdiction over employee protection; DD-97-7, 45 NRC 258 (1997)

DESIGN
deficiencies in spent fuel pool decay heat removal systems and containment systems; DD-97-8, 45 NRC 315 (1997)
of NUHOMS dry-shielded canisters for spent fuel storage; DD-97-3, 45 NRC 71 (1997)

DIESEL GENERATORS
reporting and reliability issues; DD-97-6, 45 NRC 144 (1997)

DILUTION VALVES
open when required to be closed; DD-97-6, 45 NRC 144 (1997)

DOSE
See Radiation Dose

DRY-CASK STORAGE
pressurization limits; DD-97-1, 45 NRC 33 (1997)
unloading of multiassembly basket of VSC-24 casks; DD-97-5, 45 NRC 135 (1997)
unloading procedures; DD-97-1, 45 NRC 33 (1997)

SUBJECT INDEX

ECONOMIC IMPACTS

of proposed site on African American communities; LBP-97-8, 45 NRC 367 (1997)

EMBRITTLEMENT

of reactor internal components; DD-97-8, 45 NRC 315 (1997)

EMPLOYEE DISCRIMINATION

for engaging in protected activities; DD-97-6, 45 NRC 144 (1997)

ENFORCEMENT ACTION

criteria for refusal to authorize a renewed license; LBP-97-7, 45 NRC 265 (1997)

escalation of; DD-97-11, 45 NRC 347 (1997)

hearing rights on; DD-97-2, 45 NRC 63 (1997)

ENFORCEMENT POLICY

applicable to procedure compliance, work control, and tagging control violations; DD-97-11, 45 NRC 347 (1997)

severity of violations; DD-97-4, 45 NRC 86 (1997)

ENVIRONMENTAL IMPACT STATEMENT

for site decommissioning and disposal of slag piles; DD-97-12, 45 NRC 449 (1997)

ENVIRONMENTAL JUSTICE

racial discrimination in site selection process; LBP-97-8, 45 NRC 367 (1997)

EVACUATION

during terrorist attack on research reactor, concerns about; DD-97-16, 45 NRC 487 (1997)

EVIDENCE

testimony of government officials; LBP-97-7, 45 NRC 265 (1997)

EXAMINATION

reactor operator license, score rounding; LBP-97-2, 45 NRC 51 (1997); LBP-97-6, 45 NRC 130 (1997)

senior reactor operator, correctness of answers; CLI-97-5, 45 NRC 355 (1997); LBP-97-11, 45 NRC 441 (1997)

senior reactor operator, rounding of scores; CLI-97-5, 45 NRC 355 (1997)

EXPORT APPLICATION

as proof of proposed slag disposition method, license condition requiring; DD-97-10, 45 NRC 338 (1997)

EXTENSION OF TIME

for completion of radon barrier for uranium mill tailings; LBP-97-9, 45 NRC 414 (1997)

FINAL ENVIRONMENTAL IMPACT STATEMENT

standard for judging adequacy of Staff treatment of various impacts in; LBP-97-8, 45 NRC 367 (1997)

supplementation by licensing board decision and underlying adjudicatory record; LBP-97-3, 45 NRC 99 (1997)

FINANCIAL PROTECTION

definition of; CLI-97-6, 45 NRC 358 (1997)

GENERAL LICENSES

authorization for onsite storage of spent nuclear fuel; DD-97-3, 45 NRC 71 (1997)

GENERATORS

See Diesel Generators

GENERIC COMMUNICATIONS

application and regulatory status of; LBP-97-1, 45 NRC 7 (1997)

GOVERNMENT PARTIES

standard of proof; LBP-97-7, 45 NRC 265 (1997)

HEALTH PHYSICS TECHNICIANS

qualification and training; DD-97-7, 45 NRC 258 (1997)

HEARING REQUIREMENTS

on materials licenses; LBP-97-9, 45 NRC 414 (1997)

HEARING RIGHTS

on decommissioning; DD-97-13, 45 NRC 460 (1997)

on enforcement actions; DD-97-2, 45 NRC 63 (1997)

SUBJECT INDEX

INFORMAL HEARINGS

- areas of concern specified in support of hearing request; LBP-97-9, 45 NRC 414 (1997)
- formal, trial-type procedures in; LBP-97-9, 45 NRC 414 (1997)
- party admission requirements; LBP-97-9, 45 NRC 414 (1997)
- standing to intervene in; LBP-97-10, 45 NRC 429 (1997)

