NUREG-0750
Vol. 45
Index 1

INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January – March 1997

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For this publication may be reported to the
Office of Information Resources Management
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(301-415-6844)

NUREG-0750

Vol. 45

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January – March 1997

U.S. NUCLEAR REGULATORY COMMISSION

MASTER

Prepared by the
Office of Information Resources Management
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
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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.

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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).

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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 assert 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*

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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 PROCEEDING; 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)

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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.

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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,

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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

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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.

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10. The tenth group of people who are interested in the study of the history of the world are the artists. They are people who are interested in the past and who want to know what happened in the world. They study the past in order to understand the present and to predict the future.

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