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INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January – March 1995

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INDEXES TO NUCLEAR REGULATORY COMMISSION ISSUANCES

January – March 1995

U.S. NUCLEAR REGULATORY COMMISSION

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Prepared by the
Division of Freedom of Information and Publications Services
Office of Administration
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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 Denials of Petitions for Rulemaking (DPRM) are presented in this document. These digests and indexes are intended to serve as a guide to the issuances.

Information elements common to the cases heard and ruled upon are:

- Case name (owner(s) of facility)
- Full text reference (volume and pagination)
- Issuance number
- Issues raised by appellants
- Legal citations (cases, regulations, and statutes)
- Name of facility, Docket number
- Subject matter of issues and/or rulings
- Type of hearing (for construction permit, operating license, etc.)
- Type of issuance (memorandum, order, decision, etc.).

These information elements are displayed in one or more of five separate formats arranged as follows:

1. Case Name Index

The case name index is an alphabetical arrangement of the case names of the issuances. Each case name is followed by the type of hearing, the type of issuance, docket number, issuance number, and full text reference.

2. Digests and Headers

The headers and digests are presented in issuance number order as follows: the Commission (CLI), the Atomic Safety and Licensing Board Panel (LBP), the Administrative Law Judge (ALJ), the Directors' Decisions (DD), and the Denials of Petitions for Rulemaking (DPRM).

The header identifies the issuance by issuance number, case name, facility name, docket number, type of hearing, date of issuance, and type of issuance.

The digest is a brief narrative of an issue followed by the resolution of the issue and any legal references used in resolving the issue. If a given issuance covers more than one issue, then separate digests are used for each issue and are designated alphabetically.

3. Legal Citations Index

This index is divided into four parts and consists of alphabetical or alphanumerical arrangements of Cases, Regulations, Statutes, and Others. These citations are listed as given in the issuances. Changes in regulations and statutes may have occurred to cause changes in the number or name and/or applicability of the citation. It is therefore important to consider the date of the issuance.

The references to cases, regulations, statutes, and others are generally followed by phrases that show the application of the citation in the particular issuance. These phrases are followed by the issuance number and the full text reference.

4. Subject Index

Subject words and/or phrases, arranged alphabetically, indicate the issues and subjects covered in the issuances. The subject headings are followed by phrases that give specific information about the subject, as discussed in the issuances being indexed. These phrases are followed by the issuance number and the full text reference.

5. Facility Index

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

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CLI-95-1 CURATORS OF THE UNIVERSITY OF MISSOURI, Docket Nos. 70-00270-MLA, 30-02278-MLA (TRUMP-S Project) (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); MATERIALS LICENSE AMENDMENT; February 28, 1995; MEMORANDUM AND ORDER

A The Commission considers appeals from both the Initial Decision and a Reconsideration Order issued by the Presiding Officer in this Subpart L proceeding involving two materials license amendment applications filed by the University of Missouri. In those two orders, the Presiding Officer concluded that the University's possession and use of the materials at issue were consistent with the public health and safety, did not harm the common defense and security, and therefore satisfied the requirements of the AEA. However, in order to decrease further the risks associated with such possession and use, the Presiding Officer imposed certain additional safety conditions on the Licensee.

B The University appealed to the Commission the Presiding Officer's imposition of these additional conditions. The Intervenor's appealed the Presiding Officer's rulings that the license amendments satisfied the requirements of the AEA; questioned his authority to issue the order on reconsideration; challenged numerous of his procedural rulings; and appealed his decision to exclude three of their proffered areas of concern.

C For the most part, the Commission reaches the same conclusions as the Presiding Officer, but in some instances follows a line of reasoning different from his. The Commission affirms LBP-91-31, 34 NRC 29 (1991), and LBP-91-34, 34 NRC 159 (1991) with certain modifications, and thereby approves the University's license amendment applications, subject to certain conditions. More specifically, the Commission concludes that the Presiding Officer had jurisdiction to issue his order on reconsideration; affirms his conclusions regarding all procedural issues raised on appeal as well as his decision to exclude three areas of concern; concludes that the risk of dispersion of radioactive material from the TRUMP-S experiments is acceptably small; and both modifies and supplements the fire safety conditions that the Presiding Officer imposed upon the University.

D A presiding officer has jurisdiction to consider a timely motion for reconsideration filed after the issuance of an initial decision but before the timely filing of appeals.