INJURY IN FACT

- in materials license amendment proceedings; LBP-97-9, 45 NRC 414 (1997)

INSPECTION

- See NRC Inspection

INTERVENTION PETITIONS

- protective, for preservation of minority owner's interest; LBP-97-4, 45 NRC 125 (1997)
- treated as request for hearing on transfer of ownership; LBP-97-4, 45 NRC 125 (1997)

JURISDICTION

- Commission authority to require a licensee to pay compensatory damages to private individuals; DD-97-13, 45 NRC 460 (1997)
- employee protection; DD-97-7, 45 NRC 258 (1997)
- where motion for reconsideration has been filed; LBP-97-6, 45 NRC 130 (1997)

LIABILITY

- public, for legal costs; CLI-97-6, 45 NRC 358 (1997)

LICENSE CONDITION

- proof of proposed slag disposition method as; DD-97-10, 45 NRC 338 (1997)

LICENSEE CHARACTER

- management attitudes and credibility; DD-97-6, 45 NRC 144 (1997)
- standards for; DD-97-6, 45 NRC 144 (1997)

LICENSEE EVENT REPORTS

- "taking"; DD-97-6, 45 NRC 144 (1997)

LICENSEES

- applicability of terms and conditions of Certificate of Compliance for dry storage cask to; DD-97-3, 45 NRC 71 (1997)

LICENSES

- construction of terms; LBP-97-1, 45 NRC 7 (1997)
- See also Byproduct Materials License; Reactor Operator License

LICENSING BOARDS

- jurisdiction where motion for reconsideration has been filed; LBP-97-6, 45 NRC 130 (1997)
- review, scope of; LBP-97-7, 45 NRC 265 (1997)
- weight given to testimony of expert witnesses; LBP-97-7, 45 NRC 265 (1997)

MAINTENANCE

- signout procedures to measuring and test equipment, violations of; DD-97-4, 45 NRC 86 (1997)

MANAGEMENT

- organizational structure, acceptability of; LBP-97-7, 45 NRC 265 (1997)

MANAGEMENT COMPETENCE

- research reactor, concerns about; DD-97-16, 45 NRC 487 (1997)

MATERIAL FALSE STATEMENT

- definition of; DD-97-6, 45 NRC 144 (1997)

MATERIAL STATUS REPORTS

- violation for untimely filing of; DD-97-16, 45 NRC 487 (1997)

MATERIALS LICENSE AMENDMENT

- licensee-initiated; LBP-97-9, 45 NRC 414 (1997)
- to permit receipt and processing of alternative feed material; LBP-97-10, 45 NRC 429 (1997)

MATERIALS LICENSE AMENDMENT PROCEEDINGS

- standing to intervene in; LBP-97-10, 45 NRC 429 (1997)

MATERIALS LICENSES

- hearing requirements on; LBP-97-9, 45 NRC 414 (1997)

SUBJECT INDEX

requirement for possession of radioactive slag; DD-97-12, 45 NRC 449 (1997)

MODE CHANGES
with required equipment inoperable; DD-97-6, 45 NRC 144 (1997)

MULTIASSEMBLY SEALED BASKET
cooling skid; DD-97-1, 45 NRC 33 (1997)
weld defects in; DD-97-1, 45 NRC 33 (1997)

NATIONAL ENVIRONMENTAL POLICY ACT
environmental justice; LBP-97-8, 45 NRC 367 (1997)

NOTICE OF VIOLATION
for excessive exposure rates in unrestricted area; DD-97-13, 45 NRC 460 (1997)
NRC discretion in issuing; DD-97-6, 45 NRC 144 (1997)

NRC INSPECTION
of fabrication facilities for NUHOMS dry storage casks; DD-97-3, 45 NRC 71 (1997)

NRC STAFF REVIEW
of design of VSC-24 casks; DD-97-15, 45 NRC 475 (1997)

NUCLEAR REGULATORY COMMISSION
authority to require a licensee to pay compensatory damages to private individuals; DD-97-13, 45 NRC 460 (1997)
indemnity claims, consideration of; CLI-97-6, 45 NRC 358 (1997)
jurisdiction over employee protection; DD-97-7, 45 NRC 258 (1997)

OPERATING LICENSE
status pending licensing board decision on renewal application; LBP-97-7, 45 NRC 265 (1997)

