LAW OFFICES
CONNER & WETTERHAHN, P.C.
1747 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006

TROY B. CONNER, JR.
MARK J. WETTERHAHN
ROBERT M. RADER
NILS N. NICHOLS
BERNHARD G. BECHHOEFER
OF COUNSEL

June 25, 1987

(202) 833-3500

CABLE ADDRESS: ATOMLAW

Mr. Samuel J. Chilk
Secretary
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

Re: Proposed Rules of Procedure for the Conduct of Informal Adjudicatory Hearings in Materials Licensing Proceedings

Dear Mr. Chilk:

The Nuclear Regulatory Commission ("Commission" or "NRC") has proposed to amend its regulations to provide rules of procedure for the conduct of informal adjudicatory hearings in materials licensing proceedings. 52 Fed. Reg. 20089 (May 29, 1987). The Commission has invited comments to be received by July 28, 1987. The firm of Conner & Wetterhahn, P.C. offers the following comments.

Basically, the Commission's own background explanation demonstrates the lack of any real need for additional rules to cover materials licensing. As noted, only a handful of hearing requests in materials licensing cases are received annually. In the extremely few instances in which the Commission finds a necessity for some informal hearing, it it a very simple matter for the Commission itself to set the ground rules for the hearing based on the special circumstances of each case. This policy has apparently worked rather well for the past thirty-three years.

Although not intended to do so, adopting new, formal procedures for handling such hearing requests will inevitably create more hearings. Moreover, as with reactor cases, the vast majority of materials licensing cases involve technical questions which are not suited to an adjudicatory format for resolution. In short, the very small number of hearing requests to date on materials licensing do not reflect any pressing need for the array of procedures proposed here.

DS10
cc: Paul Ballard, H-1035

1/0

Further, despite the restriction of the proposed hearing procedures to informal practices, there will be a natural tendency, both in individual cases as well as future rulemaking, to expand hearings to formal adjudications such as those under 10 C.F.R. Part 2, Subpart G for reactor cases. Intervenors will complain that their allegations deserve the same formalities accorded contentions in reactor cases and some courts might agree, particularly since Section 189 of the Atomic Energy Act is the basis for both.

We do not believe that the proposed rule is necessary, but it could nonetheless serve as a model to reform the present hearing practices in reactor cases to eliminate full-blown hearings in each and every instance, particularly with regard to technical and generic issues less susceptible to resolution by formal hearings. As many of us, including Prof. Kenneth Culp Davis, have pointed out for years, Section 189 does not require the complex, formalistic adjudications for facility licensing still required by the Commission.*/

Finally, the Commission correctly recognizes in the proposed rulemaking that the current test for standing in reactor cases is, as a practical matter, based upon the petitioner's 50-mile proximity to the reactor, rather than any demonstrated interest in the outcome of the proceeding. This should be changed to reinstate the standard actually enunciated in Section 2.714 for establishing the requisite interest in the proceeding.

In summary, the easy hearing forum with elaborate built-in mechanisms for delays provided by the Commission to anti-nuclear activists by the formal hearing procedures now incorporated in Part 2 is one of the primary causes for the loss of the nuclear power option to the nation. The error should not be repeated for materials licenses.

Sincerely,

Troy B. Conner, Jr.

Troy B. Conner, Jr.

---

*/ Radiation Safety and Regulation: Hearings before Joint Comm. on Atomic Energy, 87th Cong., 1st Sess. 426-27 (1961).