E For the Commission to grant a materials license or license amendment, it must find that (1) the applicant's proposed equipment and facilities are adequate to protect health and minimize danger to life or property; and (2) the applicant is qualified by training and experience to use the material for the purpose requested in such a manner as to protect health and minimize danger to life or property and to comply with the Commission's regulations. The test for the grant or denial of such a license or amendment is not simply whether there is a deficiency or omission in the application.

F A plainly deficient application calls into question an applicant's competence and bona fides — matters that certainly pertain to the question whether to approve the application.

G NUREGs and Regulatory Guides, by their very nature, serve merely as guidance and cannot prescribe requirements. Although conformance with regulatory guides will likely result in compliance with specific regulatory requirements, nonconformance with such guides does not equate to noncompliance with the regulations.

H The Commission does not require that proposed safety procedures to protect health and minimize danger to life or property be included in a materials license amendment application if they have already been submitted to the Commission in previous applications associated with the same NRC license. Sections 70.21(a)(3) and 30.32(a) of the Commission's regulations expressly permit an applicant to incorporate

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

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

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

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

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

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

- A The Commission considers the appeal of a licensing board decision, LBP-93-25. 38 NRC 304 (1993), which permitted the Sequoyah Fuels Corporation (SFC) to withdraw its license renewal application, and terminated the administrative proceeding in progress on that application. The Commission concludes that SFC did not require a license renewal to continue limited and previously authorized decommissioning-oriented activities. Accordingly, the Commission denies the appeal and affirms the licensing board's order.
- B The Presiding Officer's function in a license renewal proceeding is to decide whether renewal is appropriate and, if so, to determine what activities can continue in the renewal term.
- C Pursuant to the former 10 C.F.R. § 40.42(e) (1994), a source material license may remain automatically in effect beyond its expiration date to allow a licensee to continue decommissioning and security activities authorized under the license. Section 40.42(e) has been superseded by a new automatic license extension provision, 10 C.F.R. § 40.42(c), which became effective in August 1994.
- D The automatic license extension provision under 10 C.F.R. § 40.42(c) may extend a license regardless of the nature of the source material remaining on site.
- E The "necessary" provision (which appears in both the former section 40.42(e) and the new section 40.42(c)) simply means that the limited regulatory license extension comes into play only when decommissioning cannot be completed prior to the license's expiration date.
- F The automatic license extension provision grants the licensee no sweeping powers, but permits only limited activities related to decommissioning and to control of entry to restricted areas. Such activities also must have been approved under the licensee's license. To implement an activity not previously authorized by license, and thus not previously subject to challenge, the licensee must first obtain a license amendment.
- G Licensees need only submit the final radiological survey showing that the site or area is suitable for release in accordance with NRC regulations after decommissioning has been completed.
- H To make a serious case for conditions, intervenors reasonably can be held to an obligation to offer some indication of their objective. The proponent of litigation bears the burden of explaining which direction the litigation will take.

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

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

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

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

- A The Director of the Office of State Programs denies the petition submitted pursuant to 10 C.F.R. § 2.206 by US Ecology, Inc. (Petitioner), requesting action with regard to Utah's Agreement State Program.
- B Petitioner requested NRC to initiate appropriate proceedings, including relevant hearings, to suspend or revoke Utah's Agreement State status under section 274j of the Atomic Energy Act of 1954, as amended (AEA), for Utah's failure to require state or federal government land ownership in regulating the commercial disposal of low-level radioactive waste at the Envirocare of Utah, Inc. The Petitioner's request was denied because the Director did not find that the Petitioner had raised a sufficient issue of Utah's compliance with one or more requirements of section 274 of the AEA or any substantial health and safety issues to warrant the action requested.

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

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

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

- A The Director of the Office of Nuclear Material Safety and Safeguards grants in part and denies in part a petition submitted pursuant to 10 C.F.R. § 2.206 by Mr. Dennis Dums, on behalf of the Wisconsin Citizen's Utility Board (Petitioner), requesting action with regard to Arkansas Nuclear One (ANO) operated by Entergy Operations, Inc. (Entergy or the Licensee).
- B Petitioner requested that the Chairman exercise his authority to: (1) determine the applicability of 10 C.F.R. § 72.48 to 10 C.F.R. Subparts K and L; (2) determine whether Entergy is in violation of any NRC regulations regarding use of section 72.48 to make modifications to the VSC-24 cask for use at ANO; (3) order ANO to cease using section 72.48 until NRC determines whether or not it is applicable; (4) order Sierra Nuclear Corporation to cease construction of VSC-24 casks for use at ANO that are being constructed based on ANO's section 72.48 evaluation.

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

DIGEST
ISSUANCE OF DECISIONS ON PETITIONS FOR RULEMAKING

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

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

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