OPERATING LICENSE AMENDMENT
Commission procedures to be followed on application for; DD-97-14, 45 NRC 472 (1997)
technical specification changes; LBP-97-1, 45 NRC 7 (1997)
for transfer of spent fuel from wet to dry storage; DD-97-14, 45 NRC 472 (1997)

OPERATING LICENSE AMENDMENT PROCEEDINGS
issues for consideration in; LBP-97-1, 45 NRC 7 (1997)

OPERATING LICENSE RENEWAL
criterial for refusal to grant; LBP-97-7, 45 NRC 265 (1997)
grant of; LBP-97-7, 45 NRC 265 (1997)

POSSESSION-ONLY LICENSE
for decommissioning and decontamination purposes; DD-97-10, 45 NRC 338 (1997)

POWER, ONSITE
for spent fuel pool cooling; DD-97-8, 45 NRC 315 (1997)

PRICE-ANDERSON ACT
NRC payment of attorneys' fees and expenses; CLI-97-6, 45 NRC 358 (1997)

PROCEDURE COMPLIANCE
violation of; DD-97-11, 45 NRC 347 (1997)

PROOF
See Burden of Proof

RACIAL DISCRIMINATION
in site selection, NRC Staff investigation of; LBP-97-8, 45 NRC 367 (1997)

RADIATION DOSE
to visitors of radiation therapy patients denial of byproduct material license amendment to increase; LBP-97-5, 45 NRC 128 (1997)

RADIATION THERAPY
doses to visitors of patients; LBP-97-5, 45 NRC 128 (1997)

RADIOACTIVE CONTAMINATION
of sewer lines with cobalt-60; DD-97-13, 45 NRC 460 (1997)

RADIOACTIVE WASTE SYSTEMS
alleged operation and intimidation of plant review board members in connection with; DD-97-6, 45 NRC 144 (1997)

SUBJECT INDEX

RADON BARRIERS

for uranium mill tailings, extension of time for completion of; LBP-97-9, 45 NRC 414 (1997)

REACTOR INTERNAL COMPONENTS

embrittlement and cracking; DD-97-8, 45 NRC 315 (1997)

REACTOR OPERATOR LICENSE

examination score; LBP-97-6, 45 NRC 130 (1997)

REACTOR OPERATORS

examination score; LBP-97-2, 45 NRC 51 (1997)

REBUTTABLE PRESUMPTION

attached to work of government officials; LBP-97-7, 45 NRC 265 (1997)

RECONSIDERATION

of Commission decision to decline review of an issue; CLI-97-2, 45 NRC 3 (1997)

RECONSIDERATION, MOTION FOR

licensing board jurisdiction; LBP-97-6, 45 NRC 130 (1997)

new arguments or evidence in; LBP-97-6, 45 NRC 130 (1997)

REGULATORY GUIDES

application and regulatory status of; LBP-97-1, 45 NRC 7 (1997)

interpretation of; LBP-97-6, 45 NRC 130 (1997)

REQUEST FOR ACTION

on issues pending before a presiding officer, disposition of; DD-97-16, 45 NRC 487 (1997)

RESIDUAL HEAT REMOVAL PUMP

failure to declare inoperability and enter LCO; DD-97-6, 45 NRC 144 (1997)

REVIEW

licensing board, scope of; LBP-97-7, 45 NRC 265 (1997)

of licensing board approval of settlement agreement, standard for; CLI-97-1, 45 NRC 1 (1997)

of partial initial decision on enrichment facility licensing; CLI-97-3, 45 NRC 49 (1997)

reconsideration of Commission decision to decline; CLI-97-2, 45 NRC 3 (1997)

REVIEW, PETITIONS FOR

amicus curiae briefs supporting or opposing; CLI-97-7, 45 NRC 437 (1997)

RULE OF REASON

standard for judging adequacy of Staff treatment of various impacts in the FEIS; LBP-97-8, 45 NRC 367 (1997)

RULES OF PRACTICE

amicus curiae briefs supporting or opposing petitions for review; CLI-97-7, 45 NRC 437 (1997)

amicus curiae, scope of participation; CLI-97-4, 45 NRC 95 (1997)

burden of proof on applicants; LBP-97-3, 45 NRC 99 (1997)

hearing requirement on materials license; LBP-97-9, 45 NRC 414 (1997)

informal hearings, party admission requirements; LBP-97-9, 45 NRC 414 (1997)

informal hearings, specification of areas of concern; LBP-97-9, 45 NRC 414 (1997)

informal hearings, using other procedures; LBP-97-9, 45 NRC 414 (1997)

intervention petition treated as request for hearing on transfer of ownership; LBP-97-4, 45 NRC 125 (1997)

reconsideration motions; CLI-97-2, 45 NRC 3 (1997)

requirements of decisions; LBP-97-7, 45 NRC 265 (1997)

show-cause proceeding, purpose of; DD-97-2, 45 NRC 63 (1997)

showing necessary for raising new issues on appeal; LBP-97-11, 45 NRC 441 (1997)

standard for institution of show-cause proceedings; DD-97-4, 45 NRC 86 (1997)

standing to intervene in materials license amendment proceeding, criteria for; LBP-97-9, 45 NRC 414 (1997)

SAFEGUARDS

alleged concealment of problems; DD-97-6, 45 NRC 144 (1997)

SUBJECT INDEX

SAFETY ANALYSIS REPORT

requirement for vendors seeking NRC approval of spent fuel storage casks; DD-97-3, 45 NRC 71 (1997)

SCHEDULE

briefing, for review of partial initial decision on enrichment facility licensing; CLI-97-3, 45 NRC 49 (1997)

briefing, to account for amicus curiae participation; CLI-97-4, 45 NRC 95 (1997)

SECURITY PLAN

at research reactor, concerns about laxness and evacuation during terrorist attack; DD-97-16, 45 NRC 487 (1997)

SENIOR REACTOR OPERATOR

definition of; LBP-97-2, 45 NRC 51 (1997)

examination questions, correctness of; CLI-97-5, 45 NRC 355 (1997); LBP-97-11, 45 NRC 441 (1997)

SERVICE OF DOCUMENTS

for Commission review of partial initial decision on enrichment facility licensing; CLI-97-3, 45 NRC 49 (1997)

SETTLEMENT AGREEMENTS

challenges to licensing board approval of; CLI-97-1, 45 NRC 1 (1997)

SEWER LINES

radioactive contamination with cobalt-60; DD-97-13, 45 NRC 460 (1997)

SHOW-CAUSE PROCEEDINGS

appropriate focus of; DD-97-2, 45 NRC 63 (1997)

purpose of; DD-97-2, 45 NRC 63 (1997)

standard for institution of; DD-97-4, 45 NRC 86 (1997)

SHUTDOWN

during transfer of spent fuel from wet to dry storage; DD-97-14, 45 NRC 472 (1997)

margin, miscalculation of; DD-97-6, 45 NRC 144 (1997)

SITE REMEDIATION

unlicensed radioactive slag; DD-97-12, 45 NRC 449 (1997)

SITE SELECTION

racial discrimination in; LBP-97-8, 45 NRC 367 (1997)

SLAG, RADIOACTIVE

financial assurance of plan for disposition; DD-97-10, 45 NRC 338 (1997)

site remediation and decommissioning concerns; DD-97-12, 45 NRC 449 (1997)

SOVEREIGN IMMUNITY DOCTRINE

bar on payment of attorneys' fees and expenditures in light of; CLI-97-6, 45 NRC 358 (1997)

SPENT FUEL

cladding, thermal performance of; DD-97-9, 45 NRC 328 (1997)

dry-cask storage on site at nuclear power plants; DD-97-5, 45 NRC 135 (1997)

integrity during cooling; DD-97-1, 45 NRC 33 (1997)

transfer from wet to dry storage, shutdown during; DD-97-14, 45 NRC 472 (1997)

unloading procedures for dry storage casks, violations of requirements for; DD-97-1, 45 NRC 33 (1997)

SPENT FUEL POOL

boiling, time-to-boil calculations; DD-97-8, 45 NRC 315 (1997)

cooling, analysis and mitigation of areas of noncompliance; DD-97-8, 45 NRC 315 (1997)

decay heat removal systems, design deficiencies in; DD-97-8, 45 NRC 315 (1997)

heavy load handling over; LBP-97-1, 45 NRC 7 (1997)

reservation of fixed number of vacant spaces to permit retrieval from VSC-24 cask; DD-97-9, 45 NRC 328 (1997)

SPENT FUEL STORAGE

design deficiencies in NUHOMS dry-shielded canisters; DD-97-3, 45 NRC 71 (1997)

STANDING TO INTERVENE

construction of petition in making a determination on; LBP-97-9, 45 NRC 414 (1997)

SUBJECT INDEX

- criteria for establishing; LBP-97-9, 45 NRC 414 (1997)
- factual representations; LBP-97-9, 45 NRC 414 (1997)
- in informal proceedings; LBP-97-10, 45 NRC 429 (1997)
- injury in fact in materials license amendment proceedings; LBP-97-9, 45 NRC 414 (1997)
- minor radiological exposures as injury in fact; LBP-97-9, 45 NRC 414 (1997)
- nexus to radiological impacts; LBP-97-9, 45 NRC 414 (1997)
- offsite radiological impacts as injury in fact; LBP-97-9, 45 NRC 414 (1997)
- supplemental filings to fulfill requirements for; LBP-97-10, 45 NRC 429 (1997)
- SURVEILLANCE**
 - testing of containment isolation valves; DD-97-6, 45 NRC 144 (1997)
- SYNERGISTIC EFFECTS**
 - of through-wall cracking of multiple safety-class components; DD-97-8, 45 NRC 315 (1997)
- TAGGING CONTROL**
 - violation of; DD-97-11, 45 NRC 347 (1997)
- TECHNICAL SPECIFICATIONS**
 - changes regarding heavy load handling over spent fuel pool; LBP-97-1, 45 NRC 7 (1997)
 - construction of the term "except"; LBP-97-1, 45 NRC 7 (1997)
- TERRORISM**
 - attack on research reactor, evacuation concerns; DD-97-16, 45 NRC 487 (1997)
- TESTIMONY**
 - of government officials; LBP-97-7, 45 NRC 265 (1997)
- TESTING**
 - surveillance, of containment isolation valves; DD-97-6, 45 NRC 144 (1997)
- THERMAL PERFORMANCE**
 - of fuel cladding and VSC-24 concrete; DD-97-9, 45 NRC 328 (1997)
- THERMAL-HYDRAULIC MODELING**
 - cooling process for dry casks; DD-97-1, 45 NRC 33 (1997)
- TRANSFER OF LICENSE**
 - illegal; DD-97-6, 45 NRC 144 (1997)
- TRANSFER OF OWNERSHIP**
 - dismissal of protective intervention petition and termination of proceeding; LBP-97-4, 45 NRC 125 (1997)
- URANIUM MILL TAILINGS**
 - disposal, responsibility for; LBP-97-3, 45 NRC 99 (1997)
 - extension of completion date for radon barrier; LBP-97-9, 45 NRC 414 (1997)
- USEC PRIVATIZATION ACT**
 - depleted uranium tails disposal; LBP-97-3, 45 NRC 99 (1997)
- VALVES**
 - See Containment Isolation Valves; Dilution Valves
- VENDORS**
 - NRC inspection of facilities; DD-97-3, 45 NRC 71 (1997)
- VENTILATED STORAGE CASKS**
 - hydrogen gas accident during welding of shield lid; DD-97-15, 45 NRC 475 (1997)
 - loading of spent fuel in; DD-97-15, 45 NRC 475 (1997)
 - reservation of fixed number of vacant spaces in spent fuel pool to permit retrieval from; DD-97-9, 45 NRC 328 (1997)
- VIOLATIONS**
 - noncited; DD-97-4, 45 NRC 86 (1997)
 - of procedure compliance, work control, and tagging control; DD-97-11, 45 NRC 347 (1997)
 - of signout procedures to measuring and test equipment; DD-97-4, 45 NRC 86 (1997)
 - repetitive, definition of; DD-97-11, 45 NRC 347 (1997)
 - See also Notice of Violation

SUBJECT INDEX

WELDS

defects in multiassembly sealed basket; DD-97-1, 45 NRC 33 (1997)

WITNESSES, EXPERT

licensing board reliance on testimony of; LBP-97-7, 45 NRC 265 (1997)

WORK CONTROL

violation of; DD-97-11, 45 NRC 347 (1997)

FACILITY INDEX

ARKANSAS NUCLEAR ONE, Units 1 and 2; Docket Nos. 50-313, 50-368, 72-13
 REQUEST FOR ACTION; March 4, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-5, 45 NRC 135 (1997)
 REQUEST FOR ACTION; April 17, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-9, 45 NRC 328 (1997)
 REQUEST FOR ACTION; June 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-15, 45 NRC 475 (1997)
 CLAIBORNE ENRICHMENT CENTER; Docket No. 70-3070-ML
 CONSTRUCTION PERMIT--OPERATING LICENSE PROCEEDING; March 7, 1997; PARTIAL
 INITIAL DECISION (Resolving Contentions B and J.3); LBP-97-3, 45 NRC 99 (1997)
 CONSTRUCTION PERMIT--OPERATING LICENSE PROCEEDING; May 1, 1997; FINAL INITIAL
 DECISION (Addressing Contention J.9); LBP-97-8, 45 NRC 367 (1997)
 CONSTRUCTION PERMIT--OPERATING LICENSE PROCEEDING; June 30, 1997; ORDER;
 CLI-97-7, 45 NRC 437 (1997)
 MATERIALS LICENSE; January 29, 1997; ORDER; CLI-97-2, 45 NRC 3 (1997)
 MATERIALS LICENSE; February 13, 1997; ORDER; CLI-97-3, 45 NRC 49 (1997)
 MATERIALS LICENSE; March 21, 1997; ORDER; CLI-97-4, 45 NRC 95 (1997)
 CLINTON POWER STATION, Unit 1; Docket No. 50-461-OLA
 OPERATING LICENSE AMENDMENT; March 11, 1997; MEMORANDUM AND ORDER
 (Terminating Proceeding); LBP-97-4, 45 NRC 125 (1997)
 DAVIS-BESSE INDEPENDENT SPENT FUEL STORAGE INSTALLATION; Docket Nos. 50-346,
 72-1004
 REQUEST FOR ACTION; February 5, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-3, 45 NRC 71 (1997)
 GEORGIA TECH RESEARCH REACTOR, Atlanta, Georgia; Docket No. 50-160-Ren
 OPERATING LICENSE RENEWAL; April 3, 1997; INITIAL DECISION; LBP-97-7, 45 NRC 265
 (1997)
 REQUEST FOR ACTION; June 27, 1997; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R.
 § 2.206; DD-97-16, 45 NRC 487 (1997)
 HATCH NUCLEAR PLANT, Units 1 and 2; Docket Nos. 50-424, 50-425
 REQUEST FOR ACTION; March 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-6, 45 NRC 144 (1997)
 MILLSTONE NUCLEAR POWER STATION, Unit 1; Docket No. 50-245
 REQUEST FOR ACTION; February 11, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-4, 45 NRC 86 (1997)
 MILLSTONE NUCLEAR POWER STATION, Units 1, 2, and 3; Docket Nos. 50-245, 50-336, 50-423
 REQUEST FOR ACTION; April 29, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206;
 DD-97-11, 45 NRC 347 (1997)
 MOAB, UTAH FACILITY; Docket No. 40-3453-MLA
 MATERIALS LICENSE AMENDMENT; May 16, 1997; MEMORANDUM AND ORDER (Denying
 Hearing Request); LBP-97-9, 45 NRC 414 (1997)

FACILITY INDEX

FACILITY INDEX

OYSTER CREEK NUCLEAR GENERATING STATION; Docket No. 50-219
OPERATING LICENSE AMENDMENT; January 31, 1997; MEMORANDUM AND ORDER (Ruling on Summary Disposition Motion); LBP-97-1, 45 NRC 7 (1997)
REQUEST FOR ACTION; April 2, 1997; FINAL DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-8, 45 NRC 315 (1997)
REQUEST FOR ACTION; June 16, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-14, 45 NRC 472 (1997)

PALISADES NUCLEAR PLANT; Docket Nos. 50-255, 72-7
REQUEST FOR ACTION; January 23, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-1, 45 NRC 33 (1997)
REQUEST FOR ACTION; March 4, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-5, 45 NRC 135 (1997)
REQUEST FOR ACTION; April 17, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-9, 45 NRC 328 (1997)
REQUEST FOR ACTION; June 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-15, 45 NRC 475 (1997)

POINT BEACH NUCLEAR PLANT, Units 1 and 2; Docket Nos. 50-266, 50-301, 72-5
REQUEST FOR ACTION; March 4, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-5, 45 NRC 135 (1997)
REQUEST FOR ACTION; April 17, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-9, 45 NRC 328 (1997)
REQUEST FOR ACTION; June 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-15, 45 NRC 475 (1997)

VOGTLE ELECTRIC GENERATING PLANT, Units 1 and 2; Docket Nos. 50-321, 50-366
REQUEST FOR ACTION; March 18, 1997; DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206; DD-97-6, 45 NRC 144 (1997)

WHITE MESA URANIUM MILL; Docket No. 40-8681-MLA
MATERIALS LICENSE AMENDMENT; May 27, 1997; MEMORANDUM AND ORDER (Additional Filings Required); LBP-97-10, 45 NRC 429 (1997)